

Comments submitted in response to Federal Register Notice
Number 2022-18249

“Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act;
Safer Communities by Chemical Accident Prevention”

Docket Number EPA-HQ-OLEM-2022-0174-0003

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The 86 organizations listed below represent fenceline, community, worker, environmental justice, business, conservation, science, health and other constituencies affected by chemical disasters and EPA’s Risk Management Plan (RMP) regulation and program, many disproportionately impacted by chemical hazards and incidents. We submit these comments, which are guided by the vision of a safe and sustainable chemical industry that does not harm people, the environment, or the climate outlined by the Louisville Charter for Safer Chemicals.¹

The hazardous chemicals manufactured, stored and processed at RMP facilities not only disproportionately impact Black, Latino and low-income communities,² they continue to have toxic impacts across the chemical supply chain, often ultimately ending with disposal, burning or application (such as in the case of toxic pesticides being applied by farmworkers of color) in other EJ communities. EPA has stated its intent to update the RMP regulation in order to “further protect vulnerable communities from chemical accidents, especially those living near facilities with high accident rates.” EPA’s public commitment matches President Biden’s January 27, 2021 Executive Order, which states that: “It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.”

EPA received extensive input during its 2021 information collection for this rulemaking from affected residents, workers, communities, elected officials, and many other stakeholders from across the country. The July 8, 2021 virtual listening session in particular lasted 90 minutes longer than the originally scheduled 4 hours. Dozens of speakers during the listening sessions, and extensive diverse written comments, communicated clearly to EPA that **the workers and communities most at risk from RMP facilities, and most harmed by the 150 or more chemical disasters that continue to occur on average every year, demand that the agency significantly strengthen the RMP rule in ways that will finally prevent disasters.**

As you have already heard many times over the past decade, fenceline communities, facility workers, and a wide variety of experts have demonstrated conclusively to EPA that voluntary measures are not working

¹ The Louisville Charter for Safer Chemicals. <http://www.louisvillecharter.org/>

² Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Center for Effective Government. (2014, May). *Who’s in Danger? Race, Poverty and Chemical Disasters*. <https://ej4all.org/assets/media/documents/Who's%20in%20Danger%20Report%20FINAL.pdf>

to prevent chemical incidents. There is abundant evidence available to EPA of policies and methods proven to reduce and remove hazards. EPA needs to finally deliver the basic and common-sense protections that communities, workers, and safety experts have been seeking for too long.

The 2019 RMP rule rollback was based on deeply flawed data and analysis, incorrect assumptions, and arbitrary and capricious reasoning. That decision ignored abundant evidence that did not support EPA's action, and ignored well-documented disproportionate impacts on already overburdened communities. A wide variety of new information and evidence available, or which was improperly considered or ignored during the 2019 rulemaking, demonstrate the urgent need for EPA to develop and adopt a stronger RMP rule.

The regulatory impact analyses, and other evidence, for both the 2017 Amendments and the 2019 rollback rule confirmed disproportionate impacts to communities of color and low-income communities from RMP facilities. And yet, even the 2017 Amendments did not establish sufficient requirements to address these environmental justice impacts and protect these communities. It also didn't include a wide variety of measures specifically requested by these communities in their comments during the rulemaking process.

We appreciate the steps this administration has taken to address key concerns raised repeatedly by our organizations. However, EPA's draft "Safer Communities by Chemical Accident Prevention" proposed rule is far too weak, and lacks essential common sense prevention requirements, to finally prevent constantly occurring chemical disasters. The draft rule falls short of meeting EPA and the Biden Administration's commitments to support and protect disproportionately impacted communities and workers, and place health and safety ahead of corporate interests.

A stronger RMP rule, which includes robust requirements for hazard removal and conversion to safer chemicals and processes, as well as other strengthened elements, is urgently needed.

EPA must take action on the following key recommendations when finalizing the RMP rule to ensure Congress' mandate to prevent chemical disasters.

Key recommendations

1. EPA must make this rule as protective as possible because RMP facilities are one of the stressors contributing to cumulative impacts in Environmental Justice communities (Environmental Justice)
2. Require all facilities to implement safer chemicals and processes (Safer Technology and Alternatives Assessment)
3. Require facilities to routinely report on safer processes, chemicals, technologies and designs that they have evaluated, implemented and planned. (Safer Technology and Alternatives Assessment)
4. Explicitly require all facilities to assess and prepare for climate hazards (Natural Hazards)
5. Maintain the requirement for backup power for existing air monitors but include penalties suitable to prevent monitor shutdown (Power Loss + Proposed Modifications and Amplifications to Emergency Response Requirements)
6. Require all facilities to implement and maintain a real-time fence-line air monitoring system (Power Loss + Proposed Modifications and Amplifications to Emergency Response Requirements)

7. Require all RMP facilities to maintain enough back-up power to safely run or shutdown the entire facility (Power Loss + Proposed Modifications and Amplifications to Emergency Response Requirements)
8. Require multilingual emergency response plans and emergency alerts and advanced community notification (Power Loss + Proposed Modifications and Amplifications to Emergency Response Requirements)
9. Require that emergency response drills are conducted at all RMP-regulated facilities annually at a minimum (Emergency Response Exercises)
10. Strengthen worker participation and protection (Employee Participation)
11. On the fastest timeline possible, add RMP Info to an EPA website that is regularly updated (Information Availability)
12. Require that RMP facilities provide access to information that emergency responders determine necessary to sufficiently protect the public when chemical disasters aren't prevented (Information Availability)
13. Better address hazards from transportation containers (Other Areas of Technical Clarification)
14. Require root cause analysis for all RMP facilities (Root Cause Analysis)
15. Require third-party audits as a primary prevention strategy and make the results publicly available (Third Party Compliance Audits)
16. Amend 40 CFR § 68.215 so Title V (federal Clean Air Act) air permits assure full RMP compliance (OTHER)
17. Cover the entire facility where only part of it is currently covered (OTHER)
18. Update the list of covered chemicals on the fastest timeline possible (ideally no later than the end of 2023) to add known harmful chemicals (OTHER)
19. Improve accessibility in rulemaking (OTHER)
20. Use correct assumptions for incident data (OTHER)

Our organizations and constituencies insist that any new RMP rule must remove loopholes and reject the assumption that voluntary actions will produce the changes needed to protect workers and communities from the persistent cumulative impacts of chemical disasters disproportionately occurring in communities of color and low-income communities. EPA must stop shifting the burden from highly hazardous chemicals onto community health, particularly those who are disproportionately burdened. This practice exacerbates health inequities and perpetuates systemic racism. Implementing prevention measures like safer chemicals and processes at the RMP facilities will reduce their disproportionate impact and toxic burden across the chemical's lifecycle.

Environmental Justice

1. EPA must make this rule as protective as possible because RMP facilities are one of the stressors contributing to cumulative impacts in Environmental Justice communities.

RMP facilities put 39% of the US population (124 million people) who live within three miles of these facilities at constant risk of chemical disaster. Though much research has focused on those closest to the

facilities, the full vulnerability zones can extend up to twenty-five miles in radius.³ This radius often encompasses one or more other RMP facilities as well as additional dangerous facilities not covered by the RMP program.

Due to the historic and ongoing legacy of environmental racism in the United States, RMP facilities are disproportionately located in Environmental Justice (EJ) communities (communities of color and low income communities).⁴ Research shows that residents in chemical facility vulnerability zones are disproportionately Black or Latino, and have higher rates of poverty than the U.S. as a whole. This disproportionate impact based on race and income is sharply magnified in the “fenceline” areas nearest the facilities where residents are at the greatest risk of harm.⁵

Many communities of color and low-income communities face disproportionate risk from RMP facilities located near where they live, work, worship and go to school.⁶ But RMP facilities are not the only threat to health and safety of EJ communities. Residents in EJ communities are threatened and harmed by potential chemical releases or explosions, but also the cumulative impacts of daily exposure to toxic air pollution (from RMP facilities and other sources), disproportionate exposure to unsafe drinking water, and lack of access to healthy foods and quality healthcare.⁷ Many of these communities also rely on dollar stores for household necessities and even food, making these retailers potential sources of additional toxic exposures in consumer products.⁸ Furthermore, the additional stressors of experiencing systemic racism and poverty worsen the effects of pollution.⁹ Residents don’t experience these harms in a vacuum, they build on one another and multiply the risk they face in the event of a preventable disaster at an RMP facility.

Climate change is also a risk multiplier, as EPA has recognized in the proposed rule. This is especially true for EJ communities who are disproportionately impacted by the present and ever-increasing threat of climate change hazards, particularly flooding and hurricanes, and are often threatened by “double

³ Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Campaign for Healthier Solutions. (2018, September). *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities*. <https://ej4all.org/life-at-the-fenceline>

⁴ This definition is adapted from the definition of “Environmental Justice community” developed by the Equitable & Just National Climate Forum Policy Working Group. For more information, please contact Dr. Nicky Sheats of the New Jersey Environmental Justice Alliance and Ansha Zaman of the Center for Earth Energy & Democracy.

⁵ Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Center for Effective Government. (2014, May). *Who’s in Danger? Race, Poverty and Chemical Disasters*. <https://ej4all.org/assets/media/documents/Who's%20in%20Danger%20Report%20FINAL.pdf>

⁶ Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Center for Effective Government. (2014, May). *Who’s in Danger? Race, Poverty and Chemical Disasters*. <https://ej4all.org/assets/media/documents/Who's%20in%20Danger%20Report%20FINAL.pdf>

⁷ Natural Resources Defense Council, Coming Clean, Environmental Justice Health Alliance for Chemical Policy Reform. (2019, September). *Watered Down Justice*. <https://www.nrdc.org/sites/default/files/watered-down-justice-report.pdf>

⁸ Campaign for Healthier Solutions, Coming Clean, Environmental Justice Health Alliance for Chemical Policy Reform. (2015, February). *A Day Late and A Dollar Short: Discount Retailers Are Falling Behind on Safer Chemicals*. https://ejforall.org/assets/media/documents/Report_ADollarLateAndADollarShort.pdf

⁹ Schuyler, A. J., & Wenzel, S. E. (2022). Historical Redlining Impacts Contemporary Environmental and Asthma-Related Outcomes in Black Adults. *American Journal of Respiratory and Critical Care Medicine*, (ja). <https://www.atsjournals.org/doi/abs/10.1164/rccm.202112-2707OC>

disasters” when storms strike.¹⁰ EJ Communities are more likely to live in areas prone to natural hazards, have less access to resources (e.g. money, reliable transportation, English proficiency, adequate evacuation routes) to leave, and take longer to recover, when recovery is even possible.^{11, 12} The proposed rule requires facilities to “evaluate” for natural hazards, but does not require them to implement prevention measures as a result of that evaluation. This leaves facilities and neighboring communities vulnerable to predictable disasters caused or exacerbated by natural hazards. This failure to require implementation means that you are not addressing the real world risk EJ communities face.

Inadequate and often disparate enforcement of environmental and public health rules also contributes to harm in EJ communities. There are many community examples of times when rules, including the RMP Rule, were not enforced to hold facilities accountable or to protect workers and communities from avoidable harm. In Crosby, TX for example, a major explosion occurred as the result of the foreseeable loss of power during Hurricane Harvey, triggering evacuation of nearby residents already coping with the hurricane itself. According to media reporting, EPA opened an investigation into this incident, but now over four years later it still has never been the subject of an EPA enforcement action as far as we can tell.¹³

Even when rules and programs like the RMP are in place, they are no good to workers or communities if they are not being adequately and equitably enforced. We have seen time and again that enforcement is extremely variable from state to state and even EPA region to region. To the extent that EPA delegates this authority to regions, states or counties, EPA’s responsibility to ensure full and equitable enforcement of the law remains the same. Across the board, the proposed rule should include penalties sufficient to ensure compliance and deter facilities from future actions that can put workers and communities in harm’s way. In particular EPA should target facilities that are located in EJ communities for increased scrutiny and, when appropriate, enforcement actions. This would be consistent with Executive Order 14008 and the Department of Justice’s Comprehensive Environmental Justice Enforcement Strategy.¹⁴

EJHA affiliates and other EJ residents, community and environmental groups have long called for access to information about RMP facilities and the hazards they posed to surrounding communities. People cannot protect themselves from hazards they don’t know about. They can’t safely evacuate or execute emergency response plans that have never been shared with them. Unless and until EPA requires RMP facilities to eliminate the hazards they face by requiring the transition to inherently safe chemicals and processes, people need to know what their risks are and how to respond when disaster strikes. Yet access to this information to date has been piecemeal at best.

¹⁰ Center for Progressive Reform, Earthjustice, and the Union of Concerned Scientists. (2021, July). *Preventing “Double Disasters”*. <https://www.ucsusa.org/sites/default/files/2021-07/preventing-double-disasters%20FINAL.pdf>

¹¹ Bullard, R.D. (2008). Differential Vulnerabilities: Environmental and Economic Inequality and Government Response to Unnatural Disasters. *Social Research: An International Quarterly* 75(3), 753-784. doi:10.1353/sor.2008.0035.

¹² Faber, J.W. Superstorm Sandy and the Demographics of Flood Risk in New York City. *Hum Ecol* 43, 363–378 (2015). <https://doi.org/10.1007/s10745-015-9757-x>

¹³ Flitter, Emily. (2017, September 1). *U.S. regulator probes Arkema's safety practices after Texas fires*. Reuters Environment. <https://www.reuters.com/article/us-storm-harvey-arkema-probe/u-s-regulator-probes-arkemas-safety-practices-after-texas-fires-idUSKCN1BM2SB>

¹⁴ U.S. Department of Justice, Office of the Associate Attorney General. (2022, May 5). Comprehensive Environmental Justice Enforcement Strategy. <https://www.justice.gov/asg/page/file/1499286/download>

We stand with fenceline communities in calling for EPA to put RMP facility information on a transparent, accessible, and multilingual website that is regularly updated. This includes public access to facility information without the need to provide personal information to facilities (as EPA is proposing) or show identification to enter a federal reading room (as is currently the practice); real-time fenceline monitoring; multilingual alerts about hazards and response/evacuation plans in advance of an incident and during one. Access to real-time air quality information and multilingual alerts in advance of and during chemical incidents are paramount to allow EJ communities to take measures that protect their families.

In addition to dramatically increasing information available and communicated to residents, EPA should proactively, meaningfully and inclusively engage EJ communities in the process of issuing Risk Management Plans. Ensuring “meaningful engagement with impacted communities” is one of the Principles for Environmental Justice Enforcement laid out in the Department of Justice’s Comprehensive Environmental Justice Enforcement Strategy.¹⁵ It is unacceptable that there is currently no opportunity for residents living, working, etc. near an RMP facility to weigh in on that plan. Local residents have expertise on unique conditions and hazards in their communities but as of right now they are completely left out of the RMP process. For example, as mentioned later in this comment (natural hazards section), the Bayer CropScience RMP facility in Institute, WV fails to account for flooding as a major hazard, even though “catastrophic flooding” as a result of dam failure has been ranked as a top concern for the area by the Kanawha County LEPC. If residents had been included in development of the RMP, it would have almost certainly recognized flooding as a significant danger to be addressed.

One approach that is taken in California is that the public in Contra Costa County and the City of Richmond, California has 45-days to comment on Risk Management Plans, safety plans and audit findings.^{16,17} Public meetings are also held for RMPs (when the public notes interest), for preliminary audit findings, for completed Safety Plans, whenever there is a major incident or release, or public concern. Written responses are also provided to all written comments submitted by the public.

Due to the far-reaching health, safety, environmental and economic benefits of preventing chemical disasters from occurring, EPA should broadly require the transition to safer alternatives at all RMP facilities in all communities, while recognizing that EJ communities in particular face increased threats from RMP covered facilities and other sources.

Specifically EPA should:

- a. Require transition to safer chemicals and processes for all facilities.
- b. Define Environmental Justice community for use in determining which facilities are located with EJ communities. This definition should be developed by EPA with input from EJHA affiliates and other fenceline residents and EJ advocates. We recommend EPA refer to the Equitable & Justice National Climate Platform definition of EJ community.¹⁸

¹⁵ U.S. Department of Justice, Office of the Associate Attorney General. (2022, May 5). Comprehensive Environmental Justice Enforcement Strategy. <https://www.justice.gov/asg/page/file/1499286/download>

¹⁶ Contra Costa County Health Services. CalARP Public Participation. <https://cchealth.org/hazmat/calarp/public-participation.php>

¹⁷ City of Richmond, California Industrial Safety Ordinance (Municipal Code Chapter 6.43, RISO). <https://cchealth.org/hazmat/pdf/iso/RISO-Chapter-6-43-INDUSTRIAL-SAFETY.pdf>

¹⁸ For more information, please contact Dr. Nicky Sheats of the New Jersey Environmental Justice Alliance and Ansha Zaman of the Center for Earth Energy & Democracy.

- c. Target facilities that are located in EJ communities with increased compliance scrutiny and, when appropriate, enforcement actions. Ensure that state and local governments with delegated authority are equitably and justly enforcing the RMP.
- d. Proactively, meaningfully and inclusively engage EJ communities in EPA's process of accepting Risk Management Plans; incorporate RMPs into Title V permits to ensure compliance and minimal transparency; consider and implement additional ways to make community engagement part of the RMP program.
- e. Require RMP facilities to implement and maintain a real-time fence-line air monitoring system, starting with facilities in EJ Communities and known air pollution hot spots.
- f. Provide accessible, transparent and equitable access to information about all RMP facilities. Particular emphasis should be placed on proactively communicating RMP information to EJ communities.

Safer Technology and Alternatives Analysis (STAA)

- 2. Require that all facilities conduct a STAA and implement safer chemicals and processes.

The proposed rule calls for certain RMP facilities to conduct a Safer Technologies and Alternatives Assessment (STAA). As part of this requirement, covered facilities must 1) assess inherently safer alternatives/technologies (IST), 2) document their IST assessment and the available alternatives, 3) determine if it's feasible to implement IST, and 4) determine if IST implementation is "practicable" (can reasonably be completed on a timeframe). This requirement applies to chemical manufacturing facilities and petroleum and coal manufacturing processes that are located within 1 mile of another RMP-regulated facility with these same processes that are classified 324 and 325 by the North American Industry Classification System (NAICS). It also applies to all facilities with petroleum and coal products processes (in NAICS 324) using hydrofluoric acid (HF) regardless of their proximity to another facility.

As proposed, the rule exempts approximately 95% of all RMP facilities from conducting the safer alternatives assessment by only applying to 590 facilities out of almost 12,000 facilities across the country. Furthermore, once this analysis is conducted, EPA does not require that facilities take steps to actually transition to these safer alternatives. These repeated incidents demonstrate that, absent requirements, facilities will fail to implement safer alternatives voluntarily, at great cost to workers and communities. The following incidents highlight this shortcoming in the proposed rule.

Westlake Chemical South, Westlake, Louisiana

The Westlake Chemical South/Eagle US 2 LLC, Lake Charles Plant in Westlake, Louisiana reported 14 incidents in less than 10 year period that injured 12 workers, caused 5,000 people to shelter in place, 130 people to evacuate, required 27 people to seek medical treatment, and cost nearly \$12 million in damages.¹⁹ In January 2022, yet another explosion at the same plant caused 7,000 students to

¹⁹ RMP Accidents 2004-2020 (Appendix A); Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention. <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0065>

shelter-in-place.²⁰ This facility would not be required to even consider and document safer alternatives under the proposed rule, despite its poor safety record.

Union Carbide, Institute, West Virginia

The Bhopal Union Carbide sister facility in Institute, West Virginia, remained the only facility in the U.S. to continue to use and stockpile large quantities of the chemical for more than 25 years after the Bhopal disaster, even after multiple deadly explosions at the facility's pesticide manufacturing unit utilizing MIC. The facility declined to voluntarily eliminate its stockpiles of MIC by transitioning to the inherently safer alternatives used by every other US facility, even after a 1993 explosion at the facility involving MIC killed one worker, and caused a shelter-in-place, and 33 people to seek medical treatment.²¹ When the RMP rule was implemented just three years later and it did not mandate transition or even consideration of transitioning to inherently safer chemicals and processes, the facility owners, then owned by Rhone-Poulenc, again declined to voluntarily transition to proven safer alternatives. Instead, they spent \$50 million in safety investments that proved ineffective from eliminating the hazards posed by MIC.²² According to a 1994 third-party audit of the facility, "the company's failure to plan for the eventual elimination of MIC inventories may have already led to purchases of some equipment ill-suited to an eventual shift to the no-storage approach to MIC production."²³

Another explosion occurred fifteen years later in the same pesticide unit involving MIC, then owned by Bayer CropScience, that killed two workers, one student,²⁴ injured six emergency responders and two contractors, caused a shelter-in-place for more than 40,000 residents, and nearly eclipsed another Bhopal disaster according to a Congressional investigation.²⁵ This incident resulted in an additional \$25 million investment in upgrades that maintained MIC operations.²⁶ Rather than making the one-time investment in transitioning to safer chemicals or processes—like every other US facility—which could have helped to prevent harm to workers, the nearby communities and the facility, the facility chose to spend a total of \$75 million over the years to maintain a hazardous process.

In the final rule, EPA should require all RMP facilities to conduct Safer Technologies and Alternatives Assessments. Furthermore, EPA should require that all RMP facilities implement safer chemicals and processes without exemption.

²⁰ Coming Clean and Environmental Justice Health Alliance for Chemical Policy Reform. (2022, September). *Preventing Disaster: Three chemical incidents within two weeks show urgent need for stronger federal safety requirements*. <https://comingcleaninc.org/assets/media/images/Reports/Preventing%20Disaster%20final.pdf>.

²¹ U.S. Chemical Safety and Hazard Investigation Board. 2011. Bayer CropScience Pesticide Chemical Runaway Reaction Pressure Vessel Explosion. <https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/>

²² National Academies of Sciences, Engineering, and Medicine. 2012. *The Use and Storage of Methyl Isocyanate (MIC) at Bayer CropScience*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/13385>.

²³ Lapkin, Milton. (November 12, 1994.) *Reducing the Storage of Methyl Isocyanate at Rhone-Poulenc's Facility in Institute, West Virginia*. Third-party audit.

²⁴ Hunt, Jared. (2010, October 6.) *Wrongful death suit filed against Bayer*. Charleston Daily-Mail.

²⁵ *Secrecy in the Response to Bayer's Chemical Plant Explosion: Hearing before the Subcommittee on Oversight and Investigation, of the House Committee on Energy and Commerce, 111th Cong.* (2009). <https://archive.org/download/gov.gpo.fdsys.CHRG-111hhr67825/CHRG-111hhr67825.pdf>

²⁶ U.S. Chemical Safety and Hazard Investigation Board. 2011. *Bayer CropScience Pesticide Chemical Runaway Reaction Pressure Vessel Explosion*. <https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/>

3. Require facilities to routinely report on safer processes, chemicals, technologies and designs that they have evaluated, implemented and planned.

We are encouraged by EPA's proposed technology transfer provisions for sharing successful practices that companies are using to reduce and remove chemical hazards. However, as proposed, 95% of RMP facilities will not report any solutions data. EPA should require every RMP facility to routinely report the safer technologies/designs evaluated, implemented, or planned. This reporting should occur as a regular part of semi-annual Clean Air Act compliance reports, and at a minimum, as a regular part of RMP reporting to the EPA.

Natural Hazards

4. Explicitly require all facilities to assess and prepare for natural hazards.

We commend EPA for taking steps in the proposed rule to address the additional threats that natural hazards pose to RMP facilities. These hazards are only exacerbated in the face of climate change. However, this provision must be strengthened to address the actual threats that communities face on the ground. Aside from RMP facilities, these threats include other local hazardous land uses, and often legacy contaminated sites. The combination of these factors plus climate change impacts present a magnified threat to communities and these factors should be accounted for in Risk Management Plans.

In the proposed rule, EPA requires that some RMP facilities explicitly assess for natural hazards including those caused by worsening threat of climate change when they assess for possible hazards that could contribute to an incidental release. Under the current rule, RMP facilities are not required explicitly to do so. As a result, many facilities, like the ones described below, have not taken this step voluntarily, even when known natural hazards exist, leaving them unprepared.

Hurricane Ida, Shell Chemical refinery, 2021

The Shell Chemical East Site refinery in Norco, Louisiana experienced flooding and power losses in the wake of Hurricane Ida that were not explicitly considered in its Risk Management Plan. On September 1, 2021 the National Response Center reported that the facility was releasing unknown quantities of hydrogen, sulfide, benzene, and butadiene into the air. Residents could see and smell flares of black smoke issuing from the refinery. These releases continued for nearly two weeks, until at least September 12, exposing residents to carcinogenic chemicals. In the area around Shell Norco, there are 50,067 people, 49% of whom are people of color and the majority of whom are low-income. EPA ranks the community cancer risk from air toxics in Norco in the highest possible percentile range (95% to 100%).

As of August, 2021, the Shell facility's Risk Management Plan did not appear to consider floods or extremely high winds.²⁷ This facility is not unique. The Government Accountability Office estimates that one-third of RMP facilities are vulnerable to natural hazards like hurricanes.²⁸

Hurricane Harvey, Arkema, 2017

The Arkema Inc. chemical plant in Crosby, Texas, flooded and lost electrical power in the wake of Hurricane Harvey in August 2017. Organic peroxides stored onsite ignited. The fires spewed toxic black smoke into the surrounding residential community. Twenty-one emergency responders sought medical attention due to exposure to the toxic air emissions, and 205 people within 1.5 miles of the facility were evacuated from their homes. The facility, located on a floodplain, had seen extensive flooding in the past, as well as previous incidents of fire and fugitive emissions. Nevertheless, the Arkema plant did not have adequate preparation for severe flooding, loss of power, inundation and failure of backup generators, the combustion of unstable chemicals stored onsite, and toxic air emissions. Despite the predictability and harmful impacts of this incident, Arkema was not prepared and did not have adequate back up power to safely or shutdown the facility because they were not required to by EPA. Under the proposed rule they still would not be required to implement measures to prevent another similar or worse incident.

As pointed out in a joint report by the Union of Concerned Scientists, Earthjustice and the Center for Progressive Reform, “the Arkema incident is not the first — nor will it be the last — double disaster if our government fails to require chemical facilities to take precautions to prevent such catastrophes.”²⁹

Bayer CropScience, 2010

Kanawha Valley, West Virginia is home to a number of RMP facilities that are all located downstream of the Bluestone Dam, the integrity of which has been known for years by the Army Corps of Engineers to be inadequate to protect against extreme storms and at risk of breach. If a breach occurred, it would “cause catastrophic flooding” to these chemical facilities, put over 160,000 lives at risk and result in property damages in excess of \$20B.”³⁰ Even when 2010 rankings in a Hazard Vulnerability Study³¹ conducted by the Local Emergency Planning Committee identified flooding and dam failure as the top two overall hazards/risk rank for 2010, the 2010 Risk Management Program Plan for Bayer CropScience in Institute, Kanawha County, West Virginia, did not account for flooding as a major hazard. This facility sits in a predominantly Black community, next door to a historically Black land grant university right along the Kanawha River. Although the community sits next to the interstate, there is only one two-lane road that serves as an evacuation road for thousands of people, and it has insufficient access to higher

²⁷ Coming Clean. (2021, September 29). *Unprepared for Disaster: Chemical Hazards in the Wake of Hurricane Ida*. https://www.comingcleaninc.org/assets/media/documents/Unprepared_for_Disaster_FINAL.pdf

²⁸ United States Government Accountability Office. (2022, February). *Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change*. <https://www.gao.gov/products/gao-22-104494>.

²⁹ Center for Progressive Reform, Earthjustice, and the Union of Concerned Scientists. (2021, July). *Preventing “Double Disasters”*. <https://www.ucsusa.org/sites/default/files/2021-07/preventing-double-disasters%20FINAL.pdf>

³⁰ U.S. Army Corps of Engineers. Bluestone Dam Safety Assurance Mega-Project. Fact Sheet As of 29 January 2019.

<https://www.lrh.usace.army.mil/Portals/38/docs/bluestone/Bluestone%20Dam%20DSA%20Fact%20Sheet%20Updated%2029%20Jan%202019.pdf> Accessed Sept 2, 2021.

³¹ Kanawha Putnam Emergency Planning Committee. (2011, January 5.) Hazard Vulnerability Survey. https://www.kpepc.org/sites/default/files/pdfs/KPEPC-Hazard-Vulnerability-Survey_2011.pdf

ground. Access to the interstate requires traveling in the direction of the chemical plant, which in the event of a release, explosion or fire, could get people trying to escape killed. The other evacuation road is an unkept gravel road along the railroad tracks just by the river that is locked by gates on both ends.

EPA also proposes to only apply the natural hazard assessment to processes or facilities that fall under RMP Program 2 and Program 3 category. Natural hazards are a known threat multiplier, particularly as they grow more extreme in the face of climate change. Without explicitly requiring the assessment of these threats for all RMP program levels, the potential for additional consequences, on- and off-site, could be missed.

EPA should maintain the requirement that facilities justify any actions not taken to address natural hazards they identify in hazard assessments. However, this provision must be strengthened by requiring that RMP facilities act to address all natural hazard threats as they will only worsen in the face of climate change. As well, this provision should apply to all, rather than just a subsection of, RMP facilities.

Power Loss + Proposed Modifications and Amplifications to Emergency Response Requirements

5. Maintain the requirement for backup power for existing air monitors and include penalties suitable to prevent monitor shutdown.

EPA is proposing that air pollution control and monitoring equipment has standby and backup power. While we support this requirement, this provision does not address community concerns about intentional dismantling of monitoring equipment, whether or not it is related to natural hazards.

EPA even recognizes this problem in the proposed rule, although only as related to natural hazards, but takes no steps to address the concern. The proposed rule states:

“EPA is concerned that air monitoring and control equipment is often removed from service before natural disasters to potentially prevent damage to equipment or, conceivably in some cases, evade monitoring requirements and therefore may not become operational again until much later, after the event or threat has passed.”³²

The full extent of the 2017 Arkema disaster, triggered by flooding and damage from Hurricane Harvey, is still unknown, because the EPA and the Texas Commission on Environmental Quality didn't begin monitoring air quality quickly enough. A 2019 report from the EPA's Office of Inspector General found that many of the Houston area's stationary air monitors were turned off and secured *ahead* of Harvey's landfall.³³ This made it impossible to assess the full impact of these emissions on human health. And once air monitoring started, monitoring efforts did not always generate data “considered suitable for making

³² Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention. 87 Fed. Reg. 53571 (August 31, 2022).
<https://www.govinfo.gov/content/pkg/FR-2022-08-31/pdf/2022-18249.pdf>

³³ EPA Office of the Inspector General. (2019, December 16). *Report: EPA Needs to Improve Its Emergency Planning to Better Address Air Quality Concerns During Future Disasters*. Report #20-P-0062.
<https://www.epa.gov/office-inspector-general/report-epa-needs-improve-its-emergency-planning-better-address-air-quality>

health-based assessments,” given its failure to “consider the cumulative impact of exposure to multiple air pollutants at one time,” the report states.³⁴

Furthermore, EPA states in the proposed rule that they want to, “ensure RMP-regulated substances at covered processes are continually being monitored so that potential exposure to chemical substances can be measured during and following a natural disaster,” but they fail to recognize incidents where natural hazards don’t serve as a contributing factor to the incident.

For example, in 2008, Bayer CropScience intentionally dismantled air monitoring equipment prior to an explosion at a pesticide manufacturing unit in Institute, West Virginia that involved methyl isocyanate (MIC), the same chemical that was released from a Union Carbide facility in Bhopal, India in 1984 and is attributed to over a half million injuries and deaths since.³⁵

To address this concern, EPA must strengthen the rule by including penalties sufficient to deter companies from intentionally turning off their existing air monitors and removing them from service, whether as a result of the presence of a natural hazard or not.

6. Require all RMP facilities to implement and maintain a real-time fenceline air monitoring system

In the proposed rule, EPA acknowledges the need to consider expanding fenceline monitoring for RMP-facilities but says that action is beyond the scope of this notice of proposed rulemaking. Requiring adoption of fenceline monitoring at all RMP facilities falls directly within the scope of the proposed rule particularly because of its function to serve as an early warning alert system for workers and communities before major incidents occur. EPA recognizes that it has the authority to require fenceline air monitoring, and that it has used this authority to issue fenceline monitoring requirements for benzene at petroleum refineries.³⁶

For decades, community members living nearby these facilities have repeatedly urged the EPA to require real-time fenceline monitoring.³⁷ Until all facilities are required to transition to inherently safe chemicals and processes, incidents will continue to happen. People need to know that an incident is occurring so they can take action at that time to protect themselves, their families and their communities. Fenceline monitoring is a critical measure to address this. Fenceline monitoring can also assist communities in better understanding levels of emissions they may be exposed to on the fenceline as well as the health hazards associated with those emissions.

EPA must finally listen to communities and require that all facilities implement and maintain fenceline monitoring that automatically provides emissions data for all RMP-regulated chemicals online and in real

³⁴ Center for Progressive Reform, Earthjustice, and the Union of Concerned Scientists. (2021, July). Preventing “Double Disasters”. <https://www.ucsusa.org/sites/default/files/2021-07/preventing-double-disasters%20FINAL.pdf>

³⁵ *Secrecy in the Response to Bayer's Chemical Plant Explosion: Hearing before the Subcommittee on Oversight and Investigation, of the House Committee on Energy and Commerce, 111th Cong.* (2009). <https://archive.org/download/gov.gpo.fdsys.CHRG-111hhr67825/CHRG-111hhr67825.pdf>

³⁶ U.S. Environmental Protection Agency. (2022, April 19). Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention. <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0066>

³⁷ Pickering, M., & Lewis, A. (Eds.). (1991). Chemical Valley. Appalshop, Incorporated. <https://appalshop.org/shop/chemical-valley>

time, and is completely accessible to the public. This information should be available in the local languages and formats needed for easy comprehension and download. The monitors should automatically detect and report in real time when RMP quantity thresholds or health-based triggers have been exceeded or are within 25% of the level of exceedance; this should also trigger alerts for the nearby community.

Health-based triggers should be based on the most protective acute toxicity values for the most susceptible endpoints in the most susceptible human beings. Sources for these values could include EPA air office's health reference value prioritization for acute health threats, the Agency for Toxic Substances and Disease Registry (ATSDR) Minimal Risk Levels (MRLs) for Hazardous Substances, or the California EPA California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA). Where health effects data is unknown or insufficient for fully understanding human health effects, any level above 0 should trigger action. The highest emission level achieved (the peak emission) in each hour, week, month, and year should also be reported online.

7. Require all RMP facilities to maintain enough back-up power to safely run or shutdown the entire facility.

EPA proposes to require that air pollution control and monitoring equipment has standby and backup power but does not require that facilities themselves are also equipped with the same standby and backup power to safely run or shutdown the entire facility in the event of a natural or other hazard. Air monitoring equipment is crucial during chemical disasters, and thus we strongly support the inclusion of this provision; however it is largely a response measure. Requiring enough power to run or safely shut down all process units would be a prevention measure.

EPA is proposing that all facilities evaluate hazards related to power loss and document those hazards in their hazard evaluations. However, EPA is not requiring that facilities actually maintain enough power to safely run or shutdown the entire facility, not even during emergencies.

Given that power loss has been identified as the cause of hazardous chemical releases, including in two of the incidents listed above (Shell East Site, 2021, Arkema, 2017), it is clear that more stringent requirements are needed.

Voluntary measures don't work. As EPA points out in its proposed rule, "only 63 percent (310) and 44 percent (1,971) of facilities with Program 2 and Program 3 processes, respectively, have implemented backup power at their facilities, despite identifying that the loss of cooling, heating, electricity, and instrument air is a major potential hazard to their process operations." In other words, the majority of RMP facilities who have identified power loss as a danger to chemical safety have failed to then voluntarily implement backup power. In addition to requiring that facilities evaluate the hazards associated with power loss, EPA must strengthen this provision to require that all RMP facilities maintain enough backup power to safely run or shutdown the entire facility.

8. Require multilingual emergency response plans and emergency alerts and advanced community notification.

EPA is proposing that RMP facilities ensure that the public is promptly notified about chemical releases according to the facility's emergency response plan in coordination with local responders. While we support this provision, there are gaps that can prevent neighboring communities from having access to the information they need in a timely manner to protect themselves and their families in advance of and when disaster strikes. This is especially true for fence-line communities that may have social characteristics, such as lack of access to transportation, limited or no English proficiency, and housing insufficient to protect inhabitants from hazardous air, that may put them at increased risk of harm from a chemical disaster.

The proposed rule can be strengthened by improving outreach to inform the public about RMP facility hazards and emergency response plans before and during incidental releases, and by requiring that emergency alerts and advanced emergency response plans be made available in multiple languages necessary to sufficiently communicate to all members of the public affected by a potential incidental release.

Emergency Response Exercises:

9. Require that emergency response drills are conducted at all RMP-regulated facilities annually at a minimum

At the EPA's September 26-28, 2022 public hearings, several community members affiliated with Rubbertown Emergency ACTION (REACT) in Louisville, Kentucky urged the EPA to require more frequent emergency response drills. The proposed rule requires certain facilities with offsite impacts to conduct emergency response drills a minimum of every 10 years unless local responders indicate that frequency is infeasible or impracticable. That means that workers who have been employed at an RMP facility for 20 years would only be required to conduct emergency response exercises, at most, twice in their careers. Furthermore, it does not account for employee turnover or changes to processes that increase facility hazards. It also doesn't guarantee that these drills will be conducted at least once every 10 years.

This provision only applies to RMP facilities with Program 2 or 3 processes (processes that have identified potential off-site impacts) which are subject to the emergency response program requirements. As such, it excludes a number of RMP facilities, including those in the Program 1 category that would not be required to assess the threat of natural hazards under the proposed rule, even when an assessment of natural hazards may identify off-site impacts not previously considered.

It is essential that EPA strengthen this requirement to better protect workers and communities by ensuring that local and facility emergency responders are up-to-date on the evolving hazards present at RMP facilities and can cohesively work together in emergency situations. It is also essential that exclusions don't undermine the potential for off-site impacts and catch emergency responders and communities off-guard.

Employee Participation:

10. Strengthen worker participation and protection.

Workers are the first line of defense to prevent chemical disasters because they are especially at risk of harm when chemical disasters occur. The proposed rule includes crucial measures that support worker participation to prevent chemical disasters, such as Stop Work Authority and anonymous reporting, but these provisions are too limited, including that they apply to only some RMP program levels. EPA must take the following actions to strengthen worker participation and protection in the final RMP rule:

- a. Support meaningful collaboration of employees and their chosen representatives with management to design, implement, and evaluate all phases of the Risk Management Program, including hazard assessment, Safer Technology Alternatives Analysis, incident investigation, third party compliance audits, Stop Work Authority, anti-discrimination measures and emergency response.
- b. Ensure that employees and their representatives at all RMP facilities (regardless of Program level) have common rights and authorities. All workers should be able to protect safety.
- c. Adopt EPA's proposal for Stop Work Authority, a last line of defense to prevent disasters (and provide this authority to workers at all RMP facilities regardless of Program level).
- d. Require owners and operators to document and respond to reports by workers of all RMP-related safety issues, including "near-miss" events.
- e. Strengthen and clarify proposed anonymous reporting provisions.
- f. Require owners or operators to provide employees and their representatives with readily accessible information and effective training on RMP rule provisions.
- g. Require owners or operators to implement a written program to help ensure that there is no discrimination against any employee, employee representative, or contractor for exercising authorities under this rule.

Information Availability:

11. On the fastest timeline possible, add RMP Info to an EPA website that is regularly updated

EPA proposes to require that facilities make information available upon request from residents within six miles of the facility. People who live within six miles of a facility are not the only ones vulnerable to the threat of a chemical disaster. More than 177 million people who work, go to school, play, pray, and get health care near RMP facilities, and many people who travel through communities where RMP facilities are present, are also at risk of a chemical disaster.

Croda, New Castle, DE, 2018

Miss Dora Williams and her neighbors living on the Route 9 "industrial corridor" in New Castle, DE had no idea that large quantities of highly flammable, explosive ethylene oxide was being processed in their community, until a November 25, 2018 incident caused over a ton of it to be released into the air and surrounding neighborhoods (including Collins Park which is located directly adjacent to Croda). Ethylene oxide presents acute and chronic health risks as well as being extremely flammable and reactive.³⁸ As a

³⁸ New Jersey Department of Health. Right to Know Hazardous Substance Fact Sheet: Ethylene Oxide. <https://nj.gov/health/eoh/rtkweb/documents/fs/0882.pdf>

result of this incident the Delaware Memorial Bridge was shut down for several hours on one of the busiest travel days of the year due to the risk of an explosion, yet the surrounding communities were notified haphazardly, if at all. Some neighbors in a few select neighborhoods received a reverse 911 call to their home landlines—for those who had one; others found out via friends or family, and many more had no idea until after the fact—when it was too late to bring families inside or take other precautions to try to protect themselves. There was little to no advanced community notification or understanding of the hazards present onsite, let alone or what to do in the event of an emergency. Since the 2018 major release, Croda has since failed additional emissions tests but has been continued to allow operating and many community questions remain.³⁹

Intercontinental Terminals Company (ITC), Houston, TX, 2019

Ana Parras, Co-Director of Texas Environmental Justice Advocacy Services (T.E.J.A.S), was living in Houston in March 2019 when a fire broke out at the ITC petrochemical facility and burned for three days, releasing toxic chemicals from storage tanks and causing five school districts to close. Ms. Parras testified at the EPA's September 28th public hearing that people across Houston were affected by the incident and could see a plume of smoke across the skyline. T.E.J.A.S. spent days fielding calls from concerned school officials and Spanish speaking community members seeking information that should have been publicly available in multiple languages. Chemical disasters don't stay contained within a six mile radius, so information access shouldn't be limited to residents within a six mile radius.⁴⁰

This proposed provision leaves out other people who may be at risk of chemical disaster, like people who work nearby or people who go to school or go to church. It also places tremendous burden on community members to figure out if they live within six miles of a facility, individually contact—and share potentially sensitive personal information with—each facility, EPA should remove the barrier to critical information by maintaining an accessible, multilingual database of RMP information online and releasing this no later than the end of 2023.

12. Require that RMP facilities provide access to information that emergency responders determine necessary to sufficiently protect the public when chemical disasters aren't prevented.

EPA is proposing to require facilities to provide necessary entities with initial RMP accidental release information *during* releases of regulated substances in order to ensure that information is available to the public and the appropriate federal, state, and local emergency response agencies.

We generally support this provision, particularly given how insufficient communication has made chemical disasters worse for the communities where they occur.⁴¹ However, finding and reviewing this information *during* an incident would likely delay the incident response. The proposed rule does not

³⁹ DiStefano, Joseph N. (2020, December 24). *Croda's chemical plant on the Delaware River fails a pollution test, casting doubt on its rebuilding effort*. The Philadelphia Enquirer. <https://www.inquirer.com/business/croda-delaware-memorial-bridge-pollution-chemicals-osh-a-dupont-20201224.html#loaded>

⁴⁰ U.S. Chemical Safety and Hazard Investigation Board, Storage Tank Fire at Intercontinental Terminals Company, LLC (ITC) Terminal Factual Update published October 30, 2019. https://www.csb.gov/assets/1/20/itc_factual_update_2019-10-30.pdf?16522

⁴¹ U.S. Chemical Safety and Hazard Investigation Board. 2011. Bayer CropScience Pesticide Chemical Runaway Reaction Pressure Vessel Explosion. <https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/>

ensure that emergency responders have access to the full breadth of information they may need *before* a release occurs to understand the magnitude of harm posed by the chemical facilities to the public that they are sworn to protect.

Whether in this proposed rule or otherwise, EPA should require that RMP facilities provide complete facility information to emergency responders to sufficiently protect themselves and the public when chemical disasters aren't prevented.

Other Areas of Technical Clarification:

13. Better address hazards from transportation containers

Language used in the proposed rule to describe “storage incident to transportation” is confusing. It is difficult to understand whether certain circumstances being noticed by people on the ground in fenceline communities are being sufficiently addressed by EPA’s proposed update to the RMP rule.

Here is an example of what our organizations want to see this provision clearly address:

When 10,000 lbs of anhydrous ammonia are being stored or used in processes at the stationary source, this amount triggers a facility to be regulated by the RMP. If a facility has 8,000 lbs of the chemical on-site, it would not trigger RMP regulation. However, if a railcar brings an additional 2,000 lbs on-site, it should immediately trigger threshold determination for the duration that transportation container is on-site, regardless of whether or not it is attached to a source of power.

Additionally, multiple communities have noticed chemical railcars sitting on the railroad tracks in their community for days, sometimes attached to a locomotive, sometimes not. The community is being used as a chemical storage site for RMP facilities. Their presence multiplies the risk for the community, particularly when these tankers are blocking community members from commuting from one place to another and evacuation routes essential during emergencies. When these trains idle their engines they also increase local air pollution and contribute to the unjust conditions that leave communities more susceptible to the effects—both chronic and acute—of air pollution and chemical disasters.

EPA needs to better address hazards from transportation containers in the proposed rule. Specifically, EPA should strengthen the rule to immediately trigger threshold determination for the duration that a transportation container is on-site, regardless of whether or not it is attached to a source of power, and whether or not the container is in motion. Additionally, the proposed rule should be updated to address concerns about nearby roadways, waterways and railways being used as off-site storage that multiplies the threat to communities in the event of a chemical disaster.

Furthermore, EPA specifically seeks comment on whether any safety concerns may arise from transportation containers being exempt from the RMP regulation when disconnected for less than a total of 48 hours. Whether on-site for 48 seconds, 48 minutes or 48 hours, the hazard posed by the presence of that chemical is increased for the facility and the neighboring community throughout the duration of its presence. That hazard exists regardless of whether or not the transportation container is attached to a

source of motive power, whether or not that source of power is on, and whether or not that source is in motion. Its presence multiplies the potential for on- and off-site consequences and should be recognized in this rule as such.

EPA should use the full limits of their authority to address these hazards. When these limits have been reached, EPA should work closely with sister agencies to ensure these hazards are eliminated. For instance, EPA has the authority under the Clean Air Act section 112(r)7d to consult with the Secretary of Transportation and should use it.

Finally, transportation sources (locomotives, tractor trailers, barges) used to move these chemical storage containers increase air pollution in communities neighboring RMP chemical facilities. As such, EPA should take every precaution to ensure that they are not inadvertently incentivizing motive sources to keep their engines running to evade regulation.

Root Cause Analysis

14. Require root cause analysis for all RMP facilities

We support EPA's action in the proposed rule to require facilities with Program 2 and 3 processes that have an RMP-reportable incident to conduct a root-cause analysis as part of their incident investigation within 12 months. We believe this provision should be strengthened to include all RMP facilities.

Third Party Audit Compliance

15. Require third-party audits as a primary prevention strategy and make the results publicly available

In the proposed rule, EPA is proposing to require all facilities subject to STAA requirements that have had one RMP-reportable incident to conduct a third-party audit after one accident. For all other RMP facilities, it is reinstating the conditions from the 2017 amendments rule, and considering requiring the audit after one incidental release within a 5-year period rather than two.

We support the inclusion of third party compliance audits in the rule and believe that this provision can be strengthened. A five-year timeframe is too narrow a window through which to limit incident history and the potential for learning.

EPA shouldn't wait for multiple disasters to occur before third-party audits are triggered. Third party compliance audits should be implemented as a primary chemical disaster prevention strategy (to prevent an incident from occurring in the first place) rather than a secondary prevention strategy (to prevent an incident from reoccurring after it has already occurred). The results are most meaningful when they are available for review and comment by the public. EPA should require third-party audits as a primary prevention strategy and make the results publicly available.

Other

16. Amend 40 CFR § 68.215 so Title V (federal Clean Air Act) air permits assure full RMP

compliance.

Revising regulations to ensure full RMP implementation as part of the Clean Air Act Title V permitting program will help improve compliance with the new rules by integrating the RMP into major source facilities' permits. Including Risk Management Plans in Title V would also be a step toward transparency for communities surrounding RMP facilities.

17. Cover more facilities, reduce thresholds for coverage, and cover the entire facility where only part of it is currently covered.

EPA is not proposing to take action in this rule to expand coverage of the rule to include additional facilities, reduce thresholds that trigger coverage, or include entire facilities where only part is currently covered, even when multiple recent chemical disasters demonstrate the need to do so.

For example, a massive fire that spread to the Qualco chemical plant in January 2022 came dangerously close to igniting the estimated 3 million pounds of hazardous chemicals stored there, which are not currently covered by the RMP program. Had the fire reached the chemical stockpile stored at Qualco, it could have caused “one of the most catastrophic chemical disasters in the region in recent history,” according to fire officials.⁴²

The RMP rule should be expanded to include more hazardous chemicals (especially additional flammable, explosive, and reactive chemicals), lower the thresholds that trigger coverage under the program, and adopt other measures to ensure that facilities like Qualco that store large amounts of hazardous chemicals are included.

There are approximately 395 chemicals regulated by California, New Jersey, or the Occupational Safety and Health Administration's Process Safety Management rule that are not covered by the RMP program.⁴³ Stronger prevention requirements and measures to ensure compliance must be designed into the RMP rule, especially for facilities that are adjacent to or near other RMP facilities, or to non-RMP facilities that use or store hazardous chemicals. EPA should also redefine the definition of “stationary source” so it is clear that the entire facility must comply with RMP requirements if any part of it is covered.

18. Update the list of covered chemicals on the fastest timeline possible (ideally no later than the end of 2023)

In the proposed rule, EPA acknowledges the need for reviewing the list of RMP-regulated substances and notes an upcoming review of ammonium nitrate. However, no action is taken in the proposed rule to address this long needed expansion of substances that includes, but is not limited to, ammonium nitrate

⁴² Coming Clean and Environmental Justice Health Alliance for Chemical Policy Reform. (2022, September). *Preventing Disaster: Three chemical incidents within two weeks show urgent need for stronger federal safety requirements.* <https://comingcleaninc.org/assets/media/images/Reports/Preventing%20Disaster%20final.pdf>.

⁴³ Earthjustice. Chemical List Comparing RMP Chemicals to Other Jurisdictions' Chemicals and Threshold Quantities See Appendix to comments submitted to the EPA by Earthjustice, et al. on July 29, 2021. <https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0170>

and other reactive or explosive chemicals.

In 2013, at the West Fertilizer Company facility in West, Texas, an explosion of ammonium nitrate—which is not an RMP-regulated substance—killed 15 people and caused more than 260 injuries. This incident prompted the US Chemical Safety and Hazard Investigation Board to recommend that EPA regulate ammonium nitrate under the RMP.⁴⁴ This recommendation was reiterated following a deadly ammonium nitrate explosion in Beirut in 2020.⁴⁵ Yet EPA has so far taken no action even as more incidents have occurred.

In January, 2022 a fire broke out at the Winston Weaver Fertilizer plant, in Winston-Salem North Carolina, burning for several days and causing 6,500 people to evacuate. The Weaver Fertilizer facility stored more than 600 tons of ammonium nitrate on site- approximately ten times the amount stored at the West Fertilizer Company. Damage from an explosion to even a portion of this stockpile could have caused “one of the worst explosions in U.S. history,” according to the Winston-Salem fire chief.⁴⁶

EPA should heed the recommendations of the Chemical Safety Board and the National Fire Protection Association and cover ammonium nitrate under the RMP, no later than the end of 2023.

19. Improve accessibility in rulemaking

Fact sheets on the proposed rule were not translated into Spanish until the day of the virtual public hearing. EPA should have the internal or contract capacity to publish translated materials at the same time as they release English language materials.

20. Use correct assumptions for incident data

The incorrect claim that the number of accidents is declining is based on data for recent years that is necessarily incomplete, due to delayed reporting.⁴⁷ There is, in fact, no statistically significant change in accident rates for the period 2004-2015. Moreover, for the years 2010-2015, there is a non-statistically significant increase in impact accident rates. The most recent year for which 2021 data are complete is 2015.

Additionally, low-probability but high-consequence events cannot be reliably predicted by overall trends. The only way to prevent even greater disasters is to remove hazards. It should also be noted that past

⁴⁴ Chemical Safety Board. (2016, January 28). West Fertilizer Explosion and Fire Report.

<https://www.csb.gov/west-fertilizer-explosion-and-fire/>

⁴⁵ Chemical Safety Board. Statement from CSB Chairman Katherine Lemos on Massive Explosion and Fire in Beirut. [Press Release].

<https://www.csb.gov/statement-from-csb-chairman-katherine-lemos-on-massive-explosion-and-fire-in-beirut/>

⁴⁶ Coming Clean and Environmental Justice Health Alliance for Chemical Policy Reform. (2022, September). *Preventing Disaster: Three chemical incidents within two weeks show urgent need for stronger federal safety requirements.* <https://comingcleaninc.org/assets/media/images/Reports/Preventing%20Disaster%20final.pdf>

⁴⁷ Comment submitted by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Federal Register Notice Number 2021-11280, “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Notice of Virtual Public Listening Sessions,” Docket Number EPA-HQ-OLEM-2021-0312

<https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0058>

frequency of accidents cannot be used to reliably predict rare catastrophic releases, whether intentional (e.g., sabotage) or unintentional.

EPA should ensure that it is reviewing the incident data in a way that best reflects the reality of hazards on the ground to workers and communities on the fenceline and nearby.

CONCLUSION

In conclusion, workers, fenceline communities, first responders, and the thousands of schools, small businesses, medical facilities, and other institutions constantly at risk of a chemical disaster have already waited far too long for basic protections promised by Congress when they amended the Clean Air Act to include the RMP. EPA must finalize the RMP rule to focus on disaster prevention through required hazard reduction and elimination, and by increasing worker participation, addressing climate and “natech” hazards, improving enforceability and compliance, and expanding the program, based on the specific recommendations noted above and the vast body of evidence and analysis that supports these common-sense measures.

Respectfully submitted by:

1. 7 Directions of Service - Regional, East Coast
2. 7 Directions of Service - NC
3. Able Differently
4. Alianza Nacional de Campesinas, Inc.
5. Alliance of Nurses for Healthy Environments
6. American Sustainable Business Network
7. As You Sow
8. Beyond Toxics
9. Black Women for Wellness
10. Breast Cancer Prevention Partners (BCPP)
11. Buckeye Environmental Network
12. California Safe Schools
13. Catskill Mountainkeeper
14. Center for Biological Diversity
15. Center for Environmental Health
16. Center for Environmental Policy and Management
17. Center for Food Safety
18. Center for Progressive Reform
19. Clean Power Lake County
20. Clean Production Action
21. Clean Water Action
22. Clean and Healthy New York
23. Coming Clean
24. Concerned Citizens of Wagon Mound and Mora County
25. CRLA Foundation
26. Delaware Concerned Residents for Environmental Justice

27. Dr. Yolanda Whyte Pediatrics
28. Environmental Integrity Project
29. Environmental Justice Health Alliance for Chemical Policy Reform
30. Farmworker Association of Florida
31. Global Center for Climate Justice
32. Green Science Policy Institute
33. Greenpeace USA
34. Harambee House, Inc. / Citizens for Environmental Justice
35. Health Care Without Harm
36. Healthy Babies Bright Futures
37. HEALTHY SCHOOLS NETWORK
38. International Center for Technology Assessment
39. Intl Campaign for Responsible Techology
40. Learning Disabilities Association of Illinois
41. Learning Disabilities Association of Alabama
42. Learning Disabilities Association of America
43. Learning Disabilities Association of Arkansas
44. Learning Disabilities Association of California
45. Learning Disabilities Association of Connecticut
46. Learning Disabilities Association of Delaware
47. Learning Disabilities Association of Georgia
48. Learning Disabilities Association of Indiana
49. Learning Disabilities Association of Maine
50. Learning Disabilities Association of Maryland
51. Learning Disabilities Association of Michigan
52. Learning Disabilities Association of Minnesota
53. Learning Disabilities Association of New Jersey
54. Learning Disabilities Association of New York
55. Learning Disabilities Association of Oklahoma
56. Learning Disabilities Association of Pennsylvania
57. Learning Disabilities Association of South Carolina
58. Learning Disabilities Association of Tennessee
59. Learning Disabilities Association of Texas
60. Learning Disabilities Association of Utah
61. Learning Disabilities Association of Virginia
62. Learning Disabilities Association of Wisconsin
63. Los Jardines Institute
64. Material Research L3C
65. Moms for a Nontoxic New York
66. National Family Farm Coalition
67. Natural Resources Defense Council (NRDC)
68. New Castle Prevention Coalition
69. New Jersey Environmental Justice Alliance
70. Northwest Center for Alternatives to Pesticides

71. Our Future West Virginia
72. People Concerned About Chemical Safety
73. People Organized in Defense of Earth and Her Resources (PODER) Austin
74. Physicians for Social Responsibility - Los Angeles
75. REACT - Rubbertown Emergency ACTION
76. ReGenesis Institute
77. Safer Chemicals Healthy Families/Toxic-Free Future
78. Safer States
79. Science and Environmental Health Network
80. Sciencecorps
81. Texas Campaign for the Environment
82. Texas Environmental Justice Advocacy Services (t.e.j.a.s.)
83. Toxic Free NC
84. Until Justice Data Partners
85. Women's Voices for the Earth
86. Worksafe