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ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
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January 18, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

On August 31, 2022, the Environmental Protection Agency (EPA) issued a notice of proposed rulemaking (NPRM) in the Federal Register entitled: “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention”¹ or “RMP Proposal.” According to the website of the White House’s Office of Information and Regulatory Affairs (OIRA), the EPA is targeting the promulgation of this proposal as a final rule before the end of this month.² We write to you to express our concerns with the EPA proposal and the process used to develop it, and we urge you to withdraw and repropose this rule.

Section 112(r) of the Clean Air Act (CAA), first enacted in section 301 of the Clean Air Act Amendments of 1990,³ was intended to prevent the “unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source”⁴ and to minimize the consequences of those releases.⁵ Paragraph (7) of section 112(r), the authority under which the EPA is making the RMP Proposal, grants the EPA the authority to issue accidental release prevention, detection, and correction requirements. Through this authority, Congress sought to encourage manufacturers to prevent and manage accidental risks through their Risk Management Plans (RMP); Congress did not intend for EPA to misuse this

¹ <https://www.govinfo.gov/content/pkg/FR-2022-08-31/pdf/2022-18249.pdf#page=1>

² <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=2050-AH22>

³ Public Law 101-549

⁴ The definition of an ‘accidental release’ under CAA section 112(r)(2).

⁵ The stated objective and purpose of CAA section 112(r)’s programs and regulations, as articulated in CAA section 112(r)(1), is to: “prevent the accidental release and to minimize the consequences of any such release of any substance” that is listed by EPA under CAA section 112(r)(3) or any other “extremely hazardous substance.”

authority to favor certain owners or operators, to eliminate whole categories of owners or operators, or to eliminate all accidents.⁶

By allowing for a performance-based program rather than overregulating facility operations, implementation of these provisions has led to fewer accidents at regulated facilities. EPA data suggests that between the enactment of 112(r)(7) and the time of the RMP Proposal, reported accidental releases declined significantly, with a 70 percent reduction in annual reported accidents between 2004 and 2020.⁷ A group of trade associations whose members are subject to compliance with CAA section 112(r)(7) testified to EPA that 97 percent of RMP-regulated facilities reported no accidents during the most recent reporting period (i.e., 2016-2020).⁸

We are concerned the RMP Proposal will enshrine manufacturing requirements that either exceed existing statutory authority, impose impractical or unwise burdens on disfavored industries,⁹ or create new responsibilities that past Congresses or the EPA have rejected.

For instance, in the Clean Air Act Amendments of 1990, Congress separated responsibilities for activities that occur before an accident and after an accident has occurred, as well as activities inside a plant fence line and activities outside a plant fence line. Section 304 of the Clean Air Act Amendments of 1990 directed the Occupational Safety and Health Administration (OSHA) to take the lead on protecting workers within a facility's fence line. Congress felt that OSHA was best equipped to handle these issues. Conversely, in section 301 of the Clean Air Act Amendments of 1990, Congress authorized the EPA to protect the environment and human health beyond the fence-line. In requiring RMP regulated facilities to conduct Safer Technology Alternatives Assessments (STAA), the RMP Proposal overhauls that arrangement and blurs the line between OSHA and EPA responsibilities.

If Congress wanted the EPA involved in setting process safety regulations to the degree envisioned in the RMP Proposal, it would have authorized this in the statute that the EPA otherwise largely implements. Moreover, the congressional command in CAA section 122(r)(7) is to prevent unanticipated air emissions, not directly or indirectly eliminate potential emissions sources or change a sector's operating practices. Congress has repeatedly rejected proposals (like the STAA) that would mandate that facilities containing certain chemicals must engage in periodic process reviews or engage in input substitution analyses that would be subject to subjective enforcement standards and frequent unsafe workplace environments.¹⁰

⁶ CAA section 112(r)(7)(B) requires EPA to promulgate "reasonable regulations and appropriate guidance, to the greatest extent practicable, for the prevention and detection of accidental releases."

⁷ EPA-HQ-OLEM-2022-0174-0065; <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0065>.

⁸ <https://www.aslrra.org/aslrra/document-server/?cfp=aslrra/assets/File/public/news/testimony/business-community-comments-rmp-proposed-rule-10312022.pdf>

⁹ see November 10, 2022, letter to Administrator Regan from Chair Rodgers and Ranking Member Capito <https://republicans-energycommerce.house.gov/wp-content/uploads/2022/11/FINAL-RMP-Letter-FOR-RELEASE.pdf>

¹⁰ <https://www.chubb.com/content/dam/chubb-sites/chubb-com/microsites/covid19-resource-center/resources/documents/pdf/ttp-coming-out-of-shutdown-start-up-fundamentals.pdf> "In any process, the shutdown and restart operations present the greatest risk, even when well-planned and well-managed."

We are also troubled that the RMP Proposal would make security vulnerabilities public – at a time of increased cybersecurity threats and belligerent actions taken against American interests by its global foes. The RMP Proposal mandates that RMP-regulated facilities share their sensitive security information with anyone – in their preferred language – who works or lives within a six-mile radius of the facility. This proposed RMP mandate would allow both tourists and terrorists to have access to information on vulnerabilities and extremely hazardous substances, which could be exploited to attack the facility or undermine the ability of the local community to respond to an attack.

In taking this position, the RMP Proposal easily exceeds the permissiveness of disclosure in any other law we oversee. We are stunned that agencies, like the Departments of Homeland Security and Justice, which have vocally opposed lesser disclosure efforts in the past, would consent to such reckless information disclosure rules.

The RMP Proposal also includes labor relations practices that are within the purview of other Federal agencies with authority to oversee them or the collective bargaining process. For example, the RMP Proposal proposes provisions that provide employees the opportunity to stop work under certain circumstances and to report late or unreported accidents and other areas of RMP non-compliance to the EPA and other relevant authorities. Facilities must also have a written plan of action to include active consultation of employees and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations of hazard analyses, incident investigations and compliance audits, at a minimum. We are struck by the involved nature of this proposal considering Congress having spent the last decade repeatedly rejecting similarly prescriptive facility operations planning.

Lastly, we are concerned that in the RMP Proposal the EPA is resurrecting RMP amendments from 2017, which were subject to legal challenge and resulted in a new rulemaking proposal that reconsidered the most significant issues. Additionally, the EPA's RMP Proposal is tacking on two new major issues: facility siting considerations (which appear to usurp state and local delegated police powers) and natural and geological hazards, which must be explicitly addressed in an RMP-regulated facility's plan. These additions, in concert with a public comment process that was woefully inadequate to the size and scope of this rule, call for a more deliberate and open process. As part of the rulemaking process, EPA should select only those requirements that make significant, cost-effective safety improvements, and not impractical and ineffective mandates, which are ideologically driven.

Before finalizing any further changes to the RMP program, we urge the EPA to repropose the RMP rulemaking to align it with existing law and to solicit more information from the public, in part based on the issues identified in this letter. We do not want to see this proposed regulation undermine the significant progress that has been made with the current performance-based programs.

In addition, we request written responses to the following questions by February 1, 2024.

1. The RMP Proposal seems to suggest the mere occurrence of any accident is a justification for regulation.

- a. Is the EPA’s intention to promote plant designs that eliminate not just “human factors” but also those that are beyond any person’s control?
 - b. Can such a facility containing Appendix A chemicals even operate if such assumptions are the purpose of the program’s rules?
2. RMP rules need to be “reasonable” and “practicable.” Yet, the RMP Proposal did not evaluate the costs of many of its provisions, including the proposed natural hazards and proposed gap analysis requirements for Process Hazard Analyses. In fact, the EPA’s Regulatory Impact Analysis states that the EPA “has no data or empirical estimates of the precise impact of each rule provision on the probability and magnitude of an accident, or on improved efficiency due to better information.”
 - a. How does the EPA believe it is complying with the statutory directive on reasonableness when the EPA’s proposal does not demonstrate that the EPA understands what a reasonable universe might include?
 - b. Is the EPA’s failure to conduct a fulsome cost-benefit analysis for the RMP Proposal a sign that the EPA sees RMP as a zero-risk program?
3. On October 5, 2023, the American Water Works Association, the U.S. Conference of Mayors, Association of Metropolitan Water Agencies, and the National Association of Clean Water Agencies met with the Office of Information and Regulatory Affairs (OIRA) to discuss this rulemaking,¹¹ In a memorandum reiterating points made by those associations to OIRA, it states: “EPA states the total cost of the rule has increased by \$181.4 million (up from \$75.8M to \$257.2M) and the total cost for State/Local entities (which includes drinking water and wastewater utilities) is now \$18.9M, but as proposed was less than \$5M.”¹² On October 5, 2023, the American Water Works Association, the U.S. Conference of Mayors, Association of Metropolitan Water Agencies, and the National Association of Clean Water Agencies met with the Office of Information and Regulatory Affairs to discuss this rulemaking,¹³ If this is the case, the EPA — after its truncated public comment period closed — greatly expanded the scope of new regulatory requirements beyond the \$75 million annual cost included in its initial proposed rule and without giving the public a basis for the updated cost analysis.
 - a. Does the EPA now estimate the annual cost of the RMP Proposal to exceed \$75 million? If yes, how much is the current estimate?
 - b. What is the reason for the increase in the cost estimate?

¹¹ <https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=2050-AH22&meetingId=224423&acronym=2050-EPA/OLEM>

¹² <https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=247144>

¹³ <https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=247144>

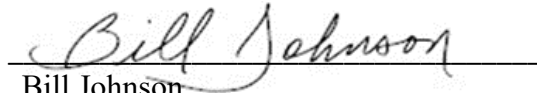
- c. Will the EPA publicly notice and meaningfully reopen the comment period to allow interested parties a chance to examine and provide expert feedback on these changes?
4. Please detail all conversations and coordination the EPA has had with OSHA on the RMP Proposal and the intersection between RMP and OSHA's Process Safety Management (PSM) program, including any efforts to prevent duplication and overlap between RMP and PSM programs.
 - a. What efforts were undertaken to identify and avoid redundancy or conflicts between provisions in the RMP Proposal and existing laws administered and enforced by the EPA or other Federal departments or agencies?
5. Regarding the protection of sensitive facility and materials information that could be used to destroy a facility and community or disrupt emergency responses to such an event:
 - a. Please identify those provisions that the Department of Homeland Security and the Department of Justice believe satisfy their decades-long concern about inappropriate sharing of sensitive facility information.
 - b. Please state whether any other law enforcement, defense, or intelligence agency raised concerns about the information disclosure provisions in the RMP proposal.
 - c. If the EPA believes currently operating facilities should use a STAA, why are the facilities in just a few sectors of the economy required to use a STAA?
6. Under the Emergency Planning and Community Response Act, local emergency planning committees (LEPCs) —are responsible for developing community response plans. The RMP Proposal appears to make RMP facilities responsible for the content of the community response plan.
 - a. How does every RMP facility “ensure” the contents of a response plan if the facility is not a part or the majority on the LEPC?
 - b. Is the RMP Proposal contravening local decision-making and resources, with this proposed requirement?
7. The “retail facility” definition for RMP and PSM has been in place for many years and is well understood by the industry. The RMP Proposal, though, proposes to amend the current RMP rule definition of “retail facility” and to add the requirement that “more than one-half of the annual income (in the previous calendar year) is obtained from direct sales.”
 - a. Please state the justification to support claims of “uncertainty” that necessitate the proposed change.

We look forward to your prompt response. Thank you in advance for your cooperation. If you have any questions, please contact the Majority staff at (202) 225-3641.

Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



Bill Johnson
Chair
Subcommittee on Environment,
Manufacturing, and Critical Materials