



Environmental Technology Council

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U.S. Environmental Protection Agency
Office of Land and Emergency Management
1200 Pennsylvania Ave. NW
Washington DC 20460

RE: Docket: EPA-HQ-OLEM-2021-0312

To The Docket:

The Environmental Technology Council (ETC) submits these comments for consideration by the Environmental Protection Agency (EPA) as part of the agency's virtual public listening sessions on the Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act. 86 Fed. Reg. 28828 (May 28, 2021).

Statement of Interest

The ETC is the national trade association for the commercial hazardous waste management industry. ETC member companies provide technologies and services to customers for the safe transport and management of industrial and hazardous wastes throughout the United States and Canada. These companies have secured permits and licenses for their facilities under Federal and state environmental laws, primarily the Resource Conservation and Recovery Act (RCRA). ETC member firms are the economic infrastructure in our nation for the proper management of byproducts and waste materials from a broad range of productive industries and businesses. Many ETC companies are directly regulated under Clean Air Act § 112(r) and the requirements related to Risk Management Plans (RMP) in 40 CFR Part 68. The ETC and its member companies are fully committed to facility safety and security to prevent accidental releases of hazardous chemicals and to ensure that our operations do not cause harm to human health or the environment.

Comments on the 2017 RMP Amendments and 2019 Final Rule

Third-Party Compliance Audits Are Unnecessary and Ineffective

EPA promulgated a final RMP rule (84 FR 69834) on December 19, 2019, that acted on three petitions for reconsideration of the 2017 RMP amendments. The 2019 final rule repealed several provisions of the 2017 amendments. One such repealed provision was a requirement in §§ 68.60 and 68.81 for facilities with Program 2 or 3 processes to contract with an independent third party to perform compliance audits when: (1) the facility has an accidental release meeting the five-year accident history criteria, or (2) an implementing

agency determines that a third-party audit is necessary based on information such as evidence of significant non-compliance. In order to be “independent,” the auditor must be external to the regulated facility and may not be a contractor or consultant for the facility. The ETC supports the continued rescission of the third party audit requirement for the following reasons.

Companies in the hazardous waste industry perform audits at their facilities as a critical part of their safety programs. Typically, the audit teams are highly trained, experienced, and report directly to a chief executive officer, not to an operating officer responsible for profits or losses. Additionally, they are comprised of individuals with expertise in facility maintenance, security, safety measures, environmental, engineering and facility operations. The audit teams visit different facilities throughout the year, prepare audit reports to management, conduct follow-up verifications, and maintain independence from the operating divisions. Importantly, these audit teams are able to transfer safety knowledge and practices from one facility to another facility operated by the company without concern for disclosing trade secret processes or confidential business information (CBI). We believe these audit teams are highly capable, add tremendous value to the safety program, and are sufficiently “independent” because their findings and recommendations are not affected by extraneous considerations.

In contrast, we have found that third-party auditors are frequently not familiar or experienced with hazardous waste processes and safety in our industry. Inordinate time and expense are necessary for third parties simply to “come up to speed” and contribute value to the compliance audit. Although the third-party auditor typically signs a confidentiality agreement, the auditor cannot help but observe production processes and operating practices that are considered trade secret or CBI, and they invariably take that information with them when they audit for companies that are competitors. On limited occasions ETC member companies may bring in a third party auditor for specific accidents, but this should be decided by the company and not mandated by the agency. For these reasons, the ETC and its membership supports the agency’s continued rescission of the third party audit requirement.

Root-Cause Analysis is Duplicative of State and OSHA Requirements

EPA’s 2019 final RMP rule also rescinded the root-cause analysis requirements. For the following reasons, ETC supports the continued rescission of these requirements. ETC member companies are subject to OSHA Process Safety Management (PSM) regulations under 29 CFR § 1910.119. As part of their PSM compliance, they already conduct root-cause analyses as a part of incident investigations. Additionally, in the event of a catastrophic release or incident, ETC member companies are already required by their state environmental agencies and state emergency response authorities to conduct an investigation that includes a root cause analysis when applicable. The facility will complete an incident report, a corrective action plan and a lessons learned document describing what was learned as a result of the incident or release and how this information can be used to prevent similar situations in the future. Upon completion, this

information is submitted to the state agency for review and further collaboration with the responsible facility.

Based on state procedures that are already in place, EPA's RMP root-cause analysis requirement is unnecessary and duplicative. The following are examples of state requirements for root-cause analyses:

- Illinois EPA has issued a clean air permit to an ETC member company which states that the permittee may provide an affirmative defense to a malfunction, defined as “sudden, infrequent, and not reasonably preventable failure” to comply with technology-based emission limitations, if the source can identify the root cause(s) of the emergency and take corrective actions. Note that a malfunction may be a minor exceedance of a permit limitation, but in extreme situations it could also be a catastrophic release or incident per the RMP regulations.
- Florida DEP has issued a clean air permit to an ETC member which states: “In case of excess emissions resulting from malfunctions, each owner or operator shall notify the Department or the appropriate Local Program in accordance with Rule 62-4.130, F.A.C. A full written report on the malfunctions shall be submitted in a quarterly report, if requested by the Department.” Florida DEP requires a root cause analysis of the malfunction as part of the report.
- The Nebraska DEQ clean air permit issued to an ETC member company states that the permittee shall report all deviations from permit requirements including those attributable to start-ups, shutdowns or malfunctions, the probable cause of such deviations based on a root cause analysis, and any corrective actions or preventive measures taken.

These are just a few examples of the duplicative requirements that ETC companies will avoid if EPA continues to rescind the root-cause analysis provision in the 2017 amendments.

Information Availability Requirements Are Overbroad and Dangerous

In the 2017 amendments, EPA added several new provisions to § 68.210 on the availability of information to the public. These included:

- A requirement that allowed any member of the public to request from a covered facility specified chemical hazard information for all regulated processes, which the facility must provide within 45 days of receiving the request.
- A requirement for the facility to provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that the above information is available to the public upon request, along with the

information elements that may be requested and instructions for how to request the information.

- A requirement to hold a public meeting to provide accident information required under §. 68.42, as well as other relevant chemical hazard information, no later than 90 days after any accident subject to reporting under § 68.42.

While ETC supports providing appropriate chemical facility hazard-related information to local emergency planning committees and emergency first responders, the 2017 amendments were too broad and require information to be made available to the general public that may reveal possible access to hazardous chemicals, compromise security measures, and jeopardize facility personnel and emergency responders. The general public was not limited to interested parties in the local community and could include illicit actors. EPA must balance the nature of information provided to the public with the serious risks posed by broad disclosure of at least certain types of hazard-related information. For safety reasons, ETC supports EPA's 2019 final RMP rule which rescinded the requirements for providing to the public upon request chemical hazard information and access to community emergency preparedness information in § 68.210 (b)-(d), as well as the Agency's proposal to rescind the requirement to provide "other chemical hazard information such as that described in paragraph (b) of this section" at public meetings required under § 68.210(e).

Despite rescinding the over-broad information requirements, the 2019 final rule retained the requirement that the facility hold a public meeting to provide accident information no later than 90 days after an accident. The ETC believes this requirement should also be rescinded. A better approach is for EPA to recognize that a public meeting to provide accident information should be requested by the public (not mandated by the agency), and that such a request should go to the state and/or local regulatory authority. Upon receiving the request, the regulatory authority will then determine whether or not a public meeting should be held and the hazard-related information that will be made available to the local community.

Comments on Expanding the Application of Environmental Justice in the RMP

As part of their business practices ETC member companies are continuously engaging with communities in which they operate and regularly work with community leaders to ensure that their facilities are operating in a responsible, safe and secure manner to support environmental justice (EJ). Routine community outreach promotes a meaningful dialogue and allows the community to share information and their viewpoints regarding our operations.

As stated in the Federal Register notice, President Biden issued E.O. 13999 on January 20, 2021, which directed federal agencies to review existing regulations and take action to address priorities established by the Biden Administration, which among other things include prioritizing environmental justice. While ETC and its member companies understand the importance of protecting communities of color, indigenous communities,

and low-income communities from environmental injustices, we believe that if the agency expands the RMP to include EJ concerns then a balance should be found between enhanced protection and avoiding undue burdens on business. For example, RMP measures that would encourage facilities to engage with those most affected by EJ impacts, educate and build awareness, and solicit guidance, input, and feedback from frontline communities may be reasonable and effective. However, extraordinary measures such as mandatory fence line monitoring, medical surveillance programs, technical support funding, and prohibiting the issuance or renewal of a Clean Air Act permit because a facility is located in an EJ community could result in prohibitive costs, job losses, and facility closures. Denial of a CAA permit renewal for a RCRA-permitted disposal facility would also mean that hazardous waste would potentially be illegally disposed rather than properly and safely managed. We urge EPA to consider additional RMP provisions that promote transparency, community dialogue, and education.

Comments on Incorporating Consideration of Climate Change Risks in the RMP

Again, ETC and its member companies understand the imperative to protect human health and the environment from the harmful effects of climate change. The basic provisions of the RMP related to preventing accidental releases and response measures will protect against climate related impacts. Rather than attempt to develop additional measures in the RMP regulations to further address climate change, we recommend that the agency focus on incorporating considerations of climate change risk into the remediation of Superfund and Brownfield sites. President Biden acknowledged the importance of accelerating agency cleanups when he released his American Jobs Plan on March 31, 2021. We believe the agency efforts would be better served by prioritizing remediation sites that are vulnerable to climate change impacts such as flooding and extreme weather events. Due to their locations many of these sites are a direct threat to low income communities and communities of color when they are impacted by climate events. Additionally, there is great potential for hazardous substances at Superfund coastal sites to be transported during hurricanes, severe storms or other high flow events thus becoming a source of future exposure and risk to EJ communities. If the agency wants to incorporate considerations of climate change risk, Superfund and Brownfield site clean ups is where their efforts should focus and not on the RMP.

In closing, The ETC would like to thank you for the opportunity to submit these comments. The ETC looks forward to working with EPA on issues related to RMP. If you have any questions, please feel free to contact the undersigned.

Sincerely,



James A. Williams, II
VP Government Affairs



David R. Case
Executive Director