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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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December 11, 2014

Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Mr. Stanislaus:

We write to you in regards to the Environmental Protection Agency's (EPA) July 31, 2014, Request for Information (RFI) on potential revisions to the Risk Management Program (RMP) in response to Executive Order 13650. Among other things, we are concerned with the breadth of the request and the inadequate 90-day timeframe for industry and stakeholder input, which ended on October 29, 2014. This insufficient timeline is prohibitive of the thoughtful and detailed responses EPA claims to seek to the 380 questions spanning 19 topics and containing more than 100 options. Given that these answers may be used to construct a substantial overhaul of significant regulations, it is unfortunate the Agency denied an extension request seeking a more appropriate period of time in which to respond.

Additionally, the agency indicated it will complete the rulemaking process within an unrealistic and self-imposed deadline of 2016. The reform of the RMP is a significant undertaking, examining regulatory and process safety elements and the public and environmental health and safety risks along with any costs and burdens they may entail. Considering the breadth of the information requested, we request EPA extend or remove this unnecessary, self-imposed deadline and take the appropriate time to carefully study and fully understand any potential impacts before issuing the final rule.

The Occupational Safety & Health Administration (OSHA) has also published an RFI to conduct a review of its Process Safety Management (PSM) standard as directed by the Executive Order. In many ways, the OSHA process stands in stark contrast to the hurried and unworkable path EPA selected. For example, their 111-day comment period for less than a third the number of EPA's questions seems like a more reasonable timeframe to receive critical input.

Enforcement Fairness Act to fully comprehend the rule's potential impact on small business, a step EPA appears again unwilling to do.

Our inquiry also seeks clarification regarding the harmonization of the regulatory reforms within EPA and OSHA. The Executive Order specifically directs the agencies to better coordinate and share information on three fronts: regulatory; locally; and cross-agency reporting. The EPA has committed to publishing a final rule within an arbitrary and rush timeframe while OSHA seems to be taking a much more deliberative path. Given this severely disjointed process to review the respective risk management programs, both of which include the management and storage of hazardous substances, EPA's hurried dash greatly increases the likelihood of final regulations that are not harmonized as the EO requires. Further, EPA's timeframe could lead to the duplication of both existing and future proposed federal regulations which would do nothing to protect public safety and health while imposing unnecessary burdens and complications on businesses. It is for these reasons we strongly urge you to consider coordinating your review processes with OSHA in regards to timeframe and substance so the resulting final rules are consistent and complimentary. We also request EPA clarify that any of the Agency's rulemakings stay wholly within EPA's authorities and any joint EPA/OSHA issues are resolved outside of the two year timeline with greater consultation and a more deliberative process.

We ask you to seek industry advice through a Clean Air Act Advisory Committee panel to consider the potential impact on small business as you work to reform the RMP. In addition to the aforementioned need for a SBREFA panel, we would also recommend you consider convening a committee under the Federal Advisory Committee Act (FACA) allowing a panel of experts to review the revisions or, at a minimum, receive input from the existing advisory committees that have jurisdiction.

The Executive Order obligation to coordinate with state and local authorities is not to be ignored. The majority of accidents result from the inadequacy of compliance with current regulations. Thus, improving training, planning, and coordination tools to protect future incidents rather than new and duplicative regulations would better serve the regulated community as well as the surrounding communities. Rather than piling on new layers of needless federal red tape, we urge you to work with the Local Emergency Planning Committees (LPEC) in coordinating uniform compliance with existing statutes to prevent future accidents.

While EPA is undergoing this review, we strongly encourage you to examine your privacy policies and procedures. It has come to our attention that confidential off-site consequence analysis (OCA) information accessed in reading rooms is being manually copied verbatim and disseminated publicly by interested third parties. The EPA's May 2013 Security Notice remains unequivocally clear that it is in violation of federal law to distribute sections publicly. As early as 2000, the Department of Justice determined that OCA information was too

sensitive to be made public and issued a joint rule with the EPA regulating OCA access. The spirit of the reading rooms is to give individuals access to information allowing them to determine if they are at risk to an accidental release while acknowledging the sensitivity of the information and protecting its dissemination. While reading rooms serve an important public service, the intent of the rule is to provide access to information in accordance with the Freedom of Information Act. Instead, interested parties are spending significant time manually copying and disseminating confidential OCA information publically, which has in many ways compromised EPA's entire system of protecting this information, rendering it useless.

The Emergency Planning and Community Right-to-Know Act (EPCRA) provides a pertinent example of a federal statute that authorizes the protection of specific chemical facility information collected under that law. We encourage you to consider including similar provisions for the protection of sensitive information collected in the RMP. Finally, the review of the RMP also provides the EPA the opportunity to revisit its reading room policies and further strengthen compliance with regulatory and statutory restrictions on access to and dissemination of confidential OCA information.

We thank you for your attention to this important matter and respectfully request a response to our requests by January 1, 2015.

Sincerely,



David Vitter
Ranking Member
Committee on Environment and Public Works



James M. Inhofe
Ranking Member
Subcommittee on Oversight