

November 29, 2016

Howard Shelanski  
Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

Re: EPA's Proposed Risk Management Program Regulations

Dear Administrator Shelanski:

On March 14, 2016, the Environmental Protection Agency (EPA) published in the *Federal Register* proposed amendments to the Risk Management Program (RMP) regulations under the Clean Air Act that would affect a diverse group of over 12,000 public and private entities across agriculture, food processing, chemical manufacturing and distribution, oil and gas, mining, water treatment, and many other sectors.<sup>1</sup> While safety is a top priority for all of our members' operations, we remain concerned that the complexity and potential impact of the proposed rule on such a diverse array of affected entities has not been fully and properly evaluated by EPA, and that the potential risks created by the rule may overwhelm its potential benefits. Accordingly, the undersigned associations believe that the proposal would clearly benefit from additional time, input, and discussion, and should be sent back for re-proposal.

The proposed rule would impose significant new requirements on current facility risk management practices, including costly third party audits (with expansive impartiality and documentation requirements), extensive investigation requirements for even "near misses," and a requirement to conduct a complex "safer technology alternatives" analysis that EPA previously had rejected due to a lack of expected benefits. Equally important, the proposal would force companies to distribute potentially security-sensitive information to the public through websites or other means. That would increase security risks for public entities, such as water agencies, many private businesses, and our communities. Similar concerns have also been raised by other federal agencies, including the Department of Homeland Security, the Small Business Administration, and many states that are on the front lines for assuring the security and safety of their citizens.

In particular, we are concerned that EPA has failed to fully evaluate the expected costs and benefits of the proposal, creating a likelihood that the significant burdens and security risks of the proposed rule are not justified. Executive Order 13563 directs agencies to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs." Despite proposing to impose significant burdens on the regulated community, EPA acknowledged in the proposal that it is "unable to quantify what specific damage reductions may occur as a result of these proposed revisions."<sup>2</sup> While EPA did attempt to quantify the damages that currently occur at RMP facilities,<sup>3</sup> it provided no analysis to demonstrate how much, if any, of that damage

---

<sup>1</sup> EPA, "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule." March 14, 2016, 81 *Fed. Reg.* at 13,638.

<sup>2</sup> 81 *Fed. Reg.* at 13,694.

<sup>3</sup> *id.*

would be prevented by the proposed revisions. It is impossible to determine the cost effectiveness of the proposed revisions to RMP without some projection of the expected benefits. Our concerns about the cost effectiveness of the proposed revisions are further heightened by EPA's suggestion in the Regulatory Impact Analysis that the costs of EPA's proposal would likely outweigh the monetized benefits.<sup>4</sup>

We are also concerned by EPA's suggestions that it may be reticent to make changes to the proposed revisions in response to public comments. In a public hearing on the proposed rule, the Assistant Administrator in charge of this rulemaking stated that the agency was unlikely to make significant changes to the proposal because EPA had engaged in significant public outreach prior to releasing the proposal.<sup>5</sup> While we appreciate and support EPA's decision to engage with stakeholders prior to issuing the proposal, it is also essential that the agency maintain an open mind throughout the rulemaking process, since significant comments and concerns were expressed once the regulated community reviewed the actual proposal. During the development of the proposal, concerns were raised relating to EPA's almost complete disregard of the input received from small businesses in the final SBREFA report for this rule. In light of the agency's remarks about the likelihood of changes being made, and its apparent overlook of small business concerns, we have significant doubts as to whether the substantial technical, legal, and cost-related comments about EPA's specific proposed revisions to the RMP regulations are being properly considered. These doubts have been heightened by EPA's disappointing decision to decline to meet and discuss our comments and cost estimates after the close of the comment period, despite several requests identifying a high level of interest in the rule and these issues.

As representatives of a diverse set of private and public sector interests, we respectfully request that the Office of Information and Regulatory Affairs (OIRA) carefully evaluate EPA's revisions to RMP in accordance with its obligations under Executive Orders 13563 and 12866, and OMB Circular A-4. Specifically, we urge OIRA to scrutinize EPA's Regulatory Impact Analysis and its evaluation of the projected benefits of the RMP revisions. Further, to the extent that OIRA identifies deficiencies in EPA's analysis, we urge OIRA to return the RMP revisions to EPA for further consideration of the expected costs and benefits of the rule. The undersigned associations and our members agree that safety is of utmost importance and support the goal of ensuring the safety of our employees and communities. However, to that end, we also believe that a deliberate and reasoned process under Executive Orders 13563 and 12866 that welcomes all views and invites constructive discussion is necessary to achieve these goals, build public support, and produce a rule that is more effective in reducing risks in accordance with the intent of RMP.

We, the undersigned associations, representing a diverse set of private and public sector interests, respectfully request the Administration not hurry this important rule but instead allow a deliberative process based on meaningful input from the many stakeholders affected.

---

<sup>4</sup> EPA, *Regulatory Impact Analysis: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, Section 112(r)(7) at 96 (Feb. 24, 2016).

<sup>5</sup> See, e.g., Dave Reynolds, InsideEPA.com, *EPA Waste Chief Signals Major Changes to Facility Security Plan Unlikely* (Mar. 29, 2016), available at <http://insideepa.com/daily-news/epa-waste-chief-signals-major-changes-facility-security-plan-unlikely>.

Sincerely,

Agricultural Retailers Association  
Aluminum Association  
American Chemistry Council  
American Coatings Association  
American Coke and Coal Chemicals Institute  
American Forest & Paper Association  
American Frozen Food Institute  
American Fuel & Petrochemical Manufacturers  
American Petroleum Institute  
Brick Industry Association  
Compressed Gas Association  
Corn Refiners Association  
Council of Industrial Boiler Owners  
Global Cold Chain Alliance  
GPA Midstream Association  
Independent Petroleum Association of America  
Institute of Makers of Explosives  
International Dairy Foods Association  
International Fragrance Association, North America  
International Liquid Terminals Association  
National Association of Chemical Distributors  
National Association of Manufacturers  
National Mining Association  
National Oilseed Processors Association  
Natural Gas Supply Association  
Society of Chemical Manufacturers and Affiliates  
SPI: The Plastics Industry Trade Association  
The Chlorine Institute  
The Fertilizer Institute  
The Vinyl Institute  
U.S. Chamber of Commerce

cc: Gina McCarthy, Administrator, EPA  
Mathy Stanislaus, Assistant Administrator, Office of Land & Emergency Management, EPA  
Avi Garbow, General Counsel, EPA  
David J. Kling, Acting Associate Administrator, Office of Homeland Security, EPA  
Denis McDonough, Chief of Staff, The White House