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The Honorable Gina McCarthy
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket: EPA-HQ-OEM- 2015-0725-0001

Comments: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Proposed Rule (RIN 2050-AG82)

Dear Administrator McCarthy:

As the chief legal officers of our states, we write to express our serious concerns about EPA's proposed sweeping changes to the Accidental Release Prevention Requirements and Risk Management Programs under Clean Air Act §112(r).

As officials tasked ultimately with ensuring that appropriate and legal safeguards are in place to protect the citizens of our states, we share the EPA's goals of preventing or minimizing the consequences of accidental chemical releases. However, we believe that many of the proposed regulatory changes to the RMP rules fall outside of EPA's purview, and would in many cases represent a drastic departure from the current regulatory framework, without corresponding benefits to chemical accident prevention.

The concern with these new requirements is not solely that they do not provide any benefit for prevention of accidental release or accident response. The disclosure of some of the information the proposal mandates may actually lead to an increased risk of intentional release by those with nefarious motives. In light of recent and significant terrorist attacks that have resulted in the loss of life, as well as the perpetual cyber-attacks and data breaches on and from our federal government that are leading to disclosure of personal and sensitive information, we are dumfounded as to why you would like to acquire and then make readily available sensitive information pertaining to chemical facilities to the public at large.

The Clean Air Act states clearly that the "objective of the regulations and programs authorized…(shall be) to prevent the accidental release and to minimize the consequences of any such release" of listed substances and other extremely hazardous substances. [1] "Accidental Release" is defined as " an unanticipated emission of a regulated substance…into the ambient air.[2]" As such, any regulatory requirements under the program

[1] 42 USC 7412(r)(1)

[2] 42 USC 7412(r)(2)(A)

must be focused on the objective of preventing an accidental release or minimizing the consequence thereof. Numerous provisions contained in the proposed RMP proposals fall outside of this clear statutory authority.

For example:

- Under the current regulations, when a facility experiences a "catastrophic release," certain regulatory requirements are triggered. A "catastrophic release" is defined as a "major uncontrolled emission, fire or explosion…that presents imminent and substantial endangerment to public health and the environment.[3]" EPA is proposing to change the definition to an uncontrolled emission "that resulted in deaths, injuries, or significant property damage on-site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage."[4] This proposed change creates an improper intrusion of the EPA into the authority of the Occupational Safety and Health Administration of the Department of Labor to ensure workplace safety. The proposed regulatory requirements that are based on this expanded definition are clearly not authorized under the Clean Air Act.

- There is currently no requirement under the RMP rule for a facility to subject itself to a "third-party" audit conducted by an entity other than the owner or operator of the facility. Despite the fact that a diverse group of industrial sectors are subject to the program, covering processes ranging from chemical to paper to food processing, EPA is proposing a third party audit requirement that takes a "one-size fits all approach." EPA assumes that a third party auditor who has sufficient knowledge of a process will be available to competently perform an audit. But to complicate matters further, EPA is demanding that the auditors have no relationship with the audited entity for three years prior to the audit and three years subsequent. EPA is demanding that a professional engineer be part of the auditing team, that attorney client privilege cannot apply to the audits, and finding and reports be released to the public. It is difficult to fathom how this collection of burdensome, costly, bureaucratic regulatory requirements does anything to enhance accidental chemical release prevention.

- The information sharing provisions give us great pause. We all are cognizant of the potential threat that a chemical facility may face by someone with nefarious motivations (i.e. terrorists). Yet, citizens have a right to know of the risks posed by their neighbors, and the federal Emergency Planning and Community Right To Know Act addresses that right. However, that right needs to be carefully balanced against exploitation of that information. It was precisely that concern which motivated Congress to enact the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act of 1999. Yet, under the proposed RMP changes, EPA is mandating release of and easy access to information such as audit reports, exercise schedules and summaries, and emergency response details, the release of which does nothing to prevent accidents or reduce potential harm, but likely increases the vulnerability of multiple facilities.

Ultimately, we believe that the most influential steps EPA could undertake to improve chemical safety is through increased awareness of existing management and regulatory programs, enhanced training, and enforcement for companies that have not met their regulatory obligations. The record that exists today regarding safety and security at the nations chemical facilities does not indicate that weak or ineffective regulations are the problem. The problems that may exist are primarily a result of a lack of coordination between federal agencies and a failure of the federal government to communicate with the local communities and first responders. Indeed, none of the current proposals are contained in the recommendations of the U.S.

[3] 40 CFR 68.3

[4] 81 FR 13638 at 13647

Chemical Safety Board in their report on the West, Texas incident, which was supposed to be the impetus for these changes.

This unauthorized expansion of the program does not make facilities safer, but it does subject facilities to even more burdensome, duplicative and needless regulation. Industries resources need to be spent on what truly matters, making facilities safe and secure, not responding to unauthorized regulation that is perpetuated for regulation's sake.

On behalf of the undersigned states, we strongly urge the USEPA to modify the regulatory proposal to ensure that all provisions contained therein are in accordance with the explicit mandate granted to the EPA by Congress in the Clean Air Act Amendments of 1990. Executive Order 13563, issued by President Obama in 2011, provides that "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements" This proposal clearly does not meet the goals set by the Administration. These serious flaws must be rectified before any final regulation is adopted.

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