

**Comments submitted in response to Federal Register Notice
Number 2021-11280**

**“Accidental Release Prevention Requirements:
Risk Management Programs Under the Clean Air Act;
Notice of Virtual Public Listening Sessions”**

Docket Number EPA-HQ-OLEM-2021-0312

***Submitted via Regulations.gov*
July 30, 2021**

The 59 organizations listed below, representing fenceline, community, worker, environmental justice, business, conservation, science, health and other constituencies affected by chemical disasters and EPA’s Risk Management Plan (RMP) regulation and program, many disproportionately impacted by chemical hazards and incidents, submit these comments on July 30, 2021 in response to Docket ID Number EPA-HQ-OLEM-2021-0312.

We appreciate EPA’s interest in updating the RMP regulation in order to “better address the impacts of climate change on facility safety and protect communities from chemical accidents, especially vulnerable and overburdened communities living near RMP facilities.” EPA’s public commitment matches President Biden’s January 27, 2021 Executive Order, which states that: “It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.”

It has been very important that EPA gathered input from affected residents, workers, communities, elected officials, and many other stakeholders from across the country through open virtual listening sessions during this comment docket. The July 8 session in particular lasted 90 minutes longer than the originally scheduled 4 hours. This extensive and diverse public input would not have been possible during a single in-person listening session in Washington, DC, or even through a handful of in-person listening sessions, especially for communities and individuals with less financial resources (who are exactly the kinds of people that EPA most needs to hear from when developing actions). We strongly encourage EPA to hold virtual national listening sessions during other information collections and comment dockets of special public interest or importance in the future.

It is also important to note that many of the organizations submitting this comment, along with many others and related networks such as the Coalition to Prevent Chemical Disasters and the Environmental Justice Health Alliance for Chemical Policy Reform, have been encouraging EPA to finally address critical weaknesses in the RMP rule for many years including through participation in several previous listening, informational, or comment processes. EPA needs to

finally deliver the basic and common-sense protections that communities, workers, and safety experts have been seeking for too long.

The 2019 RMP rule rollback was based on deeply flawed data and analysis, blatantly incorrect assumptions, and arbitrary and capricious reasoning. That decision ignored abundant evidence that did not support EPA's action, and ignored well-documented disproportionate impacts on already overburdened communities.¹ A wide variety of new information and evidence available, which was improperly considered or ignored during the 2019 rulemaking, demonstrate the urgent need for EPA to develop and adopt a stronger RMP rule.

The regulatory impact analyses, and other evidence, for both the 2017 Amendments and the 2019 rollback rule confirmed disproportionate impacts from RMP facilities and hazards on communities of color and low-income communities. And yet, even the 2017 Amendments did not establish sufficient requirements to address these environmental justice impacts and protect these communities, or include a wide variety of measures specifically requested by these communities in their comments during the rulemaking process.

An improved RMP rule is urgently needed to protect workers, communities, first responders, and businesses (including the many businesses that supported a stronger RMP rule) **by focusing on preventing chemical disasters through hazard reduction and elimination.** EPA must follow the science and apply new information and lessons learned to prevent disasters and save lives. It is essential for EPA to issue a stronger new rule expeditiously that requires robust hazard reduction to prevent chemical disasters.

Overall, the rules must require front line **worker participation** and bolster **union participation and training in incident prevention, investigation, and response** requirements to ensure the safety of workers (including contractors), first responders, and community members. It is also important for EPA to strengthen the rules to advance **environmental justice and address disproportionate, cumulative impacts** for communities with multiple RMP facilities. Any new rule must prevent chemical disasters by **ensuring hazard reduction or elimination** (not only improving the response to preventable disasters). It is important to restore and implement essential requirements for safer chemicals, technologies and practices, worker training, third-party audits, root cause analysis, deregistration analysis, and emergency exercises.

Our organizations and constituencies insist that any new RMP rule must:

INCLUDE STRONGER AND REQUIRED DISASTER PREVENTION MEASURES,
ESPECIALLY REQUIREMENTS FOR IDENTIFICATION AND USE OF AVAILABLE,
INHERENTLY SAFER METHODS THAT CAN ELIMINATE OR REDUCE
CATASTROPHIC HAZARDS ALTOGETHER

Despite the fact that the Clean Air Act Amendments require EPA to publish regulations for chemical incident prevention, the RMP rule has never truly focused on prevention, or required

¹ See, for example, *Who's in Danger: Race, Poverty, and Chemical Disasters* (EJHA et al 2014); and *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities* (EJHA et al 2018).

any actual reduction or removal of hazards. These hazards disproportionately affect facility employees and contractors, communities of color, and low-income communities.

Too many facilities focus solely on incident response or administrative controls, many consistently blaming workers or coincidence for deadly incidents that are the result of corporate failures to fund and require prevention measures, or convert to available safer processes. Incidents continue across the country at an alarming rate, and the US has been fortunate to avoid a truly catastrophic incident to date. As EPA noted in its February 2016 Regulatory Impact Analysis, the 10-year baseline used to assess costs and benefits at that time did not include a "major catastrophe," and if RMP revisions "were to prevent or substantially mitigate even one accident of this magnitude, the benefits generated would be dramatic." It is important to note that low-frequency or low-probability, but high-consequence, events cannot be predicted by frequency of incidents or overall trend of incidents.

Any new RMP rule must prioritize PREVENTING disasters by ensuring HAZARD REDUCTIONS.

This is entirely possible and practical. EPA does not need to invent approaches that will help prevent disasters by reducing and removing hazards – these already exist. They have been developed over decades by process safety experts, facility safety teams, and local and state governments, and have been implemented by cities, states, facilities and sectors. What is needed are common-sense requirements for national adoption, and the moral and political courage to enact them.

In developing a badly needed new RMP rule, EPA should rely on best practice approaches to hazard reduction, especially successful state and local programs like the recent (2017) California Process Safety Management regulation for petroleum refineries, the Contra Costa County (CA) Industrial Safety Ordinance, and the New Jersey Inherently Safer Technology rule.

Any new RMP rule should require hazard reduction to the greatest extent feasible, especially for the most hazardous facilities, in communities with multiple facilities or with environmental justice concerns, and for industry sectors that have known safer processes available. Hazard reduction requirement based on feasibility has been practically and defensibly defined in policies such as the California PSM rule and others. It should also be noted that the U.S. Chemical Safety and Hazard Investigation Board (CSB) recommended in October of 2014, May 2016, July 2018 that the EPA, should “require chemical facilities [to] utilize inherently safer technology to the greatest extent practicable.”

An estimated 60 publicly owned water treatment plants each still put 100,000 or more people at risk. Another 86 bleach plants put over 60 million people in danger. And as many as 50 refineries put 26 million people at risk. Safer alternatives are already available for these and other sectors.² Robust requirements are needed to ensure that these, and other facilities, convert to existing safer chemicals and processes.

² For water and wastewater treatment facilities, *Who's in Danger: Race, Poverty, and Chemical Disasters* (EJHA et al, 2014) data table; for bleach plants, see *Chlorine Bleach Plants Needlessly Endanger Millions* (Greenpeace, 2016);

For example, all RMP facilities should be required to develop and submit hazard reduction plans through a process in which:

- Hazard reduction plans and feasibility determinations are made by facility experts & workers (with required worker participation);
- Facilities are required to start at the top of the hierarchy of controls (elimination or substitution), unless elimination or substitution are not feasible;
- Decisions and justifications must be documented in writing and submitted to EPA, with Agency ability to review and challenge (possibly including required third party audits of claims that transition to safer alternative chemicals or processes are not feasible, especially if safer alternatives are already being utilized at similar facilities), and with at least summaries publicly available;
- Decisions to not remove or reduce hazards must be based on allowable factors specified in the regulation (and not solely based on cost);
- Analyses must include consideration of an EPA-generated list of inherently safer chemicals and processes based on the experience of deregistered facilities and other sources;
- The rule should include enforceable deadlines for facilities to transition to available safer chemicals or processes, or implement other identified hazard reduction measures.

In addition, a new rule should restore, and improve or expand, important prevention measures from the 2017 Amendments by:

- Requiring root cause analyses following catastrophic releases or incidents that could reasonably have resulted in a catastrophic release (i.e., a near miss);
- Requiring independent third-party compliance audits after an RMP-reportable incident, or when an implementing agency determines that such as audit is needed;
- Requiring facilities to include findings from incident investigations in safety and process hazard analyses.

The U.S. Chemical Safety and Hazard Investigation Board has made a variety of recommendations on how EPA can and should improve the RMP rule and its RMP program to prevent incidents. For example, the CSB's reports on the Chevron Richmond, CA and Tesoro Anacortes, WA incidents both found serious weakness in EPA's RMP and OSHA's PSM regulations for preventing chemical accidents. Both regulations were intended to be goal setting or performance-based, but in practice they function primarily as reactive and activity-based regulatory schemes that require extensive rulemaking to modify. As a result, the standards have become static in the face of advancing best practices and technology, with the emphasis placed on the completion of a task or activity rather than achievement of continuous risk reduction to a targeted level. The CSB also found that the regulations do not require that companies effectively manage the risks they create; nor do they require regulator evaluation of the effectiveness of safeguards or regulator acceptance of companies' plans for controlling those risks. These weaknesses have resulted in a scheme that has largely resulted in industry self-

for refineries, see *A Risk Too Great: Hydrofluoric Acid in US Refineries* (USW, 2013), all submitted to the docket with this written comment.

regulation. Both reports recommended regulatory revisions that would require the use of higher order controls and inherent safety to the greatest extent feasible. Any new RMP rule should include important CSB recommendations for preventing chemical incidents, as have been well documents in CSB reports and submitted by CSB itself to previous RMP rulemaking dockets.

**INCLUDE ROBUST CLIMATE-RELATED PREVENTION AND SAFETY MEASURES
TO PROTECT COMMUNITIES AND WORKERS FROM THE DOUBLE THREAT OF
CHEMICAL DISASTERS HURRICANES, FLOODS, AND OTHER “NATECH”
INCIDENTS WHERE THERE IS A DOMINO EFFECT OF NATURAL AND
TECHNOLOGICAL DISASTERS**

A new RMP rule should require facilities to assess climate- and natural disaster-related hazards that increase the risk of harm from chemical disasters, and adopt chemical release prevention practices that can withstand the risk of climate- and natural disaster-related hazards.

EPA should reform RMP rules to specifically require process hazard analysis for these events and natech-focused hazard reductions, as well as third-party audits (that explicitly address climate risks) to identify specific practices, such as reliable backup power generation that can operate for extended periods, leak detection and repair, and inspection, maintenance, and repair of aging pipes, tank components, and other equipment, and take other measures to prevent chemical releases and harm worsened by climate and other natech risks.

The EPA should also expressly require facilities to consider climate and natural disaster factors in review, planning, reporting, prevention, and response provisions that include: (a) release scenario and offsite consequence analyses, (b) accident history and incident investigations, (c) hazard review and process hazard analysis, and (d) emergency response coordination, programs, and exercises. For example, EPA should consider requiring offsite consequence analysis parameters to incorporate climate and natural disaster factors.

The agency should also adopt mitigation standards using the hierarchy of controls and provisions requiring specified and orderly emergency procedures for safer shutdown and restart of operations in anticipation of forecasted natural disasters to reduce releases and hazards during these procedures. And EPA should expressly prohibit host and contractor employers from locking in workers, as has occurred at some facilities.

In consultation with the U.S. Occupational Safety and Health Administration, EPA should develop and require delivery of trainings and resources, in their native languages, to workers at RMP facilities on climate and natural disaster risks and how they may impact hazardous chemical processes, onsite emergency responses, and worker health and safety (as part of a broader set of worker training requirements including hazards onsite, response procedures, and offsite impacts).

**INCLUDE COMMON-SENSE EMERGENCY RESPONSE AND INCIDENT
MANAGEMENT MEASURES, E.G., ALERTS IN MULTIPLE LANGUAGES (INCLUDING
ADVANCE COMMUNITY NOTIFICATION), FENCELINE AIR MONITORING, LEAK**

DETECTION AND REPAIR, EMERGENCY RESPONSE EXERCISES, AND OTHER BEST PRACTICES OF SAFETY LEADERS

According to the U.S. EPA's Chemical Emergency Preparedness and Prevention Office, transparency between industry and the public will improve community safety: *Both EPCRA and the CAA [Clean Air Act] section 112(r) Risk Management Program encourage communication between facilities and the surrounding communities about chemical safety and chemical risks. Regulatory requirements, by themselves, will not guarantee safety from chemical accidents. Information about hazards in a community will allow local emergency officials and the public to work with industry to prevent accidents.* CSB reports and recommendations also emphasize the importance of facility and regulator transparency for effective incident prevention.

RMP facilities must be required to report data to EPA that can be made accessible to workers, their representatives, and fenceline communities to reduce harm when preparing for and responding to chemical incidents, including natech-related incidents. This includes hazard reduction and elimination assessments and facility response plan information.

EPA should require RMP facilities to undertake — and facilitate the participation of first responders in — emergency response exercises (including field, tabletop, and community notification exercises) on clear, regular, and enforceable timetables (i.e. restore and strengthen all these elements of the 2017 Amendments).³ These rule elements and exercises should include information and procedures that are responsive to the particular risks of natural disasters and natech incidents for a given facility.

Facilities should also be required to make emergency response components of their RMP plans, including up-to-date information regarding all chemical hazards, publicly available and accessible online (such as through EPA's website). Such information should be easily understandable and accessible (incorporating multilingual formats where appropriate). Community members need more access to information about chemicals that are made, stored, and used at local facilities, and the hazard reduction and disaster prevention strategies employed by similar facilities in other jurisdictions.

A new rule should require facilities to conduct real-time fenceline monitoring (including data collection during or as soon as possible after natural disasters and extreme weather events), share data with the public, and provide timely and effective community alerts at hazardous facilities (such as through prompt, multilingual community alerts using cell phone networks to first responders and affected communities).

STRENGTHEN ENFORCEABILITY, CORRECTIVE ACTION, AND ACCOUNTABILITY, INCLUDING NECESSARY INFORMATION ACCESS IN MULTIPLE LANGUAGES

³ The New Jersey Toxic Catastrophe Prevention Act (TCPA) rules require **annual** field exercises (not just table top exercises). Although the 2019 RMP changes were incorporated into these rules, "the frequency of field exercises as described in (b)(1)(i) **must still be at least once every calendar year as specified in N.J.A.C. 7:31-5.2(b)2.**" See https://www.nj.gov/dep/enforcement/tcpa/downloads/epa_reconsideration_rule_crosswalk_sept_2020.pdf

Increase Worker Participation

RMP reforms should require increased involvement of workers and their representatives and participation in RMP plan development, and training in incident prevention, response, and investigation, including making workers aware of anti-retaliation protections and anonymous safety hazard reporting procedures.

Workers also need access to mechanisms to anonymously report safety hazards and near-miss incidents to EPA with anti-retaliation protections, requiring immediate response by RMP facilities to present and imminent threats, including those related to extreme weather and other natural disaster risks. A public record of these reports is also needed to ensure timely maintenance or other corrective action is taken to prevent incidents.

EPA should issue specific provisions in a new rule that enable workers and their unions to more effectively prevent chemical releases into communities and the environment through:

- 1) Stating that “In consultation with employees and employee representatives (including contractor employee representatives), the facility owner and operator shall provide for meaningful employee participation when developing, implementing, maintaining, and evaluating **all** RMP activities, including hazard assessment, the prevention program, and emergency response activities and shall keep current a written plan that describes such opportunities.”
- 2) Requiring facility owners and operators to disseminate RMP information to employees and their representatives, including PHAs, safer alternatives assessments, incident investigation reports, third-party audits, emergency response plans, etc.
- 3) Allowing employees and their representatives to participate in Program Levels 1 and 2, not just in Level 3, so that workers at **all** sites with extremely hazardous chemicals can help protect communities and public safety.
- 4) Requiring facility owners and operators to assess the impact of a worst-case release on their own employees and contractors **and** on those of nearby industrial facilities when conducting Process Hazard Analyses.
- 5) Issuing, as called for by the Chemical Safety Board, a “stop work authority” provision so workers and their representatives may engage management to temporarily halt processing units and operations that pose a catastrophic risk.

Finally, the 1990 Clean Air Act amendments require that employers allow employees and their representatives the right to participate in Section 112(r) inspections under the same terms that they can participate in OSHA inspections. EPA *guidance* explains this right. The new RMP rule should also explain how employees and their representatives can participate during EPA inspections and audits.

Strengthen Compliance and Enforcement

EPA must build more thorough and effective compliance mechanisms into a new RMP rule, especially for elements to address climate-related hazards. Compliance mechanisms must be transparent and easily enforceable, and must include prompt compliance deadlines as well as regulatory language that clearly defines facility and EPA obligations and requires compliance reporting to EPA in a publicly accessible form. Requirements, which must take place before dangerous incidents occur, should include appropriate testing and assessment for worst-case failure scenarios of critical components and systems, testing and assessment of mitigation measures, inspections and reports, and replacement of components like corrosion-vulnerable pipes and equipment.

Revising regulations to ensure full RMP implementation as part of the Clean Air Act Title V permitting program will help improve compliance with the new rules by integrating the RMP into major source facilities' permits.

The EPA should prioritize health and cumulative impact assessment and target regulatory enforcement for RMP facilities in areas vulnerable to natural disaster risks and near communities with environmental justice concerns.

EPA should make the routine reporting and dissemination of solutions data an integral part of the RMP program and rule. Solutions data means the successful practices companies are using to reduce and remove RMP chemical hazards.

EPA should incorporate solutions data into the RMP program in at least five basic ways. Solutions data should be:

- 1) Reported on RMP deregistration forms;
- 2) Summarized from any safer alternatives analyses in RMPs submitted to EPA;
- 3) Required from every RMP facility (not just oil, chemicals, and paper);
- 4) Included in public meetings after incidents;
- 5) Compiled into a public EPA hazard reduction clearinghouse.

We urge EPA to designate staff whose job it is to address these information policy issues in the RMP rulemaking process.

EXPAND COVERAGE OF THE RMP PROGRAM TO MORE FACILITIES, PROCESSES AND CHEMICALS, AND TO ADDRESS CUMULATIVE/MULTIPLE HAZARDS

Expand the Program

A new RMP rule should expand coverage to more facilities, especially those in disproportionately impacted or already overburdened areas, and in areas at risk of climate-related (“natech”) incidents. It is especially important to extend safety protections to more facilities and nearby communities to ensure that natech-focused protections are factored into the evaluation of permitting for facilities in areas particularly vulnerable to natural disasters and climate impacts. For example, facilities that are already subject to RMP requirements for one or more processes or chemicals should be covered for all processes across the facility to avoid cascading disasters like

the incident at the Arkema chemical plant in Crosby, Texas, and the fatal explosions in West, Texas.

EPA should expand the universe of hazardous chemicals, and lower the thresholds, that trigger RMP requirements, including (and especially) flammable, explosive, and other reactive chemicals on EPA's "List of Lists," a consolidated roster of hazardous chemicals subject to reporting requirements of the Emergency Planning and Community Right To-Know Act, the Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act.

The agency should also adopt additional RMP-coverage criteria that require additional protections at proposed facilities and covered processes that would be sited in areas vulnerable to climate and natural disaster risk, or in communities already overburdened with multiple RMP facilities and/or other chemical hazards and exposures.

Address Cumulative Hazards and Impacts

Many communities host multiple (in some cases dozens) of RMP facilities with overlapping vulnerability zones, and in some cases in very close proximity to each other. These cumulative hazards and the potential for simultaneous or chain reaction incidents, especially during extreme weather events or natural disasters that affect all facilities simultaneously, is currently not addressed in the RMP program at all. As is well documented, these communities are disproportionately communities of color and low-income communities – the very overburdened and disproportionately impacted communities that the Biden Administration and EPA have committed to protect.

In addition to the risk of immediate injury or death from a catastrophic chemical release (and the economic and social harms caused by shelter in place or evacuation orders, along with property damage and environmental contamination), many communities already shoulder disproportionately high levels of exposure to hazardous chemicals from multiple pollution sources while facing social conditions that can make them even more susceptible to the health impact of those exposures. So any additional chemical exposures in these communities from RMP incidents or releases may cause more harm than EPA has in the past accounted for in its analyses. Focusing narrowly on the risk of harm from a single release from a single facility without accounting for the unique characteristics of the surrounding population, including current and past exposures and social disadvantage, and the presence of other RMP facilities, will understate the potential harm from even a worst-case release and perpetuate disproportionate impacts in communities that need the RMP rule's protections the most. On the other hand, reducing or removing hazards in these communities will likely have even greater benefits than have been previously determined (in addition to advancing EPA's stated commitment to environmental justice).

A new RMP rule must address these cumulative hazards, especially in communities that are already disproportionately impacted by and overburdened with chemical hazards and exposures, through common-sense measures, including:

- Requirements that facility worst-case scenario analyses, response plans, and hazard reduction plans must account for the presence of other RMP facilities in the vulnerability zone; and
- Requirements for certain facilities in such communities to implement certain prevention methods (i.e., new facilities; facilities with incidents in last 5 years; Program 3 facilities; facilities in communities with multiple sources; facilities using particularly hazardous chemicals or with available safer alternative chemicals or processes; environmental justice communities; etc.).

Workers, fenceline communities, first responders, and the thousands of schools, small businesses, medical facilities, and other institutions constantly at risk of a chemical disaster have already waited far too long for basic protections. EPA must finally amend the RMP rule to focus on **disaster prevention through required hazard reduction and elimination**, and by **increasing worker participation, addressing climate and “natech” hazards, improving enforceability and compliance**, and **expanding the program**, based on the specific recommendations noted above and the vast body of evidence and analysis that supports these common-sense measures.

Submitted by:

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Air Alliance Houston

Alaska Community Action on Toxics, Anchorage, AK

Alliance of Nurses for Healthy Environments

American Sustainable Business Council

As You Sow, Berkeley, CA

Beyond Pesticides

Beyond Toxics, Eugene, Oregon

Breast Cancer Prevention Partners

Buckeye Environmental Network, Ohio

California Communities Against Toxics

California Kids IAQ, Wilmington, CA

Center for Progressive Reform

Clean and Healthy New York, Albany, NY

Clean Power Lake County, Lake County, Illinois

Clean Water Action/Clean Water Fund

ClimateMama

Coalition for a Safe Environment, Wilmington, CA
Coalition of Community Organizations COCO, Houston, TX
Coming Clean
Community Dreams, Wilmington, CA
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Friends of the Earth U.S.
Green Science Policy Institute
Greenpeace USA
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Natural Resources Defense Council
Northwest Center for Alternatives to Pesticides, Eugene, OR
OVEC-Ohio Valley Environmental Coalition, Huntington, WV
People Concerned About Chemical Safety, Charleston, WV
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Science and Environmental Health Network

Sciencecorps

Sierra Club

Texas Campaign for the Environment

Texas Environmental Justice Advocacy Services, Houston, TX

The Healthy Port Communities Coalition, Houston, TX

Toxic Free NC

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Women's Voices for the Earth, Women's Voices for the Earth