

	<p>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY</p> <p>PUBLIC HEARING</p> <p>PROPOSED CHANGES TO THE</p> <p>RISK MANAGEMENT PROGRAM (RMP) RULE</p> <p>Washington, D.C.</p> <p>Thursday, June 14, 2018</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>PARTICIPANTS (CONT'D):</p> <p>Speakers:</p> <p>YVETTE ARELIANO Texas Environmental Justice Advocacy Services</p> <p>STEVE ARENDT ABS Group</p> <p>JORDAN BARAB Confined Space</p> <p>ALANA BYRD BlueGreen Alliance</p> <p>RHETT CASH American Coatings Association</p> <p>RON CHITTIM American Petroleum Institute</p> <p>SYDNEY COLOPY League of Conservation Voters</p> <p>KATHY CURTIS Clean and Healthy NY</p> <p>MILES DONOVAN League of Conservation Voters</p> <p>OCTAVIA DRYDEN Delaware Concerned Residents for Environmental Justice</p> <p>KEN DRYDEN Minority Workforce Development Coalition</p> <p>BILL ERNY ACC</p> <p>TIMOTHY GABLEHOUSE NASTTPO</p> <p>Page 3</p>
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<p>1 PARTICIPANTS (CONT'D):</p> <p>2 MICHELE ROBERTS</p> <p>3 Environmental Justice Health Alliance for</p> <p>4 Chemical Policy Reform</p> <p>5 ALEXANDRA M. ROMERO</p> <p>6 Arent Fox, LLP</p> <p>7 NICKY SHEATS</p> <p>8 NJ Environmental Justice Alliance</p> <p>9 GORDON SOMMERS</p> <p>10 Earthjustice</p> <p>11 ELIZABETH SPIKE</p> <p>12 Resident of Houston, Texas</p> <p>13 LARA SWETT</p> <p>14 AFPM</p> <p>15 EAN TAFOYA</p> <p>16 Colorado Latino Forum</p> <p>17 STEPHANIE THOMAS</p> <p>18 Public Citizen</p> <p>19 JAKE TYNER</p> <p>20 U.S. Chamber of Commerce</p> <p>21 MICHAEL WILSON</p> <p>22 BlueGreen Alliance</p> <p>SAY YANG</p> <p>Center for Earth, Energy and Democracy</p> <p>* * * * *</p> <p>Page 5</p>	<p>1 comments on EPA's proposed reconsideration of</p> <p>2 amendments made to the Risk Management Program</p> <p>3 regulations. The RMP amendments were published in</p> <p>4 Federal Register registered on January 13th of</p> <p>5 2017. The effective date of the amendments was</p> <p>6 delayed until February 19th of 2019, in order to</p> <p>7 conduct a reconsideration proceeding. EPA is</p> <p>8 reconsidering the amendments in response to three</p> <p>9 reconsideration petitions and also to consider</p> <p>10 further regulatory action and other matters that</p> <p>11 EPA believes will benefit from additional public</p> <p>12 comments.</p> <p>13 On May 30, 2018, so just about two weeks</p> <p>14 ago, EPA published a notice to proposal rule</p> <p>15 making, which proposes changes to the final</p> <p>16 amendments. The proposed changes include</p> <p>17 rescinding some of the new provisions contained in</p> <p>18 the amendments rules and retaining others with</p> <p>19 proposed modifications, provisions of the</p> <p>20 amendments that would be rescinded under EPA's</p> <p>21 current proposal include provisions for a</p> <p>22 third-party audits, safer technologies, and</p> <p>Page 7</p>
<p>1 P R O C E E D I N G S</p> <p>2 (9:00 a.m.)</p> <p>3 MR. BELKE: Good Morning everyone. We</p> <p>4 are going to start the hearing now. Good Morning</p> <p>5 and welcome to the Public Hearing and EPA's</p> <p>6 proposal to reconsider the risk management program</p> <p>7 amendments. My name is Jim Balke. I am a</p> <p>8 chemical engineer with EPA's Office of Emergency</p> <p>9 Management and I will be the Panel Chair for this</p> <p>10 first session of the public hearing. Thank you</p> <p>11 for being here today.</p> <p>12 Joining me on the panel this morning, to</p> <p>13 my left is Jon Averbach, he is a senior attorney</p> <p>14 with EPA's Office of General Counsel, Craig Haas</p> <p>15 to my right is an Environmental scientist with</p> <p>16 EPA's Office of Enforcement and Compliance</p> <p>17 Insurance. To his right, is Margaret Gerardin.</p> <p>18 Margaret is an Environmental Protection Specialist</p> <p>19 with EPA's Office of Emergency Management and will</p> <p>20 also service the time keeper for this session of</p> <p>21 the Public Hearing.</p> <p>22 We are here today to listen to your</p> <p>Page 6</p>	<p>1 alternatives analysis, instant investigation and</p> <p>2 root cause analysis, public information</p> <p>3 availability, and certain other minor changes.</p> <p>4 Provisions of the amendments that would</p> <p>5 be retained with modifications include: enhanced</p> <p>6 local emergency coordination provisions, emergency</p> <p>7 response exercise provisions, provisions for the</p> <p>8 public meetings after accidents, and a few other</p> <p>9 minor technical corrections. At this time, EPA is</p> <p>10 seeking comments on the proposed reconsideration</p> <p>11 rule.</p> <p>12 Before we get started with hearing</p> <p>13 testimony, I would like to go through some</p> <p>14 house-keeping items and ground rules that will</p> <p>15 help make today's hearing run smoothly.</p> <p>16 First, please be sure that you have</p> <p>17 checked in at the Registration Desk, even if you</p> <p>18 are not planning to speak today, and if you did</p> <p>19 pre-register to speak but didn't sign in when you</p> <p>20 arrived, please do step out to the Registration</p> <p>21 Desk, so that we can assign you a specific</p> <p>22 speaking time.</p> <p>Page 8</p>

<p>1 If you remember the news media, there is 2 a separate Registration Desk in the vestibule that 3 you should register at, and speaking of the news 4 media, for everyone's awareness, this hearing is 5 open to the press and we do have members of the 6 media present with us today. This event is open 7 to any form of recording, video, audio, photos. 8 For the members of the media, we ask that you not 9 cause any disruption to those testifying or 10 observing the hearing today. Please refrain from 11 interviewing in the public hearing area. If you 12 need interview space, please check in with our 13 press contacts on the vestibule and they'll 14 provide you with a suitable area.</p> <p>15 For people here to present testimony, 16 it's up to you, whether or not, you want to be 17 interviewed by a member of the press and we ask 18 that the media members here today, please respect 19 each individuals wishes on that subject.</p> <p>20 I will call up speakers, generally two 21 at a time. When your name is called, please come 22 to the speaker's table at the front of the room</p> <p style="text-align: right;">Page 9</p>	<p>1 spoken for five minutes and it's time to stop.</p> <p>2 We are here to listen to you today. We 3 won't engage in discussion or debate about your 4 comments. However, a panel member may ask you 5 questions to clarify your testimony. If you have 6 brought a written comment, a copy of your 7 comments, please give that to the staff at the 8 Registration Desk before you leave today and we 9 will enter any written comments into the public 10 docket for the proposed rule.</p> <p>11 We also have comment forms available at 12 the Registration Desk if you would like to submit 13 written comments today. If you want to submit 14 written comments after today's hearing, 15 instructions for submitting those comments are 16 also available at the Registration Desk. Comments 17 must be received by July 30th of this year. Even 18 if you are speaking today, you can still submit 19 additional public comments to the docket after 20 your testimony today, as long as they are received 21 by the public comment period deadline, and your 22 comments will be considered.</p> <p style="text-align: right;">Page 11</p>
<p>1 and I would just caution you, when you are 2 approaching the podium that there is some steps to 3 get over and there is a cover over some wires that 4 could create a tripping hazard. So just be 5 cautious when you are stepping onto the podium.</p> <p>6 If I call two people to the speaker's 7 table, those speakers should stay at the table 8 until each has given comments, and I will then 9 call the next two speakers and so on. When I call 10 you to speak, please state your name and spell it 11 for the court reporter. Your comments will be 12 transcribed and included in the record of comments 13 on the proposed rule.</p> <p>14 Each speakers will have five minutes to 15 give comments. We have a timer, with lights to 16 help you know how much time you have left to 17 speak. The way the timer works, when you start 18 speaking, your time begins and you will see a 19 green light. The light turns from green to yellow 20 after four minutes - that means you have one 21 minute left. And then when the light turns from 22 yellow to red, that's the signal that you have</p> <p style="text-align: right;">Page 10</p>	<p>1 Restrooms are available down the hallway 2 outside the hearing room. We are in a federal 3 building and therefore you need to be escorted to 4 those areas, and we have escorts out in the front 5 that will help you with that. In the event of an 6 emergency or a fire drill, please exit the hearing 7 room, turn left, walk towards the main entrance, 8 walk outside, and move to a safe distance, and 9 then await further instructions. And then if you 10 have questions during the day, please see the 11 staff at the Registration Desk and somebody will 12 assist you.</p> <p>13 Again, thank you for taking your time 14 today to share your comments on EPA's proposal and 15 let's get started. So our first two speakers are 16 Jordan Barab and Lara Swett. And Jordan, you can 17 go first.</p> <p>18 MR. BARAB: Okay. My name is Jordan 19 Barab and the last name is B-A-R-A-B. From 2009 20 to 2017, I was Deputy Assistant Secretary of Labor 21 for OSHA. I also worked for four years at the 22 Chemical Safety Board. I am testifying today in</p> <p style="text-align: right;">Page 12</p>

<p>1 strong opposition to the proposed Risk Management 2 program reconsideration rule.</p> <p>3 Repeal of the 2017 rule of weakened 4 protections for emergency responders, chemical 5 plant workers, and millions of people living in 6 the vicinity of chemical plants. I am going to 7 oppose to all the provisions weakened in this 8 proposal. I will focus my comments on the 9 unsubstantiated allegations of the fire at the 10 West Fertilizer plant which was deliberately set 11 and how those allegations effect this proposal.</p> <p>12 The tragic facts of the West Fertilizer 13 explosion are well known, so I won't go into them 14 here except to note that twelve of the fifteen 15 people killed in that explosion were emergency 16 responders. In May 2016, the BATF shocked the 17 country by announcing that they had determined 18 that the fire that led to the explosion was 19 deliberately set and was a criminal act. EPA used 20 these findings as one justification for repealing 21 the 2017 regulation.</p> <p>22 There were several problems with the</p> <p style="text-align: right;">Page 13</p>	<p>1 Even if the fire was started 2 intentionally, the catastrophic explosion was 3 caused by improper management of hazardous 4 materials. Ultimately, for the purposes of 5 chemical plant safety, it doesn't matter what or 6 who started the fire, the problem is not the 7 ignition source or even the fire itself. Ignition 8 sources are notoriously difficult to identify 9 after a catastrophic explosion because there are 10 often lots of possibilities and the evidence may 11 have been destroyed. But fires don't lead to 12 catastrophic explosions unless the fuel is present 13 and in this case, improperly stored or contained.</p> <p>14 The Chemical Safety Board found that if 15 the ammonium nitrate of the West Fertilizer Plant 16 had been stored in metal instead of wooden bins, 17 and if contaminants like nearby seeds had not been 18 stored nearby, the fire likely would have burnt 19 itself out, without causing the ammonium nitrate 20 to detonate. In addition, the presence of 21 sprinklers could have controlled the fire. If the 22 ammonium nitrate or any hazardous chemical is</p> <p style="text-align: right;">Page 15</p>
<p>1 BATF finding. The first of which is that they 2 used negative corpus. The only evidence presented 3 in the past two years of the fire at the West 4 Fertilizer Plant that it was a criminal act, came 5 from a short press conference BATF held in Texas. 6 The ATF never stated that they had evidence that 7 the fire was started intentionally. They stated 8 only that 'we have eliminated all the reasonable 9 accidental and natural causes and that includes 10 smoking'. 'We came to the conclusion after we 11 ruled out all reasonable accidental and natural 12 causes', and several other quotes in that nature.</p> <p>13 I understand that the proposal states 14 that the BATF told EPA that did not rely on 15 negative corpus but the BATF's explanation of 16 their conclusion is a text book definition of 17 negative corpus. The process of the National Fire 18 Protection Association has declared to be 'not 19 consistent with the scientific method 20 inappropriate and should not be used'. Given 21 these facts, I strongly question the EPA's 22 decision to 'defer' to the BATF's expertise.</p> <p style="text-align: right;">Page 14</p>	<p>1 properly stored and handled, you don't have to 2 worry much about fires and the ignition sources. 3 Proper storage and management of flammable and 4 explosive materials is the difference between a 5 fire that makes the front page of the West Texas 6 News and a catastrophic explosion that makes the 7 front page of every newspaper in the world.</p> <p>8 Even if the fire was started 9 intentionally, that had no effect on the lack of 10 training and communication, lack of knowledge 11 about the materials stored in the plant that led 12 to the death of the responders. Note that there 13 were houses, schools, apartment buildings, and 14 nursing homes located too close to the plant. The 15 only conclusion therefore is that the BATF's 16 questionable finding, even in the unlikely event 17 that it's true, should have no relevance on the 18 fate of this regulation, nor should it inform this 19 deliberations in any way.</p> <p>20 Finally in response to the specific 21 questions asked in this proposal, namely, does the 22 BATF finding provide additional justification for</p> <p style="text-align: right;">Page 16</p>

<p>1 EPA rescinding the STAA, third- party audit 2 incident investigation and information 3 availability provisions? The BATF finding, if 4 true, should make STAA, third-party audits at 5 incident investigations and information 6 availability even more important. Regarding STAA, 7 if we assume the fire was intentionally started by 8 a terrorist, that should strengthen the need to 9 reduce the amount of how we have these hazardous 10 materials and chemical facilities so as to reduce 11 the target that might attract terrorist. 12 Enhanced incident investigations and 13 third-party audits would help discover the root 14 causes of these incidents and prevent future 15 incidents and more information available to 16 emergency responders in the public might have 17 saved the lives lost. Look at this in reverse, 18 none of these provisions would have made it more 19 likely for someone to intentionally start a fire 20 in such facility but would have significantly 21 contributed to reducing the impact of that fire. 22 To the EPA's proposed changes to the Page 17</p>	<p>1 are proposing to retain the emergency coordination 2 and exercise provisions. 3 MR. BARAB: I am sorry. There is a lot 4 of echo in here. I didn't quite -- 5 MR. BELKE: I thought at the beginning 6 of your testimony, you said that you opposed all 7 the provisions of the proposal. 8 MR. BARAB: All the weakening 9 provisions. 10 MR. BELKE: All the weakening -- okay. 11 Understood. Thank you. Okay. Lara. 12 MS. SWETT: Thanks. My name is Lara 13 Swett, S-W-E-T- T and I am a Senior Director of 14 the Health and Safety for the American Fuel and 15 Petrochemical Manufacturer's Association. 16 AFPM is a trade association whose 17 members encompass virtually all US refining and 18 petrochemical manufacturing capacity. Our members 19 work in environments that involve both complex 20 equipment and hazardous materials that are subject 21 to EPA's Risk Management Program and OSHA's 22 Process Safety Management Regulations both of Page 19</p>
<p>1 emergency response coordination provisions, 2 preserve the agency's goal of a better 3 coordination between facility staff and local 4 emergency responders. It was precisely the lack 5 of coordination between facility staff and local 6 emergency responders that caused thirteen 7 unnecessary deaths. Does the BATF's finding is of 8 any significance for EPA's proposed revisions of 9 the emergency exercise, provisions of alternative 10 bear decision? Again, the BATF finding, if true, 11 makes emergency response exercise provisions even 12 more important. 13 In conclusion, the BATF finding with the 14 fire was started intentionally is most likely not 15 accurate. Even if it were accurate, it should 16 neither have been used as an excuse to reopen this 17 rule-making, nor as an excuse to weaken any of the 18 provisions of January 2017 regulation. Thank you. 19 MR. BELKE: Thank you. Jordan, just one 20 clarifying question. You said, I think at the 21 beginning that you opposed all provisions that we 22 are proposing in that rule including -- I mean we Page 18</p>	<p>1 which have overlapping program elements. Our 2 members invest significant resources in our 3 people, equipment, procedures, and management 4 systems to drive continuous improvements in our 5 process safety performance that goes above and 6 beyond basic compliance with the process safety 7 elements of RMP and PSM regulations. This is 8 essential to the safety of our employees, 9 facilities, and communities in which we operate. 10 We support EPA's newly proposed rule to enhance an 11 already effective Risk Management Program 12 Regulation. 13 RMP and PSM are regulations that have 14 proven track records of ensuring safety and 15 driving continuous improvement. Let me emphasize 16 that the existing program is not static. This 17 performance standard requires facilities to 18 continually examine their processes, identify 19 means to reduce risks, and then, audit those 20 processes to ensure they are working as intended. 21 EPA has owned and confirmed that 22 correctly implemented Risk Management Programs Page 20</p>

<p>1 have been effective in identifying and reducing 2 risks and improving offsite impacts. In fact, 3 between 2004 and 2017, the number of RMP 4 recordable events has been halved.</p> <p>5 AFPM supports EPA's proposal by proven 6 improving elements of the 1996 rule resulting in 7 improved safety and emergency response. These 8 proposed changes will improve EPA regulations of 9 offsite issues to complement OSHA's regulations on 10 onsite worker safety. Additionally, these 11 provisions will allow EPA to avoid security 12 vulnerabilities and bring clarity to the regulated 13 community, the public, and emergency response 14 personnel. The proposal will lead to consistent 15 compliance requirements across regulatory agencies 16 and harmonized record- keeping environments 17 between the RNP and PSM regulations.</p> <p>18 Finally, EPA's proposal will allow it to 19 appropriately balance the need to provide 20 emergency responders and the surrounding community 21 with useful information in the event of an 22 emergency while reducing the risk of highly</p> <p style="text-align: right;">Page 21</p>	<p>1 written comments.</p> <p>2 MR. BELKE: Thank you. Any questions?</p> <p>3 Okay. Thank you. The next two speakers will be 4 Tim Gablehouse and Ron Chittim.</p> <p>5 Tim, you can go first. Go on.</p> <p>6 MR. GABLEHOUSE: Thank you. My name is 7 Tim Gablehouse. I am here on behalf today of the 8 National Association of SARA Title III Program 9 Officials known affectionately as NASTTPO. It is 10 an organization of local Emergency Planning 11 Committees and State Emergency Response 12 Commission. I sit on the State Emergency Response 13 Commission for the state of Colorado. I chair 14 local Emergency Planning Committee in the west 15 metro area of Denver.</p> <p>16 Within the planning district of that 17 LAPC are several facilities currently subjected to 18 RMP, several facilities currently subjected to the 19 chemical facility anti-terrorism standards of 20 Homeland Security as well. And the LAPC works in 21 cooperation with all of those facilities as well 22 as the 26 various response organizations within</p> <p style="text-align: right;">Page 23</p>
<p>1 sensitive information reaching bad actors. 2 Increasing the security of workers, local 3 communities, and the general public.</p> <p>4 EPA's action with respect to the RNP 5 don't exist in a vacuum. As I mentioned, OSHO's 6 Process Safety Management Regulations mirror RNP's 7 program three Prevention Program elements. 8 Congress designed the RNP to follow the OSHA's 9 process. EPA's proposal to remove requirements 10 redundant with other federal regulations will 11 promote industry compliance, conserve federal and 12 state resources, and help first responders focus 13 on the information relevant to emergency response.</p> <p>14 Expansive redundant reporting 15 requirements that go beyond the information 16 necessary to respond to emergency pose dangerous 17 risks that essential information will be lost or 18 missed when it is needed most benefiting no one. 19 AFPM's members continue to invest in these 20 important goals and appreciates EPA holding a 21 public hearing on this important issues. We all 22 address these issues in greater detail in our</p> <p style="text-align: right;">Page 22</p>	<p>1 that area, some of which are large paid 2 departments and many of which are volunteer 3 organizations.</p> <p>4 Primary point I want to make today has 5 to be with the ability of the LAPC's response 6 organizations to request information from 7 reporting facilities. That is a critical feature 8 of the RMP rule. At a minimum, we would ask EPA 9 to adopt the alternative language as is proposed 10 about the authority of LAPC's response 11 organizations to request information. To a very 12 substantial degree, we believe that many of the 13 security concerns raised by some of the 14 (commoners) are not very appropriate to the 15 circumstance. LAPC and the first responders care 16 little about employee betting procedures. They 17 care little about locks and doors except to the 18 extent that the first responders can actually 19 safely get out of that facility if something is 20 going south during response.</p> <p>21 But the bigger problem has to do with 22 the mission of the local Emergency Planning</p> <p style="text-align: right;">Page 24</p>

<p>1 Committees. They are very much trying to do whole 2 of community preparedness planning consistent with 3 FEMA's document called Community Preparedness 4 Guide 101. In other words, the entire community 5 is responsible for preparedness to deal with 6 incidents. That means the entire community needs 7 to understand the capabilities, and more 8 importantly, they need to understand the risks 9 that are present in the community and the 10 implications of those risks to the ability of the 11 community to prepare itself.</p> <p>12 It is important to have a perspective a 13 little beyond the idea of simply response only. 14 The problem does not begin at the 911 call. The 15 success of a response requires preplanning. The 16 success of a response and the ability of the 17 responders to come home safely, and the ability to 18 minimize the impact of an incident on the 19 community at large depends on the ability to 20 prepare and preplan. That requires close 21 cooperation between facilities of all (strikes) 22 and the community planners. One size does not fit</p> <p style="text-align: right;">Page 25</p>	<p>1 recording (303D), three of the statute to request 2 information relevant. To emergency planning, I 3 have no information that there has ever been an 4 improper release of information by an LAPC 5 requesting information under that provision. In 6 fact, most facilities cooperate readily with LAPCs 7 and first responders. Quite honestly, I do not 8 understand the hesitancy to promote that kind of 9 cooperation.</p> <p>10 We will submit other written comments 11 covering a variety of other issues but I wanted to 12 be clear today that primary point is you need to 13 specify the information requesting authority of 14 the LAPCs and responders and to the minimum, the 15 proposed alternative languages necessary. The 16 other provisions of Section 93 are inadequate. 17 Thank you.</p> <p>18 MR. BELKE: Thanks. Did your comment on 19 the proposed alternative language for 6893 also 20 pertain to this similar alternative language we 21 proposed for the public meeting provision? 22 MR. GABLEHOUSE: Yes.</p> <p style="text-align: right;">Page 27</p>
<p>1 all. Every community is a bit different whether 2 they are rural and small, whether they are highly 3 urbanized and industrial.</p> <p>4 Because the capabilities vary, the tasks 5 of an LAPC is to try to fill those capability 6 gaps. Those capability gaps cannot get filled on 7 the backs of the First Response Agency. They 8 cannot get filled on the backs of the facilities 9 that bring hazardous materials to the community. 10 It is a community-wide problem. And if you do not 11 have fulsome conversations occurring between 12 facilities, responders, and planners, then you 13 cannot possibly do adequate preparedness.</p> <p>14 Many LAPCs have chairs and members that 15 have confidential vulnerability information, 16 verifications from the CFATS programs. There is 17 no incident of which I am aware of in which LAPC 18 or First Response Agency has improperly released 19 information obtained under the Chemical Facility 20 Anti-Terrorism Program.</p> <p>21 Likewise, vast bulk of RMP facilities 22 are subject to EPCRA, a special provision</p> <p style="text-align: right;">Page 26</p>	<p>1 MR. BELKE: Okay. Thank you. Okay. 2 Any other questions for Tim? Okay, Ron.</p> <p>3 MR. CHITTIM: Good morning. My name is 4 Ron Chittim, C-H-I-T-T-I-M as in Mary. I am the 5 Manager of the Refining Program at the American 6 Petroleum Institute. API represents 620 oil and 7 natural gas companies, leaders of the 8 technology-driven industry that supplies most of 9 America's energy, supports 10.3 million US jobs, 10 and is backed by a Growing Grassroots Movement of 11 more than 45 million Americans. API members are 12 significantly impacted by the RMP regulations and 13 I will cover some of the highlights this morning.</p> <p>14 In 2013, the citizens of West Texas lost 15 family members, neighbors, and friends to an 16 explosion of an ammonium nitrate storage facility. 17 In response, President Obama issued an executive 18 order requiring federal agencies including EPA to 19 investigate means for improving chemical 20 facilities safety and security. Soon thereafter, 21 EPA advanced a set of regulatory provisions that 22 were not responsive to the West Texas tragedy. In</p> <p style="text-align: right;">Page 28</p>

<p>1 an effort to finalize the new RMP rules, before a 2 change in administration, EPA failed to 3 contemplate all the implications and the 4 underlying consequences of the final rule being 5 now considered.</p> <p>6 API supports and thanks EPA for 7 re-examining the impractical modifications of the 8 RMP rule adopted under the prior administration. 9 I will now provide some examples of such 10 modifications and why API supports the current EPA 11 proposals.</p> <p>12 The provisions requiring safer 13 technology and alternatives analysis by a process 14 hazard team would have imposed a big and 15 significant burden on a facility to demonstrate 16 that it has identified and considered alternatives 17 in the absence of any findings by EPA that the 18 site has not adequately managed the existing 19 risks. The alternatives analysis requirement 20 would have also distracted the PHA team from 21 identifying and addressing potential hazards of 22 existing processes. Furthermore, the requirement</p> <p style="text-align: right;">Page 29</p>	<p>1 Lastly, the 2017 final rule required 2 audits of each covered process which would not 3 have had the intended effect of improving overall 4 safety. API members view the primary purpose of 5 RMP compliance audits as a review of the safety 6 management systems and processes by which RMP has 7 implemented is at the site. These systems and 8 processes are applied in the same fashion across 9 all covered process units creating commonality 10 between the covered units. The identification and 11 corrections of concerns in one process unit will 12 address those concerns in all other covered 13 process units at the facility.</p> <p>14 Employing the sampling approach as part 15 of the RMP audit process is a 16 scientifically-proven and robust method of 17 demonstration with a higher degree of confidence 18 that the compliance audit results for the sample 19 represent the compliance posture of all covered 20 process. Given that the safety management systems 21 and process reviews, coupled with the robustness 22 of statistically sampling, are effective, API</p> <p style="text-align: right;">Page 31</p>
<p>1 would have placed the burden of assessing 2 alternative technologies on individuals who are 3 not necessarily experts on the operability and 4 hazards of those alternative technologies. 5 Thankfully, the current EPA proposal rescinds the 6 2017 requirements.</p> <p>7 In another example, compliance audits 8 would have suffered as a result of the 2017 final 9 rule. API believes that while the third party 10 compliance audits maybe helpful from time to time, 11 facility-made audits and second-party audits have 12 many safety benefits that are lost to third-party 13 audits. Company- made audits can be far more 14 effective in addressing issues covered during an 15 audit to impart to the company's auditors into the 16 knowledge of process technology and of the company 17 organization and how it functions. Conversely, 18 there was no evidence provided that supported the 19 notion that third-party audits result in superior 20 process safety performance. Again, EPA has wisely 21 proposed that the third-party audit requirements 22 be rescinded.</p> <p style="text-align: right;">Page 30</p>	<p>1 believes an audit of each covered process would 2 not only be a waste of time and resources, it 3 could create operational disruptions and will fail 4 to provide meaningful improvement on the 5 effectiveness of duplication of compliance audits.</p> <p>6 API and its member companies support 7 performance-based RMP regulations that are 8 reasonable and that are applied in a force in a 9 manner that is consistent with the applicable 10 statutory scope. We believe that both EPA RMP and 11 OSHA's PSM regulations have been successful in 12 incident prevention over the past two decades. 13 API appreciates EPA's efforts to provide an 14 opportunity to engage in this dialogue and we will 15 be submitting detailed comments by the deadline. 16 Thank you.</p> <p>17 MR. BELKE: Thank you. All right. 18 Thank you both. Go on.</p> <p>19 MR. AVERBACK: You had mentioned that -- 20 you had spoken in support of allowing for more 21 sampling in identifying in the audit provisions. 22 Are all provisions of the RMP Prevention Programs</p> <p style="text-align: right;">Page 32</p>

<p>1 suitable for auditing or are some more suitable 2 for sampling approach? I mean is there enough 3 comparability between your processes to say that 4 selecting one for an intense audit can really 5 inform you about your other processes?</p> <p>6 MR. CHITTIM: Yeah, I didn't take time 7 to get into the remarks but we, in our comments, 8 we can provide for the details of some things you 9 would consider to make up that representative 10 sample. I think OSHA has some rules and there are 11 professional journals, you know, existing 12 literature that describes what that sampling might 13 look like.</p> <p>14 MR. AVERBACK: Thank you.</p> <p>15 MR. CHITTIM: Yeah.</p> <p>16 MR. BELKE: Okay, Our next two speakers 17 would be Rhett Cash and Stewart Holm. You can go 18 first.</p> <p>19 MR. CASH: Good Morning. My name is 20 Rhett Cash. First name R-H-E-T-T, last name 21 C-A-S-H. I serve as counsel on the Government 22 Affairs Division at the American Coatings</p> <p style="text-align: right;">Page 33</p>	<p>1 comments throughout 2017 that expressed its 2 concerns and issues with various provisions of the 3 2017 RMP amendments. We appreciate EPA's response 4 to our comments, and its decision to issue this 5 proposed rule to reconsider certain aspects of the 6 RMP amendments, including the third-party 7 compliance audits, safer technology and 8 alternatives analysis, information availability 9 requirements, the incident investigation 10 requirements, and the local emergency 11 co-ordination and exercise requirements. ACA 12 looks forward to submitting more substantive 13 comments and data regarding EPA's reconsideration 14 of the final 2017 RMP amendments by July 30th.</p> <p>15 Thanks again for the opportunity to 16 testify today. The paint coating industry has 17 always prided itself on being pro-safety and 18 security and supports fair & reasonable 19 regulations that enhance safety and security for 20 the public and the environment. We look forward 21 to working with the EPA on the further development 22 & reconsideration of the RMP amendments. Thank</p> <p style="text-align: right;">Page 35</p>
<p>1 Association. This is a voluntary non-profit trade 2 association working to advance the needs of the 3 paint and coatings industry and the professionals 4 who work in it. ACA serves as an advocate, an 5 ally for paint coatings industry members for 6 legislative, regulatory and judicial issues. 7 Several of our member companies are subject to the 8 current RMP regulations. On behalf of the ACA, I 9 want to thank you for the opportunity to testify 10 today on EPA's proposed rules to consider the 11 final RMP amendments that were issued back on 12 January 13, 2017.</p> <p>13 First and foremost, ACA would like to 14 thank EPA for all the hard work it has put into 15 the Risk Management Program amendments since 2016. 16 ACA has been involved in this amendment process 17 from the very beginning and we appreciate the 18 effort that EPA has undertaken in ensuring that 19 these amendments are properly written and are 20 reasonable and appropriate for all stakeholders 21 involved.</p> <p>22 Of note, ACA submitted a series of</p> <p style="text-align: right;">Page 34</p>	<p>1 You.</p> <p>2 MR. BELKE: Thanks. Can you tell me 3 approximately how many members you have that are 4 subject to the RMP regs?</p> <p>5 MR. CASH: I don't have that data right 6 now but I'll make sure to include it in our 7 comments. Thank you.</p> <p>8 MR. BELKE: Any Questions? Okay 9 Stewart.</p> <p>10 MR. HOLM: Thanks. Good Morning. Thank 11 you for the opportunity to speak today. My name 12 is Stewart Holm. H-O-L- M. I am chief scientist 13 at the American Forest & Paper Association. AF & 14 PA supports the EPA's proposed rule to rescind or 15 modify certain provisions of the Risk Management 16 Program rule.</p> <p>17 The safety of employees and community 18 members is very important to AF & PA and its 19 member companies. Americans paper and wood 20 products manufacturing industry is firmly 21 committed to operating safe facilities. AF & PA 22 however believes that the January 2017 changes to</p> <p style="text-align: right;">Page 36</p>

<p>1 the RMP rule are unnecessary to promote safety and 2 they are overly burdensome and were adopted in a 3 flawed procedural process. Air Force & PA joined 4 several other industry associations that be in the 5 RMP coalition in petitioning the EPA to reconsider 6 the final RMP rule.</p> <p>7 The petition focused on procedural 8 deficiencies that precluded in effective notice 9 and comment on rulemaking in violation of 10 Administrative Procedures Act in addition to the 11 West Texas incident that motivated the amendment 12 and strongly influenced to the Executive Board of 13 13650, was proven to be arson which is not an 14 event to be affected by the rule. The proposed 15 rule that is the topic of this hearing would 16 rescind these elements including third-party 17 audits, accident investigation, root cause 18 analysis, say for information technology and 19 alternative analysis, and several other relatively 20 minor regulatory changes. While AF & PA supports 21 the goal of the RMP, we believe the proposed rule 22 would eliminate the unnecessary and overly</p> <p style="text-align: right;">Page 37</p>	<p>1 MR. BELKE: Thank you both. The next 2 two speakers are Charise Johnson and Bill Ernie. 3 Go over there, yeah, and be careful of the steps 4 over there. It's a little bit -- Charise, you can 5 go first.</p> <p>6 MS. JOHNSON: Thank you for this 7 opportunity to speak on the proposed amendments to 8 the Risk Management Plan. My name is Charise 9 Johnson, that is C-H-A-R-I-S-E. I am here on the 10 behalf of the Union of Concerned Scientists with 11 more than 500,000 members and supporters across 12 the country. We are a non-partisan, non-profit 13 group dedicated to improving public policy through 14 rigorous and independent science.</p> <p>15 This proposed rule rolls back many of 16 the critical public safeguards implemented into 17 2017 chemical disaster rule. Just last year, I 18 was in this building along with many other 19 partners and friends in our community groups 20 asking EPA to end its dangerous delay of the 2017 21 chemical disaster rule. Those updates to the 22 original RMP were hard thought and deliberated by</p> <p style="text-align: right;">Page 39</p>
<p>1 burdensome requirements without sacrificing 2 safety. An example here would be the requiring 3 third-party audits undermines companies' strong 4 commitment to the effective internal audits.</p> <p>5 In conclusion, AF & PA members are 6 committed to minimizing and safeguarding the use 7 of hazardous chemicals. AF & PA members have 8 achieved our Better Practices, Better Planet 2020 9 goal of the 25 percent improvement in safety 10 incident straight from 2006 to 2020. In fact, the 11 2014 member company recordable case incident rate 12 was 41 percent lower than in 2006. Our members 13 accomplished this by implementing innovative and 14 comprehensive safety programs that include worker 15 training, increased automation, preventative 16 measure and safeguards to ensure that we are doing 17 the most we can to protect our workers. Although 18 we have met the goal to reduce recordable 19 incidents, we continue to look for new ways to 20 achieve our aspirational goal of zero workplace 21 injuries. Thank you for your time and 22 consideration of these comments.</p> <p style="text-align: right;">Page 38</p>	<p>1 various stakeholders including multiple agencies 2 and took several years to finalize. I am here 3 today to ask the EPA to rescind these dangerous 4 rollbacks.</p> <p>5 This rule is particularly important to 6 the health and safety of fence line communities, 7 first responders, and workers in the facilities. 8 The Husky energy oil refinery explosion was 9 constant, the Valero refinery explosion of fire in 10 Texas, and the Chevron Richmond refinery clearing 11 of at least 500 pounds of sulphur dioxide in 12 California are a few examples just in the past two 13 months of how chemical facilities need to better 14 co-ordinate with first responders, offer more 15 direct access to information to communities to 16 plan for evacuation and assessment of safer 17 practices that could make workers and surrounding 18 communities safer in case of an accident.</p> <p>19 And with the strengthening of severe 20 weather events such as intense hurricane seasons 21 in the gulf region, the frequencies of chemical 22 disasters like the Arkema explosion will become</p> <p style="text-align: right;">Page 40</p>

<p>1 more common place for neighboring communities. 2 The modest common sense requirements that the EPA 3 is aiming to roll back include a requirement that 4 industrial facilities presenting the highest risk 5 undertake a safer technology alternative 6 assessment. Safer technology alternative 7 assessment is the best business best practice. 8 Industries should be looking at ways to make their 9 practices and technology safer for their facility, 10 workers, and surrounding communities.</p> <p>11 A requirement that an incident analysis 12 include determining the root cause of the incident 13 to avoid such incidents in the future. Root-cause 14 analyses are necessary to determine what the cause 15 of an incident or near-miss is, so the facility 16 can fix the problem and prevent a future disaster. 17 A requirement that qualified independent third- 18 party audits be conducted when a facility has an 19 incident to ensure the cause of the incident is 20 addressed. In the case of the highest risk 21 facilities and extreme incidents of third- party 22 audits of the facility should be necessary to gain</p> <p style="text-align: right;">Page 41</p>	<p>1 of affected communities to know and prepare for 2 chemical risks.</p> <p>3 Next, a requirement that the facilities 4 provide emergency planners and first responders 5 with additional information needed for responding 6 to a chemical release. The proposal would return 7 to the status quo where the companies have more 8 leeway to refuse to share relevant safety 9 information with first responders.</p> <p>10 EPA's own rule making states that the 11 proposed changes to this rule would impact 12 low-income communities and communities of color 13 the hardest. We are here in solidarity with our 14 environmental justice community partners including 15 the Environmental Justice Health Alliance and 16 Texas Environmental Advocacy Services partners 17 among countless others, who among the few 18 community voices able to make it all the way to DC 19 to make sure the EPA considers vulnerable 20 communities over industry profits.</p> <p>21 Since the delay of 2017 chemical 22 disaster rule, there have been at least 45 known</p> <p style="text-align: right;">Page 43</p>
<p>1 an objective view and assessment of the safety of 2 the facility.</p> <p>3 Next, a requirement that facilities 4 provide the public with information critical to 5 the surrounding communities understanding of the 6 potential risk from these facilities including, 7 how to protect themselves should a release occur 8 and what potential health risk they might face 9 from a recent release incident. Information 10 sharing should be a basic tenet of this rule. The 11 EPA requires individuals travel to their 12 respective state's federal reading room to acquire 13 information on facilities, yet not every state has 14 a reading room and some must travel great 15 distances.</p> <p>16 Communities and first responders deserve 17 to have better access to basic info about 18 facilities in their community such as 5-year 19 accident history, safety data sheets, planned 20 emergency exercises, and evacuation information. 21 These provide basic access to information that the 22 public has a right to know and hampers the ability</p> <p style="text-align: right;">Page 42</p>	<p>1 incidents at chemical facilities, that is at least 2 45 incidents too many. For 2017 finalized 3 amendments are common sense protections that could 4 have helped prevent and mediate the harm of those 5 chemical disasters and prevent us from future 6 ones. EPA needs to put the health and safety of 7 the public first and not move forward with this 8 proposed rule.</p> <p>9 MR. BELKE: Thank you. If I could just 10 ask you to clarify. You mentioned several 11 specific accidents including the superior refinery 12 in Husky that was in the last month, right? Then 13 you mentioned ARCAMA which we are familiar with, 14 the other two you mentioned were Valero.</p> <p>15 MS. JOHNSON: Yes, the Valero refinery 16 explosion that was in Texas.</p> <p>17 MR. BELKE: That was in Texas? Okay.</p> <p>18 MS. JOHNSON: And Chevron refinery in 19 Richmond.</p> <p>20 MR. BELKE: Richmond? Okay. You said 21 that you were referring to the recent Chevron.</p> <p>22 MS. JOHNSON: Yes, so that one was I</p> <p style="text-align: right;">Page 44</p>

<p>1 think about two months ago, yeah, April-May.</p> <p>2 MR. BELKE: Okay. Thank you.</p> <p>3 MR. AVERBACK: Charise, you had</p> <p>4 mentioned that you have identified several states</p> <p>5 that don't have access to the reading room. To</p> <p>6 some extent our proposal sides information that is</p> <p>7 alternative ways to getting the same information.</p> <p>8 In your final comments, if you could identify some</p> <p>9 specific areas or states where you have had</p> <p>10 problems accessing the information.</p> <p>11 MS. JOHNSON: Okay. Absolutely.</p> <p>12 MR. AVERBACK: That would be helpful.</p> <p>13 Thank you.</p> <p>14 MR. BELKE: Go ahead Bill.</p> <p>15 MR. ERNY: Thank you. Okay I apologize</p> <p>16 upfront I have got kind of a rusty voice here</p> <p>17 today, a little bit of cold. But anyway, Good</p> <p>18 Morning. My name is Bill Erny, that's E-R-N-Y. I</p> <p>19 am a senior director for the American Chemistry</p> <p>20 Counsel here in Washington. And I want to thank</p> <p>21 EPA for providing us and all stakeholders today</p> <p>22 this opportunity to address the recent release of</p> <p style="text-align: right;">Page 45</p>	<p>1 all of the RMO recorded accidents. In fact, ACC</p> <p>2 found that only 8 percent of the total RMP</p> <p>3 population was responsible for all reported</p> <p>4 accidents during that time. Said another way, 92</p> <p>5 percent of the RMP population did not have a</p> <p>6 recordable accident over that 10 year period.</p> <p>7 Based on the data, ACC supports a</p> <p>8 targeted approach and emphasizes EPA enforcement</p> <p>9 to address those areas and operators that need the</p> <p>10 most attention. Facilities that have been in</p> <p>11 compliance and continue to operate safely should</p> <p>12 not be subject to new brought up political/federal</p> <p>13 mandate that simply add burden, create paper, and</p> <p>14 take attention away and resources from productive</p> <p>15 activities.</p> <p>16 ACC supports the 2018 reconsideration</p> <p>17 proposal, which we believe is a well-balanced and</p> <p>18 objective approach to advancing Chemical</p> <p>19 Accidental Prevention. This approach is</p> <p>20 consistent with the current administration policy,</p> <p>21 is outlined in the various executive orders on</p> <p>22 regulatory efficiency and with sound regulatory</p> <p style="text-align: right;">Page 47</p>
<p>1 your RMP reconsideration proposal.</p> <p>2 First and foremost, I would like to</p> <p>3 commend EPA for your leadership in reconsidering</p> <p>4 the 2017 amendments based on the new information</p> <p>5 related to the West Texas event as well as the</p> <p>6 numerous concerns raised regarding the security of</p> <p>7 sensitive chemical facility information.</p> <p>8 Furthermore, I would like to comment EPA for</p> <p>9 reconsidering its economic analysis based on the</p> <p>10 wealth of the RMP data which shows that the RMP</p> <p>11 rule has been an effective prevention program that</p> <p>12 continues to drive down accidental releases.</p> <p>13 Since, 2004 the RMP database shows that</p> <p>14 the reported accidents have steadily declined from</p> <p>15 a 197 in 2004 to the most recent report cited in</p> <p>16 your RIA of 99 in 2016. This trend represents an</p> <p>17 annual decline of three and a half percent per</p> <p>18 year and total reduction of 45.5 percent over the</p> <p>19 13-year period.</p> <p>20 Moreover, based on the ACC's analysis</p> <p>21 from 2004 to 2013, the data shows that a small</p> <p>22 minority of RMP facilities were responsible for</p> <p style="text-align: right;">Page 46</p>	<p>1 analysis is outlined in the RMP guidance.</p> <p>2 I would like to conclude by asking the</p> <p>3 EPA consider making the RMP accident database more</p> <p>4 easily accessible. In a way that it can be used</p> <p>5 as a technical resource to help advance Chemical</p> <p>6 Accident Prevention. We plan to offer some</p> <p>7 specific suggestions in our written submission to</p> <p>8 the docket on this and I look forward to any</p> <p>9 future dialogue. Thank you.</p> <p>10 MR. BELKE: Thank you.</p> <p>11 MR. HAAS: Thank you. Yeah one</p> <p>12 question. You were mentioning that a very small</p> <p>13 percentage of the RMP regulative facilities are</p> <p>14 responsible for the accidents. When you were</p> <p>15 doing that analysis, did you look more finely at</p> <p>16 that information? Were there commonalities among</p> <p>17 those facilities? Certain industry sectors that</p> <p>18 may have been more likely than not.</p> <p>19 MR. ERNY: Right. So, we never got to</p> <p>20 that point. That would be sort of a next phase</p> <p>21 where we will be able to do that kind of analysis.</p> <p>22 Let me step back a second. We did look at some of</p> <p style="text-align: right;">Page 48</p>

<p>1 the NAICS codes and we did present some of that 2 information to you last time that looks at, you 3 know, our NAICS code and the chemical sector. And 4 the results in those sectors were consistent with 5 this, that there is a very small minority of folks 6 in those sectors that are responsible for the 7 accidents reported in those sectors.</p> <p>8 Clearly the odds as I have mentioned, I 9 mean this broad mandates that you know implied or 10 imposed across a very large sector of the 11 regulative community, just doesn't -- you are just 12 punishing people for good behavior. So, we 13 strongly like I said, we strongly support this 14 enforcement approach targeted to bad apples.</p> <p>15 MR. BELKE: Okay. Thank you. Thank you 16 both. The next two speakers would be Richard 17 Gupton and Lowell Randel.</p> <p>18 MR. GUPTON: Good Morning. Thank you 19 for the opportunity to be here today for this 20 public hearing on the reconsideration of RMP 21 amendments from 2017. I am Richard Gupton, Senior 22 Vice President Public Policy and Counsel for the</p> <p style="text-align: right;">Page 49</p>	<p>1 support regulations to make sure that takes place 2 like the RMP regulations as it existed before 2017 3 of January 13th.</p> <p>4 They are also regulated by OSHA's 5 1910.111 for the source of handling of anhydrous 6 ammonia. There's approximately 3,000 retail 7 facilities that store and handle it that are 8 believed to be covered under the program. So we 9 are fully committed to making sure these products 10 are stored safely and in a secure way.</p> <p>11 We have our members, we communicate with 12 them, and they gauge their employees, the local 13 first responders community on all environmental 14 health, safety and security matters. ARA and the 15 Fertilizer Institute has established a non-profit 16 compliance assistance training program called 17 'Responsible Ag' that was done back in 2014 after 18 the West Fertilizer explosion and accident and the 19 tragedy that happened that did kill individuals 20 that Joe Barrett said but we started that process 21 well before that had taken place. That program 22 promotes public welfare by assisting agro bills as</p> <p style="text-align: right;">Page 51</p>
<p>1 Agricultural Retailers Association. We represent 2 the nation's agricultural retailers and 3 distributors that are also referred to as farm 4 supplied dealers. Our members are located 5 throughout the United States and range in size 6 from family and businesses to farmer co-operatives 7 to large national companies with multiple outlets 8 across the country. Our members play an important 9 role in providing farmers with essential crop 10 inputs such as fertilizers, pesticides, seeds, and 11 equipment.</p> <p>12 Anhydrous Ammonia is one of those 13 products which is regulated by the RMP program. 14 It's an efficient widely used source of natural 15 fertilizer. It's used on crops like corn which is 16 essential. The reason for importance is its most 17 concentration of nitrogen at 82 percent. It could 18 be applied before the crops are even planted and 19 it usually represents the less expensive source of 20 nitrogen. However, it is a hazard material toxic 21 on the toxic inhalation hazard and needs to be 22 stored, handled, and transported with care and we</p> <p style="text-align: right;">Page 50</p>	<p>1 they seek to comply with federal regulatory 2 requirements like the RMP regulations.</p> <p>3 There's a training facility for auditors 4 in Owensboro, Kentucky that I know that several 5 EPA, OSHA, DSH officials and others have also 6 visited. It provides regulatory compliance 7 training. There are auditors who will take new 8 audits at facilities. There's a robust 9 information on the website as well for the 10 industry and for help with the compliance 11 assistance measures as well. To date from that 12 program, just over 2,500 facilities have 13 registered and joined Responsible Ag. Of those, 14 911 facilities have been certified. Currently, 15 there are 185 independent trained auditors and of 16 those 115 are credential. There's been 1,921 17 completed audits. And they found 68,577 risks 18 have been identified. Of those, 42,672 risks have 19 been mitigated. The most serious risk found from 20 the RMP program was paperwork. Paperwork 21 violations were the most serious. And of all the 22 audits, only 0.4 percent of the issues resolved</p> <p style="text-align: right;">Page 52</p>

<p>1 were of any significance.</p> <p>2 As we have indicated in our public</p> <p>3 comments, both written and verbal, some of the</p> <p>4 other groups have said it today, we believe the</p> <p>5 current regulations are working very well. The</p> <p>6 data by Responsible Ag and the data that EPA has</p> <p>7 that Bill Erny talked about clearly show that's</p> <p>8 the case. We agree with the proposal to mitigate</p> <p>9 like the public disclosure information that may be</p> <p>10 security issues and DHS, I think, it raised it as</p> <p>11 well.</p> <p>12 As Jordan Barab pointed out, I would</p> <p>13 like to talk about West fertilizers. He talked</p> <p>14 about the ATF rule that West Fertilizer was a</p> <p>15 criminal act. He failed to mention what the</p> <p>16 product was that exploded. That was ammonium</p> <p>17 nitrate fertilizer, which is also hazard material</p> <p>18 but it's not regulated by the RMP regulations. We</p> <p>19 think that is significant that ATF, under the</p> <p>20 previous administration that made that</p> <p>21 determination. Again he was the head of OSHA at</p> <p>22 the time but there was another federal agency</p> <p style="text-align: right;">Page 53</p>	<p>1 and look forward to work with EPA on. Thank you.</p> <p>2 MR. BELKE: Thank you. Richard, you</p> <p>3 mentioned that your auditors are finding a lot of</p> <p>4 paperwork violations. Can you clarify that a</p> <p>5 little paperwork could mean that the I's aren't</p> <p>6 dotted and the T's aren't crossed. It could also</p> <p>7 mean that you haven't done a PHA which is a core</p> <p>8 part of the prevention program. So I am not clear</p> <p>9 what point you are trying to make there.</p> <p>10 MR. GUPTON: Well, some of it -- I can</p> <p>11 get you that data. I have asked for that from</p> <p>12 responsible -- I wasn't able to get that this</p> <p>13 morning. But I'll get that to you. It can</p> <p>14 provide that more specifics to the agency in that</p> <p>15 regard.</p> <p>16 MR. BELKE: Okay. Thank you. Randel?</p> <p>17 MR. RANDEL: Good Morning. My name is</p> <p>18 Lowell Randel. L-O-W-E-L-L R-A-N-D-E-L. I am</p> <p>19 here on behalf of the global cult chain alliance</p> <p>20 in the International Institute of Ammonia</p> <p>21 Refrigeration. These two partnering associations</p> <p>22 are very interested in this process and we</p> <p style="text-align: right;">Page 55</p>
<p>1 within the previous administration.</p> <p>2 In addition, the ammonium nitrate is</p> <p>3 regulated already by OSHA 1910 109(i) for the</p> <p>4 storage and handling. So, during that time frame,</p> <p>5 OSHA never updated those regulations. They didn't</p> <p>6 make any attempt to update the regulations for</p> <p>7 ammonium nitrate, the storage and handing of it</p> <p>8 even to make it updated with the current industry</p> <p>9 consensus standards. They didn't make an effort</p> <p>10 to update the anhydrous ammonia storage and</p> <p>11 handling regulations. None. No efforts in that</p> <p>12 regard. We had asked and tried to work with them</p> <p>13 on that issues. I'll submit the rest of our info</p> <p>14 for public consumption.</p> <p>15 In closing, I will say for</p> <p>16 recommendation of changes, they should update the</p> <p>17 Tier 2 reporting to make that easier for local and</p> <p>18 first responders to address. Also update some of</p> <p>19 these other regulations. The last thing I'll say</p> <p>20 is having better co-ordination between our</p> <p>21 industry and look for short responders is a</p> <p>22 priority and something that we continually work on</p> <p style="text-align: right;">Page 54</p>	<p>1 appreciate the agency holding this meeting and</p> <p>2 proposing the reconsideration rule. This is an</p> <p>3 important issue for our members because the vast</p> <p>4 majority use Anhydrous Ammonia as their industrial</p> <p>5 refrigerant.</p> <p>6 They do this at because it is the most</p> <p>7 efficient and effective refrigerant for industrial</p> <p>8 use and it is a natural refrigerant. With that</p> <p>9 said, it is a toxic chemical subject RMP and many</p> <p>10 of our members do have over 10,000 pounds of</p> <p>11 ammonia at their facility. So, this is a critical</p> <p>12 issue for us and we appreciate the opportunity to</p> <p>13 work with the agency on these issues.</p> <p>14 We do strongly support the agency's</p> <p>15 proposal to rescind accident prevention program</p> <p>16 provisions such as the third-party audits, safer</p> <p>17 technology analysis, and incident investigation</p> <p>18 root-cause analysis. I'll touch on those in a</p> <p>19 little bit more detail in just a moment.</p> <p>20 We believe that there were some</p> <p>21 procedural challenges, very speedy process last</p> <p>22 time, maybe some data gaps or opportunities to</p> <p style="text-align: right;">Page 56</p>

<p>1 generate and use more data as has been discussed 2 previously. Some of the security issues with the 3 information provisions. We support the 4 reconsideration because of some of those areas. 5 We also continue to have substantive concerns with 6 some of the provisions, in particular, things like 7 third-party audits.</p> <p>8 As we have communicated in previous 9 comments, we believe that facilities should be 10 allowed to use whatever qualified auditor that 11 makes the most sense to them. In some cases, 12 that's going to 'independent auditors'. And in 13 some cases, that may be someone from within their 14 corporate structure, or someone that they are 15 currently doing other business with that are 16 providing services to their company. The 17 independence requirement as currently included in 18 the final amendments rule, we believe will put a 19 real strain, in particular, on our small 20 businesses and our rural facilities in struggling 21 to find qualified auditors who know not just RMP 22 but also know about industrial refrigeration</p> <p style="text-align: right;">Page 57</p>	<p>1 reiterate that 90 days should be a minimum. 2 Certainly, we would not support shortening that 3 length as is discussed in the proposed rule as a 4 potential consideration.</p> <p>5 Well, the safer alternatives analysis 6 does not apply to our membership at this point in 7 time. We do support the rescinding as proposed.</p> <p>8 Finally, on the issue of emergency 9 response coordination, this is critical. This is 10 something that we talk to our members about 11 continually. We fully support the process that 12 should be in place to facilitate that 13 coordination. We think that the proposed rule has 14 a nice balance there, offers some flexibility 15 while maintaining the importance of that 16 coordination which we absolutely agree with. With 17 that said, we will be providing additional written 18 comments for the record and we appreciate the 19 opportunity to comment.</p> <p>20 MR. BELKE: Thanks Lowell. I do have 21 one question for you. I know that your membership 22 includes a pretty good number of small businesses.</p> <p style="text-align: right;">Page 59</p>
<p>1 systems using anhydrous ammonia. So we believe 2 that rescinding that provision is very 3 appropriate.</p> <p>4 We also support the rescinding of public 5 information availability provisions. We agreed 6 that there are some security concerns. I do want 7 to touch on the public meeting provision. We 8 tried these public meetings in the past. Our 9 member experiences have been that they were not 10 very effective. And they were costly not just 11 with the financial resources but with the human 12 resources and with very little participation from 13 the public. We are afraid that that will happen 14 again. So, we appreciate some of the 15 modifications in this rule, but we would ask that 16 you even reconsider whether there is ultimate 17 value in that public meeting.</p> <p>18 We do appreciate the alternative 19 suggested to confine the public meeting 20 requirements to 'major incidents'. We think that 21 bears more consideration if there will remain a 22 public meeting requirement. And we would</p> <p style="text-align: right;">Page 58</p>	<p>1 When we had the -- as per panel for the amendments 2 rule -- small businesses on that panel expressed a 3 lot of concerns over the cost of the amendments. 4 One provision that the agency's proposal would 5 retain is the emergency exercise provision and I 6 just wanted to know if you had any feedback on 7 whether the proposed changes to that provision 8 would benefit your membership and meeting those 9 provisions or not.</p> <p>10 MR. RANDEL: Yes I think some of the 11 additional flexibility as proposed would ease some 12 of those burdens on our members. We have talked a 13 lot with our membership about the exercises and I 14 think that there is a recognition that some level 15 of exercise and testing whether it's a table top 16 or a full exercise has some value. But having 17 additional flexibility on timelines and how those 18 are carried out would be of value to our 19 membership.</p> <p>20 MR. BELKE: Thank you. Anything? 21 MR. AVERBACK: Actually as long as 22 Richard is still on the table, Lowell mentioned</p> <p style="text-align: right;">Page 60</p>

<p>1 that his sector wasn't directly affected by STAA.</p> <p>2 MR. GUPTON: Yeah, I believe how it is</p> <p>3 now, ours is program too so it wouldn't be</p> <p>4 impacted either.</p> <p>5 MR. AVERBACK: Okay.</p> <p>6 MR. GUPTON: It would have been, but</p> <p>7 because she tried to do that through enforcement</p> <p>8 guidance document that was an illegal and we won</p> <p>9 in court, but there are now so programs too.</p> <p>10 MR. AVERBACK: So in terms of the</p> <p>11 prevention program changes that were proposed,</p> <p>12 which ones would affect your sectors? As it's</p> <p>13 written, I think it's only after accidents.</p> <p>14 MR. GUPTON: Sure. If there is anything</p> <p>15 like, the Responsible Acts Program has a</p> <p>16 credential of a lot of auditors. Again how it --</p> <p>17 our understanding of even the final rule, how it</p> <p>18 was drafted would make it overly restrictive and</p> <p>19 not allow for those types of qualified industry</p> <p>20 third-party auditors to even be able to</p> <p>21 participate how the regulations were and so you</p> <p>22 are cutting out a whole number of qualified</p> <p style="text-align: right;">Page 61</p>	<p>1 MR.BELKE: Okay. Thank you both.</p> <p>2 MR. BELKE: Okay. Our next two speakers</p> <p>3 will be Laura Mirman-Heslin and Steve Arendt.</p> <p>4 Laura, you can go first if you are ready.</p> <p>5 MS. MIRMAN-HESLIN: Good morning. My</p> <p>6 name is Laura Mirman-Heslin. That M-I-R-M-A-N -</p> <p>7 H-E-S-L-I-N. And I am an Assistant Attorney</p> <p>8 General in New York Attorney General Barbara</p> <p>9 Underwood's office. We partnered with ten other</p> <p>10 states in opposing EPA's unlawful delay of its</p> <p>11 Accident Prevention amendments which amended the</p> <p>12 risk management program to improve safety at</p> <p>13 regulated facilities.</p> <p>14 As New York is home to more than a 150</p> <p>15 facilities regulated under the program, Attorney</p> <p>16 General Underwood strongly opposes EPA's proposal</p> <p>17 to largely eviscerate the Accident Prevention</p> <p>18 amendments.</p> <p>19 Today I will highlight two of the</p> <p>20 reasons for our opposition. First, EPA failed to</p> <p>21 adequately consider the impacts of the proposed</p> <p>22 rollbacks on public health and the environment.</p> <p style="text-align: right;">Page 63</p>
<p>1 individuals that do conduct that third-party</p> <p>2 audit. So that is one of the things that impacted</p> <p>3 if there's an incident at the facility. And yes,</p> <p>4 I would mention that West fertilizer did have</p> <p>5 anhydrous ammonia at their location. But that's</p> <p>6 my understanding is they had submitted their RMP</p> <p>7 updated plans that were in compliance related to</p> <p>8 that regulation.</p> <p>9 MR. AVERBACK: Yes, I believe in our</p> <p>10 proposal, we ask for comment on, in addition to</p> <p>11 rescinding the third-party audit provision, we</p> <p>12 also ask comment on if we were to keep it, what</p> <p>13 about the qualifications? It sounds like you have</p> <p>14 some concerns. If you could put those into</p> <p>15 written comments.</p> <p>16 MR. GUPTON: Sure, I mean, again, we</p> <p>17 have a program. There would be a lot of qualified</p> <p>18 third-party auditors available if the program is</p> <p>19 less restrictive and there's some more</p> <p>20 flexibility, I think the members would probably be</p> <p>21 open to that. Thanks.</p> <p>22 MR.AVERBACK: Thanks. Anything?</p> <p style="text-align: right;">Page 62</p>	<p>1 Second, EPA is wrong that enforcement can</p> <p>2 effectively replace the requirement that</p> <p>3 facilities improve their accident prevention</p> <p>4 practices across the board.</p> <p>5 To my first point, EPA enacted the</p> <p>6 Accident Prevention amendments after a series of</p> <p>7 catastrophic chemical incidents underscoring the</p> <p>8 pressing need for improved safeguards and after</p> <p>9 President Obama issue an Executive Order directing</p> <p>10 Federal agencies to improve their chemical safety</p> <p>11 regulations.</p> <p>12 EPA concluded that it needed to do more</p> <p>13 under the Clean Air Act to further protect human</p> <p>14 health and the environment from chemical hazards.</p> <p>15 And that specific regulatory improvements could</p> <p>16 reduce the probability and severity of chemical</p> <p>17 accidents. EPA's proposed rollback will largely</p> <p>18 rescinds these critical protections, yet fails to</p> <p>19 examine the health and environmental consequences</p> <p>20 of the rescission.</p> <p>21 For example, in the one year and several</p> <p>22 months that the Accident Prevention amendments</p> <p style="text-align: right;">Page 64</p>

<p>1 have been delayed, at least 45 publicly known 2 accidents have occurred at facilities in 20 3 states. Seven employees have been killed, 58 4 others have been hospitalized. Nearby residents 5 have been forced to shelter in place. Schools and 6 hospitals have been evacuated.</p> <p>7 These accidents reinforce the 8 determinations that underpin the urgent need for 9 the amendments. Despite this EPA's proposal did 10 not consider whether the regulation it seeks to 11 eliminate could have prevented or mitigated these 12 or other accidents. In addition, EPA's proposed 13 rollback ignores the Chemical Safety Board's 14 finding about the increasing risk severe weather 15 poses for chemical facilities.</p> <p>16 In its report on the 2017 disaster at 17 the Arkema chemical facility in Texas, the Board 18 found that Arkema had not adequately analyzed the 19 hazards posed by flooding. The Board noted that 20 in recent years, flooding from extreme rainfall 21 events has increased and that a 2015 EPA report 22 found that this trend is projected to continue as</p> <p style="text-align: right;">Page 65</p>	<p>1 low-income populations. Nonetheless, the agency 2 failed to consider the consequences of its action 3 on those communities and populations. Its failure 4 to do so is unjust and unlawful.</p> <p>5 Regarding my second main point, EPA 6 erroneous contends an enforcement against what it 7 characterizes as a few bad apples in the industry 8 can effectively replace a requirement that 9 facilities improve their accident prevention 10 practices across the board. In New York's 11 experience, in order to sufficiently protect 12 public health and the environment, a successful 13 regulatory program requires both adequate 14 prevention and robust enforcement. Indeed the 15 Clean Air Act requires that EPA's regulations 16 provide to the greatest extent practicable for the 17 prevention of accidental releases of regulated 18 substances.</p> <p>19 The factual predicate for EPA's new 20 position that chemical accidents are only 21 attributable to a few bad apples is also 22 questionable. Even if the industry data that EPA</p> <p style="text-align: right;">Page 67</p>
<p>1 a result of climate change increasing the flood 2 risk in many parts of the country.</p> <p>3 The Board recommended that chemical 4 manufacturing, handling, or storage facilities 5 perform analyses to determine their susceptibility 6 to these extreme weather events and evaluate the 7 adequacy of relevant safeguards. Instead of 8 rolling back the Accident Prevention amendments, 9 EPA should act on the Board's recommendation that 10 facilities consider increased accident risks from 11 severe weather.</p> <p>12 This issue is especially important to 13 New York as it is experiencing threats from 14 flooding worsened by sea level rise and from more 15 extreme storms. Extreme weather events have a 16 disproportionate impact on New York's vulnerable 17 communities. Approximately 15 percent of New 18 York's risk management program facilities are 19 located in environmental justice communities. EPA 20 acknowledged that its planned rollback may have 21 disproportionately high and adverse human health 22 or environmental effects on minority and/or</p> <p style="text-align: right;">Page 66</p>	<p>1 relies on is taken at face value, it still shows 2 that accidents occurred at over 1,200 facilities 3 resulting in 19 deaths and almost 17,000 injuries.</p> <p>4 Moreover enforcement only serves as a 5 deterrent to violations of law if it perceived by 6 the industry as credible. On that front, EPA has 7 low credibility. According to a recent analysis 8 for NBC News, the past fiscal year marked a 9 historic low for EPA enforcement actions across 10 the board. In addition, the Trump administration 11 has proposed to significantly cut EPA's 12 enforcement budget for fiscal year 2019 and called 13 for elimination of the Chemical Safety Board which 14 would make EPA efforts to enforce even more 15 difficult.</p> <p>16 We urge EPA to abandon this dangerously 17 misguided proposal and promptly move forward with 18 the implementation of the 2017 rule. Thank you 19 for the opportunity to testify today.</p> <p>20 MR. BELKE: Thank you. Just one 21 question. You referred to the Arkema incident and 22 I think you are drawing a connection there between</p> <p style="text-align: right;">Page 68</p>

<p>1 the -- but I don't want to put words in your mouth</p> <p>2 -- between the Arkema incident and the provisions</p> <p>3 that are proposed to be rescinded. Could you</p> <p>4 clarify which provision are you seeing in the</p> <p>5 proposal that would have helped with the Arkema</p> <p>6 incident?</p> <p>7 MS. MIRMAN-HESLIN: We think that the</p> <p>8 root cause analysis provisions could help</p> <p>9 determine, you know, if there is a flooding risk</p> <p>10 for accidents. So, we think that, that could</p> <p>11 affect severe weather analyses. And we also think</p> <p>12 that the Chemical Safety Board has presented new</p> <p>13 information that EPA should consider as part of</p> <p>14 this reconsideration.</p> <p>15 MR. BELKE: Thank you. The CSB just</p> <p>16 sent the report within the last few weeks to EPA.</p> <p>17 We will respond to those recommendations.</p> <p>18 MS. MIRMAN-HESLIN: Thank you.</p> <p>19 MR. BELKE: Anybody else? Okay, Steve.</p> <p>20 MR. ARENDT: Thank you, panel. My name</p> <p>21 is Steve Arendt. I am Vice President for Global</p> <p>22 Oil, Gas and Chemicals for ABS Group,</p> <p style="text-align: right;">Page 69</p>	<p>1 data-driven.</p> <p>2 And so, I would recommend, for example,</p> <p>3 in the state of California now, both OSHA and</p> <p>4 CalARP has new provisions in their rule which</p> <p>5 companies are now having to apply. And so, we</p> <p>6 have a perfect opportunity to get real data on</p> <p>7 costs and benefits as opposed to theoretical</p> <p>8 rejections of costs and benefits as you had to</p> <p>9 deal with in earlier parts of your rule making.</p> <p>10 So, I would take advantage of that. So, even once</p> <p>11 this rule making is finished, you still have</p> <p>12 opportunities to collect real data to be able to</p> <p>13 address what real changes need to be made to</p> <p>14 address root causes.</p> <p>15 The provision for a public meeting --</p> <p>16 the reconsideration proposal is a good one.</p> <p>17 Unfortunately, back when your RMP rule was first</p> <p>18 put out, there were a lot of organizations, a lot</p> <p>19 of communities, a lot of companies banded together</p> <p>20 to communicate RMP information to the communities</p> <p>21 through emergency response organizations. And</p> <p>22 there was a lot of activity. Unfortunately, after</p> <p style="text-align: right;">Page 71</p>
<p>1 headquartered in Houston, Texas. But I am here</p> <p>2 today representing myself as a citizen. I have</p> <p>3 got over 40 years in process safety.</p> <p>4 About 30 years ago, I worked with a</p> <p>5 number of individuals to help propose rules for</p> <p>6 OSHA to consider in as process safety management</p> <p>7 regulations. And I have been involved with the</p> <p>8 RMP rule makings through the years over that time.</p> <p>9 I have written over 12 guidelines for CCPS, API,</p> <p>10 and ACC. Investigate many major accidents. I led</p> <p>11 the evaluation of BP for Secretary Baker. And so,</p> <p>12 I have quite a bit of experience to lay the</p> <p>13 foundation for my comments.</p> <p>14 Let me say that I support EPA's</p> <p>15 modifications to its originally proposed changes</p> <p>16 to the RMP rule. I think that they will be</p> <p>17 effective in addressing many of the root causes of</p> <p>18 the accidents that they cited as a part of their</p> <p>19 economic impact analysis and basis in the original</p> <p>20 rule that was proposed. I do believe that there</p> <p>21 are some possibilities for improvements over the</p> <p>22 years that you could consider but they need to be</p> <p style="text-align: right;">Page 70</p>	<p>1 9/11 and because of a lot of regulatory</p> <p>2 enforcement activities, the relational bank</p> <p>3 account between the communities and the people and</p> <p>4 the companies has waned. And more effort needs to</p> <p>5 be put in for communicating that risk information</p> <p>6 to the communities.</p> <p>7 And so, for example, for your new</p> <p>8 proposal, I would recommend that you have a new</p> <p>9 initial meeting requirement. Not just one for</p> <p>10 ones that are done after accidents. One time,</p> <p>11 just like it was done before. Yeah, some of them</p> <p>12 will be done in a perfunctory fashion but many of</p> <p>13 them could be effective in reestablishing the</p> <p>14 relationship that's needed.</p> <p>15 I would like to also mention that if you</p> <p>16 look towards trying to improve any of the other</p> <p>17 requirements, think about that there are four</p> <p>18 kinds of companies that you address with your</p> <p>19 rule. Companies that know what the rule is about</p> <p>20 and try to do a good job and do a really good job.</p> <p>21 And that's a vast majority, I think, of the</p> <p>22 various industries and the SIC codes that are</p> <p style="text-align: right;">Page 72</p>

<p>1 there. Then you have some companies that try but 2 they occasionally fail. And you are able to 3 tackle those with enforcement programs and 4 citations. There are some though that are still 5 confused but a smaller number every year. And 6 there are some that intentionally don't do it. 7 Those are the criminals. They don't raise their 8 hand and they are hard to find.</p> <p>9 Probably the best anti-bang for the buck 10 that you could get is by investing in better 11 enforcement, more competent enforcement, and to 12 seek the assistance of industry in helping to 13 target those parts of industry and companies where 14 that enforcement is most needed. If you do that 15 and you invest in a local emergency planning and 16 response in a way that's never been done before, 17 then we will have huge improvements in the 18 prevention of major accidents. Thank you.</p> <p>19 MR. BELKE: Thank you. Steve, at the 20 beginning of your remarks, you were talking about 21 the root cause provisions and I am just -- want to 22 clarify. Are you opposed to the rescission of</p> <p style="text-align: right;">Page 73</p>	<p>1 MR. AVERBACK: Contributing factors. In 2 your view, does that encompass root cause?</p> <p>3 MR. ARENDT: So, there are -- no it does 4 not. A root cause could be a contributing factor 5 but they are not -- it's not the same thing. So, 6 many companies that do investigations, sometimes 7 they don't do them to the level what root causes 8 are. But industry best practice now is to be able 9 to do that. Nearly all of the industry guidelines 10 talk about investigation, talk about using root 11 cause analysis tools. And that's generally the 12 way that it's done.</p> <p>13 MR. AVERBACK: Where would root cause 14 come in through our current rules or do they not 15 come in through our current rules?</p> <p>16 MR. ARENDT: So, it's not specifically 17 in a rule but if you were doing an NIST 18 investigation using appropriate techniques then as 19 the industry techniques advanced because of new 20 techniques that have been developed or whatever, 21 then root cause analysis would be one of those new 22 techniques and frankly, it's been in place for</p> <p style="text-align: right;">Page 75</p>
<p>1 them?</p> <p>2 MR. ARENDT: As an individual, root 3 cause analysis is an effective or best practice 4 that many many companies apply. And so, the 5 current regulations for a variety of reasons use 6 different wording and that's gotten in the way 7 sometimes. But I think through your ability to 8 enforce, recognized in generally accepted 9 practices in the industry, if a company does not 10 do root cause analysis, you could probably do 11 something about that even without the language 12 being in the rule.</p> <p>13 MR. BELKE: Okay. Thank you. Thank you 14 both. Does anybody have any other -- Hold on a 15 second, Steve. Jon --</p> <p>16 MR. AVERBACK: Again, it's useful to 17 have both of you at the panel at the same time. 18 The current incident investigation provisions 19 require the factors that contributed to the 20 incident.</p> <p>21 MR. ARENDT: Contributing factors, 22 right?</p> <p style="text-align: right;">Page 74</p>	<p>1 almost 20 years, I think, probably the initial 2 chemical industry guidance was about 23 years ago.</p> <p>3 MR. AVERBACK: Thank you.</p> <p>4 MR. CASH: Yeah. I have a follow up 5 question on that. You are talking about root 6 cause analysis as a best practice. Would you 7 characterize it now as recognized in generally 8 accepted good engineering practice? Is it at that 9 level now or is it still a best practice in your 10 mind?</p> <p>11 MR. ARENDT: I need to be careful. The 12 phrase recognized in generally accepted good 13 engineering practice is the one that's been both 14 the ESM standard and in your prevention rule. But 15 that's not exactly what we are talking about here. 16 We are talking about a slightly more vague term of 17 recognized industry practice. I do believe that 18 root cause analysis would be a recognized industry 19 best practice.</p> <p>20 MR. BELKE: Okay. Anything else? Thank 21 you very much. Okay. Our next two speakers will 22 be Paul Orum and Kathy Curtis. Paul, you can go</p> <p style="text-align: right;">Page 76</p>

<p>1 first.</p> <p>2 MR. ORUM: Good morning. My name is</p> <p>3 Paul Orum. That's O-R-U-M. So, EPA is proposing</p> <p>4 to fully repeal the chemical incident prevention</p> <p>5 requirements of the agency's Risk Management</p> <p>6 Planning amendments of 2017. This repeal will</p> <p>7 undermine chemical security. I will address one</p> <p>8 specific aspect. EPA's cost analysis of the</p> <p>9 repeal fails to account for the chemical security</p> <p>10 benefits of the prevention program elements. The</p> <p>11 most effective way to reduce terrorism at chemical</p> <p>12 facilities is to implement not repeal the</p> <p>13 prevention program. Rescinding the prevention</p> <p>14 program requirements for safer technology</p> <p>15 assessments, third-party audits, and root cause</p> <p>16 incident investigations will contribute to future</p> <p>17 chemical emergencies at RMP facilities.</p> <p>18 Repealing the safer technology</p> <p>19 assessment provisions in particular will</p> <p>20 perpetuate unnecessary terrorist targets that</p> <p>21 would otherwise be removed as a result of an</p> <p>22 alternatives assessment. EPA must account for the</p> <p style="text-align: right;">Page 77</p>	<p>1 estimates.</p> <p>2 The Center for Chemical Process Safety</p> <p>3 states major industrial incidents cost an average</p> <p>4 of 80 million each for property damages alone and</p> <p>5 losses from business interruption can amount to</p> <p>6 four times the property damage. These are among</p> <p>7 other losses to life, health, market share,</p> <p>8 reputation, litigation, insurance, investigations,</p> <p>9 and penalties. One insurance industry analysis of</p> <p>10 a major industrial chlorine spill scenario, showed</p> <p>11 insurance claims to cover casualties could exceed</p> <p>12 7 billion.</p> <p>13 The Marsh Insurance largest losses</p> <p>14 report includes a 100 major incidents of property</p> <p>15 damage losses over a 100 million. 20 of these,</p> <p>16 had property damage over 500 million and some</p> <p>17 topped 1 billion. Again the report covers only</p> <p>18 property damage. Actual losses are much higher</p> <p>19 including liabilities, penalties, shareholder</p> <p>20 value, business interruption, and reputation.</p> <p>21 A single incident, ExxonMobil refinery</p> <p>22 in California, cost California drivers 2.4 billion</p> <p style="text-align: right;">Page 79</p>
<p>1 increased risk of terrorism associated with</p> <p>2 perpetuating avoidable chemical hazards.</p> <p>3 Safer technology assessments reveal</p> <p>4 fool-proof ways of preventing chemical terrorism.</p> <p>5 For example, by improving plant design to remove</p> <p>6 chemicals that could be targeted. EPA must fully</p> <p>7 account the foregone prevention benefits of</p> <p>8 improved chemical security that would result from</p> <p>9 alternatives assessments.</p> <p>10 In its regulatory analysis, EPA</p> <p>11 estimates that repealing the prevention program</p> <p>12 will save about 88 million a year. These savings</p> <p>13 are more than offset by estimated potential losses</p> <p>14 of up to 270 million each year from foregone</p> <p>15 prevention benefits, such as increased damages.</p> <p>16 Under EPA's analysis, net incurred costs</p> <p>17 from a rollback could be up to 182 million each</p> <p>18 year, not even counting costs such as</p> <p>19 contamination, lost productivity, emergency</p> <p>20 response, property value impacts, and health</p> <p>21 problems from chemical exposures. Actual losses</p> <p>22 may be many times larger than EPA's monetized</p> <p style="text-align: right;">Page 78</p>	<p>1 based on prolonged increased gas prices and cost</p> <p>2 macro-economic losses of 6.9 billion, according a</p> <p>3 Rand study. Again these figures are incomplete.</p> <p>4 They do not include facility and community losses</p> <p>5 associated with emergency services, healthcare,</p> <p>6 property values, and local tax revenue.</p> <p>7 A study of terrorism insurance found</p> <p>8 that a chemical agent attack in a big city roughly</p> <p>9 analogous to a major industrial toxic gas release</p> <p>10 could involve property and worker compensation</p> <p>11 losses ranging up to 25 billion. Explosion at</p> <p>12 West Fertilizer, 247 million.</p> <p>13 Point is, EPA's RMP amendments develop</p> <p>14 credible methods to avoid such losses by removing,</p> <p>15 reducing, or better managing chemical hazards. In</p> <p>16 contrast, EPA's proposal to reduce information are</p> <p>17 not a credible and realistic means to prevent</p> <p>18 terrorism especially given that entire categories</p> <p>19 of chemical hazard facilities are generally known</p> <p>20 or readily discoverable.</p> <p>21 The cost of industrial chemical</p> <p>22 emergencies, whether from terrorist attack or</p> <p style="text-align: right;">Page 80</p>

<p>1 other release, could be very high to businesses 2 and communities. EPA must account for the impacts 3 of its policies in perpetuating such avoidable 4 hazards. There is a saying sometimes found in 5 retail stores, little cards. If you break it, you 6 bought it. Well, repealing these credible 7 prevention requirements means owning the next 8 major incident.</p> <p>9 MR. BELKE: Okay. Thank you. Any 10 questions?</p> <p>11 MR. AVERBACK: Paul, in your comments, 12 you mentioned the 270 million as the high end 13 estimate of the costs of accidents as we have put 14 the numbers together. Do you have any suggestions 15 as to how we could come up with a rate for 16 accidents prevented? I mean, that's the, you 17 know, we don't -- we have noted in our proposal 18 that we don't predict a number of accident 19 prevented by the original rule. We just 20 acknowledged that what would have been prevented 21 will not be prevented by the reconsideration. So, 22 you know, that -- we have asked for that</p> <p style="text-align: right;">Page 81</p>	<p>1 The JustGreen Partnership, a coalition of over 50 2 community, labor, environmental justice, health 3 effected, healthcare business and other 4 organizations representing over a million New 5 Yorkers, working for environmental health and 6 justice for New York's people and communities. We 7 co-lead this coalition with WE ACT for 8 Environmental Justice, a nationally recognized 9 community organization in West Harlem.</p> <p>10 I also serve on the Board of Directors 11 and steering committee of the Alliance of Nurses 12 for Health Environments, a national organization 13 representing thousands of nurses, promoting 14 healthy people and healthy environments by 15 educating and leading the nursing profession, 16 advancing research, incorporating evidence-based 17 practice, and influencing policy.</p> <p>18 Sorry for the long-winded introduction 19 but I am -- the constituencies that I represent 20 have numerous grave concerns about both the 21 delayed implementation and the proposed 22 reconsideration of improvements to risk management</p> <p style="text-align: right;">Page 83</p>
<p>1 information is there -- if in your final comments 2 you have some suggestions on the methodology for 3 making the estimate, it would be useful.</p> <p>4 MR. ORUM: I would just say that 5 predicting a terrorist incident based on accidents 6 would not be a reliable way. You can't really 7 tell. Second, I think that it's incomplete to 8 base you cost estimates on accidents alone. I 9 think you have to look at the inherent hazards and 10 the inherent magnitude of a worst-case release, 11 when you are looking at cost information.</p> <p>12 MR. AVERBACK: Thank you.</p> <p>13 MR. BELKE: Kathy.</p> <p>14 MS. CURTIS: Good morning and thank you 15 for the opportunity to speak to you today to voice 16 my concerns about EPA's proposal to weaken risk 17 management programs under the Clean Air Act. My 18 name is Kathleen Curtis and I am the Executive 19 Director of Clean and Healthy New York, a premier 20 state-level environmental health organization 21 working to promote safer chemicals, a sustainable 22 economy, and a healthier world. I also co-lead</p> <p style="text-align: right;">Page 82</p>	<p>1 programs under the Clean Air Act.</p> <p>2 First, EPA must not repeal disaster 3 prevention measures. Thorough investigations of 4 chemical releases will prevent deaths, injuries, 5 and long-term health impacts, which, I as a nurse, 6 am very concerned about. Second, since disasters 7 at chemical facilities continue to occur, EPA must 8 not continue to stall life saving measures, weaken 9 emergency response coordination requirements or 10 delete community informational provisions. If 11 public meeting requirements -- they are not 12 getting enough people then perhaps better outreach 13 and better services to people that, you know, are 14 impacted, would be a solution to that rather than 15 throwing out the community engagement piece, let's 16 work to improve it and facilitate public 17 participation and not act as a barrier to 18 participation. So, the focus should be on 19 prevention, not management of risk.</p> <p>20 Third, in the event of an exposure to a 21 chemical release, firefighters, first responders, 22 first receivers in emergency rooms, and other</p> <p style="text-align: right;">Page 84</p>

<p>1 health care providers must have access to relevant 2 information. So, they can share the information 3 with the patient and other providers as needed to 4 provide quality care. When a nurse is admitting 5 and assessing a patient, they are required to make 6 certain crucial decisions that can be a matter of 7 life and death based on both objective and 8 subjective information. When information is 9 withheld, errors can be made and lives can be at 10 stake, especially when there is a disaster or a 11 severe weather event and they are flooded with the 12 input of patients.</p> <p>13 It's essential that first responders and 14 receivers have access to chemical information in 15 order to provide that critical care and to protect 16 themselves from potential exposure and harm.</p> <p>17 Rolling back improvements in the 18 disclosure provided in improved risk management 19 plans violates everything nurses and other 20 healthcare professionals are taught about a good 21 patient-provider relationship. If anything EPA 22 should be improving risk management plans under</p> <p style="text-align: right;">Page 85</p>	<p>1 of Emergency Management. And we have Jon 2 Averback, our attorney with the Office of General 3 Counsel. And we also have Vanessa Principe, 4 Chemical Engineer in the Office of Emergency 5 Management, and Francesco Maimone, who is a 6 Physical Scientist from EPA Region 2, and he is on 7 detail here in the Office of Emergency Management.</p> <p>8 And just as reminder, the hearing is 9 open to the press. We have members of the media 10 present today. The event is open to any form of 11 recording, video, audio and photos. We ask that 12 you not cause any disruption to those testifying 13 or observing the hearing. For the members of the 14 media, please refrain from interviewing in the 15 public hearing room. If you need interview space, 16 please ask an EPA press contact at the media 17 registration table. For people here to present 18 testimony, it's under your discretion whether you 19 would like to be interviewed by a member of the 20 press. We ask that media members here today 21 respect each individual's wishes.</p> <p>22 So, our next two speakers are Gordon</p> <p style="text-align: right;">Page 87</p>
<p>1 the Clean Air Act to provide greater disclosure 2 and protection.</p> <p>3 Real plant security does not involve 4 higher walls, brighter lights, or more guards. 5 Real plant security is achieved through safer 6 chemistry which not only protects from weather 7 events and terrorist attacks but protects workers, 8 communities, and the broader environment in an 9 ongoing fashion. EPA has a mission to protect 10 public health and safety and EPA has failed to 11 evaluate the serious harm to public health and 12 safety these proposed measures would cause. 13 Communities need stronger not weaker protection 14 from chemical facilities. Thank you for your time 15 and for the opportunity to comment.</p> <p>16 MR. BELKE: Thank you. Okay. Thank you 17 both. We are now going to take a short recess. 18 The hearing will start again in five minutes.</p> <p>19 (Recess)</p> <p>20 MS. FRANKLIN: Restart the hearing now. 21 And for this session, we have -- my name is Kathy 22 Franklin. I am a Chemical Engineer in the Office</p> <p style="text-align: right;">Page 86</p>	<p>1 Sommers from Earthjustice and Jesse Marquez, 2 Coalition For A Safe Environment. Okay, I am 3 going to ask Gordon to go first and if you could 4 please make sure and hold the microphones close so 5 we can hear you better.</p> <p>6 MR. SOMMERS: Sure. Hello, my name is 7 Gordon Sommers, here with Earthjustice. We work 8 with a number of groups around the country, 9 communities in particular that are affected by 10 chemical disasters. A long experience dealing 11 with disasters and the aftermath of these 12 disasters.</p> <p>13 MS. FRANKLIN: Could you hold the mike a 14 little closer?</p> <p>15 MR. SOMMERS: Sure. We work with a 16 number of communities around the country that are 17 affected and have been affected for years by 18 chemical disasters of the type that the chemical 19 disaster or the RPM amendments would have been 20 preventing were it in effect now or prevented if 21 it goes in effect. So, we ask that if you 22 withdraw this proposed rule that will rescind all</p> <p style="text-align: right;">Page 88</p>

<p>1 of the prevention requirements in that rule and 2 further delay the few remaining requirements for 3 coordination and other parts of the rule.</p> <p>4 I would first like to note that EPA 5 admits that this rule disproportionately impacts 6 communities of color and low- income communities. 7 And unfortunately, EPA has nevertheless declined 8 to have public hearings in communities around the 9 country that are most impacted by this proposed 10 rescission of protections. So, some community 11 members have been able to make it here today. I 12 would ask that you pay particular attention to 13 their testimony and bear in mind the great 14 distance and difficulty with which they have had 15 to travel here to share their stories.</p> <p>16 And I would also ask you to consider 17 that there are many many more folks who are very 18 affected by this rule but cannot come here today 19 to testify. And so, we hope that they will be 20 able to submit written comments but that's 21 difficult also. Often oral testimony is much 22 easier. And so, we again urge EPA to considering</p> <p style="text-align: right;">Page 89</p>	<p>1 450 more incidents occurred after that period in 2 2014 to 2016. Public media reports show another 3 at least 45 that have occurred just into March of 4 last year while the chemical disaster rule has 5 been delayed. And that's just what's been 6 publicly reported. Point is, accidents continue 7 and they continue to disproportionately affect 8 certain communities. And so, it is as important 9 as ever, the EPA improve the existing regulations 10 which are failing to prevent these incidents.</p> <p>11 EPA has not real rationale for this 12 proposed rollback especially of the prevention 13 requirements. EPA says it wants to coordinate 14 more with OSHA but at the same time, EPA admits 15 that it did coordinate with OSHA in developing 16 these -- the chemical disaster rule protections. 17 EPA also says it wants to save money -- rather 18 that this rescission will save money for the 19 industries that would be regulated. But, as my 20 colleague, Paul Orum, very well put it, chemical 21 disasters cost a lot more money. Preventing even 22 a few of these would grossly outweigh the costs of</p> <p style="text-align: right;">Page 91</p>
<p>1 having a public -- at least one public hearing 2 elsewhere in any affected community.</p> <p>3 These communities that Earthjustice 4 represents and that we work with around the 5 country face, what I would call, a chemical 6 crisis. There is a long history of many of these 7 communities, year after year, chemical disasters, 8 fires, spills, explosions, releases into the air, 9 harming people, harming their families, requiring 10 children in schools a shelter in place, and as 11 EPA's own data shows, this has been going on for 12 years.</p> <p>13 EPA needs to pay attention to the facts 14 and its records. When EPA developed the chemical 15 disaster rule, it found that over 2,200 of these 16 types of incidents had not been prevented despite 17 the 1996 regulations being in place and despite 18 EPA enforcing these regulations for the past 19 several decades.</p> <p>20 My colleagues have spoken about the fact 21 that these disasters continue and this is indeed 22 an ongoing problem. EPA's own data shows at least</p> <p style="text-align: right;">Page 90</p>	<p>1 these regulations which, when spread across the 2 large industries that they apply to, are not that 3 significant.</p> <p>4 I would also like to note that EPA seems 5 to think an enforcement-led approach will -- 6 rather claims that an enforcement-led approach can 7 be a substitute for prevention regulations. 8 That's just the false dichotomy. You need both. 9 I mean, you need enforcement and you need good 10 regulations to enforce. EPA has had its current 11 regulations in place and has been enforcing them 12 and it has not prevented disaster after disaster 13 after disaster. That has wrought havoc on many 14 communities around this country.</p> <p>15 Lastly, I would like to note that EPA is 16 further delaying the much needed coordination 17 requirements for first responders. As we saw last 18 year with Hurricane Harvey, those requirement need 19 to be in effect now, yesterday, they need to be in 20 effect because first responders don't have the 21 information they need when they rush to the scene 22 of disasters. Responders got sick at that</p> <p style="text-align: right;">Page 92</p>

<p>1 incident. This has happened elsewhere where they 2 were unprepared because facilities were not 3 sharing the information -- not sharing enough 4 information with them. And so, this needs to 5 change. It needs change now as the next hurricane 6 season is starting already.</p> <p>7 So, to conclude, I would just like to 8 say that we ask EPA withdraw this proposal and put 9 the chemical disaster rule, also known as the RMP 10 and get it into effect immediately because it's 11 very very needed as EPA itself determined. Thank 12 you.</p> <p>13 MS. FRANKLIN: Okay.</p> <p>14 MS. MARQUEZ: Good morning. My name is 15 Jesse Marquez. I am 65 years old and I live in 16 the community at Wilmington in the city of Los 17 Angeles. We are an environmental justice Latino 18 community. And wish to state for the record that 19 I oppose the new changes to the Risk Management 20 Program regulations.</p> <p>21 On March 28th, 1969, the Fletcher Oil 22 Refinery in the city of Carson, across the street</p> <p style="text-align: right;">Page 93</p>	<p>1 could escape to try to get away from that ball of 2 fire coming at us.</p> <p>3 I then jumped over the fence and as I 4 was getting ready to escape, I heard a voice. And 5 the voice says, boy, boy, please turn around. And 6 when I turned around, I could see this blonde 7 woman holding a baby in its arms. Her face was 8 burnt, the baby's face was burnt, the baby's 9 blanket was burnt. And she said, please, save my 10 baby. She threw her baby over that block wall for 11 me to catch. And she yelled at me, run as fast as 12 you can, don't look back, save my babies life. 13 That way my experience with the chemical industry. 14 There are no hospitals in Wilmington. So, here I 15 am running with a baby terrified. I had to stop 16 and think and took the baby to a clinic.</p> <p>17 On February 18th, 2015, the ExxonMobil 18 Oil Refinery Torrance just a few miles from 19 Wilmington exploded. The electrostatic 20 precipitator exploded sending a shower of toxic 21 ash throughout the Torrance residential community 22 and public schools. Two months later California</p> <p style="text-align: right;">Page 95</p>
<p>1 from my home exploded in front of our house. All 2 seven members of my family were burned ranging 3 from first degree to third degree burns. My 4 grandmother was burnt the worst with third degree 5 burns. Over 200 residents and refinery workers 6 were burned and injured during that explosion. 7 Four storage tanks exploded in five to seven 8 minutes. There were no refinery safety personnel, 9 no fire department firemen, no city public safety 10 there when the explosion occurred.</p> <p>11 We could not escape in our car after the 12 first explosion because the cars on the street 13 were crashing in front of each other. And then a 14 second explosion took place as we were trying to 15 get away. We then held hands and began to run to 16 the corner to escape. And then a third tank 17 exploded. All I could see was a huge white ball 18 of flame and smoke coming at our home and at us. 19 My parents yelled at me to help my younger 20 brothers and sisters jump over the block wall, 21 while my father helped my seven-month pregnant 22 mother and my grandmother over that wall so we</p> <p style="text-align: right;">Page 94</p>	<p>1 -- two California Senate Committees held a public 2 hearing there at Torrance City Hall. Standing 3 room only, every TV, radio, newspaper was there. 4 And they asked the ExxonMobil Plant manager, 5 Safety Manager, Environmental Manager, Torrance 6 Fire Department, South Coast Air Quality 7 Management, everybody, what caused the explosion? 8 And here it is two months later they said, they 9 did not know why.</p> <p>10 Then they opened it up for public 11 comment and I got in line. When I was -- my turn 12 to speak, I told them within one hour after that 13 explosion why the ESP exploded. The Chair of the 14 Committee asked if I worked at the refinery and I 15 said, no. He asked if I was a petroleum engineer 16 and I said, no. He asked if I had worked for any 17 regulatory agency and I said, no.</p> <p>18 What I did find out within that hour, I 19 used common sense. I used community science 20 sense. I went to this thing called the computer. 21 I went to this thing called an internet. I went 22 to this thing called a search engine. And I typed</p> <p style="text-align: right;">Page 96</p>

<p>1 in electrostatic precipitator explosions. There 2 are 20,000 plus refineries all over the world. 3 This is not the first time it ever occurred. What 4 did occur and the Plant Manager was correct, there 5 is nothing in an ESP that can explode. But when I 6 read the information, if a combustible gas on the 7 outside enters it, it will explode. So, there was 8 gas leak.</p> <p>9 Was it preventable? Yes. Was it 10 preventable in 1969? Yes. A gas detector costing 11 2,000 dollars was not installed, could have been 12 installed, and would have prevented these tens of 13 million dollars of damages and loss of life and 14 injuries for a 2,000 dollar piece of equipment.</p> <p>15 Best practices is not good enough. Root 16 cause analysis is an accurate way to determine 17 what needs to be done. The gentlemen spoke 18 earlier about there has been reductions. Yes 19 there has been reductions because new regulations 20 take place to prevent the reoccurring of 21 disasters.</p> <p>22 I was on a toxic tour with the South</p> <p style="text-align: right;">Page 97</p>	<p>1 equipment, there is not oil, nothing that can 2 explode but there are electrostatic charges. So, 3 the only way it can explode if an external gas 4 enters it. Which meant a gas leak. And that's 5 exactly what had happened. There was a break and 6 there was leaking gas.</p> <p>7 MR. AVERBACK: This maybe a little bit 8 nuts and boltsy about the way the RMP works but 9 the -- do you have any idea about the source of 10 the gas whether the source of the gas --</p> <p>11 MS. MARQUEZ: Okay. Yes. There was a 12 tank that ruptured but part of the reason it 13 ruptured too is that during the process when 14 something occurs an operator has to take over and 15 do some things and there was an 'oops' in one of 16 those things.</p> <p>17 MR. AVERBACK: Okay.</p> <p>18 MS. MARQUEZ: The operator should not 19 have done this that caused the pressure to build 20 up that caused the rupture.</p> <p>21 MR. AVERBACK: And when you submit 22 written testimony, if you could explain the</p> <p style="text-align: right;">Page 99</p>
<p>1 Coast AQMD with Board members this Monday, 2 visiting schools and they asked the teachers, does 3 the school district provide you any information on 4 hydrofluoric acid or how to prepare for an 5 incident? And everyone answered, no. It, that 6 electrostatic explosion, a 15,000 piece of 7 equipment came within inches of hitting the 8 storage tank. And if it had erupted and ruptured, 9 it would have killed everyone within two miles.</p> <p>10 I turned in a document and there is a 11 map that shows facilities and industries around 12 the Valero Oil Refinery that can also blow up as a 13 result of an external factor. Thank you.</p> <p>14 MS. FRANKLIN: Thank you. Any 15 questions? Okay. Thank you, both.</p> <p>16 MR. AVERBACK: Actually, Jesse, if you 17 can come back. So, regarding the ESP explosion, 18 what you had mentioned that it was your 19 understanding or your deduction that flammable 20 gases entered the ESP and caused the explosion.</p> <p>21 MS. MARQUEZ: Yes. When I did the 22 research online, there is no gas in that</p> <p style="text-align: right;">Page 98</p>	<p>1 relationship between the covered process, the loss 2 of gas, and the event, it would be useful.</p> <p>3 MS. MARQUEZ: Okay. I will also submit 4 a copy because six months later, the Chemical 5 Safety Board released a report and validated that 6 and explained in more detail. Thank you.</p> <p>7 MS. FRANKLIN: Okay. The next two 8 speakers Mildred McClain from Harambee House and 9 Say Yang, Center for Earth, Energy and Democracy. 10 Okay, Mildred, you want to go ahead?</p> <p>11 MS. MCCLAIN: Okay. Sure. Good morning 12 and thank you so much for allowing me to come all 13 the way from Savannah to share some comments with 14 you. I am not representing my organization today. 15 I am representing about a thousand families who we 16 work with in Savannah.</p> <p>17 I live in Savannah, Georgia, a small 18 port city of about a 150,000 people. I work with 19 three neighborhoods that are geographically 20 located right near the Georgia port and are 21 surrounded by 17 industries including 22 International Paper, Arizona Chemical, and</p> <p style="text-align: right;">Page 100</p>

<p>1 Colonial Oil.</p> <p>2 We have participated along with</p> <p>3 thousands of other environmentally impacted</p> <p>4 neighborhoods across the United States in the work</p> <p>5 to protect our citizens against disproportionate</p> <p>6 and negative impacts on our health, economy,</p> <p>7 ecology, and environment due to major releases,</p> <p>8 explosion, fires, and accidents at dangerous</p> <p>9 industrial and nuclear facilities because we live</p> <p>10 about a 125 miles downstream from the Savannah</p> <p>11 riverside.</p> <p>12 All the work communities have done over</p> <p>13 the past few years to strengthen the Risk</p> <p>14 Management Plan rule must be protected and used to</p> <p>15 assist communities which include people of color,</p> <p>16 low-income populations, and indigenous peoples who</p> <p>17 face great risk on a daily basis from chemical</p> <p>18 releases and explosions at thousands of facilities</p> <p>19 throughout our nation.</p> <p>20 If the Environmental Protection Agency</p> <p>21 rolls back any of the current measures in the RMP,</p> <p>22 we believe and that is the thousand families of</p> <p style="text-align: right;">Page 101</p>	<p>1 the industries and government and community is</p> <p>2 essential. The explosion and fierce fire at the</p> <p>3 sugar refinery which took many lives, the three</p> <p>4 day burning fire at the Power Dufferin industry</p> <p>5 that we didn't even know stored chemicals. We had</p> <p>6 to go to Alabama to get some substances to put the</p> <p>7 fire out.</p> <p>8 The fire at the Georgia Ports about a</p> <p>9 year ago. The death of a worker at the Colonial</p> <p>10 Oil. All due to explosions constantly reminds us</p> <p>11 that there is a deeper need for environmental</p> <p>12 protection as well as environmental justice. With</p> <p>13 more drastic weather changes coming our way every</p> <p>14 day, we the people of Savannah call upon the EPA</p> <p>15 to do the right thing. Listen to the voice of the</p> <p>16 people, not just the industries.</p> <p>17 Our lives matter, our children lives</p> <p>18 matter, our voices should matter. We represent</p> <p>19 thousands of voices. If you remember over a</p> <p>20 144,000 comments were made on the RMP rule. That</p> <p>21 demonstrates meaningful involvement and engagement</p> <p>22 of the people in a crucial process. We cannot and</p> <p style="text-align: right;">Page 103</p>
<p>1 residents of Hudson Hill, Clearview, Woodville,</p> <p>2 and West Savannah, we believe, our health and</p> <p>3 safety will be severely threatened including</p> <p>4 property damage, injuries, further compromising</p> <p>5 our existing health conditions and death as we</p> <p>6 have witnessed. We have already experienced all</p> <p>7 of this. We have examples 20 years back, 10 years</p> <p>8 back, 2 years back, a few months back. Giant</p> <p>9 chemical and oil companies cannot be more</p> <p>10 important than the American people.</p> <p>11 The mothers and fathers of Hudson Hill</p> <p>12 asked me to come. They gave me permission to</p> <p>13 come. I had to request my elders to allow me to</p> <p>14 come because I work -- is always so, so, so</p> <p>15 overwhelming. We believe common sense provisions</p> <p>16 that will help prevent chemical disasters and save</p> <p>17 our neighborhoods and our local economies must</p> <p>18 always be our priority.</p> <p>19 And we trust the Environmental</p> <p>20 Protection Agency. We have been working with you</p> <p>21 for over 30 years. Know it hasn't been an easy</p> <p>22 ride but we believe that the collaboration between</p> <p style="text-align: right;">Page 102</p>	<p>1 should not roll anything back. If anything, we</p> <p>2 should strengthen and deepen what we already have.</p> <p>3 We must continue to work for policies that favor</p> <p>4 the people and not the profits. There should be</p> <p>5 no reconsideration of the 2017 amendments to the</p> <p>6 Accidental Release Prevention requirements. We</p> <p>7 want it to stay as is and we need your help to</p> <p>8 make it even stronger. We need to focus on do no</p> <p>9 harm through using chemical reform. Thank you so</p> <p>10 much.</p> <p>11 MS. FRANKLIN: Okay. Thank you. Any</p> <p>12 questions? Okay. Say.</p> <p>13 MS. YANG: Good morning and thank you</p> <p>14 for this unique opportunity to speak at this</p> <p>15 public hearing on the proposed changes to the Risk</p> <p>16 Management Program rule. My name is Say Yang.</p> <p>17 S-A-Y Y-A-N-G. I am the Program Coordinator at</p> <p>18 the Center for Earth, Energy and Democracy in</p> <p>19 Minneapolis, Minnesota. We are a member of the</p> <p>20 Midwest Environmental Justice Network, an</p> <p>21 affiliate of the Environmental Justice Health</p> <p>22 Alliance.</p> <p style="text-align: right;">Page 104</p>

<p>1 At the Center, we work in collaboration 2 with grass roots communities, policy makers and 3 researchers to conduct research and provide 4 community education on important energy, climate 5 and environmental issues impacting low-income, 6 indigenous and communities of color, so that they 7 can make informed decisions about policies and 8 programs affecting their health and environmental 9 conditions, much like today at this public 10 hearing.</p> <p>11 In the many communities we work in 12 throughout the nation, a common theme we continue 13 to hear is the need and want for safe healthy 14 viable place to live, work, play, and worship. I 15 believe this is also what the U.S. Environmental 16 Protection Agency is working towards with the 17 mission to protect human health, the environment, 18 and access to clean air, land, and water for all. 19 And especially in our environmental justice 20 communities who have been historically 21 marginalized from these accesses.</p> <p>22 I am here today, Thursday, June 14th at</p> <p style="text-align: right;">Page 105</p>	<p>1 support for prevention and preparedness activities 2 from awareness raising to field exercises on 3 emergency response; the need for strong robust 4 emergency response coordination which includes 5 having immediate well-coordinated and pre-planned 6 response; the need for a capacity to deal with the 7 several simultaneous emergencies in different 8 places; the need for frequent compliance audits of 9 these facilities to ensure the safety of workers 10 and communities; and the need to work with many 11 different cultural communities where I am from who 12 may have a different way of handling emergency 13 crisis.</p> <p>14 Lastly, there is a need for safer 15 process with chemical management so that these 16 explosions do not happen. Again, I want to thank 17 you for this opportunity of a public hearing on 18 the proposed changes to the Risk Management 19 Program rule.</p> <p>20 MS. FRANKLIN: Okay. Thank you.</p> <p>21 MR. AVERBACK: Question. Say, you had 22 mentioned in your testimony that there is a need</p> <p style="text-align: right;">Page 107</p>
<p>1 this public hearing on the proposed changes to the 2 Risk Management Program rule to share concerns 3 around the rescinding of the Risk Management 4 Program rule under the Clean Air Act because when 5 a disaster strikes, we know that every minute 6 counts for saving lives.</p> <p>7 As many have heard, there was an 8 explosion in late April this year in Superior, 9 Wisconsin, just minutes from Duluth, Minnesota 10 sharing Lake Superior and the harbor. This was 11 Husky Energy Oil Refinery. The explosion forced 12 massive evacuations, sent several people to local 13 hospitals, and several fire fighters stood by for 14 several hours until it was clear that a dangerous 15 toxic chemical known as hydrogen fluoride was not 16 at risk of exploding.</p> <p>17 This recent disaster is just one of many 18 to have occurred throughout this nation as several 19 before me have mentioned today. And each time 20 this happens, we are reminded of the potential 21 risk and dangers of chemical facilities. We are 22 also reminded of the importance in having strong</p> <p style="text-align: right;">Page 106</p>	<p>1 to work with different cultural communities on, 2 you know, going forward on new rule. Can you give 3 some examples of ways the communication would be 4 different other than obviously different language 5 communities and what's going on -- what particular 6 rule provisions would improve that process?</p> <p>7 MS. YANG: Absolutely and thank you for 8 asking that question. Maybe a lot of communities 9 don't even know that these chemical facilities 10 exist. And recently, I just learned of the local 11 chemical facilities in the twin cities. Many of 12 us we drive by the facilities not knowing what's 13 in it and the risk that we are it if they were to 14 explode. Many of us don't even know all the 15 different types that these facilities are carrying 16 in there. And I think that, you know, there are 17 so many ways in communicating to our communities 18 about the risk around these facilities. And if 19 there is something in place already I am not aware 20 of it, the communities that we work with are not 21 aware of it. As far as we know these are just 22 buildings.</p> <p style="text-align: right;">Page 108</p>

<p>1 But what we do know is when something 2 smells bad, when we feel something that is burning 3 our eyes and we start to question, but even then 4 we still don't know what's in these facilities. 5 And I think it's the role of the EPA to work with 6 states, to work with regions, to work with local 7 government and assimilating and explaining to 8 communities what is in these chemicals and the 9 dangers around them.</p> <p>10 MR. AVERBACK: Okay.</p> <p>11 MS. MCCLAIN: I am from the African 12 American community in Savannah and we work with 13 African Americans throughout the country. And one 14 way to get information and to train and empower 15 skill of our community is to work with our 16 faith-based institutions. They have a very deep 17 relationship with them, we are there most of the 18 week. They have a way of speaking our language, 19 we trust them, we have been in those churches, 20 those synagogues, those temples, those mosques for 21 years and those are respected leaders and experts 22 that can deliver the message and help the</p> <p style="text-align: right;">Page 109</p>	<p>1 background about Delaware, it's a relatively small 2 state geographically with a population of less 3 than one million. It contains twenty- three 4 facilities in RMP programs. These facilities use 5 over 33 million pounds of toxic chemicals in their 6 processes and over 33 million pounds of flammable 7 chemicals.</p> <p>8 There have been nineteen reportable 9 incidents of these facilities over five years 10 costing over 30 million in property damages.</p> <p>11 My perspective today is on behalf of 12 communities of color who are disproportionately 13 affected by chemical disasters in Delaware. We 14 live in fear every day.</p> <p>15 An example of the types of fears we 16 experience in our community is having a chemical 17 facility that operates over 150 tanks, each day, 18 all day. We have no idea what's in those tanks. 19 We have no idea what that purpose is.</p> <p>20 Not knowing what's in these tanks is a 21 real threat. And based on the previous testimony 22 that I've heard, I think we're in quite a bit of</p> <p style="text-align: right;">Page 111</p>
<p>1 communities with this whole notion of the 2 community right to know, as well as to help engage 3 them in emergency preparedness and response.</p> <p>4 MS. YANG: I just want to add one more 5 thing and that is that the communities that we 6 serve and the organization that I work for and our 7 affiliates with the Midwest EJ network and also 8 with the Environmental Justice Health Alliance, we 9 are ready to work with the EPA in partnership to 10 work with our communities around these issues.</p> <p>11 MR. AVERBACK: Thank you.</p> <p>12 MS. FRANKLIN: Okay. The next two 13 speakers, Octavia Dryden, Delaware Concerned 14 Residents for Environmental Justice, and Ken 15 Dryden, Minority Work Force Development Coalition.</p> <p>16 MS. DRYDEN: Thank you very much for 17 allowing us to speak today. My name is Octavia 18 Dryden, D-R-Y-D-E-N. And I'm a member of the 19 Delaware Concerned Residents for Environmental 20 Justice, an affiliate of the Environmental Justice 21 Health Alliance.</p> <p>22 Just to give you a little bit of</p> <p style="text-align: right;">Page 110</p>	<p>1 danger and don't know it. Not having access to 2 information, plans for most facilities and policy 3 makes us most vulnerable.</p> <p>4 Without necessary evacuation plans, my 5 family is in a real risk. My children's safety is 6 at risk.</p> <p>7 Rolling back regulations that protect 8 communities of color who are most impacted by 9 chemical disasters is just simply unjust.</p> <p>10 Therefore, we urge EPA not only to 11 maintain the existing protections and regulations 12 but to increase protection policies and fund 13 programs that provide us the necessary 14 information, to have access to the information and 15 for greater protections for our children, family 16 and our communities against the potential chemical 17 disasters. I thank you for this opportunity to 18 speak.</p> <p>19 MR. AVERBACK: Mildred? Thank you for 20 your testimony, Octavia, my apologies, my 21 apologies.</p> <p>22 Have members of your organization</p> <p style="text-align: right;">Page 112</p>

<p>1 attempted to access information about plants in 2 your area through the existing provisions of 3 COPRA, through the Local Emergency Planning 4 Committee, or through any other local or the State 5 Department of Natural Resources and been turned 6 down?</p> <p>7 Have folks tried using some of the 8 existing other statutory authorities that we 9 mentioned in our proposals as making information 10 available? Have folks tried to use them and not 11 been able to get them?</p> <p>12 MS. DRYDEN: Absolutely, absolutely. We 13 have a system, a four-year system within our state 14 and when requests are made, they're not responded 15 to and so that information remains unavailable to 16 us. I mean you almost have to really seek legal 17 counsel to get information on these particular 18 facilities.</p> <p>19 MS. FRANKLIN: Thank you.</p> <p>20 MR. DRYDEN: Ken Dryden, D-r-y-d-e-n. 21 Foremost, let me thank the EPA family today for 22 allowing us to be here to speak on behalf of</p> <p style="text-align: right;">Page 113</p>	<p>1 cost saving, it makes me wonder at the time and 2 the days we're living in.</p> <p>3 We came here today to ask this panel to, 4 like we've heard from other states, that 5 regulations and guidelines may not be being 6 followed. We heard that in trying to acquire 7 information as to the different chemicals, when we 8 see these health disparities in our neighborhood, 9 respiratory for which I lost two parents to 10 respiratory, or they say it was, that we, my 11 parents lived in about maybe a two-mile radius of 12 the, once was Getty Oil and now known as, I forget 13 what it's called, but it's an energy's name.</p> <p>14 But I say that to say this: You don't 15 see these folks. I don't know what you do in this 16 building, but if you would come to my state, then 17 you would see the many folks who are, you may have 18 heard of the DuPont Hospital, Children's Hospital. 19 And there you can go see many of the small 20 children who do cumulative of the problems and 21 they are probably in that hospital. But parents 22 don't, many of them who can't afford proper</p> <p style="text-align: right;">Page 115</p>
<p>1 Delawarrians.</p> <p>2 When I came today, I looked at this big, 3 beautiful building and while I don't know the 4 mission of EPA, I see that it appeared that no 5 cost was spared for this beautiful building.</p> <p>6 And while you may sit there today, and 7 may see me sit here in my suit, and one pair of 8 pants, maybe a few pairs I do have, the folks who 9 I come here to speak on behalf of today you don't 10 see, the ones who badly need you to enforce 11 sanctions or enforce whatever provisions that are 12 allocated.</p> <p>13 When I leave here today and go back 14 home, there will be many with many health issues 15 because of the different chemicals and different 16 pollutions that we have where I come from. Many 17 folks suffer, many (inaudible) communities suffer 18 with major health disparities and they suffer from 19 downtrodden communities.</p> <p>20 But when I look around here and see no 21 cost has been considered in saving and think about 22 them at home where there is a, or appears to be a</p> <p style="text-align: right;">Page 114</p>	<p>1 medical.</p> <p>2 And I'm not trying to say that it's not 3 a caring thing but I do ask that you, when I 4 looked at your reason for why you were considering 5 amendments and then looked at why you were 6 proposing your proposals, it just made me wonder 7 as to do folks coming really matter.</p> <p>8 And I ask that you really do consider 9 it. Thank you.</p> <p>10 MS. FRANKLIN: Thank you. All right, 11 the next two speakers, Elizabeth Spike, Houston 12 Sierra Club and Stephanie Thomas, public citizen. 13 Elizabeth, would you like to go first?</p> <p>14 MS. SPIKE: Yes, please. My name is 15 Elizabeth Spike and I am a resident of Houston, 16 Texas. I am a high school chemistry teacher and I 17 volunteer as the chair of the Houston Regional 18 Group of the Sierra Club.</p> <p>19 Houston Regional Group of the Sierra 20 Club is one of ten regional groups across the 21 state. We represent tens of thousands of members 22 across the state of Texas. In Houston alone,</p> <p style="text-align: right;">Page 116</p>

<p>1 there are at least five or six thousand members.</p> <p>2 I would like to comment on the proposed</p> <p>3 changes to the assessment of safer technologies or</p> <p>4 alternatives to the hazardous processes rule of</p> <p>5 the Risk Management Program. I would like to use</p> <p>6 my time to primarily address the danger of using</p> <p>7 hydrogen fluoride as a catalyst in the alkylation</p> <p>8 reaction to produce high octane gasoline.</p> <p>9 Texas has a number of refineries that</p> <p>10 use HF, putting workers and surrounding</p> <p>11 communities and the general public at risk for</p> <p>12 injury and death.</p> <p>13 Hydrogen fluoride is a low molecular</p> <p>14 weight chemical. It is volatile, meaning it</p> <p>15 evaporates easily, spreads quickly and may travel</p> <p>16 long distances up to twenty- five miles. It is</p> <p>17 made of the halogen fluorine which is the most</p> <p>18 reactive element on the periodic table.</p> <p>19 It has a small atomic radius which pulls</p> <p>20 strongly on surrounding electrons, its own and</p> <p>21 nearby and other atoms. The high electron</p> <p>22 activity value allows chlorine to react easily</p> <p style="text-align: right;">Page 117</p>	<p>1 assessment of safer technologies or alternatives</p> <p>2 to the hazardous processes that could be used to</p> <p>3 inflate, reduce the risk of disaster and may fail</p> <p>4 to protect lives.</p> <p>5 And I repeat, I would never expose</p> <p>6 students to such a dangerous chemical. Safer</p> <p>7 alternatives exist. It's just that chemical and</p> <p>8 refining companies won't change unless it's</p> <p>9 required by government and that's what government</p> <p>10 is for.</p> <p>11 Hydrogen fluoride is one of the most</p> <p>12 deadly chemicals used by industry, ranking as the</p> <p>13 top dangerous chemicals hazard in many petroleum</p> <p>14 and refinery and chemical plants.</p> <p>15 To date, Texas refineries using HF have</p> <p>16 not switched to safer alternatives. Too many oil</p> <p>17 refineries have had accidents, fires and toxic</p> <p>18 releases in recent years related to the use of HF</p> <p>19 in the alkylation units.</p> <p>20 Valero's Texas City Oil Refinery had a</p> <p>21 toxic release of deadly hydrogen fluoride release</p> <p>22 in April 2018 due to a major fire. RMP recognize</p> <p style="text-align: right;">Page 119</p>
<p>1 with other compounds both target, in the case of</p> <p>2 the production of gasoline, and non-target, like</p> <p>3 that of human cells.</p> <p>4 OSHA has assigned an acute toxicity</p> <p>5 value to HF of three and the National Fire</p> <p>6 Protection Association has assigned a value of</p> <p>7 four, meaning both organizations know that HF is</p> <p>8 dangerous to human health and people should not be</p> <p>9 exposed to it.</p> <p>10 As a chemistry teacher I would never use</p> <p>11 HF to demonstrate or experiment in the chemistry</p> <p>12 laboratory. Safer alternatives exist that allow</p> <p>13 me to make enough chemical product on time and</p> <p>14 under budget. Thus I make wise decisions on</p> <p>15 behalf of students.</p> <p>16 I expect EPA to keep the Risk Management</p> <p>17 Program in place because it protects workers and</p> <p>18 the public, parents and the general public</p> <p>19 workers, excuse me, from the dangers of HF.</p> <p>20 The full removal, of requiring</p> <p>21 facilities and the refining chemical manufacturing</p> <p>22 of pulp and paper mill industries to conduct an</p> <p style="text-align: right;">Page 118</p>	<p>1 (inaudible) that every single refinery that's</p> <p>2 using HF as a catalyst identifies a catastrophic</p> <p>3 release of HF as the number one worst case</p> <p>4 accidental release scenario.</p> <p>5 Worst case accidental release scenarios</p> <p>6 under the RMPs were made public in 1999.</p> <p>7 The worst case release scenario is an</p> <p>8 industrial plant release event where a highly</p> <p>9 toxic chemical is instantly released and vaporizes</p> <p>10 instantly or in ten minutes into a vapor cloud</p> <p>11 traveling slowly downwind under low wind speed</p> <p>12 conditions.</p> <p>13 Low wind speed means that toxic chemical</p> <p>14 vapor clouds remain more highly concentrated and</p> <p>15 more harmful as it drifts and disperses under</p> <p>16 moderate to high wind speeds.</p> <p>17 Some worst case scenarios could include</p> <p>18 Coke Corpus Christi West Refinery, 410,000 pounds</p> <p>19 sudden release twenty- five miles downwind that</p> <p>20 could cause injuries and deaths.</p> <p>21 DuPont Ingleside Chemical Plant, 3.7</p> <p>22 million pounds sudden release twenty-five miles</p> <p style="text-align: right;">Page 120</p>

<p>1 downwind due to a sudden catastrophic failure.</p> <p>2 Valero Corpus Christi Refinery, 210,000</p> <p>3 pounds sudden release seventy miles downwind</p> <p>4 process, sudden release catastrophic failure.</p> <p>5 Citgo Corpus Christi East Refinery,</p> <p>6 150,000 pounds sudden release fifteen miles</p> <p>7 downwind due to a storage drum catastrophic</p> <p>8 failure.</p> <p>9 Coastal Corpus Christi Refinery, 85,000</p> <p>10 pounds sudden release three miles downwind,</p> <p>11 storage catastrophic failure.</p> <p>12 Finally, it is most unfortunate EPA is</p> <p>13 holding this hearing only in D.C. and not in</p> <p>14 places like Corpus Christi, Pasadena or Houston to</p> <p>15 let people speak for themselves on this</p> <p>16 life-saving rule. Thank you.</p> <p>17 MS. FRANKLIN: Thank you. Any</p> <p>18 questions? Okay. Stephanie.</p> <p>19 MS. THOMAS: Thank you. My name is</p> <p>20 Stephanie Thomas, S-t-e-p-h-a-n-i-e, last name</p> <p>21 T-h-o-m-a-s. So I live in Houston, Texas, and I</p> <p>22 work with the Public Citizen and National Public</p> <p style="text-align: right;">Page 121</p>	<p>1 And you know the purpose of these is not</p> <p>2 merely just to put out the fires. The purpose is</p> <p>3 to really understand why these incidents happened</p> <p>4 in the first place and take key steps to insure</p> <p>5 that these fires, these explosions and these</p> <p>6 deaths do not happen again.</p> <p>7 So we really feel that these provisions</p> <p>8 cannot be rolled back in order to insure the</p> <p>9 health and safety of communities.</p> <p>10 I also want to talk about the proposed</p> <p>11 removal of a requirement to provide, upon request,</p> <p>12 information to the public on chemical hazards,</p> <p>13 which include substance names, safety data sheets,</p> <p>14 accident history, Emergency Response Program</p> <p>15 information and LPC contact information.</p> <p>16 So in Texas, where I lived during</p> <p>17 Hurricane Harvey, first responders were exposed to</p> <p>18 air fumes that they claim were hazardous to their</p> <p>19 health, and that has resulted in a lawsuit.</p> <p>20 So the people who were trying to save</p> <p>21 lives were thwarted by exposure, and if this</p> <p>22 provision had not been delayed, if this had been</p> <p style="text-align: right;">Page 123</p>
<p>1 Interest Organization with more than 400,000</p> <p>2 members and supporters across the country. And we</p> <p>3 advocate for stronger health and safety and</p> <p>4 consumer protections. So we really appreciate the</p> <p>5 opportunity to testify today on the chemical</p> <p>6 disaster rule.</p> <p>7 So first I'd like to speak to some of</p> <p>8 the proposed changes and I'd also like to speak to</p> <p>9 some of the community impacts and some of the</p> <p>10 larger impacts as well.</p> <p>11 So it is Public Citizen's opinion that</p> <p>12 the 2017 amendments were not strong enough. So we</p> <p>13 are not in support of these rollbacks. We believe</p> <p>14 that these rollbacks will harm workers, will harm</p> <p>15 first responders and will harm community members.</p> <p>16 So some of the ways that we see these</p> <p>17 rollbacks being harmful, the third-party</p> <p>18 compliance audits we feel are really important</p> <p>19 safety provisions as well as the root cause</p> <p>20 analyses, as laws for safer technology and</p> <p>21 alternatives analysis that Miss Spike just spoke</p> <p>22 with.</p> <p style="text-align: right;">Page 122</p>	<p>1 in place, they should have had the necessary</p> <p>2 information, the safety data sheets that would</p> <p>3 allow them the necessary information to better</p> <p>4 protect themselves as they entered into the area</p> <p>5 that was impacted by the Arkema explosions.</p> <p>6 So we really need to understand the</p> <p>7 lessons of Hurricane Harvey and recall its</p> <p>8 devastating impacts on the Gulf Coast. So these</p> <p>9 flood waters that caused the back-up generator to</p> <p>10 fail led to explosions of unstable organic</p> <p>11 peroxides and the release of the stew of toxic</p> <p>12 chemicals, including an unpermitted release of</p> <p>13 cancer-causing ethylbenzene.</p> <p>14 So I want to read a statement quickly</p> <p>15 from Houston Fire Department Chief, Samuel Pena,</p> <p>16 who was unable to be here today but he sent along</p> <p>17 a statement. He says, "The proposed changes to</p> <p>18 the Federal Chemical Disaster Rule are</p> <p>19 unreasonable, illogical and in the opposite</p> <p>20 direction of where we need to go, especially after</p> <p>21 the Arkema chemical plant incident during Harvey.</p> <p>22 Limiting information to the public will have an</p> <p style="text-align: right;">Page 124</p>

<p>1 enormous impact in diminishing public safety. 2 Emergency response agencies and community 3 residents have a right to know where dangerous and 4 potentially hazardous materials exist. 5 It is critical to have this information 6 in making proper operational decisions during an 7 emergency incident or event. Without the 8 information, it is difficult to assess public 9 health risks or discover what went wrong after a 10 disaster." 11 So based on the EPA's own assessment, 12 these changes will impact low income communities, 13 minority communities and in the regulatory impact 14 assessment, the EPA states that it did not conduct 15 additional engagement activities associated with 16 the rule making because it did not impose 17 additional costs in affected communities. 18 This ignores the cost of health care, of 19 well being and other costs that may be intangible 20 like living in fear for your life. 21 So the EPA should not be engaged in this 22 rule making that disadvantages low income</p> <p style="text-align: right;">Page 125</p>	<p>1 You've spoken in favor of the third 2 party audit provision. From your perspective, are 3 all of the qualifications - you can address this 4 in your written comments if you prefer - but there 5 is a series of qualifications for third party 6 audits, auditors. 7 If you could address whether those could 8 be modified and still achieve what your objective 9 is in your written comments or write it down, we'd 10 appreciate it. 11 MS. THOMAS: Yes, I would be happy to 12 address those in written comments. You know as 13 far as some of what I've seen, I know one of the 14 recommendations was to have former employees serve 15 as third-party auditors. 16 And I'll be honest, at this point, I 17 have some mixed feelings about that because I do 18 have some familiarity with processes but they may 19 have very close ties to the entity that they're 20 auditing. 21 So I will be happy to address that in 22 more detail in the comments. Thank you.</p> <p style="text-align: right;">Page 127</p>
<p>1 communities at the benefit of the chemical 2 industries. And while these environmental justice 3 communities are largely left out of the 4 opportunity to testify, industry interests are 5 well represented in the agency, including several 6 administrators and counselors through the EPA who 7 have served as lobbyists and litigators for the 8 industry. 9 So it's no accident that these rollbacks 10 are being proposed at a time when the foxes are in 11 the proverbial hen house, where lobbyists for the 12 petrochemical and refinery industries have key 13 positions within the EPA. 14 So the EPA should be supporting the 15 health and well being of Texas communities and 16 American communities, not padding the profits of 17 corporate polluters. Thank you. 18 MS. FRANKLIN: Thank you. 19 MR. AVERBACK: Earlier today, I asked 20 one of the witnesses who had criticized the third 21 party audit provision and some of the, largely 22 based on the specifications for the auditors.</p> <p style="text-align: right;">Page 126</p>	<p>1 MR. AVERBACK: Thanks. 2 MS. FRANKLIN: Thank you. Our next 3 speakers, Bani Hudson Hines, Earthjustice and 4 Michele Roberts from EJHA. You want to go first, 5 Michele? 6 MS. ROBERTS: She has a strong voice. 7 MS. HINES HUDSON: I am Bani Hines 8 Hudson from Louisville, Kentucky, and I'm a member 9 of REACT, Rubbertown Emergency Action, which is 10 affiliated with Earth Justice Health Alliance. 11 REACT is an all-volunteer group of 12 residents under the leadership of Eboni Cochran 13 who lives near or in the fencline of a cluster of 14 Title Five chemical facilities commonly referred 15 to as Rubbertown and is the area's largest source 16 of industrial emissions. 17 I am here today because I am concerned 18 about the proposed rollbacks of the Chemical 19 Disaster Prevention Measures and I'm a grandmother 20 who's looking ahead to the health of my 21 grandchildren. 22 These rollbacks will make vulnerable</p> <p style="text-align: right;">Page 128</p>

<p>1 communities more so, in spite of the current 2 administration's admittance that risks fall 3 significantly greater on those communities.</p> <p>4 Most of the residents live or work in a 5 chemical release danger zone where toxic releases 6 expose them to a half dozen chemicals that could 7 burn their skin, or lungs, or kill them.</p> <p>8 And more than 600,000 people, or 67% of 9 Louisville residents, live within three miles of 10 the city's 23 RMP facilities. This is 72% higher 11 than the national rate of 39% of the U.S. 12 population that lives within three miles of such a 13 facility.</p> <p>14 In Rubbertown, the DuPont plant puts the 15 most people at risk, more than 70,000 within a 16 sixteen-mile radius depending on weather and wind 17 conditions. But the closest neighbors of plants 18 that store large quantities of deadly chemicals 19 are more likely to be black or Latino.</p> <p>20 Advancing rollbacks supported by 21 chemical companies will further endanger 22 Rubbertown residents. And I offer a few examples</p> <p style="text-align: right;">Page 129</p>	<p>1 A lot of these people attribute to allergies.</p> <p>2 The cost of doing business should be the 3 cost of operating safely and in a manner that 4 values the community, first responders, workers 5 and families.</p> <p>6 In 2012, Paducah and Louisville Railway 7 cars derailed with nine of the thirteen cars 8 carrying hazardous materials. Three workers were 9 hospitalized after a butadiene fueled blaze 10 ignited and another worry was the stockpile of 11 hydrogen fluoride penned close to the fire.</p> <p>12 Hundreds were evacuated. Workers were 13 hosing down chemicals that can cause severe 14 respiratory damage. And the fire burned for 15 several days before stabilization.</p> <p>16 In 2011 an explosion at Carbide 17 Industries required fire crews from seventeen 18 departments and left two dead.</p> <p>19 The city of Louisville acknowledged that 20 the information system in place did not work as 21 well as it should have and reports differed as to 22 whether there was no danger to residents or if</p> <p style="text-align: right;">Page 131</p>
<p>1 of things we've experienced.</p> <p>2 In anticipation of rollback, I suspect, 3 in 2017 American Synthetic Rubber requested and 4 was granted the right to ease toxic air 5 requirements, even with its history of air quality 6 violations.</p> <p>7 Rubbertown residents dread the 8 industrial domino effect that will be facilitated 9 by the rollbacks and put us at greater risk of 10 disasters.</p> <p>11 EPA prevention measures responsive to 12 the thousands of incidences from 2004 to 2013, and 13 the harm they caused, are still needed in 14 Rubbertown.</p> <p>15 The company Hexion has had a hundred 16 electrical or mechanical failures that have caused 17 excess chemical pollution in the last three years 18 and has been fined and cited for improper record 19 keeping and reporting. The excess releases of 20 phenol and methanol have threatened residents with 21 irritation to skin, eyes, mucous membranes, 22 blurred vision, headaches, dizziness and nausea.</p> <p style="text-align: right;">Page 130</p>	<p>1 residents should shelter in place. There was 2 confusion.</p> <p>3 The failsafe system promised afterward 4 by officials has not happened.</p> <p>5 The Carbide explosion resulted from a 6 failure by the company to investigate similar but 7 smaller explosive incidents over many years while 8 deferring crucial maintenance of the furnace that 9 eventually blew up, according to the U.S. 10 Chemical Safety Board. It ran the equipment to 11 failure.</p> <p>12 The report said the company could have 13 prevented it had it voluntarily applied elements 14 of a process safety management program such as 15 Hazard Analysis Incident Investigation and 16 Mechanical Integrity, thus proving the need for 17 continued and improved prevention measures. Not 18 rollbacks.</p> <p>19 The CSB chairman at the time stated that 20 the national standard adopted by industry 21 incorporated into state and federal requirements 22 would go a long way in preventing such tragedies.</p> <p style="text-align: right;">Page 132</p>

<p>1 Low income communities and communities 2 of color are unprotected. Our rights are not the 3 same as others who can drive in and out and who 4 can escape a disaster if a plant blows up by not 5 being close by.</p> <p>6 The environmental injustice of rollbacks 7 is clear. Business friendly enforcement of 8 environmental laws which increase the unfair 9 exposure to harmful chemicals to the poor and 10 communities of color will be exacerbated.</p> <p>11 The discriminatory zoning and land use 12 practices in those communities that make escape 13 and legal redress difficult will be made more so 14 by rollbacks that privilege profits before people.</p> <p>15 And access to information and services 16 after, not to mention before, environmental 17 disasters, will be denied with chemical industries 18 being able to hide dangers from residents who have 19 the right to know what we're exposed to.</p> <p>20 These environmental time bombs created 21 by rolling back preventative and protective 22 measures may blow up - no pun intended - first in</p> <p style="text-align: right;">Page 133</p>	<p>1 explosions at 12,500 high-risk facilities across 2 this nation.</p> <p>3 These "modest improvements", these 4 modest improvements are what is on the table today 5 to be rolled back. What is important to know is 6 that these modest improvements were developed 7 through an exhaustive three-year process that 8 included ten public listening sessions, two 9 separate public comment dockets that received over 10 144,000 comments of small business advocacy review 11 panel, a 147-page regulatory impact analysis, a 12 259-page response to public comments, and two 13 reviews. Not one, two reviews by the Office of 14 Information and Regulatory Affairs. Today, you 15 want to roll all of this back down the hill. That 16 is morally reprehensible.</p> <p>17 Too many of our communities are faced 18 with health disparities, mortality disparities, 19 forced evacuations, forced migration and we don't 20 even have to speak to the community of Mossville, 21 which has been part of this process up to this 22 point that now as we speak cease, no longer exist</p> <p style="text-align: right;">Page 135</p>
<p>1 disadvantaged communities, but collateral damage 2 to others is guaranteed by us all living on the 3 same planet.</p> <p>4 MS. FRANKLIN: Thank you. Michele?</p> <p>5 MS. ROBERTS: Thank you. My name is 6 Michele Roberts. I'm the National Co-Coordinator 7 of the Environmental Justice Health Alliance, 8 which is a national alliance of feneline groups 9 and advocates who serve them, many of those groups 10 you've heard testify this morning, along with our 11 affiliate member REACT.</p> <p>12 We are here actually to, you know when 13 we've looked at this fact sheet, it makes me want 14 to fall off the chair. We're here to really state 15 the fact that all of these proposed changes to the 16 RMP Reconsideration Rule are actually a slow and 17 impending pathway to genocide for communities of 18 color and the poor.</p> <p>19 Why is that? In January 2017, the U.S. 20 Environmental Protection Agency finalized 21 amendments to its Risk Management Plan Rule that 22 was supposed to prevent chemical releases and</p> <p style="text-align: right;">Page 134</p>	<p>1 because they have been overcome by major, major 2 high-risk facilities that have severely displaced 3 them in a very unjust buy-out.</p> <p>4 The Presidential Executive Order 1289A 5 on Federal actions to address environmental 6 justice in communities of color and lower income 7 populations. And the EPA's own environmental 8 justice policies require the agency to identify 9 and address potential disproportionate impacts of 10 the actions on people of color, low income 11 communities, indigenous peoples and provide for 12 "meaningful" involvement of these populations and 13 communities in the decision-making processes.</p> <p>14 These are commitments that Administrator 15 Pruitt testified, under oath, at his confirmation 16 hearing in around the questions from then Senator 17 Corey Booker that he would uphold. Unfortunately, 18 what we are seeing today with this rollback is the 19 proposal that it's a complete rollback of what 20 Senator Pruitt, excuse me, Administrator Pruitt 21 testified to his will to protect communities of 22 color, environmental justice communities.</p> <p style="text-align: right;">Page 136</p>

<p>1 EPA's process to develop the RMP 2 amendments provided multiple opportunities for 3 affected communities to provide input and 4 influence and develop the rule adopted under this 5 specific element to address disproportionate 6 impacts and hazards.</p> <p>7 Today all of these pieces are subjugated 8 to being rolled back.</p> <p>9 In addition to that, as you heard from 10 our many members of our collective, the challenge 11 that they receive in even trying to get to 12 Washington to testify. There's only one public 13 hearing in Washington, D.C. that is not cost 14 prohibitive, excuse me, that is cost prohibitive 15 to our communities.</p> <p>16 They cannot come and spend nights in 17 \$400 and four, five, six hundred dollar a night 18 hotels and leave their families to be able to come 19 and share their testimonies, when actually we feel 20 that the EPA should be in their communities such 21 as what they did before.</p> <p>22 I'm going to end on this note. We have</p> <p style="text-align: right;">Page 137</p>	<p>1 for taking us higher, not lower.</p> <p>2 The life and the breath and the well 3 being of the many members of this homeland, the 4 many community people and workers of this homeland 5 are in your hands. We ask, at the end of the day, 6 how well will you uphold the homeland to make sure 7 that each and every one, from the shadows to the 8 industrial representatives sitting at the table, 9 are fully protected. There is no Planet B. Thank 10 you very much.</p> <p>11 MS. FRANKLIN: Thank you, Michele. Any 12 questions? Okay.</p> <p>13 I have one more speaker. Maya Nye. I'm 14 going to let her say who she's representing.</p> <p>15 MS. NYE: Good afternoon. My name is 16 Maya Nye. I'm here today representing People 17 Concerned About Chemical Safety, based in Chemical 18 Valley, West Virginia, and I'm also here 19 representing the Ohio Valley Environmental 20 Coalition. I'm here primarily as a former 21 impacted resident.</p> <p>22 I lived within a mile of high-risk</p> <p style="text-align: right;">Page 139</p>
<p>1 schools, we have children, we have elderly. We 2 have the poor. We have communities of color and 3 the poor where we have utilized your data that 4 show that they are in disproportionate impact of 5 being actually there at the fencline should a 6 catastrophic event happen.</p> <p>7 In addition to that, we have volunteer 8 firefighters, first responders, first receivers, 9 all whom you've heard that are actually willing 10 and wanting to be able to protect our nation's 11 public should something happen.</p> <p>12 The unfortunate part is the lack of the 13 political will in this administration, 14 unfortunately, to show the moral courage to 15 protect what you all call the people of the 16 homeland.</p> <p>17 We are asking, we are standing here with 18 over 144,000 members and those who are in the 19 shadows and people you have not heard from yet to 20 be able to say that these modest regulations that 21 we were able to receive and achieve under the 22 previous administration should be your baseline</p> <p style="text-align: right;">Page 138</p>	<p>1 facilities my entire childhood. Every single 2 school that I went to as a child was within one 3 mile of a high-risk facility. We, in the 1980s, 4 were actually the model, we were the West Texas of 5 creating chemical safety regulations.</p> <p>6 In 1985, a leak that occurred right 7 after the Bhopal disaster in our community is one 8 of the key events that actually sparked the Risk 9 Management Programs' initiation. You may not be 10 aware of that. So we've been dealing with this 11 for a long time.</p> <p>12 And we are also affiliates of the 13 Environmental Justice and Health Alliance for 14 Chemical Policy Reform and we underscore 15 everything that our folks have said. Our fencline 16 communities are also communities of color and low 17 income communities.</p> <p>18 You know I had prepared testimony but 19 how do you sum up in five minutes a lifetime of 20 some of the most unjust things that have happened 21 to you in your entire life.</p> <p>22 When I was 16 years old, a pesticide</p> <p style="text-align: right;">Page 140</p>

<p>1 facility blew up, the Institute Facility a mile 2 away from my house and that same, exact chemical 3 came into my house. And that same exact unit blew 4 up after Risk Management Plans were implemented. 5 Same exact unit. Two workers died the first time. 6 Two workers died the second time and for the span 7 of time that that happened, we knew for twenty 8 years, that inherently safer technologies existed 9 to be able to change the processes.</p> <p>10 They were actually economically viable 11 to other companies, to DuPont, but Bayer Crop 12 Science chose not to implement those; and as a 13 result, we had another explosion that nearly 14 eclipsed the Bhopal disaster, because the chemical 15 that was being stored in our community was the 16 same chemical that was released in Bhopal, India.</p> <p>17 We stored it, and stockpiled it in 18 twofold what existed in the Bhopal disaster. 19 Twofold. We lived with that under our pillows 20 every night. And we could see what the 21 catastrophic harm would be should that happen. So 22 the fear that you live in when you live that close</p> <p style="text-align: right;">Page 141</p>	<p>1 But we do have evidence that Bayer Crop 2 Science intentionally hid behind Homeland Security 3 laws and actually testified to Congress that they 4 did that in order to prevent the community from 5 knowing that the danger of MIC still existed in 6 our community. They acknowledged that.</p> <p>7 So they refused to provide emergency 8 responders with this crucial information that 9 prevented them from actually responding to the 10 disaster for over forty-five minutes putting, not 11 only the emergency responders, but the community 12 in danger.</p> <p>13 What else have I not gotten to? You 14 know, your current economic analysis fails to 15 consider the external lives, social and health 16 cost of cumulative exposures within these, 17 associated with these Risk Management facilities. 18 It fails to monetize the harm of the structural 19 racism in poverty that it perpetuates by siting 20 these facilities in predominantly low income 21 communities and communities of color.</p> <p>22 No clean company wants to develop next</p> <p style="text-align: right;">Page 143</p>
<p>1 to something like that is pretty spectacular.</p> <p>2 I think I said it, I worked for the 3 chemical industry. My father, my mother, my step 4 mother, my step father, we all worked for the 5 chemical industry. So I understand what it means 6 to have such an economic stability within your 7 community.</p> <p>8 But when you're faced with this kind of 9 fear and disaster, it's just - inherently safer 10 technologies exist that would make us much safer. 11 And, in fact, a better strategy to preventing 12 terrorist attacks is actually to reduce the 13 terrorist threats that exist. Just as Paul Orum 14 said earlier on.</p> <p>15 You know we have no evidence that 16 emergency responders have ever threatened national 17 security, but we do have evidence that Bayer Crop 18 Science, who now owns Monsanto, they're also an 19 active member of the American Chemistry Council's 20 Responsible Care Program. And in fact a number of 21 those facilities have been among the ones who were 22 the worst actors in our community.</p> <p style="text-align: right;">Page 142</p>	<p>1 to that dangerous facility. Certainly Disneyland 2 doesn't want to. We'd love to have that kind of 3 great economic development in our community. 4 Contra Costa County Industrial Safety Ordinance 5 has implemented industrial, or inherently safer 6 technology feasibility studies for years. They've 7 incorporated public participation. They have 8 provided emergency responders with essential 9 hazard information for years without it being a 10 breach of a national security threat.</p> <p>11 So it's pretty reminiscent that this 12 national security threat is being thrown around 13 now, just like what Bayer threw out, just to not 14 be able to tell the community the dangers that 15 exist in their back yard.</p> <p>16 I have more but I guess I'm going to 17 have to submit it in written testimony. Thank 18 you.</p> <p>19 MS. FRANKLIN: Thank you. Well, we 20 don't have anymore scheduled speakers for this 21 session. So we're going to take a short recess. 22 I'm sorry, not a short recess. We're going to</p> <p style="text-align: right;">Page 144</p>

<p>1 break for, well, unless somebody shows up in the 2 next five minutes, but we will go ahead and recess 3 the hearing and we will get back at 1:00 o'clock 4 to restart the hearing. 5 (Recess) 6 MS. REGNA: We're going to restart the 7 hearing now. My name is Jean Regna and I'm the 8 panel chair for this session of the public 9 hearing. I'm an attorney with our New York office 10 in Region 2. Joining me now on the panel are Jon 11 Averback, who's an attorney with our Office of 12 General Counsel, and Kim Jennings, who's the 13 division director of Regulation Implementation 14 Division. 15 Our first two speakers will be Patrick 16 O'Connor and Alexandra Romero. Patrick, would you 17 like to begin? 18 MR. O'CONNOR: Sure. Thank you very 19 much. Good afternoon. I'm Pat O'Connor. I'm 20 here on behalf today of the International 21 Warehouse Logistics Association. The acronym is 22 IWLA. We appreciate the opportunity to</p> <p style="text-align: right;">Page 145</p>	<p>1 railcars into drums, totes, pails, et cetera. 2 We've had a long history with EPA, with 3 the RMP. IWLA worked with EPA back in 2000 to 4 develop a comprehensive implementation guidance 5 document for chemical warehouse operators, "Risk 6 Management Program Guidance for Warehouses." I'm 7 pleased to say that that document is still 8 available on the Internet, on your website. I was 9 saying to someone earlier today that probably 10 merited some updating. 11 Our members also participated as members 12 of the Small Business Advocacy Review Panel, or 13 SBAR, under the SBREFA process. We were unhappy, 14 to say the least, though, that EPA ignored its 15 obligations under SBREFA by submitting a proposed 16 rule to the Office of Management and Budget before 17 the SBAR panel had completed its report. That is 18 one of the reasons we feel that the revisions and 19 review of the RMP standard are warranted because 20 the Agency, to a great extent, overlooked the 21 concerns that were raised during the SBREFA 22 process.</p> <p style="text-align: right;">Page 147</p>
<p>1 participate in this public hearing on the proposed 2 revisions to the RMP standard. 3 Our member companies are warehouse-based 4 third-party logistics providers. They act as 5 distribution centers for their customers. They 6 offer warehousing, inventory, and supply chain 7 management capabilities, as well as a broad range 8 of value-added services. 9 We have a Chemical Council within our 10 membership. The members of the Chemical Council 11 store and handle chemicals and other hazardous 12 materials from manufacturers and wholesale 13 distributors. They take possession and provide 14 care, custody, and control of these materials for 15 future shipment at the direction of the product 16 owner. We do not own the product. We do not sell 17 the product. We are simply an intermediary in the 18 supply chain. 19 The majority of our Chemical Council 20 members are closed-container warehousing 21 operations. While others may repackage chemicals, 22 especially liquids from both tank, truck, and</p> <p style="text-align: right;">Page 146</p>	<p>1 In 2017, we did join with other 2 organizations in asking EPA to reconsider the 2017 3 rule. One of those reasons, of course, was that 4 the impetus for the 2017 RMP rule grew out of the 5 tragic explosion of the ammonium nitrate 6 fertilizer facility in West Texas. That explosion 7 was considered an accidental chemical release. It 8 was later determined to be arson, an intentional 9 criminal act. 10 While there may be support for the 11 overarching goals of the RMP, and I, again, would 12 reiterate that we worked with the Agency back in 13 2000 on a guidance document because we saw the 14 benefit of the goals of the original RMP, we had 15 several significant concerns with the RMP as 16 finalized by the Agency in 2017. We appreciate 17 the fact that many of these concerns are addressed 18 in the revisions that you folks released in May. 19 Just to highlight a few of those 20 concerns, we feel the RMP rule overlaps and 21 conflicts with other federal programs designed to 22 promote safety and security. EPA's RMP rule will</p> <p style="text-align: right;">Page 148</p>

<p>1 be duplicative and add regulatory burdens and 2 likely additional -- likely inconsistencies. In 3 particular, EPA's expansion of the definition of 4 "catastrophic release" to include releases that 5 only produce onsite impact conflicts with OSHA's 6 statutory authority over such releases.</p> <p>7 We're concerned with the numerous 8 inadequacies of a proscriptive inherently safer 9 technology analysis. Those inadequacies have been 10 well documented in response to similar proposals 11 from other agencies and are not any more suitable 12 under the RMP program.</p> <p>13 The RMP rule's requirement of 14 third-party audits is infeasible in certain 15 circumstances due to the high cost and lack of 16 availability of qualified third-party auditors, 17 which have not shown to provide an improvements in 18 safety in comparison to self audits. The 19 third-party audits are likely to introduce 20 unnecessary complexity, burden, and hardship that 21 are not warranted.</p> <p>22 As EPA has previously acknowledge, the</p> <p style="text-align: right;">Page 149</p>	<p>1 people here to present testimony, it is under your 2 discretion whether you would like to be 3 interviewed by a member of the press, and we ask 4 that media members here today respect each 5 individual's wishes.</p> <p>6 Alexandra?</p> <p>7 MS. ROMERO: Good afternoon. My name's 8 Alexandra Romero. I'm an attorney with the law 9 firm of Arent Fox and we represent CRA, the Corn 10 Refiners Association. I'm here today to provide 11 CRA's comments on the proposed RMP reconsideration 12 rule, and we appreciate the opportunity to 13 participate.</p> <p>14 Corn refiners produce sweeteners, 15 starch, bio products, corn oil, and feed products 16 from corn components, such as starch, protein, and 17 fiber. CRA consists of 4 leading member 18 companies, with 27 domestic processing plants 19 located in 11 states. CRA members process 20 approximately 11 percent of the United States' 21 corn supply, which accounts for 8,000 jobs and 22 impacts an additional 259,000 jobs. CRA and its</p> <p style="text-align: right;">Page 151</p>
<p>1 monetized benefits of the RMP rule are likely to 2 exceed the monetized benefits (sic). An 3 appropriate cost-benefit analysis would further 4 underscore how costly this rule would be in 5 comparison to its benefits.</p> <p>6 Thank you for consideration of these 7 comments. And I'm sorry I didn't beat the red 8 light.</p> <p>9 MS. REGNA: Thank you. Any questions? 10 MR. O'CONNOR: Thanks. 11 MS. REGNA: Thank you. Actually, before 12 we continue there's a statement I'd like to read. 13 For everyone's awareness, this hearing is open to 14 the press and we have members of the media present 15 with us today. This event is open to any form of 16 recording, video, audio, and photos. We ask that 17 you not cause any disruption to those testifying 18 or observing the hearing.</p> <p>19 For members of the media, please refrain 20 from interviewing in the public hearing room. If 21 you need interview space, please ask an EPA press 22 contact the Media Registration table. And for</p> <p style="text-align: right;">Page 150</p>	<p>1 predecessors have served this important segment of 2 American agribusiness since 1913.</p> <p>3 CRA's members support the RMP 4 reconsideration rule which rescinds many of the 5 amendments about which CRA raised concerns in the 6 written comments that it submitted in May of 2016. 7 CRA's members believe that the original 1996 RMP 8 requirements have been and continue to be highly 9 effective in minimizing the risk of chemical 10 accidents. Based on EPA data, the number of 11 accidents at RMP-covered facilities has decreased 12 by approximately 60 percent from 1996 through 13 2013. A very small number of RMP-covered 14 facilities are responsible for the majority of 15 reportable accidents. Ninety-two percent of 16 RMP-covered facilities had no accidents at all 17 between 2004 and 2013.</p> <p>18 And the corn refining industry is 19 particularly safe. RMP incident data indicates 20 that for the 10-year period from 2004 through 21 2013, only 0.9 percent of incidents, 22 of 2,291, 22 involved in facilities within the NAICS codes</p> <p style="text-align: right;">Page 152</p>

<p>1 under which CRA's members mostly operate. 2 Accordingly, CRA supports the rescission of the 3 amendments relating to third-party audits, the 4 requirement that owner-operators conduct 5 compliance audits for each covered process, the 6 requirement that owner-operators conduct a root 7 cause analysis as part of their incident 8 investigations, the provisions requiring safer 9 technology and alternatives analyses, the 10 information sharing requirements, training 11 requirements for supervisors with process 12 operational responsibilities, the provisions 13 expanding the scope of process hazard analyses, 14 and the provisions pertaining to the updating of 15 process safety information.</p> <p>16 While safety and the environment is a 17 top priority for CRA's members, as it is 18 throughout the entire industry, CRA believes that 19 these amendments would impose enormous costs with 20 very little, if any, corresponding safety or 21 environmental benefit.</p> <p>22 As the Supreme Court has clarified,</p> <p style="text-align: right;">Page 153</p>	<p>1 Second, there's no data in the 2 rulemaking record to suggest that requiring an 3 STAA analysis provides any measurable benefits or 4 reduces the frequency or severity of incidents. 5 In New Jersey, which has required facilities to 6 conduct an inherent safety technology analysis 7 since 2008, a review of EPA's 10-year accident 8 history data shows that the number of reportable 9 incidents has not decreased since the 10 implementation of that requirement. And, in fact, 11 there have been more reportable incidents in five 12 years since the rule when into effect than the 13 five years prior. Retaining this amendment will 14 likely have the same negligible effect at great 15 cost to covered facilities.</p> <p>16 In summary, CRA believes that the lack 17 of evidence in the rulemaking record regarding the 18 specific benefits that may occur as a result of 19 these amendments confirms that the original RMP 20 requirements have been and continue to be highly 21 effective. Accordingly, CRA believes that 22 inspections and enforcement of existing</p> <p style="text-align: right;">Page 155</p>
<p>1 rulemakings initiated under the Clean Air Act must 2 address the costs of the proposed actions on the 3 public, as well as the likely benefits. Here, 4 however, CRA's members believe that the rulemaking 5 record for the RMP amendments was fundamentally 6 flawed because it shows that the Agency failed to 7 consider a number of important factors that bear 8 on the cost of the amendments and failed to 9 quantify the anticipated benefits of the changes 10 in the rule.</p> <p>11 Of the major changes, EPA's cost-benefit 12 analysis falls particularly short with respect to 13 two, which are illustrative of the deficiencies in 14 the other amendments. First, EPA's proposal to 15 require third-party audits is infeasible and 16 appears to be premised on the assumption that 17 third parties are more capable, more credible, and 18 more objective than a facility's own employees. 19 CRA's members disagree with that assumption and 20 did not find any evidence in the record that the 21 third party audit requirement would result in any 22 appreciable safety or environmental benefit.</p> <p style="text-align: right;">Page 154</p>	<p>1 regulations that are targeted towards the minority 2 of RMP-covered facilities that are repeat 3 offenders would be a more effective way to 4 decrease chemical accidents without burdening 5 facilities that have never had an accident with 6 the proposed amendments.</p> <p>7 Thank you for your time and 8 consideration.</p> <p>9 MR. AVERBACK: Thank you, Alexandra. 10 MS. ROMERO: Sure. 11 MR. AVERBACK: You mentioned the 12 accident rates in New Jersey since the 13 implementation of I guess what they call ISD, we 14 call it STAA. Have you compared the rates there 15 to a comparable state with a similar mix of 16 chemical handling facilities, regulated 17 facilities, like Delaware or perhaps parts of 18 Pennsylvania or whatever?</p> <p>19 MS. ROMERO: Yes, we have looked at that 20 and compared New Jersey's data with other states. 21 I don't have the specific off the top of my head. 22 MR. AVERBACK: No.</p> <p style="text-align: right;">Page 156</p>

<p>1 MS. ROMERO: But we did not see any 2 appreciable difference.</p> <p>3 MR. AVERBACK: Yeah, when you submit 4 your comments because, I mean, we did have sort of 5 a specific request for information on accident 6 history, teasing out a lot of them. You know, our 7 identification of the STAA codes were based on 8 accident history.</p> <p>9 Are your facilities, the corn refinery 10 facilities, subject to STAA under the 2017 rule or 11 are you outside the magic (inaudible)?</p> <p>12 MS. ROMERO: I believe that they're 13 primarily outside of that requirement, outside of 14 the coverage of that requirement.</p> <p>15 MR. AVERBACK: Outside of it. And as 16 long as you're still up there, Patrick, Alexandra 17 mentioned the accident history of her members' 18 facilities. Do you have any information on 19 accident rates at warehouses?</p> <p>20 MR. O'CONNOR: You know, I do not, but I 21 made a note to myself to get that and we'll 22 include that in our written comments.</p> <p style="text-align: right;">Page 157</p>	<p>1 risky basket.</p> <p>2 Seismologists tell us that the odds are 3 43 percent that an earthquake of magnitude 6.7 or 4 greater will strike the Wasatch front in the next 5 50 years. Such an earthquake would damage a 6 majority of the region's building foundations. It 7 would rupture chemical storage tanks, as well as 8 gas, water, and sewer lines. Fatalities and 9 serious injuries would exceed 10,000, and economic 10 damage would reach 35 billion.</p> <p>11 The infrastructure most at risk is 12 Refinery Row that lines Salt Lake City's northern 13 escape route. These five oil refineries were 14 built on top of the fault line. They rest on soil 15 prone to liquefaction. More than 70 years old, 16 these refineries were never engineered to 17 withstand a major earthquake.</p> <p>18 When it comes, experts anticipate 19 natural gas-fed fires and explosions, loss of 20 electrical power to operate safety valves and 21 switches, and loss of the water needed to cool 22 pipes, extinguish fires, and tamp down toxic vapor</p> <p style="text-align: right;">Page 159</p>
<p>1 MR. AVERBACK: Okay, because you would 2 be subject to the incident investigation and I 3 guess the third-party audit are both triggers on 4 incidents. So that information's useful to us. 5 Thank you.</p> <p>6 MR. O'CONNOR: Okay, we'll provide it.</p> <p>7 MS. REGNA: Thank you both. Our next 8 two speakers will be Malin Moench and Jake Tyner. 9 Malin, would you like to begin?</p> <p>10 MR. MOENCH: My name is Malin Moench. 11 Utah Physicians for a Healthy Environment consists 12 of some 430 physicians and other healthcare 13 professionals. We offer our expertise to improve 14 public understanding of the intimate connection 15 between environmental health and human health.</p> <p>16 FEMA recently concluded that earthquakes 17 are Utah's most serious natural threat. The main 18 reason is the Wasatch fault. Nearly 80 percent of 19 Utah's population and 85 percent of its economic 20 activity is located in harm's way within 15 miles 21 of this fault. For better or worse, Utah has put 22 nearly all of its eggs in this very geologically</p> <p style="text-align: right;">Page 158</p>	<p>1 clouds. VOCs, polycyclic aromatic hydrocarbons, 2 and acid aerosols can be expected to pour into 3 surrounding neighborhoods and, depending on 4 prevailing winds, into Salt Lake City whose 5 downtown is six miles away.</p> <p>6 These refineries are public health time 7 bombs. They border residential neighborhoods, 8 commercial districts, and elementary schools. 9 They are waiting to be detonated by a major 10 earthquake.</p> <p>11 Worst of all, if a magnitude 6.7 12 earthquake struck tomorrow, it would likely expose 13 thousands of Wasatch front residents to the 14 chemical from hell: Hydrogen fluoride, or HF. 15 Breathing it swells the lungs, fills them with 16 water, and soon causes the victim to suffocate. 17 At high concentrations brief exposure is lethal. 18 When released, HF forms a toxic cloud denser than 19 air, that hugs the ground and can spread for miles 20 without losing its ability to kill. Because it 21 quickly damages human tissue of all types and 22 dissipates slowly, large HF releases in urban</p> <p style="text-align: right;">Page 160</p>

<p>1 areas can inflict mass casualties.</p> <p>2 Only 50 of the nation's oil refineries</p> <p>3 continue to rely on HF, but they have experienced</p> <p>4 131 HF releases or near misses. Three of Salt</p> <p>5 Lake's refineries still use it. As far as safety</p> <p>6 is concerned, Utah's oil refineries essentially</p> <p>7 self-regulate, but not effectively. Over 10 years</p> <p>8 they have averaged one fire, explosion, or</p> <p>9 chemical release every 9 days. Although most of</p> <p>10 these incidents did not involve HF, high overall</p> <p>11 accident rates like this are the best predictor of</p> <p>12 whether a refinery using HF will eventually spill</p> <p>13 it.</p> <p>14 Regarding chemical accidents, there's a</p> <p>15 regulatory vacuum in Utah. It's Division of Air</p> <p>16 Quality says that it is not its job to regulate</p> <p>17 accidental refinery emissions or to plan for an</p> <p>18 HF-related disaster. Utah's OSHA counterpart says</p> <p>19 that it will investigate accidental emissions only</p> <p>20 when they injure refinery workers. Otherwise, it</p> <p>21 will not monitor accidental emissions, not inspect</p> <p>22 how HF is stored or used, and will not plan for an</p> <p style="text-align: right;">Page 161</p>	<p>1 If a magnitude 6.7 earthquake strikes</p> <p>2 the Wasatch front its residents will pay a heavy</p> <p>3 price for repeal of those essential safety</p> <p>4 regulations.</p> <p>5 MS. REGNA: Thank you. Jake, would you</p> <p>6 like to speak?</p> <p>7 MR. TYNER: Sure. Good afternoon. My</p> <p>8 name is Jake Tyner and I'm here on behalf of the</p> <p>9 U.S. Chamber of Commerce. The Chamber is the</p> <p>10 world's largest bidder -- business federation</p> <p>11 representing the interests of more than 3 million</p> <p>12 businesses of all sizes, sectors, and regions, as</p> <p>13 well as state and local chambers and industry</p> <p>14 associations. The Chamber supports the U.S.</p> <p>15 Environmental Protection Agency's proposal to</p> <p>16 rescind or modify certain provisions of the</p> <p>17 amendments to the final Risk Management Program</p> <p>18 rule.</p> <p>19 The safety and security of facilities,</p> <p>20 employees, and communities are extremely important</p> <p>21 to the Chamber and its members. The Chamber's</p> <p>22 members conduct risk management planning,</p> <p style="text-align: right;">Page 163</p>
<p>1 HF disaster.</p> <p>2 In January 2017, the EPA issued its</p> <p>3 chemical disaster rule. It would have required</p> <p>4 Salt Lake refineries that use HF to evaluate</p> <p>5 switching to less hazardous alternatives, to find</p> <p>6 the root causes of accidents, to help first</p> <p>7 responders device accident response plans, and to</p> <p>8 disclose its use of HF to workers and residents</p> <p>9 who are in harm's way so that they could better</p> <p>10 prepare for HF releases.</p> <p>11 There are 1.6 million Utahans living</p> <p>12 within the maximum risk zone of a refinery that</p> <p>13 stores and uses HF. It is urgent that we</p> <p>14 implement the accident provision measures of the</p> <p>15 chemical disaster rule described above.</p> <p>16 The EPA now proposes to drop them. Its</p> <p>17 motive is to save the oil refineries, what we call</p> <p>18 pennies on the disaster dollar: Saving an</p> <p>19 individual refinery a few hundred thousand dollars</p> <p>20 while risking the billions of dollars' worth of</p> <p>21 harm that a major release of toxic chemicals like</p> <p>22 HF could inflict on our region.</p> <p style="text-align: right;">Page 162</p>	<p>1 investment security, and believe that supporting</p> <p>2 an ongoing partnership between businesses and</p> <p>3 federal, state, and local officials is critical to</p> <p>4 ensuring facility safety today and in the future.</p> <p>5 However, the Chamber's long opposed the 2017</p> <p>6 amendments to the RMP rule that EPA's proposal</p> <p>7 seeks to now change because they were</p> <p>8 unreasonable, unnecessary, and adopted under a</p> <p>9 flawed process.</p> <p>10 EPA first issued the RMP rule amendments</p> <p>11 on January 13, 2017. To that end, the Chamber</p> <p>12 joined a number of other industry associations</p> <p>13 known as the RMP Coalition in petitioning the EPA</p> <p>14 to reconsider the final RMP rule amendments in</p> <p>15 February 2017. The petition focused on how a</p> <p>16 number of procedural deficiencies related to the</p> <p>17 RMP rule and concluded an effective notice and</p> <p>18 comment rulemaking in violation of the</p> <p>19 Administrative Procedure Act, as well as</p> <p>20 previously unknown purposeful and criminal</p> <p>21 circumstances surrounding the West Texas incident</p> <p>22 that motivated the amendments.</p> <p style="text-align: right;">Page 164</p>

<p>1 According to the Bureau of Alcohol, 2 Tobacco, and Firearms, the incident was no 3 accident. Notably, the incident inspired 4 Executive Order 13650, improving chemical facility 5 safety and security, which serves as the driver 6 for the amendments to the RMP rule.</p> <p>7 Over the course of spring 2017, EPA 8 delayed the effective date of the RMP rule 9 amendments a number of times in order to give 10 serious and due consideration to the procedural, 11 substantive, and security concerns raised in the 12 reconsideration petitions. Ultimately, on June 9, 13 2017, EPA acted to delay the rule's effective date 14 for 20 months until February 19, 2019, in order to 15 consider the serious issues in the petitions for 16 reconsideration of the rule and take future 17 regulatory action, which could include proposing, 18 finalizing, or revising the RMP rule.</p> <p>19 The Chamber supported the EPA's delay of 20 the RMP rule amendments' effective date because it 21 was a prudent course of action given the 22 deficiencies in the rulemaking process for the RMP</p> <p style="text-align: right;">Page 165</p>	<p>1 communications by the SBA.</p> <p>2 The proposal addressed today would 3 rescind the amendments to the RMP rule related to 4 technology and alternatives analysis, third-party 5 audits, incident investigations, information 6 availability, and several other minor regulatory 7 changes. The proposal would also modify 8 amendments related to local emergency coordination 9 and emergency exercises, and change the compliance 10 dates for those provisions in order to address 11 their shortcomings and make them effective and 12 efficient at advancing emergency preparedness and 13 response.</p> <p>14 The Chamber supports the overarching 15 goals of the Risk Management Program under the 16 Clean Air Act, finds that the performance record 17 of the existing RMP rule is efficiently advancing 18 the safety and security objectives of these goals, 19 and believes that the proposal appropriately 20 addresses our concerns and removes unnecessary, 21 overlapping, and overly burdensome requirements 22 without jeopardizing safety or security.</p> <p style="text-align: right;">Page 167</p>
<p>1 rule and the many concerns raised by stakeholders 2 in their comments during the rule's promulgation. 3 In written comments submitted in May 2016, the 4 Chamber noted that provisions included in the RMP 5 rule amendments were unnecessary, too costly and 6 that the changes in the amendments would not lead 7 to safer outcomes for the chemical industry, its 8 workers, or the communities where these businesses 9 reside.</p> <p>10 Specifically, those provisions 11 overlapped and conflicted with other existing 12 federal programs designed to promote safety and 13 security, included an unjustified alternative 14 analysis requirement, created security risks 15 through public disclosure requirements and other 16 measures, required unfeasible third-party auditing 17 requirements, failed to be justified through the 18 appropriate cost-benefit analysis, and did not 19 comply with the Small Business Regulatory 20 Enforcement Fairness Act, and address the many 21 issues raised in the Small Business 22 Administration's report and other advocacy</p> <p style="text-align: right;">Page 166</p>	<p>1 Thank you for your time and 2 consideration.</p> <p>3 MS. REGNA: Thank you both. Our next 4 two speakers will be Richard Pavlak and Sydney 5 Colopy. Richard, would you like to start?</p> <p>6 MR. PAVLAK: Good afternoon. My name is 7 Richard Pavlak. I'm speaking today on behalf of 8 the Chemical Safety Advocacy Group, also known as 9 CSAG.</p> <p>10 CSAG is a coalition of companies formed 11 specifically to improve EPA and OSHA's actions to 12 amend the regulations of the Risk Management 13 Program and Process Safety Management Program, 14 respectively. CSAG members collectively possess 15 the experience of dozens of RMP and PSM facilities 16 and decades of work advancing best practices in 17 RMP and PSM, and the refining oil and gas, 18 chemicals, and general manufacturing sectors.</p> <p>19 CSAG actively engaged in every phase 20 leading up to the issuance of the January 13, 21 2017, amendments, filing extensive comments on the 22 proposed rule, and accompanying ICR, initiating</p> <p style="text-align: right;">Page 168</p>

<p>1 meetings with OMB to discuss our concerns and 2 offer meaningful alternatives, filing a formal 3 petition for reconsideration to explain our 4 continued concerns, and filing a petition for 5 review of the amendments. CSAG has approached 6 this new RMP rule proposal with the same 7 dedication to risk management and process safety 8 excellence and offers the following oral comments 9 to accompany our formal written submittal.</p> <p>10 CSAG supports EPA's decision to 11 reconsider aspects of the rule and believes that 12 the information needed to support the majority of 13 the proposed changes is already in the record for 14 the 2017 amendments. CSAG appreciates that EPA 15 was under a tight timeframe to finalize the 16 amendments by January 2017, but also assets that 17 the seven-month period from the close of the 18 comment period to publication of the final 19 amendments was simply too share for EPA staff to 20 adequately consider and address the extensive 21 information provided in the comments on the 22 proposal. As a result, the amendments did not</p> <p style="text-align: right;">Page 169</p>	<p>1 major problem with the 2017 RMP amendments is that 2 they provide no quantifiable benefits relative to 3 -- excuse me one minute -- relative to their high 4 compliance costs. Fundamentally, they focus on 5 the wrong things relative to the goals of 6 preventing catastrophic releases and mitigating 7 their consequences.</p> <p>8 For example, the safer technology and 9 alternatives analysis provisions were extremely 10 costly, yet provided no benefits and were being 11 driven through procedures that EPA acknowledged 12 are poorly suited to such analyses CSAG believes 13 that the alternative technologies are already 14 being considered as new processes are being 15 designed and that the expensive analysis in STAA 16 provides no meaningful benefits.</p> <p>17 Another example is that third-party 18 auditing provisions delegated enforcement and 19 inspection authority to private parties. Further, 20 the 2017 amendments created new harms to the 21 public and environment that EPA had not intended. 22 CSAG and other stakeholders, including federal</p> <p style="text-align: right;">Page 171</p>
<p>1 adequately respond to the overwhelming information 2 in the record that laid out where the continued 3 problems were and how to fix them.</p> <p>4 In addition, the amendments retained 5 provisions counterproductive to the RMP goal of 6 safety and environmental protection by way of a 7 strong performance standard. Industry has already 8 implemented and developed mature programs and best 9 practices pursuant to the current RMP rules' 10 performance- driven provisions. Indeed, EPA 11 repeatedly confirmed on the record that the RMP 12 rules in place since the early 1990s have been 13 successful and highly productive -- protective, 14 and I quote, "effective in preventing and 15 mitigating chemical accidents in the United States 16 and protecting human health and the environment 17 from chemical hazards."</p> <p>18 Rather than showing a need for more 19 rules, the concerns with the RMP program are a 20 result of inadequate implementation at a facility 21 and enforcement of outliers by the regulators. As 22 CSAG explained in its reconsideration petition, a</p> <p style="text-align: right;">Page 170</p>	<p>1 security and law enforcement agencies, raised 2 serious concerns with the security implications of 3 the 2017 RMP amendments.</p> <p>4 The amendments compel disclosure of 5 security- sensitive information with no means to 6 keep it out of the hands of terrorists or other 7 criminals. CSAG was gratified to see that EPA 8 acknowledged these harms and has now proposed 9 revisions to address these dangers on which we 10 will submit written comments.</p> <p>11 CSAG looks forward to providing further 12 comments, supporting documentation, and 13 alternative ways to address the environmental and 14 public safety objectives in the newly proposed RMP 15 rule. CSAG remains concerned with the resource 16 constraints and the coordination and exercise 17 provisions, timeframe for holding public meetings, 18 and issues related to near-miss, supervisor 19 training, and compliance audits. It is important 20 that these statements in the final rule and this 21 proposal be precise and meaningful in the 22 regulations on these points.</p> <p style="text-align: right;">Page 172</p>

<p>1 We thank you for the time allotted to</p> <p>2 testify today.</p> <p>3 MS. REGNA: Thank you. Sydney, would</p> <p>4 you like to speak?</p> <p>5 MS. COLOPY: Good afternoon and thank</p> <p>6 you for the opportunity to speak today. My name</p> <p>7 is Sydney Colopy and I'm here to voice my strong</p> <p>8 opposition to the EPA's proposed reconsideration</p> <p>9 of accidental release prevention requirements</p> <p>10 under the Risk Management Program.</p> <p>11 The EPA's proposed rule would reverse</p> <p>12 critical improvements to chemical facility safety</p> <p>13 standards that protect workers, neighborhoods, and</p> <p>14 communities. It is extremely important that</p> <p>15 chemical facilities to examine solutions that are</p> <p>16 less dangerous to their workers and local</p> <p>17 communities, yet the EPA's proposing eliminating</p> <p>18 the requirement that the most dangerous chemical</p> <p>19 facilities assess safer alternatives.</p> <p>20 The proposed rule would also put workers</p> <p>21 and communities at higher risk by removing the</p> <p>22 compliance audit requirement and all requirements</p> <p style="text-align: right;">Page 173</p>	<p>1 respond to and mitigate a chemical disaster, but</p> <p>2 the EPA proposes removing that requirement. We</p> <p>3 should be pushing for better coordination between</p> <p>4 responders and facilities, not putting responders,</p> <p>5 workers, and nearby residents in danger by</p> <p>6 eliminating these requirements.</p> <p>7 The EPA has power under the Clean Air</p> <p>8 Act to implement chemical release regulations</p> <p>9 separate from OSHA and, as California's stricter</p> <p>10 chemical facility standards show, the economic</p> <p>11 benefits of fewer disasters outweigh the costs of</p> <p>12 implementing safer practices. Strong chemical</p> <p>13 facility safety standards are good for American</p> <p>14 workers, communities, and industry. I urge the</p> <p>15 EPA to abandon the proposal to reconsider and to</p> <p>16 instead uphold the 2017 RMP rule in order to</p> <p>17 fulfill its mission of protecting human health.</p> <p>18 Thank you.</p> <p>19 MS. REGNA: Any questions?</p> <p>20 MR. AVERBACK: One aspect of your</p> <p>21 comments was directed towards the proposed changes</p> <p>22 to the emergency coordination provisions. That's</p> <p style="text-align: right;">Page 175</p>
<p>1 for independent third-party audits. Communities,</p> <p>2 residents, and workers deserve to have an unbiased</p> <p>3 and independent assessment of safety failures if a</p> <p>4 chemical disaster occurs. And third-party audits</p> <p>5 demonstrate a business best practice.</p> <p>6 In addition, EPA's proposal to remove</p> <p>7 requirements for root cause analysis,</p> <p>8 knowledgeable investigative teams, and</p> <p>9 documentation of investigations shows completely</p> <p>10 disregard for preventing future incidents.</p> <p>11 Vulnerable populations are at an even higher risk</p> <p>12 if these safety standards are eliminated.</p> <p>13 Low-income communities and communities</p> <p>14 of color are disproportionately affected by weak</p> <p>15 safety standards: 135 million people live in</p> <p>16 vulnerability zones and 20 million children attend</p> <p>17 school in vulnerability zones. And they deserve</p> <p>18 the protection from dangerous chemical incidents</p> <p>19 that the 2017 RMP rule provides.</p> <p>20 The 2017 RMP rule also requires that</p> <p>21 facilities provide emergency planners and first</p> <p>22 responders with information needed to safely</p> <p style="text-align: right;">Page 174</p>	<p>1 one section where we're proposing a set of</p> <p>2 modifications rather than a full rescission. Is</p> <p>3 your testimony that you're opposed to the</p> <p>4 revisions that we're proposing? I'm a bit</p> <p>5 confused.</p> <p>6 MS. COLOPY: My testimony is that we</p> <p>7 stand by the 2017 RMP rule. And so I can look</p> <p>8 into that further and include it in my comment,</p> <p>9 but I'm not sure further than that.</p> <p>10 MR. AVERBACK: Yeah. And just as a</p> <p>11 general matter, even on some of the provisions</p> <p>12 that we're proposing to rescind, we're soliciting</p> <p>13 comment on various options or short of full</p> <p>14 rescission, so this causes much fervor. Everyone</p> <p>15 when they submit their comments that we're</p> <p>16 interested in their views in all of the comments</p> <p>17 and solicitations in the proposal.</p> <p>18 MS. REGNA: Okay, thank you both. Our</p> <p>19 next two speakers will be Miles Donovan and</p> <p>20 Michael Overton. Miles, would you like to begin?</p> <p>21 MR. DONOVAN: Sure. Good afternoon. My</p> <p>22 name is Miles Donovan. Thank you for the</p> <p style="text-align: right;">Page 176</p>

<p>1 opportunity to offer comment today.</p> <p>2 I am a member of the League of</p> <p>3 Conservation Voters and I'm here to strongly</p> <p>4 oppose the EPA's proposed reconsideration of</p> <p>5 accidental release prevention requirements in the</p> <p>6 Risk Management Program. The program, which was</p> <p>7 updated in early 2017, is crucial for improving</p> <p>8 the safety of chemical facilities, protecting</p> <p>9 first responders, and reducing exposure to</p> <p>10 vulnerable communities, particularly low-income</p> <p>11 communities. The Risk Management Program was</p> <p>12 updated in part due to the 1,500 reported</p> <p>13 incidents that occurred at RMP chemical facilities</p> <p>14 between 2004 and 2013, 500 of which had offsite</p> <p>15 impacts. In total, nearly 60 people died and more</p> <p>16 than 2 billion in property damages resulted. The</p> <p>17 EPA's new proposed rule would cut vital</p> <p>18 improvements to chemical facilities and add to</p> <p>19 these troubling statistics.</p> <p>20 Perhaps the most essential provision of</p> <p>21 the 2017 RMP rule that EPA has proposed removing</p> <p>22 is the requiring of the highest risk facilities to</p> <p style="text-align: right;">Page 177</p>	<p>1 handling a critical disaster.</p> <p>2 Worst of all, some populations bear an</p> <p>3 unequal proportion of the risk when it comes to</p> <p>4 chemical facilities, the true extent to which the</p> <p>5 EPA's proposed rule refuses to acknowledge. The</p> <p>6 poverty rate around these facilities is 50 percent</p> <p>7 greater than the U.S. average. In fact,</p> <p>8 low-income children of color are more than twice</p> <p>9 as likely to live within one mile of these</p> <p>10 dangerous facilities compared to those above the</p> <p>11 poverty line.</p> <p>12 In total, around 20 million school</p> <p>13 children who are more susceptible when exposed to</p> <p>14 toxic chemicals attend schools in the</p> <p>15 vulnerability zones at high-risk facilities.</p> <p>16 I strongly urge the EPA to propose the</p> <p>17 reconsideration of this rule. The EPA must not</p> <p>18 ignore its core mission of protecting our health</p> <p>19 and the environment by placing industrial</p> <p>20 interests above human health and safety. Thank</p> <p>21 you.</p> <p>22 MS. REGNA: Thank you.</p> <p style="text-align: right;">Page 179</p>
<p>1 complete safer technology alternatives</p> <p>2 assessments. These imperative assessments</p> <p>3 determine whether such facilities could avoid</p> <p>4 future disasters by adopting better technologies</p> <p>5 and processes, ultimately saving the industry</p> <p>6 money in the long run and greatly reducing the</p> <p>7 risk of harmful and deadly incidents. This is</p> <p>8 widely regarded as the best method in furthering</p> <p>9 safety on potentially harmful sites.</p> <p>10 Additionally, the EPA's new plan will</p> <p>11 eliminate the requirements that facilities</p> <p>12 coordinate with emergency planners, first</p> <p>13 responders at least annually, providing details on</p> <p>14 the chemicals they are working with and how to</p> <p>15 deal with them in the event of a crisis. This</p> <p>16 will place a lot of the first responders and</p> <p>17 others in even greater danger. EPA's proposal</p> <p>18 would also make valuable field exercises carried</p> <p>19 out by facilities at least every 10 years</p> <p>20 non-mandatory. Both of these changes would</p> <p>21 drastically hurt the effectiveness of first</p> <p>22 responders and of the facilities themselves when</p> <p style="text-align: right;">Page 178</p>	<p>1 MR. OVERTON: Good afternoon. I am</p> <p>2 Michael Overton, and I'm from Winston-Salem, North</p> <p>3 Carolina. Thank you for this opportunity to</p> <p>4 comment. I'm a member of the League of</p> <p>5 Conservation Voters and I'm here to speak out</p> <p>6 against the EPA's proposed rule to change the</p> <p>7 chemical safety standards of the risk management</p> <p>8 program.</p> <p>9 The January 2017 Chemical Disaster Rule</p> <p>10 was the previous administration's response to more</p> <p>11 than 1,500 reportable incidents at RMP covered</p> <p>12 chemical facilities between 2004 and 2013,</p> <p>13 incidents that caused 60 deaths, 500,000</p> <p>14 evacuations or shelters in place, and more than \$2</p> <p>15 billion in property damage.</p> <p>16 Among the most important components of</p> <p>17 the 2017 rule, the first update to the original</p> <p>18 RMP since 1996 was a requirement for regularly</p> <p>19 scheduled compliance and third-party audits of</p> <p>20 chemical processes at facilities. Yet, EPA's</p> <p>21 proposed changes would strike these proactive</p> <p>22 requirements in favor of follow-up audits</p> <p style="text-align: right;">Page 180</p>

<p>1 commenced only in reaction to multiple accidents 2 or demonstrated regulatory violations. This 3 change would both reward bad behavior and 4 undermine the EPA's duty to promote industry best 5 practices.</p> <p>6 When it comes to the health and safety 7 of both workers as well as the general public, 8 there is no such thing as being too cautious. 9 Since the EPA first delayed the January 2017 rule, 10 at least 46 incidents have occurred across the 11 country. One of these incidents occurred when 12 both the fire and chemical leak broke out at the 13 house of Rayford Plant in Mocksville, North 14 Carolina, just a few short miles from my home in 15 Winston-Salem. Only by luck and timing with the 16 leak occurring in the middle of the night were 17 injuries limited.</p> <p>18 Both incidents like this occurring 19 regularly, even now, it's wholly responsible for 20 the EPA to eliminate instruments like the safer 21 technology alternatives assessment which works to 22 ensure chemical facilities adopt inherently safer</p> <p style="text-align: right;">Page 181</p>	<p>1 MR. AVERBACK: The third party -- 2 MS. REGNA: -- the third-party audit. 3 MR. AVERBACK: Yeah. The third-party 4 provision was only with -- I believe was only 5 post-accident. 6 MS. REGNA: Right. Only under certain 7 circumstances. 8 MR. AVERBACK: Right. 9 MS. REGNA: Okay. 10 MR. AVERBACK: The incident you 11 mentioned near where you live, what -- do you know 12 what chemical was involved and what type of plant 13 had the incident? 14 MR. DUERTON: I don't recall off the top 15 of my head the chemical involved but I can include 16 that in the written comments. 17 MR. AVERBACK: Thank you. 18 MS. REGNA: Thank you both. Our next 19 speaker will be Ean Tafoya. 20 MR. TAFOYA: Hello. So my name is Ean 21 Thomas Tafoya and I'm here representing the 22 Colorado Latino Forum. We're an organization of</p> <p style="text-align: right;">Page 183</p>
<p>1 technologies and processes without enacting 2 similarly robust policies. Without these 3 safeguards, we can expect more incidents like that 4 which occurred in Mocksville or worse.</p> <p>5 EPA's proposed rule would be a major 6 setback in chemical safety and is one which our 7 health and well-being cannot afford. I strongly 8 encourage the EPA not to go ahead with the rule 9 changes and instead, to fully implement the 10 January 2017 rule. Thank you.</p> <p>11 MS. REGNA: Thank you. One question. 12 Did you state that the rule would strike the 13 regularly scheduled compliance audits? Is that 14 what you seem to be saying? 15 MR. DUERTON: The third-party audits. 16 MS. REGNA: Oh, the third party. The 17 existing -- the proposed rule would maintain the 18 requirement for regularly scheduled compliance 19 audits every three years? 20 MR. AVERBACK: Yeah, it would block out. 21 MS. REGNA: But it -- yeah. But it 22 would not, as you're saying --</p> <p style="text-align: right;">Page 182</p>	<p>1 thousands of Latinos in Colorado, predominantly in 2 the metro Denver area. 3 I'm here today mostly because I've been 4 doing a lot of environmental justice work around 5 Suncor Energy. It's been specific as the one 6 industry that has had the greatest impact on 7 Latinos in the community. 8 In the last few years, it's had several 9 explosions and releases of gas, most particular 10 sulfur dioxide, although hydrogen cyanide permits 11 were just approved. It is especially dangerous 12 because it's adjacent to three highways, two 13 elementary schools, a new transit line, and a 14 river, which it had leaked benzene in for nearly 15 six years before it was finally brought into 16 compliance. 17 Now, I'm not here to say today that land 18 use patterns are your issue; they're not. They're 19 the issue of me and people in my community to 20 fight for better fence line monitoring and all the 21 things that are associated with that. Also, the 22 removing of schools.</p> <p style="text-align: right;">Page 184</p>

<p>1 I'm also not here today to tell you that 2 I think the chemical industry is bad. I can't 3 paint anybody as bad or good. I realize that I 4 enjoy many, many products that are produced and 5 created around chemical industries.</p> <p>6 What I am here today to say is that 7 there are parts of this rule in your proposal that 8 I like. That you intend to keep parts of the 9 emergency response coordination, although I don't 10 believe they should be weakened. I believe -- I 11 was an educator in my earlier career, and I 12 believe the more you train for problems, the 13 easier it is to deal when they happen.</p> <p>14 I'm not in favor -- I am in favor of 15 this public information requirement where you 16 actually are trying to strengthen the 17 notifications to the community after a disaster. 18 Thirty days is better than 90 days from my point 19 of view.</p> <p>20 In regard to a majority of these changes 21 and rollback for the Chemical Disaster Rules, my 22 organization strongly opposes this rule change,</p> <p style="text-align: right;">Page 185</p>	<p>1 with the other industries, \$88 million pales in 2 comparison to the costs of the lives and for the 3 community.</p> <p>4 I guess I'd really like to close by 5 saying, you know, failure to plan is planning to 6 fail. And in the first moments of an incident, 7 all will be glad that practice was put before 8 profits. Communities have the right to plan 9 effectively to prevent and to respond to 10 disasters, period. Thank you.</p> <p>11 MS. REGNA: Thank you very much. We 12 have no more speakers at the moment so we'll be 13 taking a brief recess.</p> <p>14 (Recess)</p> <p>15 MS. REGNA: We're going to restart the 16 hearing now. Our next speaker will be Michael 17 Wilson.</p> <p>18 MR. WILSON: Good afternoon. My name is 19 Michael Wilson. I'm the national director for 20 Occupational and Environmental Health at the 21 BlueGreen Alliance.</p> <p>22 On behalf of my organization, our</p> <p style="text-align: right;">Page 187</p>
<p>1 whether it be technological advancements or 2 third-party audits. Especially third-party 3 audits. Anybody who is put in charge of making 4 their own decisions about whether they're doing 5 something right or not, and profit is based on 6 that, you have to say that they're going to err in 7 the favor of profit. I wish it wasn't so.</p> <p>8 Now, as far as root causes and near 9 misses, how do we expect to learn and to get 10 better if we don't actually report when there are 11 near misses, drive technology to help them, and 12 figuring out what the problem is?</p> <p>13 Now, in the last 10 years, there have 14 been over 1,500 incidents to the tune of \$2 15 billion in damage, 58 deaths, and nearly \$17,000 16 people injured. Now, when Scott Pruitt issued 17 this announcement, he made a claim that \$88 18 million in savings would be had. While I was 19 doing my research, I found that the National 20 Association of Chemical Distributors who oppose 21 the previous rule from 2017, claims nearly \$31 22 billion in sales annually. If you couple that</p> <p style="text-align: right;">Page 186</p>	<p>1 national labor and environmental partners and the 2 millions of members and supporters they represent, 3 I urge the EPA to stand up for industrial workers, 4 first responders, and fence line communities by 5 reversing its proposal to rescind crucial 6 amendments to the risk management program.</p> <p>7 I'm familiar with the risks of 8 industrial hazards because I had the privilege of 9 working for 13 years as a professional 10 firefighter, paramedic, and EMT, during which time 11 I responded to about 10,000 emergency calls. I 12 worked in a city with heavy industry centered 13 around agriculture, so there were many facilities 14 that used chlorine and ammonia and other 15 agricultural chemicals. Responding to an incident 16 at one of these facilities meant grappling with a 17 lot of uncertainty because the facilities weren't 18 required to invite us in and involve us in 19 planning or training for an emergency.</p> <p>20 In general, these facilities relied on 21 us if they had an emergency, but they were 22 reluctant to help us improve the safety and</p> <p style="text-align: right;">Page 188</p>

<p>1 effectiveness of our response. Without a doubt, 2 emergency response is a necessary aspect of 3 chemical safety, but it's an indicator of a 4 failure. It's a measure of last resort where 5 thoughtful planning and prevention have broken 6 down. EPA reported this year that most serious 7 chemical accidents are preventable if the 8 necessary precautions and actions are taken, and 9 yet, serious industrial chemical accidents 10 continue to occur every two and a half days across 11 our nation.</p> <p>12 Last year, EPA estimated that about 177 13 million Americans live close enough to an 14 industrial facility to be affected by a chemical 15 accident, and that these risks fall 16 disproportionately on low income and minority 17 communities.</p> <p>18 The Chemical Disaster Rule, finalized in 19 January of 2017, included improvements to the RMP 20 that required companies to take steps to prevent 21 chemical releases, fires, and explosions, while 22 also working with first responders to improve</p> <p style="text-align: right;">Page 189</p>	<p>1 lives of my former coworkers in the U.S. fire 2 service, and they will endanger workers and 3 millions of community members and their families 4 who live around our nation's chemical facilities.</p> <p>5 The State of California, the third 6 largest refining state in the country, has taken 7 the opposite approach. After five years of 8 effort, the state adopted a sweeping new safety 9 regulation for oil refineries last year, which was 10 motivated by a flammable vapor explosion at the 11 Richmond Chevron refinery. That incident created 12 a 100-square meter vapor cloud that ignited and 13 endangered the lives of 19 workers and caused some 14 15,000 downwind of the plant to seek medical 15 attention.</p> <p>16 California's comprehensive new 17 regulation is informed by the industry's own best 18 engineering and management practices developed 19 over the last 20 years. These include nearly all 20 of the provisions that EPA is proposing to remove 21 from the Chemical Disaster Rule. The rule should 22 be retained in its original form, not weakened or</p> <p style="text-align: right;">Page 191</p>
<p>1 emergency preparedness and coordination.</p> <p>2 We are very concerned that the US EPA is 3 now proposing to substantially weaken the rule by 4 rolling back most of its key provisions, including 5 all of its prevention requirements. These include 6 requirements on training and coordination between 7 emergency responders and facilities, learning from 8 mistakes by looking back at accidents or near 9 misses to assess how to prevent them in the 10 future, sharing information with communities on 11 hazards at the facility and preparedness and 12 evacuation procedures, ensuring that incident 13 investigation reports are completed effectively 14 within 12 months, training of workers and 15 supervisors at certain facilities, conducting 16 independent audits for serious chemical accidents. 17 And finally, for the most dangerous subset of 18 facilities, to assess the applicability of safer 19 technologies and practices so that if a problem 20 occurs, whatever the cause, fewer people will be 21 killed or injured.</p> <p>22 EPA's proposed changes will endanger the</p> <p style="text-align: right;">Page 190</p>	<p>1 delayed as the administration has proposed. We 2 can and must prevent chemical accidents. I urge 3 you to reverse the proposed changes. The result 4 will be fewer explosions, fewer injuries and 5 deaths, and a far more resilient industrial 6 infrastructure. Thank you.</p> <p>7 MS. REGNA: Thank you very much. As we 8 no longer have any speakers, we will now be in 9 recess for a while.</p> <p>10 (Recess)</p> <p>11 MS. GIOFFRE: Good afternoon, everyone. 12 We're going to restart the hearing.</p> <p>13 Before we begin, let me take a moment to 14 introduce our next panel. My name is Patty 15 Gioffre. I am the deputy division director for 16 the Office of Emergency Management's Regulation 17 Implementation Division. Joining me on the panel 18 today is Jon Averbach. He's an attorney in our 19 Office of General Counsel; Kathy Franklin, who is 20 a chemical engineer in our division; and Greg 21 Wilson is our timekeeper for today, and he is a 22 physical scientist in our regulation division.</p> <p style="text-align: right;">Page 192</p>

<p>1 Before we get started, let me take a 2 moment to read our media statement.</p> <p>3 For everyone's awareness, this hearing 4 is open to the press and we have members of the 5 media present with us today. The event is open to 6 any form of recording -- video, audio, and photos. 7 We ask that you not cause any disruption to those 8 testifying or observing the hearing.</p> <p>9 For members of the media, please refrain 10 from interviewing in the public hearing room. If 11 you need interview space, please ask an EPA press 12 contact at the media registration table.</p> <p>13 And finally, for people here to present 14 testimony, it is under your discretion whether you 15 would like to be interviewed by a member of the 16 press, and we ask that media members here today 17 respect each individual's wishes.</p> <p>18 With that, I'd like to call up our next 19 speaker, and I apologize if I get the name wrong. 20 I have Yvette Arellano. And I'd like to remind 21 speakers to spell your name before presenting your 22 testimony, please.</p> <p style="text-align: right;">Page 193</p>	<p>1 effectively under the RMP rule. This exposes our 2 communities, which include significant communities 3 of color that are low income to more toxic 4 pollution and disproportionate harm to chemical 5 disasters.</p> <p>6 As illustrated too well from Hurricane 7 Harvey, too often we experience a flood of toxics 8 on top of the threats we already face from 9 hurricanes and heavy rains. That comes on top of 10 disparate health and safety impacts we already 11 face around the year because the EPA's refusal to 12 do its job and protect us from the frequent toxic 13 releases in pollution, these facilities send 14 across the fence line.</p> <p>15 At Hartman Park, which is in the center 16 of Manchester, a community on the east side, is 17 Valero Refining. They produce over 154,000 18 barrels per calendar day. The community has 19 painted a mural reflecting all the pollution 20 surrounding it. Valero is only one. Contanda 21 Chemical has 87 sealed carbon storage tanks with a 22 full capacity of over a million barrels. And Eco</p> <p style="text-align: right;">Page 195</p>
<p>1 MS. ARELLANO: My name is Yvette 2 Arellano. I'm a research, policy and grassroots 3 advocate with Texas Environmental Justice Advocacy 4 Services.</p> <p>5 Thank you for the opportunity to speak 6 on the proposal to roll back and eliminate the 7 protections for my community in Houston, Texas, 8 that are part of the EPA's 2017 Chemical Disaster 9 Rule. I am disappointed that the EPA in its 10 rulemaking has chosen to only hold one hearing in 11 Washington, D.C., making it difficult for voices 12 like those in my community, but I'm relieved that 13 I can bring my experiences to this hearing.</p> <p>14 My name is Yvette Arellano, and I work 15 for Texas Environmental Justice Advocacy Services. 16 We're a nonprofit working on educating and 17 mobilizing communities in Southeast Houston, a 18 city that is home to the largest Petrochemical 19 complex in the entire nation, second largest in 20 the world.</p> <p>21 We have a high concentration of chemical 22 facilities that the EPA is required to regulate</p> <p style="text-align: right;">Page 194</p>	<p>1 Services, which is a sulfuric gas plant, the 2 largest one at its founding, the children now when 3 they see this every day on their way to school, 4 from school to home, on the weekends when they're 5 playing soccer across the street from Eco 6 Services, the sulfuric gas plant. Communities in 7 Manchester never know when an incident requires 8 evacuation or a shelter in place. They hear the 9 sirens and they have no idea. The lower reps have 10 stated that the sirens are only meant for internal 11 use but people live in constant fear of releases 12 or incidences while children are playing outside 13 or once hurricane season starts. We're in 14 hurricane season again.</p> <p>15 No one should have to shelter in place 16 due to a hurricane or a toxic chemical that floods 17 their homes, wondering what they should do or 18 which facility down the street let it off. This 19 happens. This is a worry. This should be no 20 one's worry. Moms shouldn't have to worry about 21 the air that their children breathe when they're 22 playing in the playgrounds at the nearby park.</p> <p style="text-align: right;">Page 196</p>

<p>1 The Chemical Disaster Rule contains</p> <p>2 important safeguards that would help communities</p> <p>3 like mine and those across the country with common</p> <p>4 sense provisions. Most importantly, for</p> <p>5 overexposed communities, we need this rule to go</p> <p>6 in full effect now to require facilities to take</p> <p>7 preventative action. To prevent fires,</p> <p>8 explosions, and other disasters, including by</p> <p>9 ensuring they actually look for safer ways to</p> <p>10 operate before disaster starts.</p> <p>11 It also would increase the availability</p> <p>12 of basic information we need to know, like</p> <p>13 chemical safety data sheets and emergency response</p> <p>14 contacts so communities can try to find ways to</p> <p>15 protect ourselves if a serious incident happens.</p> <p>16 Community members should get information from each</p> <p>17 incident they're exposed to without delay and it's</p> <p>18 essential for facilities to do real investigation</p> <p>19 reports, that they cannot ignore in planning to</p> <p>20 prevent future problems.</p> <p>21 I want to highlight that the rule was</p> <p>22 finalized in 2017 and came after years of work by</p> <p style="text-align: right;">Page 197</p>	<p>1 with the aftermath of chemical debris which is</p> <p>2 visible in their lawns and cars. The Valero</p> <p>3 refinery and other nearby facilities released</p> <p>4 spikes of benzene and other toxic chemicals, but</p> <p>5 most important of these were missed because EPA</p> <p>6 and the state turned off all of the end monitors.</p> <p>7 I urge this committee to consider the</p> <p>8 impacts on my neighbors, on my friends, family</p> <p>9 without critical protections like these and the</p> <p>10 Chemical Disaster Rule, and ask you to call on</p> <p>11 President Trump and Administrator Pruitt to drop</p> <p>12 the hazardous plan that EPA has been considering</p> <p>13 which would revoke lifesaving protections for</p> <p>14 communities all across. I urge you to consider</p> <p>15 communities like Manchester to have to shelter in</p> <p>16 place or evacuate in temperatures that can reach</p> <p>17 115 degrees in the summer. I urge you, and I</p> <p>18 trust that you will do the right thing in</p> <p>19 regulating these facilities by creating the</p> <p>20 regulatory programs by adding dual languages to</p> <p>21 information sharing requiring the implementation</p> <p>22 of safer technologies in those facilities to</p> <p style="text-align: right;">Page 199</p>
<p>1 EPA and after over 100 groups working with TEJAS,</p> <p>2 also supported it. As disasters were happening</p> <p>3 around the country and people in Washington, D.C.</p> <p>4 didn't seem to be paying attention, it also</p> <p>5 provided for better coordination through</p> <p>6 information sharing for first responders' needs</p> <p>7 and ensuring practice notification and exercises</p> <p>8 happened to prepare without delay. EPA can't</p> <p>9 justify repealing all of the prevention and</p> <p>10 weakening of the important requirements and it has</p> <p>11 refused to face the fact that it's taking away</p> <p>12 protections meant to save lives and prevent harm,</p> <p>13 especially to communities like those right across</p> <p>14 the fence lines from chemical facilities.</p> <p>15 These rollbacks don't come without</p> <p>16 community costs as fires and toxic releases around</p> <p>17 the country on this administration's watch,</p> <p>18 especially those in Arkema and Crosby, Texas,</p> <p>19 after Hurricane Harvey. First responders on the</p> <p>20 scene had to evacuate and receive medical</p> <p>21 treatment for inhaling dangerous chemicals from</p> <p>22 the blast, and community members are still dealing</p> <p style="text-align: right;">Page 198</p>	<p>1 mitigate a future disaster and consider the</p> <p>2 cumulative impacts of the exposure to multiple</p> <p>3 chemical facility sources. Our communities feel</p> <p>4 powerless in the event of a chemical disaster, and</p> <p>5 I hope that this committee works to restore the</p> <p>6 power and the protection to the people in our</p> <p>7 communities. Thank you.</p> <p>8 MS. GIOFFRE: Thank you very much for</p> <p>9 your testimony today.</p> <p>10 So at this time we do not have any other</p> <p>11 scheduled speakers. I'd like to take a moment for</p> <p>12 anybody -- one more? Okay. I'd like to invite</p> <p>13 you up to speak.</p> <p>14 That's fine. Okay. On their way. All</p> <p>15 right. So right now we don't have anyone at</p> <p>16 present, so if there is no one in the room here</p> <p>17 ready to speak then we will recess until our next</p> <p>18 speaker arrives.</p> <p>19 Thank you to everyone who has provided</p> <p>20 testimony thus far.</p> <p>21 (Recess)</p> <p>22 MS. GIOFFRE: Hi, everyone. We're going</p> <p style="text-align: right;">Page 200</p>

<p>1 to reconvene the panel. We have another speaker 2 who has arrived. For the speaker's benefit, let 3 me just take a moment to introduce myself. I'm 4 Patty Gioffre. I'm the deputy division director 5 of the Office of Emergency Management Regulation 6 and Implementation Division. Joining me on this 7 panel is Jon Averback with our Office of General 8 Counsel, Kathy Franklin, and Greg Wilson, also 9 with the division that I work in.</p> <p>10 I'd like to take a moment to invite up 11 Alana Byrd, who is with the BlueGreen Alliance. 12 And Alana, if you will spell your name before 13 providing your testimony, please.</p> <p>14 MS. BYRD:: My name is spelled A-l-a-n-a 15 B-y-r-d. And I'm speaking today as a 16 representative of the BlueGreen Alliance, a 17 coalition of the nation's largest labor unions and 18 environmental organizations collectively 19 representing millions of members and supporters.</p> <p>20 Thank you for the opportunity to testify 21 today. I want to urge the Environmental 22 Protection Agency to stand up for industrial</p> <p style="text-align: right;">Page 201</p>	<p>1 this year, 19 known chemical disasters have 2 occurred, resulting in death and injury that might 3 have been prevented had the Chemical Disaster Rule 4 been in place. Because this rule has been 5 delayed, more than 12,500 industrial facilities 6 have been allowed to continue operations without 7 being required to take concrete steps to prevent 8 chemical disasters that place Americans at risk 9 every year. And if this rule was rescinded 10 entirely, workers, first responders, and the 11 millions of Americans who live in the 12 vulnerability zone of an industrial chemical 13 release will remain at risk.</p> <p>14 Today, at least one in three school 15 children in America attends a school in the 16 vulnerability zone of a hazardous facility. At 17 least 50 percent of students in the states of 18 Utah, Rhode Island, Texas, Louisiana, Nevada, 19 Delaware, and Florida are in these danger zones. 20 Too many Americans have had to evacuate, shelter 21 in place, or race to pick up their children from 22 school as an industrial fire burns or a chemical</p> <p style="text-align: right;">Page 203</p>
<p>1 workers, first responders, and fence line 2 communities by reversing its proposal to rescind 3 crucial amendments to the successful risk 4 management program (RMP).</p> <p>5 The Chemical Disaster Rule, finalized in 6 January 2017, included much-needed improvements to 7 the RMP requiring companies to take steps to 8 prevent chemical releases, fires, and explosions, 9 while also working with first responders to 10 improve emergency preparedness and coordination.</p> <p>11 Just over a week ago, we were reminded 12 of the need for this rule when on June 3, 2018, in 13 the 45th publicly-known chemical disaster since 14 this rule has been delayed, an equipment failure 15 resulted in the deaths of two employees from steam 16 burns at the Jeffrey Energy Center in St. Mary's, 17 Kansas. Not a month prior to the St. Mary's 18 incident, in Pasadena, Texas, a fire broke out at 19 the Kuraray America plant, leading to the 20 hospitalization of over 20 employees for burns and 21 other treatment.</p> <p>22 In fact, just since the beginning of</p> <p style="text-align: right;">Page 202</p>	<p>1 release heads their way.</p> <p>2 It is not just our children who would be 3 affected by this deregulatory indiscretion. The 4 EPA reports that over 175 million Americans live 5 in the worst case scenario zones for chemical 6 disasters. Among these populations, the 7 percentage of African-American living in fence 8 line zones, around 3,433 of the most dangerous 9 facilities, is 75 percent greater than for the 10 U.S. as a whole. And similarly, the percentage of 11 Latinos in these zones is 60 percent greater.</p> <p>12 It is clear from the scores of 13 publicly-known chemical disasters that have 14 occurred since just the delay of this rule that 15 the protections we have on the books simply aren't 16 sufficient. Even the chemical industry itself 17 recognizes that the existing RMP regulations are 18 deeply lagging behind advancements in industrial 19 process safety that the industry has made since 20 the regulations were first adopted 25 years ago. 21 The industry professionals who understand process 22 safety recognize the need for reform. The modest</p> <p style="text-align: right;">Page 204</p>

<p>1 revisions to the RMP rules were developed with 2 extensive input from many of these experts, and 3 they reflected the industry's own interests in 4 broadly improving process safety.</p> <p>5 While the revisions were intended to 6 protect the safety of workers, first responders, 7 and communities, there is no question that they 8 will also help insure the integrity and operation 9 of the nation's critical industrial 10 infrastructure. Moreover, the review process for 11 these crucially and modest amendments was 12 extensive, including a stakeholder consultation 13 process conducted jointly with other agencies, 14 including the Department of Homeland Security and 15 the Department of Labor. This process also 16 included public listening sessions across the 17 country, a public request for information, a small 18 business advocacy review plant panel, and a two 19 month public comment period where thousands of 20 people weighed in on the merits of this rule. 21 After so much consultation, input, and 22 demonstrated need for such requirements, it is</p> <p style="text-align: right;">Page 205</p>	<p>1 industrial workers, communities, and our nation's 2 infrastructure by reversing the proposed revision 3 of these important improvements. Thank you.</p> <p>4 MR. AVERBACK: Alana, you identified an 5 incident in St. Mary's and an additional incident 6 in Pasadena right prior to that. What types of 7 facilities were these and what were the chemicals 8 that were involved? If you don't have it --</p> <p>9 MS. BYRD:: Yeah, I don't have the 10 information readily available.</p> <p>11 MR. AVERBACK: When you prepare your 12 final written comments, and this goes for other 13 people who are in the room and going to read the 14 transcript of the hearing, when incidents are 15 cited, it's helpful to identify, if possible, the 16 chemical that's involved and the provisions --</p> <p>17 MS. BYRD:: Absolutely.</p> <p>18 MR. AVERBACK: -- that the incident is 19 relevant to.</p> <p>20 MS. BYRD:: Absolutely. I will add that 21 to my written testimony. Thank you.</p> <p>22 MS. GIOFFRE: Thank you very much,</p> <p style="text-align: right;">Page 207</p>
<p>1 confounding that the agency would abandon these 2 common sense amendments.</p> <p>3 Finally, it should be noted that we are 4 here debating the utility of the Chemical Disaster 5 Rule less than two weeks after having marked the 6 official start of the hurricane season. And as we 7 know all too well from the example of the Arkema 8 plant explosion near Houston, Texas, last year in 9 the wake of Hurricane Harvey, the frequency and 10 magnitude of industrial chemical releases and the 11 threat of fires and explosions increases during 12 hurricane season in the gulf states where many oil 13 refineries and chemical facilities are 14 concentrated. The damage inflicted on the first 15 responders and fence line community in the wake of 16 the Arkema explosion could have been prevented or 17 mitigated if the Chemical Disaster Rule had been 18 implemented prior to the last hurricane season.</p> <p>19 Now, as we enter the 2018 hurricane 20 season, it is time to strengthen the laws we have 21 on the books, not weaken them. We request that 22 you take action to protect first responders,</p> <p style="text-align: right;">Page 206</p>	<p>1 Alana.</p> <p>2 MS. BYRD:: Thank you.</p> <p>3 MS. GIOFFRE: Do we have any other 4 speakers today? Okay. Until our next speaker 5 arrives, we're going to recess for the moment. 6 Thank you very much, everyone.</p> <p>7 (Recess)</p> <p>8 MS. GIOFFRE: Hello, everyone. We are 9 going to reconvene the panel. We have a new 10 speaker.</p> <p>11 I'd like to invite Nicky Sheats up. 12 Nicky is with New Jersey Environmental Justice 13 Alliance.</p> <p>14 And Nicky, if you don't mind, please 15 spell your name for the court reporter before 16 giving your testimony. Thank you.</p> <p>17 MR. SHEATS: So my name is Nicky Sheats, 18 S-h-e-a-t-s. I'm here representing the New 19 Jersey Environmental Justice Alliance as you said, 20 and Thomas Edison State University. So I work at 21 Thomas Edison State University, where I run a 22 small policy center called the Center for Urban</p> <p style="text-align: right;">Page 208</p>

<p>1 Environment. It's part of the John S. Watson 2 Institute for Public Policy. I'm also a member of 3 the New Jersey Environmental Justice Alliance.</p> <p>4 The Alliance is the only statewide 5 organization in New Jersey that focuses on 6 environmental justice issues, and even though we 7 are well integrated, we are also the only 8 statewide group in New Jersey that addresses 9 environmental issues, which is a majority of color 10 in both its membership and leadership.</p> <p>11 And we are concerned. New Jersey 12 Environmental Justice Alliance is concerned about 13 the proposals that EPA is making to what we see as 14 a weakened Chemical Disaster Rule. We think that 15 the proposed changes will result in chemical 16 facilities around the country being less safe, and 17 that's because as we read the rule, it will reduce 18 or eliminate safety assessments, reduce or 19 eliminate compliance audits, reduce or eliminate 20 analysis of incidents, and reduce or eliminate 21 investigations of near misses or incidents that 22 almost happened. Disasters that almost happened.</p> <p style="text-align: right;">Page 209</p>	<p>1 And so this is a concern for all 2 communities. We think the rule will detrimentally 3 impact all communities because of the potential it 4 has to produce more chemical incidents and the 5 reduction in the information the community is 6 going to receive. But, we are an environmental 7 justice organization, so we are especially 8 concerned about environmental justice communities. 9 When I say environmental justice communities, I 10 mean communities of color and low income 11 communities. These communities -- because we 12 think the rule is going to disproportionately 13 impact those communities because these communities 14 are already particularly vulnerable to the 15 detrimental impacts of chemical disasters and 16 incidents. That's for a number of reasons, 17 because these communities tend to have more 18 pollution in them already, tend to have more 19 disease, incidents of more disease, tend to have 20 less healthcare, and have a harder time -- the 21 residents have a harder time escaping from any 22 instance that might happen or disasters that might</p> <p style="text-align: right;">Page 211</p>
<p>1 And obviously, this is of concern. We 2 think this is going to result in more chemical 3 incidents, more chemical disasters, and we have 4 enough of them already. I think EPA has 5 recognized that there are over -- the number is at 6 my fingertips -- over 100 a year. Certainly, I 7 think all of us would agree there are too many 8 incidents now, and we think this is moving in the 9 wrong direction.</p> <p>10 We also think that the proposals EPA is 11 making to the rule will make it more difficult for 12 first responders to do their job and will make it 13 more difficult for communities to be prepared for 14 chemical disasters or incidents because it's going 15 to cut down on the information that chemical 16 facilities share with both the first responders 17 and the residents. And if you're a first 18 responder, the less information you have, the more 19 difficult it is to do your job. And if you are a 20 resident, a community resident, of course, if you 21 don't have information, it's hard to prepare for 22 good or bad things that might happen.</p> <p style="text-align: right;">Page 210</p>	<p>1 happen, and have a harder time recovering from any 2 incidents or disasters that might happen. So we 3 are very concerned about disproportionate impacts 4 the rule will have on environmental justice 5 communities.</p> <p>6 And I have to say, coming from New 7 Jersey, we are concerned that the rule is going to 8 have a disproportionate impact on New Jersey 9 because New Jersey is a state that has extensive 10 chemical industry activity. So we think it's 11 going to impact New Jersey more because we have 12 more chemical activity, you know, to impact, 13 potentially, again, more incidents and more 14 disasters in New Jersey than other states.</p> <p>15 That's the message. We have these 16 concerns. I'll close by saying that when we look 17 at the rule, we see two disasters, or two possible 18 disasters. We see the rule itself as being a 19 possible disaster, and then, of course, we see a 20 chemical disaster that could happen after that. 21 So we see a disaster before the disaster, and we 22 really want to urge EPA to rethink the acts of</p> <p style="text-align: right;">Page 212</p>

<p>1 this proposal, not repeal any of the rule, not 2 weaken the rule, and really need to strengthen the 3 rule instead of weaken it to protect environmental 4 justice communities. Thank you for the 5 opportunity to comment.</p> <p>6 MR. AVERBACK: Nicky?</p> <p>7 MR. SHEATS: Yes. I'll sit down now.</p> <p>8 MR. AVERBACK: Excellent. Make sure 9 that the mic will pick up your answer.</p> <p>10 When we originally developed the rule, 11 at various points we pointed to the New Jersey 12 chemical accident, TCPA, toxic chemical accident 13 -- catastrophe, thank you -- as an example of a 14 state program that implemented some of the same 15 things that we did. When you submit your -- in 16 particular, New Jersey has had something analogous 17 to our safer technology and alternatives analysis 18 (STAA) program. I think there they call it 19 inherently safer technologies. They have an 20 experience with that. So if in your comments you 21 could compare what's in this rule to what your 22 experience has been under New Jersey's and where</p> <p style="text-align: right;">Page 213</p>	<p>1 MR. SHEATS: And who said that?</p> <p>2 MR. AVERBACK: It was representative -- 3 who said that?</p> <p>4 MS. GIOFFRE: Alexandra?</p> <p>5 MR. AVERBACK: Yeah, I believe it was 6 the Corn Refiners Association.</p> <p>7 At any rate, you know, we're interested 8 about, you know --</p> <p>9 MR. SHEATS: And so the comment was that 10 the rate of incidence has gone down since 11 implementation of the rule?</p> <p>12 MR. AVERBACK: The comment, and the 13 record will reflect, it was something to the 14 effect that there wasn't an appreciable difference 15 between the accident rates in New Jersey --</p> <p>16 MR. SHEATS: There was not?</p> <p>17 MR. AVERBACK: -- after they instituted 18 the inherent safety requirements.</p> <p>19 MR. SHEATS: So the comment was that 20 after New Jersey implemented its inherent safer 21 technology, the number of incidents did not go 22 down?</p> <p style="text-align: right;">Page 215</p>
<p>1 it adds to what New Jersey is having, where it 2 would take it away, that would be helpful 3 information for us.</p> <p>4 MR. SHEATS: Okay. I think, so let me 5 say a few things. I'm not an expert in chemical 6 security. We are following the league of the 7 Environmental Justice Health Alliance, and they 8 have a lot of expertise in this. But having said 9 that, I'm an air pollution, climate change guy. 10 Having said that, within our umbrella, as New 11 Jersey Environmental Justice Alliance and the 12 partners we work with, there are people who are 13 experts in that and have followed the rule that 14 you're talking about very closely. So I will 15 consult with them, and I will try to put something 16 in written comments that may help address that.</p> <p>17 MR. AVERBACK: Yeah. In particular, 18 earlier today another witness represented 19 something about the rate of accidents in New 20 Jersey since it's instituted safer technologies 21 versus the comparable rates around the country. 22 So --</p> <p style="text-align: right;">Page 214</p>	<p>1 MR. AVERBACK: Relative to the country, 2 I believe.</p> <p>3 MR. SHEATS: Okay.</p> <p>4 MR. AVERBACK: But information on 5 accident rates.</p> <p>6 MR. SHEATS: I'll see what I can find 7 out about that.</p> <p>8 MR. AVERBACK: Yeah. A lot of our 9 proposal discusses and solicits comments on 10 accident rates. So what you've got would help us.</p> <p>11 MR. SHEATS: And give me the 12 organization that said that again?</p> <p>13 MS. FRANKLIN: It was the Corn Refiners 14 Association. The Corn Refiners Association.</p> <p>15 MR. SHEATS: Corn Refiners Association? 16 Okay. I'll see what my people have to say about 17 that.</p> <p>18 MR. AVERBACK: Okay. That's it. Thank 19 you.</p> <p>20 MR. SHEATS: Yeah, no, thanks for posing 21 the question.</p> <p>22 MS. GIOFFRE: Yes. Thank you for your</p> <p style="text-align: right;">Page 216</p>

1	testimony.	
2	MR. SHEATS: Thank you. Thank you for	
3	the opportunity.	
4	MS. GIOFFRE: Okay. Before we take our	
5	next recess let me just reach out and see if we	
6	have any other speakers in the room.	
7	All done? Okay. We are going to recess	
8	for the time being. Thank you, everyone.	
9	(Recess)	
10	MS. FRANKLIN: Okay. Okay. This is	
11	Kathy Franklin of OEM. It's 6:30 p.m. We haven't	
12	had any more speakers that have wanted to speak	
13	for the last hour, so we're going to adjourn the	
14	hearing.	
15	(Whereupon, at 6:30 p.m., the	
16	HEARING was adjourned.)	
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