



August 23, 2018

United States Environmental Protection Agency
Office of the Administrator, Room 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Docket EPA-HQ-OEM-2015-0725; FRL-9975-20-OLEM
(Accident Release Prevention Requirements: Risk Management
Programs Under the Clean Air Act)**

Dear Acting Administrator Wheeler:

These comments are submitted on behalf of the members of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steelworkers" or "USW"). We appreciate the opportunity to comment on the United States Environmental Protection Agency's ("EPA's") proposal "to rescind almost all of the requirements added to the accident prevention provisions of Subparts C (for Program 2 processes) and D (for Program 3 Processes)" by the Risk Management Program ("RMP") Amendments under the Clean Air Act that were finalized by EPA and published at 82 Fed. Reg. 4594-4705 (January 13, 2017) (hereinafter "Chemical Disaster Rule").

The United Steelworkers strongly object to EPA's proposed rescission of these important, potentially life-saving improvements to the RMP regulations at 83 Fed. Reg. 24850-24883 (May 30, 2018) (hereinafter "Proposed Rescission of the Chemical Disaster Rule"). Moreover, the United Steelworkers respectfully request that EPA withdraw its proposal to rescind nearly all of the Chemical Disaster Rule in light of the United States Court of Appeals for the D.C. Circuit's recent decision in *Air Alliance Houston v. EPA*, No. 17-1155 (USW is a Petitioner-Intervenor) issued on August 17, 2018 (*slip op.*) (USW Comments – Attachment 1) where the Court concluded that EPA's interpretation of section 307(d)(7)(B) relied upon in the RMP Delay Rule "makes a mockery of the statute" (*id.* at 28.) and EPA's promulgation of the Delay Rule was arbitrary and capricious. *Id.* at 31.

As stated in the Declaration of Michael Wright (USW Director of Health Safety and Environment Department) ¶ 2 (hereinafter "Wright Declaration") (USW Comments – Attachment 2) and the Declaration of Kim Nibarger (USW Oil Sector Bargaining Chair) ¶ 2 (hereinafter "Nibarger Declaration") (USW Comments – Attachment 3), the USW is the largest private-sector union in North America, representing approximately 850,000 workers employed in metals, mining, rubber, paper and forestry, energy, chemicals

transportation, health care, security, hotels, and municipal governments. As noted by the D.C. Circuit in *Air Alliance Houston* at 16 “[a]pproximately 25,000 of United Steelworkers’ members work in 350 covered chemical plants in the United States, and United Steelworkers-represented “refineries account for almost two-thirds of United States production. No single company, and no other union, either operates, or represents the workers in more plants that are the subject of the [RMP] regulations than [the USW].”

United Steelworker members are highly-skilled and highly-trained workers who operate and maintain chemical and petrochemical facilities including petroleum refineries. United Steelworker members who work at these facilities are hurt “first and worst” when employers and federal regulations do not do enough to prevent catastrophic releases and explosions. In addition, many of our members and their families reside and recreate within close proximity to these chemical and petrochemical facilities located throughout the United States as noted by the D.C. Circuit in *Air Alliance Houston* at 17 in citing to the Declaration of Ben Lilienfeld at ¶ 10 (hereinafter “Lilienfeld Declaration”) (USW Comments – Attachment 4):

[A] butadiene release in 2015 at Shell Deer Park Refinery & Chemical in Deer Park, Texas, put our members at risk At the LyondellBasell facility in Houston, Texas, multiple fires have occurred over the last several years causing releases. The same risks that caused the explosions at the Phillips Pasadena complex in 1989 [— a series of explosions at a Texas chemical plant resulting from the accidental release of flammable process gases that killed 23 employees, injured 100 more, and caused \$1.4 billion in damage —] still exist today and our members and communities were, are and will remain on the front line. Lilienfeld Decl. ¶ 10 (DEC. 58); Comment, Coalition to Prevent Chemical Disasters (Oct. 29, 2014), J.A. 497.

On a daily basis, USW members, their families and their communities are confronted by hazards posed by RMP covered facilities including the potential for widespread damage to critical infrastructure and communities where they work and live that are intended to be addressed by CAA § 112(r) RMP requirements and the Chemical Disaster Rule. Wright Declaration ¶¶ 11, 13; Nibarger Declaration ¶¶ 7, 13; Lilienfeld Declaration ¶¶ 9-10. According to the D.C. Circuit in *Air Alliance Houston* at 17:

Such risks are particularized to chemical plant workers such as the United Steelworkers’ members, and EPA found that the Chemical Disaster Rule would reduce the kinds of accidents that Lilienfeld and the other United Steelworkers declarants face in their workplace and communities, and would mitigate such harms by improving coordination between facilities and local first responders. See Chemical Disaster Rule, 82 Fed. Reg. at 4597; EPA Activities Under EO 13650: Risk Management Program (RMP) Final Rule Questions & Answers (June 2017) (“EPA’s

changes to the RMP rule will help protect local first responders, community members and employees from death or injury due to chemical facility accidents.”). (Emphasis supplied.).

Releases of RMP regulated substances from chemical and petrochemical facilities pose a real and immediate threat to USW members and their families who work, reside and/or recreate near these facilities. Such releases from these facilities may (i) cause USW members, their families and their communities to be exposed to contaminants from the air emissions, (ii) pose a significant risk to the personal safety and welfare of USW members and their families due to the potential for catastrophic releases and explosions from these facilities, (iii) lead to closure of the damaged facility resulting in economic harm from the loss of employment including wages and benefits, and (iv) cause damage and deterioration of the homes and property of USW members thereby reducing the value of their properties. Accordingly, USW and its members have a strong interest in ensuring that the EPA promulgate and implement robust RMP program requirements protective of human health and welfare. Wright Declaration ¶¶ 11, 13; Nibarger Declaration ¶¶ 19-20; Lilienfeld Declaration ¶¶ 11-21.

Regrettably, EPA now seeks, through the Proposed Rescission of the Chemical Disaster Rule, to remove numerous program requirements that the United Steelworkers and community stakeholders have long championed to reduce (1) the likelihood of catastrophic events (*i.e.*, safer technology and alternatives analysis (“STAA”), incident investigation/root cause analysis, third-party audits, and supervisor training requirements), and (2) the potential harm to community members including workers, first responders, and residents (*i.e.*, enhanced emergency response coordination requirements and public information sharing requirements). USW urges EPA to reconsider its approach and move forward to implement the improvements within the Chemical Disaster Rule as expeditiously as practicable in accordance with section 112(r)(7)(A) of the CAA.

USW Efforts to Strengthen RMP Requirements

As noted in the Nibarger Declaration ¶¶ 8-12, 21-22, in furtherance of the USW’s interests to protect the health and safety of its members, their families and their communities, the USW has been actively involved in efforts to strengthen the RMP requirements of section 112(r) of the Act through petitioning EPA to initiate RMP rulemaking, testifying before Congress, and submitting comments to EPA on the proposed RMP rules including USW comments on the proposed Chemical Disaster Rule (USW (Holly R. Hart, Assistant to the International President, Legislative Director, United Steelworkers) to EPA (Administrator McCarthy) (Re: Docket EPA-HQ-OEM-2015-0725) (May 13, 2016) (hereinafter “USW 2016 RMP Comments”))<https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0519>), and objecting to EPA’s proposal to delay of the Chemical Disaster Rule. (USW (Holly R. Hart, Assistant to the International President, Legislative Director, United Steelworkers) to EPA (Administrator Pruitt) (Re: Docket EPA-HQ-OEM-2015-0725)

(May 19, 2017) (hereinafter “USW 2017 RMP Comments”)
<https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0859>.

For example, in 2010, Michael Wright (USW, Director of Health, Safety and Environment Department) testified before the United States Chemical Safety and Hazard Investigation Board (“CSB”) advocating on behalf of the benefits of STAA. Statement of Michael J. Wright (Director of Health, Safety and Environment United Steelworkers) before the U.S. Chemical Safety and Hazard Investigation Board Public Hearing on Regulatory Approaches to Offshore Oil and Gas Safety (December 15, 2010) at 3, 6 (hereinafter “Wright CSB Statement (2010)”) (USW Comments – Attachment 5).

The United Steelworkers also were a signatory to the July 25, 2012, “Petition to the Environmental Protection Agency to Exercise its Authority under Section 112(r) of the Clean Air Act to Prevent Chemical Facility Disasters through the Use of Safer Chemical Processes.” Attachment to USW 2017 RMP Comments. Declaration of Anna Fendley ¶ 11 (USW Legislative Representative) ¶ 11 (hereinafter “Fendley Declaration”) (USW Comments – Attachment 6). In petitioning EPA, the United Steelworkers joined a coalition of over 50 environmental, community and public health/safety advocates to commence rulemaking to amend the RMP rule in recognition that millions of Americans are threatened by possible accidental releases of hazardous chemicals including many members of the USW, their families and their communities. The Coalition focused on the need for the use of ISTs that can help ensure protection of the public and the promulgation by EPA of regulations under Section 112(r) of the CAA that require the use of ISTs.

The USW presented testimony to Congress on risk management and emergency planning programs seeking to strengthen the regulations for the protection of USW members. On June 27, 2013, Kim Nibarger presented testimony on behalf of the USW before the United States Senate Committee on Environment and Public Works on Oversight of Federal Risk Management and Emergency Planning Programs to Prevent and Address Chemical Threats, Including the Events Leading Up to the Explosion in West, Texas and Geismar, Louisiana. (Attachment to USW 2017 RMP Comments). In the USW Senate Testimony, the USW submitted into the record a ground-breaking report prepared by the USW entitled, “A Risk Too Great, Hydrofluoric Acid in U.S. Refineries” (April 2013) (hereinafter “A Risk Too Great”) (Attachment to USW 2017 RMP Comments) and USW “Beyond Texas City: The State of Process Safety in the Unionized U.S. Oil Refining Industry” (2007) (hereinafter “Beyond Texas City”) (Attachment to USW 2017 RMP Comments).

In his testimony, Mr. Nibarger stated that, since 2008, the oil industry has reported an average of over 45 fires a year, which are industry self-reported and do not include many smaller fires that USW members bring to the HSE Department’s attention. These sometimes deadly and potentially catastrophic events take place far too frequently putting USW members who work in the petrochemical industry at risk of physical injury or death as well as their families who live in close proximity to these facilities. In addition, as part of his USW Senate Testimony, Mr. Nibarger responded to

questions from Senator Boxer providing the USW's recommendations as to what actions EPA could take under existing laws to enhance safety at industrial facilities that handle dangerous chemicals. Mr. Nibarger reinforced that under CAA section 112(r)(1) of the General Duty clause, all owners and operators covered under the Act are required to "[d]esign and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur." To achieve this mandate, the USW strongly advocated for and continues to advocate for the use of STAA and inherently safer technologies and designs ("ISTs"), which could be as simple as substitution of a less toxic or hazardous substance or even a reduction in the volume of a hazardous substance stored on-site, to reduce or eliminate the hazard whenever possible.

On August 1, 2013, the USW, along with the same coalition of environmental, community and public health/safety advocates that petitioned EPA in 2012, submitted a letter to then EPA Administrator McCarthy urging EPA to make chemical disaster prevention one of the priority initiatives of Administrator McCarthy's first 100 days in office. (USW Comments – Attachment 7). The letter highlighted the April 17, 2013, tragedy in West, Texas, as well as the at least six other serious chemical accidents after the West, Texas, event, two of which resulted in fatalities. The Coalition's letter noted that "[p]revention is the only fool-proof way to ensure the safety of millions of people whose communities are needlessly in danger." Particularly relevant to the issues raised in the Proposed RMP Rescission Rule, the Coalition's letter championed the benefits of STAA and cautioned on the limitations of relying on voluntary efforts to prevent catastrophic events at chemical facilities in the future:

Hundreds of chemical facilities (including all Clorox Co. facilities) have already proven that safer processes are available and that by adopting them and eliminating these hazards to their employees and the surrounding communities we can reduce the risks to millions of people. Unfortunately the reliance on voluntary efforts continues to leave more than one-hundred million people at risk because they happen to live and work inside "vulnerability zones" adjacent to the highest risk chemical facilities in our major cities.

Businesses are also negatively impacted. Due to their potential liability for hauling poison gases, the Association of American Railroads issued a statement in 2008 saying, **"It's time for the big chemical companies to do their part to help protect America. They should stop manufacturing dangerous chemicals when safer substitutes are available...."**

The New York Times put it bluntly in their lead June 2nd editorial, **"policy makers cannot wait for the industry to move to safer technologies on its own. It is critical for the E.P.A. to take action under the power it already has."** The Times also noted that, **"The health risk is particularly great for the poor and racial minorities, who are more**

likely to live in communities near facilities using hazardous materials. Much of this is the result of racial politics that put dangerous plants in segregated and poor neighborhoods where land is cheap.” (Emphasis in original).

On March 6, 2014, the USW provided testimony before the United States Senate Committee on Environment and Public Works on Preventing Potential Chemical Threats and Improving Safety: Oversight of the President’s Executive Order on Improving Chemical Facility Safety and Security. Attachment to USW 2017 RMP Comments. The USW testimony identified four goals to improve RMP regulations: (1) improve operational coordination with state and local partners; (2) enhance federal agency coordination and information sharing; (3) Modernize policies, regulations and standards; and (4) work with stakeholders to identify best practices.

United Steelworkers Participation in RMP Rulemaking

In furtherance of the USW’s interests in protecting the health and safety of our members who work at facilities that produce, process, handle or store RMP regulated substances, their families, and their communities, the USW participated in the CAA RMP rulemaking (Docket No. EPA-HQ-OEM-2015) to ensure that EPA implements the Chemical Disaster Rule as expeditiously as practicable in accordance with the statutory language of section 112(r) of the Act. The USW submitted timely comments to EPA Administrator McCarthy in response to the notice of proposed rulemaking (81 Fed. Reg. 13638-13712 (March 14, 2016)) setting forth the USW’s support for the incremental steps taken in the rulemaking to strengthen federal regulations and prevent the accidental releases or explosions lessening the hazards and the potential for widespread damage to critical infrastructure and the communities. USW 2016 RMP Comments.

The USW 2016 RMP Comments on EPA’s proposed revisions to the RMP regulations emphasized (i) the importance of worker involvement requirements in developing and updating RMPs, (ii) the value of root cause analysis as a best practice in incident investigation, (iii) the USW’s support for third-party independent RMP compliance audits, (iv) the USW’s support for STAA, (v) the importance of worker involvement requirements in developing emergency response planning and training, (vi) the importance of public access to RMP information as crucial to community involvement, and (vii) the importance of updating the list of regulated chemicals under section 112(r) of the CAA to harmonize coordination efforts amongst federal agencies.

Chemical Disaster Rule

EPA issued the Chemical Disaster Rule at 82 Fed. Reg. 4594-4705 on January 13, 2017, amending the RMP regulations set forth at 40 CFR Part 68 “to improve safety at facilities that use and distribute hazardous chemicals.” *Id.* at 4594. The Chemical Disaster Rule consists of three components: (1) Accident Prevention Program

Revisions; (2) Emergency Response Enhancements; and (3) Enhanced Availability of Information (to first responders and the public).

The Accident Prevention Program component of the Chemical Disaster Rule includes new requirements relating to independent third party audits, incident investigations and root cause analysis, and STAA including consideration of ISTs. *Id.* at 4595. The Emergency Response Enhancements component of the Chemical Disaster Rule establishes new requirements relating to Local Emergency Planning Centers or “LEPC” coordination, and the conduct of notification exercises and facility exercises (*i.e.*, field exercises and/or tabletop exercises). *Id.* The Enhanced Availability of Information component of the Chemical Disaster Rule improve information sharing with LEPCs and the public and require that the regulated facility hold a public meeting within ninety days after a RMP event. *Id.* at 4596.

As noted by EPA in the preamble to the Chemical Disaster Rule (82 Fed. Reg. at 4685), “the benefits of the final rule include reductions in the number of people killed, injured, and evacuated or otherwise inconvenienced by sheltering in place; reductions in the damage caused to property on-site and offsite including product, equipment, and buildings; reductions in damages to the environment and ecosystems; and reductions in resources diverted to extinguish fires and clean up affected areas. The final rule also provides other benefits, such as increased public information, which in addition to helping to minimize the impacts of accidents on the offsite public, may also lead to more efficient property markets in areas near RMP facilities.”

Notwithstanding, in advancing the Proposed Rescission of the Chemical Disaster Rule, EPA now seeks to disavow these findings and dismantle the Chemical Disaster Rule. EPA, however, cannot ignore and trivialize EPA’s facts and findings in the administrative record that firmly establish the benefits derived from various components of the Chemical Disaster Rule to United Steelworker members and their families that EPA now seeks to rescind in its rush to advance a deregulatory agenda. In doing so, EPA has arbitrarily trivialized the unquantified benefits identified in EPA’s Preliminary and Final Regulatory Analyses that accrue to United Steelworker members and their families in favor of modest economic benefits identified by EPA that will be enjoyed by many of the largest companies and dangerous facilities in the United States to the detriment of public health and safety.

The misguided nature of EPA’s proposed rescission of the Chemical Disaster Rule is reinforced by the CSB comments submitted to EPA during the public comment period on July 20, 2018, which raises several important issues. CSB to James Belke (EPA) (Attention: Docket No. EPA-HQ-OEM-2015-0725, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 40 CFR Part 68) (July 20, 2018) (USW Comments – Attachment 8). The United Steelworkers strongly support the CSB comments and share the CSB’s concerns at 1:

The CSB is now deeply concerned that the EPA seeks to rescind these key improvements, including elimination of all accident prevention

program provisions of the RMP Amendments Rule, even though the EPA's own data supports implementing greater protections.

The United Steelworkers agree with the CSB assertion, that in light of the EPA's 2016 Regulatory Impact Analysis showing an increase in high-consequence chemical events, there is a substantial need for "stronger rather than weaker safeguards" to protect against chemical disasters. CSB Comments at 2. Specifically, the CSB asserts, and the USW agrees, that EPA should not base its proposed regulatory changes on the flawed findings of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") in the West Fertilizer Investigation. CSB Comments at 2-3. The CSB disputes and contradicts the ATF's findings that the West Fertilizer accident was the result of arson/criminal activity. *Id.* at 3. The USW urges the EPA to adopt the causation findings of the CSB as to the West Fertilizer accident in this regard and cease from relying upon the ATF's flawed findings to justify weaken the protections of the Chemical Disaster Rule. *Id.*

The United Steelworkers also endorse the CSB's assertion that the Chemical Disaster Rule and the Occupational Safety and Health Administration's ("OSHA's") Process Safety Management ("PSM") standard do not require absolute consistency. CSB Comments at 3. As stated by the CSB at 4, "Executive Order 13650 directed both the EPA and OSHA to review and update their respective regulations, with no requirement that they be identical. As such, the CSB and the USW disagree with the EPA's justification to eliminate key improvements to the RMP regulation that could help save lives and protect communities based upon a streamlining effort associated with OSHA's PSM standard." Finally, the United Steelworkers support CSB's objections to EPA's proposal to rescind third-party audits, STAA, incident investigation/root cause analysis requirements, mandatory field and tabletop exercises, and the information sharing with LEPCs and the public that will remove important benefits that would be provided to USW members and their families under the Chemical Disaster Rule.

Furthermore, EPA's proposal to utilize an "Enforcement-led" approach as described at 83 Fed. Reg. 24872-73 is *de facto* endorsement of the benefits of the Chemical Disaster Rule requirements including, *inter alia*, independent third party audits, root cause analysis, and STAA by the current EPA administration. First of all, the United Steelworkers object to the proposed enforcement-led approach as flawed because it is reactive rather than proactive. Enforcement while vital to assuring compliance with environmental regulatory requirements is no replacement for clear enforceable standards established by regulations promulgated in accordance with the Administrative Procedure Act. Moreover, the Chemical Disaster Rule provides EPA enforcement staff better tools and information to ensure compliance with RMP requirements that EPA proposes to rescind including, *inter alia*, new recordkeeping requirements for coordination with LEPCs set forth at 40 CFR §§ 68.93(c) (annual coordination), and 68.96(b)(3) (exercise evaluation report) as well as new

recordkeeping requirements for incident investigations at 40 CFR §§ 68.60(d) (incident investigation report requirements) and (g) (incident investigation record retention requirements) and 68.81(d) (incident investigation report requirements) and (g) (incident investigation record retention requirements).

With regard to STAA in particular, EPA found in the Chemical Disaster Rule record that the three targeted sectors warranted heightened standards. EPA's bold assertion at 83 Fed. Reg. 24873 that there are "small numbers of problematic facilities" citing to Reconsideration RIA, Exhibit 3-7 is inconsistent with CSB comments and EPA findings under the Chemical Disaster Rule. Moreover, with regard to Third Party Audits and Root Cause Analysis, the Table 3 – Summary of Annualized Costs in the proposed rule at 83 FR 24854 documents nominal costs for implementation of both programs that belie the need to rely on a flawed enforcement-led approach in lieu of establishing uniform regulatory standards.

The United Steelworkers also object to the enforcement-led approach proposed by EPA because it will lead to inconsistent application and implementation of the RMP program improvements including Third Party Audits, Root Cause Analysis, and STAA throughout the United States due to different priorities and resources throughout the EPA regional offices where enforcement is actually done. Axiomatically, incorporation of Supplemental Environmental Projects ("SEPs") that include Third Party Audit, Root Cause Analysis, and/or STAA requirements into Administrative Orders on Consent ("AOCs") and Consent Decrees ("CDs") is at the discretion of both EPA and the Respondent (*i.e.*, nothing precludes the Respondent from refusing to agree to SEP provisions and paying a civil penalty instead). Finally, EPA's proposal to rely on enforcement rather than assuring compliance as expeditiously practicable with the improved regulatory schemes set forth in the Chemical Disaster Rule is disingenuous at best in light of the significant cuts to the EPA enforcement budget and the EPA's proclamation that environmental enforcement will be shifted to the States particularly when taking into account the real world reality that negotiation and oversight of AOCs and CDs with SEPs that include Third Party Audits, Root Cause Analysis, and/or STAA will require a significantly greater investment of EPA resources (*i.e.*, time and expertise) than simply settling EPA enforcement actions through the assessment of civil penalties.

USW Objects to EPA's Proposal to Rescind STAA Requirements within the Chemical Disaster Rule

USW objects to EPA's proposal to rescind all STAA requirements in the Process Hazard Analysis ("PHA") set forth in the Chemical Disaster Rule for owners or operators of facilities with Program 3 regulated processes in North American Industrial Classification System ("NAICS") codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing). According to EPA statements in the proposed and final Chemical Disaster Rule Federal Register Notices: "[t]he [STAA] provision is intended to reduce the risk of serious accidental releases by requiring facilities in these sectors to conduct a careful examination of potentially safer

technology and designs that they could implement in lieu of, or in addition to, their current technologies.” 82 Fed. Reg. at 4595; 81 Fed. Reg. at 13640.

The United Steelworkers agree with the CSB’s objections to the EPA’s proposal to eliminate all STAA requirements at 40 CFR § 68.67(c)(8). CSB Comments at 6. We also agree with the CSB that IST as one of the most effective safety precaution in what is referred to as ‘the hierarchy of controls. *Id.* Accordingly, USW endorses the CSB Comments at 7:

The Amendments Rule required owners or operators of facilities with Program 3 regulated processes to conduct a STAA as a part of their PHA[process hazard analysis], and to evaluate the practicability of any IST identified, essentially adding consideration of IST alternatives to the PHA process. While this did not go as far as the CSB proposed, it was still a notable step in the right direction. **The CSB strongly encourages the EPA to retain these requirements in the regulation.** (Emphasis supplied.)

As discussed above, the United Steelworkers have long championed the benefits of STAA – both quantified and unquantified – in preventing and reducing impacts from accidental releases to facility owners, workers, and fence-line community members based on the Union’s experience and expertise in responding to and investigating catastrophic accidents to EPA, the CSB, the United States Senate, and industry through, *inter alia*, the now defunct Responsible Care program. Moreover, the United Steelworkers have authored and released safety and health studies – that cite to surveys and hard data – advocating for the application of STAA and ISTs inherently safer technologies and reinforcing the benefits of STAA particularly for these industries with the highest accident rates. See, e.g., Beyond Texas City, (Attachment to USW 2017 Comments); USW, “Papered Over: Safety and Health In U.S. Paper Mills, at 7 (2010) (hereinafter “Papered Over”) (USW Comments – Attachment 9); and A Risk Too Great.

In A Risk Too Great, the United Steelworkers emphasize that the use of hydrofluoric acid (“HF”) in the alkylation process in refineries poses a profound risk to workers and community members particularly in major metropolitan areas such as Wilmington, Delaware; Philadelphia, Pennsylvania; Memphis, Tennessee; and Houston, Texas to name just a few. See *Id.* at C-1 (Table C1. 50 HF-using Refiners and Locations and Size of Populations at Risk). In short, the United Steelworkers warn in A Risk Too Great at 1:

Thousands of workers, millions of community members and vast stretches of air, land and water are at risk from oil companies’ use of hydrofluoric acid (HF) at 50 U.S. refineries. In several cases, a single HF-using refinery puts hundreds of workers and more than one million community members at risk of devastating injuries and even death. This is a risk too great.

The Wright Declaration ¶¶ 33-47 provides extensive discussion of the benefits derived from the STAA requirements within the Chemical Disaster Rule that EPA now proposes to rescind. USW asserts that the STAA IST provisions within the Chemical Disaster Rule are clearly beneficial in preventing explosions and fires at RMP facilities and notes that application of STAA IST requirements in the Chemical Disaster Rule would provide real world benefits for literally millions of people who live within the worst case scenarios of these refineries. The delay in implementing IST requirements set forth in the Chemical Disaster Rule harms USW members who work at chemical and petrochemical facilities including refineries and their families who live in close proximity to these facilities. As EPA notes in the preamble to the Chemical Disaster Rule, IST is widely recognized as a concept or principle that can be used in process safety management along with other types of hazard reduction measures to eliminate or reduce the frequency and/ or impact of accidents. As recognized in process safety technical literature, the benefit of using practicable IST as the first choice for accident prevention is more likely permanent risk reduction. 82 Fed. Reg. 4643-45.

Moreover, in the preamble to the proposed rule (81 Fed. Reg. at 13665-66), EPA cites to CSB reports for two recent accidents at the Tesoro Refinery in Anacortes, Washington (2010) and Chevron Refinery in Richmond, California that occurred prior to promulgation of the Chemical Disaster Rule – where USW members were and are employed – that the Board indicated could have been avoided if safer technologies had been employed. In the Wright Declaration ¶ 44, the USW HS&E Director notes that “[i]n at least the Chevron case, the accident could easily have spread beyond the fence line, and caused multiple fatalities inside and outside the facility. In addition, catastrophic accidents could occur anywhere the wrong steel is used in a petrochemical facility, threatening workers inside, and their families and the local community outside of the facility.” Accordingly, the United Steelworkers strongly object to the proposal to rescind the STAA requirements set forth in the Chemical Disaster Rule and urge EPA to move forward with STAA implementation as expeditiously as practicable in light of the *Air Alliance Houston* decision.

The United Steelworkers Object to Rescission of Third-Party Audit Requirements within the Chemical Disaster Rule

The United Steelworkers object to EPA’s proposal to rescind all of the requirements for third party compliance audits within the Chemical Disaster Rule as proposed at 83 Fed. Reg. 24852. According to EPA’s preamble to the final Chemical Disaster Rule, the third-party independent audit “provision is intended to reduce the risk of future accidents by requiring an objective auditing process to determine whether the owner or operator of the facility is effectively complying with the accident prevention procedures and practices required under 40 C.F.R. part 68.” 82 Fed. Reg. at 4595. EPA also concluded that “independent compliance audits will assist stationary sources to come fully into compliance with the applicable prevention program requirements.” *Id.* at 4609. EPA stressed that third-party audits should identify deficiencies in all covered processes at a facility, not just affected processes pursuant to the Chemical Disaster Rule. EPA reinforced in the preamble to the Chemical Disaster Rule that conducting

third-party compliance audits immediately after an accidental release is necessary to identify and correct existing noncompliance at prevention program facilities that could lead to future releases. *Id.* at 4616. EPA also emphasized the importance of having senior corporate official certification of the audit findings to improve facility and public confidence that third-party audit report findings and recommendations are promptly and properly addressed. *Id.* at 4627.

Notwithstanding the above findings, EPA now proposes to rescind all of the third-party audits within the Chemical Disaster Rule over the objection of the CSB. The United Steelworkers endorse the CSB's objections to the EPA's removal of the third-party compliance audit language contained in the Chemical Disaster Rule. The United Steelworkers, like the CSB, firmly believe that third-party audit provisions in the Chemical Disaster Rule would reduce the frequency and severity of accidents at RMP covered facilities. As aptly stated by the CSB, "third-party safety audits are a small price to pay to help foster major accident prevention." CSB Comments at 5. The Wright Declaration ¶¶ 24-32 provides an extensive discussion of the benefits that independent third-party audits provide to USW members and their families by reducing the number of chemical accidents, increasing compliance with the RMP rule's prevention program requirements, and ensuring safer operations.

As stated in the Wright Declaration ¶ 30, the United Steelworkers caution that self-auditing alone may not be sufficient to prevent accidents, determine compliance with the RMP rule's prevention program requirements, and ensure safer operations at stationary sources where accidents and/or substantial non-compliance with RMP requirements has occurred. The United Steelworkers, therefore, continue to agree with EPA's finding in the preamble to the Chemical Disaster Rule that "it is appropriate to require such stationary sources to undergo objective auditing by competent and independent third-party auditors...assist[ing] the owners and operators, EPA (or the implementing agency), and the public to better determine whether the procedures and practices developed by the owner and/or operator under subparts C and/or D of the RMP rule (*i.e.*, the prevention program requirements) are adequate and being followed." 81 Fed. Reg. at 13654. As noted in the Wright Declaration ¶ 31, EPA identified in the preamble to the proposed rule (81 Fed. Reg. at 13654-55), numerous examples of events where EPA and the CSB found that poor compliance audits were contributing factors to the severity of past chemical accidents, which may have been rectified if a third-party audit had been conducted instead of an audit conducted by in-house personnel, including:

- BP Texas City Refinery explosion and fire (Texas City, Texas, March 23, 2005), where the CSB identified a lack of rigorous compliance audits as a contributing factor.
- Citgo Corpus Christi Refinery explosion and fire (Corpus Christi, Texas, July 2009), where the CSB found that Citgo had never conducted a safety audit of hydrofluoric acid (HF) alkylation operations at either of its U.S.

refineries with a recommendation that Citgo complete a third party audit of all Citgo HF alkylation unit operations in the United States.

- DPC Enterprises, L.P., chlorine release (Glendale, Arizona, November 2003), where the CSB recommended that DPC use a qualified, independent auditor to evaluate DPC's PSM and RMPs and implement recommendations.
- Bayer CropScience, LP, explosion (Institute, West Virginia, January 2008), where the CSB recommended that Bayer commission an independent human factors and ergonomics study of all Institute site PSM and RMP covered process control rooms to evaluate the human control system interface, operator fatigue, and control system familiarity and training.

The United Steelworkers strongly object to EPA's proposal to eliminating the third-party independent compliance audit requirements within the Chemical Disaster Rule in contradiction to EPA's well-supported findings in the preambles to the proposed and final Chemical Disaster Rule. In light of the recent *Air Alliance Houston* decision, the United Steelworkers urge EPA to move forward to facilitate implementation and compliance with the third-party audit requirements set forth in the Chemical Disaster Rule as expeditiously as practicable in accordance with section 112(r)(7) of the CAA to protect the interests of USW members and their families.

The United Steelworkers Object to Rescission of Incident Investigation/ Root Cause Analysis Requirements within the Chemical Disaster Rule

The United Steelworkers object to EPA's proposal to rescind incident investigation requirements including the root cause analysis requirements set forth in the Chemical Disaster Rule. EPA, under the Chemical Disaster Rule, revised the Incident Investigation definition at 40 C.F.R. §§ 68.60(d) and 68.81(d) to require that the report to be completed upon conclusion of an incident investigation discuss "the factors that contributed to the incident including the initiating event, direct and indirect contributing factors, and root causes. According to EPA, root causes shall be determined by conducting an analysis for the incident using a recognized method." 82 Fed. Reg. at 4602. EPA further stated that "the rule requires all facilities with Program 2 or 3 processes to conduct a root cause analysis as part of an incident investigation of a catastrophic release or an incident that could have reasonably resulted in a catastrophic release (*i.e.*, a near-miss). This provision is intended to reduce the number of chemical accidents by requiring facilities to identify the underlying causes of an incident so that they may be addressed. Identifying the root causes, rather than isolating and correcting solely the immediate cause of the incident, will help prevent similar incidents at other locations, and will yield the maximum benefit or lessons learned from the incident investigation." *Id.* at 4595.

The United Steelworkers have significant experience and expertise in conducting incident investigations through its Triangle of Prevention Program ("TOP") (see USW,

“Looking for Trouble: A Comprehensive Union-Management Safety and Health Program,” (2015) at 6 (hereinafter “Looking for Trouble”) (USW Comments – Attachment 10)) and the USW’s involvement in numerous incident investigations of accidents at USW facilities as discussed in the Nibarger Declaration ¶¶ 3, 5, 14-18, 32-33, 36-42. The Nibarger Declaration provides specific examples of past catastrophic events at USW facilities where the conduct of a root cause analysis could have resulted in lessons learned that prevented future accidents at the facility and similar facilities throughout the United States. For example, the Nibarger Declaration ¶ 36-37 states:

While investigating root causes of an accident on behalf of USW, I have seen numerous circumstances where identification of root causes prevented harm to USW members and their families by considering factors beyond the immediate cause of an accident, thereby allowing the facility to identify and address broader root causes to prevent future accidents at the facility. For example, during my investigation into the BP Texas City, Texas, explosion (March 23, 2005), the obvious immediate cause of the explosion at BP Texas City was the failure of an antiquated piece of equipment. If BP had limited its response to the immediate cause and only replaced the failed baffles, BP would have failed to consider all of the contributory factors to that equipment failing, and BP would not have addressed contributory factors up to and including cultural issues. Instead, by examining the root cause information, BP had a better and more in depth understanding of the contributing factors that prevented similar incidents from occurring at the BP Texas City facility.

Moreover, the investigation at BP, Texas City (2005) identified and addressed contributory issues not only in the BP system but in the refining sector in general. For example, failings in the process safety management system were uncovered. Issues like fatigue and inadequate training were identified as well as management system failures like pre-start up safety reviews. In short, just replacing a piece of failed equipment at BP would not have addressed any of the contributory events of the failure. Absent conduct of the root cause analysis at Texas City, those problems would still be in place setting another failure into motion at Texas City and other refineries. BP’s root cause analysis, therefore, was critical in protecting USW members at the BP Texas City refinery as well as in the refining sector as a whole. If the Chemical Disaster Rule continues to be delayed, facilities such as BP Texas City will not be required to conduct root cause analyses after an accident. As such, important information will not be considered and shared harming USW members and their families by forsaking the opportunity to apply “lessons learned” that would prevent or minimize impacts of future accidents and the resultant injuries to USW members and their families.

See also Papered Over at 6.

The Nibarger Declaration ¶ 31 also reinforces that “identifying the root causes, rather than isolating and correcting solely the immediate cause of the incident, will help prevent similar incidents at other locations, and will yield the maximum benefit or lessons learned from the incident investigation as noted by EPA in the preamble to the proposed rule.” Finally, the Nibarger Declaration at 33 endorses EPA’s statement in the preamble to the final Chemical Disaster Rule (82 Fed. Reg. at 4607), that “requiring root cause analyses for catastrophic releases and near misses, and including root cause information in incident investigation reports is vital for understanding the nature of these events.” As the Nibarger Declaration ¶ 32 asserts, without identifying and understanding contributory causes per a root cause analysis, a facility cannot make the changes necessary to prevent a recurrence of the event. Analysis of root causes for catastrophic releases and near misses increases the likelihood that “lessons learned” are identified and applied resulting in accidents avoided or mitigated at the facility and throughout the industry. See also 81 Fed Reg. at 13640.

Accordingly, the United Steelworkers strongly support the CSB’s assertion that incident investigation root cause analysis requirements are essential for continued improvement and accident prevention. CSB Comments at 5. The United Steelworkers join with the CSB in objecting to the removal of the Chemical Disaster Rule’s “requirement that facilities conduct a root cause analysis as part of an incident investigation following an incident that resulted in a catastrophic release or an incident that could reasonably have resulted in a catastrophic release (referred to as a “near miss”).” *Id.* As noted in the CSB Comments at 6, the CSB 2012 report on the Chevron Refinery Fire, a USW facility, led to the recommendation of key root cause analysis provisions including the need for investigation reports to include a schedule to address recommendations by taking appropriate corrective actions within a 12-month completion deadline and the need for at least one person with appropriate knowledge of the facility process and experience in incident investigation techniques be a part of the incident investigation team. *Id.* at 6.

The United Steelworkers, like the CSB, continue to support the need for strong root cause analysis provisions and other provisions in the Chemical Disaster Rule that bolster incident investigation requirements. Moreover, in light of the *Air Alliance Houston* decision, the United Steelworkers urges EPA to reconsider its proposal to rescind incident investigation/root cause requirements within the Chemical Disaster Rule and instead facilitate implementation of these improvements as expeditiously as practicable in accordance with section 112(r)(7) of the CAA to protect the interests of USW members and their families.

The United Steelworkers Object to Rescission of LEPC Coordination
and Information Sharing Requirements Including Mandatory
Field and Tabletop Exercise Requirements within the Chemical Disaster Rule

The United Steelworkers object to the rescission of Chemical Disaster Rule’s bolstered emergency response coordination requirements between the facility and the LEPC that improved information sharing under 40 CFR § 68.93, and established new

requirements relating to the conduct of emergency response exercises notification exercises, field exercises and tabletop exercises in coordination with local first responders per 40 CFR § 68.96 to address the harm posed to first responders, workers, and the public caused by poor communications from facility personnel during an RMP event. See 82 Fed. Reg. at 4667 and 4691).

The United Steelworkers agree with the findings in EPA's preamble to the final Chemical Disaster rule (82 Fed. Reg. at 4667):

[T]his approach will allow LEPCs and other local emergency officials to obtain the information they require to meet their emergency response planning needs. It will also allow local emergency planners and response officials to ask questions of facility personnel about the risks associated with the chemical hazards at the facility and about appropriate mitigation and response techniques to use in the event of a chemical release. It further allows the facility owner or operator and the LEPC to identify information that may need to be maintained securely and discuss strategies to secure the information or to provide only information that is pertinent to emergency response planning without revealing security vulnerabilities.

The LEPC or local emergency response officials may request information such as accident histories, portions of compliance audit reports relevant to emergency response planning, incident investigation reports, records of notification exercises, field and tabletop exercise evaluation reports, or other information relevant to community emergency planning. For example, this may include requesting information on changes made to the facility that affect risk such as incorporating safer alternatives.

The United Steelworkers believe that the enhanced emergency response coordination requirements set forth at 40 C.F.R. § 68.93 will improve information sharing between facility personnel and local first responders as determined EPA in the preamble to the Chemical Disaster Rule (see 82 Fed. Reg. at 4667 and 4691) thereby avoiding or at a minimum mitigating impacts to workers (including USW members) and the public (including USW members and their families) that occur as a result of poor coordination and communication between facility personnel and local first responders under the existing regulatory scheme.

For example, the Nibarger Declaration ¶ 56 recounts an explosion that occurred at the former ExxonMobil refinery in Torrance CA (2015) where the refinery had a release after the explosion of an electrostatic precipitator. Facility personnel delayed communicating to the community and first responders the makeup of the particulate matter released after the explosion. As a result, the makeup of the catalyst particles released into the community was not made readily available to the first responders or community. The first responders could not determine what personal protective equipment ("PPE") would be most effective for their personal protection and community

members were greatly confused and apprehensive as to what actions should be taken in response to the release – whether to shelter in place or evacuate. Had the facility personnel been required to comply with the new coordination requirements in the Chemical Disaster Rule, facility personnel would have communicated more effectively with local first responders and community members, which would have facilitated the first responders and community members' ability to effectively respond to the release and protect themselves from harm.

The United Steelworkers endorse EPA's statement in the preamble to the proposed Chemical Disaster Rule that "[e]nsuring that communities, local planners, local first responders, and the public have appropriate chemical facility hazard-related information is critical to the health and safety of the responders and the local community.... Specifically, LEPCs and first responders want to have access to the most relevant chemical hazard and risk information for their needs, in a user-friendly format, to better support planning and preparedness efforts. Community residents, operators of community facilities (such as daycares and nursing homes) and organizations consistently noted that they need basic information regarding chemical risks at facilities, presented in a clear and consistent manner, so that they can effectively participate in preparedness and planning to address such issues as effective emergency notification procedures, evacuation, and sheltering in place." 81 Fed. Reg. at 13677.

The United Steelworkers also agree with EPA's finding in the proposed rule (*id.* at 13671) that "[p]oor communication between facility personnel and first responders, as well as poor communication between facility personnel and communities, has been shown to contribute to the severity of chemical accidents." In support of this statement, EPA cites to two specific examples where the facility personnel's failure or refusal to provide critical information regarding the nature, volume or identity of the chemicals involved, or what if any precautions or measures should be taken by first responders and the public to avoid or minimize exposures including the Bayer CropScience explosion that occurred in Institute, West Virginia, in 2008, and the release of hydrofluoric acid or HF from the Citgo Refinery in Corpus Christi, Texas, in July 2009. The Nibarger Declaration ¶ 45 notes that the Bayer CropScience incident is a particularly illustrative example of the harm that results to workers, first responders and the public due to poor communication between facility personnel, first responders and the public under the current RMP regulatory scheme. According to the CSB,

The Bayer fire brigade was at the scene in minutes, but Bayer management withheld information from the county emergency response agencies that were desperate for information about what happened, what chemicals were possibly involvedThe Bayer incident commander, inside the plant, recommended a shelter in place; but this was never communicated to 911 operators. After a few hours of being refused critical information, local authorities ordered a shelter in place, as a precaution. **Improper communication between the facility and the first responders during the accident led to a delay in implementing a**

public shelter-in-place order for the local community, and may have resulted in toxic exposure to on-scene public emergency responders. (Emphasis supplied.).

The United Steelworkers endorse EPA's findings in preamble to the proposed and final Chemical Disaster Rule that the West Texas Fertilizer fire highlighted the need for better coordination between facility personnel and local first responders. See 81 Fed. Reg. at 13671-72; and 82 Fed. Reg. at 4654. As noted in *Air Alliance Houston* at 8: "The West, Texas disaster involved a fire and explosion that crushed buildings and sent projectiles into neighboring communities, killing twelve first responders and two members of the public and causing \$230 million in damage" See also Nibarger Declaration ¶ 46:

During the West Texas Fertilizer fire, the first responders lacked knowledge of what chemicals were stored on the facility and the potential damage associated with those chemicals if the chemicals stored on the facility were involved in a fire or other mechanism to release their energy due to the lack of coordination between facility personnel and the local first responders. As a result, the first responders traveled too close to the areas where the chemicals were stored at the facility putting the first responders at risk and contributing to their deaths.

EPA's efforts to discount the West, Texas disaster in seeking to delay and rescind the Chemical Disaster Rule are unfounded. The D.C. Circuit in *Air Alliance Houston* at 35-36 stated in support of the Court's conclusion that EPA's promulgation of the RMP Delay rule was arbitrary and capricious:

[C]ontrary to EPA's statement in the Delay Rule that "the timing" of a "finding by the Bureau of Alcohol, Tobacco, and Firearms . . . that the West Fertilizer explosion was caused by arson" rather than an accident supports delay, that is not a reasoned basis for delaying the *entire* Chemical Disaster Rule. See 82 Fed. Reg. at 27,137-38. EPA cited many more incidents than just the West, Texas disaster throughout the development and promulgation of the rule. See, e.g., Chemical Disaster Rule NPRM, 79 Fed. Reg. at 44,608 ("An April 8, 2011 explosion at [a plant in] Hawaii killed five workers who were disposing of fireworks."); *id.* at 44,616 ("In October 36 2007, five contractor workers were killed [at a plant] in Georgetown, Colorado, when a fire occurred inside a tunnel The CSB found that inadequate contractor safety practices and oversight contributed to the accident."); *id.* at 44,618 (citing the "CSB's findings concerning a lack of rigorous compliance audits in the 2005 BP Texas City Refinery explosion" that killed fifteen plant workers); Chemical Disaster Rule, 82 Fed. Reg. at 4599 (citing, in a section titled "Events Leading to This Action," "[i]n addition to the tragedy . . . in West, Texas," "an explosion and fire at the Tesoro Refinery in Anacortes, Washington," a fire "at the Chevron Refinery in Richmond, California," and "a fire and

explosion at Williams Olefins in Geismar, Louisiana.”). **Even were the court to agree for purposes of argument that the cause of the West, Texas disaster being arson is relevant to some of the accident-prevention provisions of the Chemical Disaster Rule, it is irrelevant to the emergency-response and information-sharing provisions, including those that have indisputably been delayed from the original March 14, 2018 effective date. Given that twelve of the fifteen fatalities in the West, Texas disaster were local volunteer firefighters and other first responders, this would be a fairly weak explanation for delaying provisions that EPA previously determined would help keep first responders safe and informed about emergency-response planning.** (Emphasis supplied.).

In addition, as discussed in the Nibarger Declaration ¶¶ 47-51, a series of recent high profile events including the fire and explosions from the bursting of containers with highly flammable organic peroxides produced at the Arkema Chemical plant in Crosby, Texas, in the wake of Hurricane Harvey highlight the harm to first responders and the public (including USW members and their families) that results from poor communication and coordination between facility personnel, first responders and the public under the current RMP regulatory scheme.

The delay in implementing the enhanced availability of information for local first responders within the Chemical Disaster Rule harms and will continue to harm USW members who work at chemical and petrochemical facilities including refineries and their families who live in close proximity to these facilities. *See Air Alliance Houston* at 16 (“Even if the only tangible impact of the Delay Rule were delay of the Chemical Disaster Rule’s first-responder provisions, the potential harm to members of United Steelworkers is alone sufficient to provide standing to Community Petitioners.”). The United Steelworkers urge EPA to reconsider the proposal to rescind the enhanced LEPA coordination and information sharing requirements at 40 CFR § 68.93 within the Chemical Disaster Act and implement these requirements as expeditiously as practicable in accordance with section 112(r)(7) of the CAA particularly in light of the *Air Alliance Houston* decision.

The United Steelworkers also object to EPA’s proposal to rescind the modest mandatory field exercise requirements and relax the tabletop exercise requirements set forth in the Chemical Disaster Rule at 40 CFR § 68.96. The Nibarger Declaration ¶¶ 58-65 provides an insider’s perspective on the benefits provided by field and tabletop exercises that improve first response efforts including coordination between facility operators, workers, first responders and the public. *See, e.g., Nibarger Declaration* ¶ 63:

I have personally been involved in several emergency responses as well as tabletops and drills, during my time employed as an operator at the Shell refinery in Anacortes, Washington. There is a sense of confidence going into an actual event if one has gone through exercises or practiced it

as compared to ‘reading’ a plan. Practice gives one the chance to test equipment and theories to discover shortcomings or incorrect assumptions. Having gone through the tabletop and exercise drills, one has had the opportunity to make mistakes and learn from them in a practice scenario. Then, when one is confronted with an actual emergency event with life and death consequences, one can move with confidence implementing the emergency plans and procedures.

USW joins with the CSB in objecting to the proposed removal of the 10-year minimum frequency requirement for field exercises. The USW, like the CSB, “does not understand why the EPA proposes to eliminate this modest requirement.” CSB Comments at 7. Tabletop and field exercises are critical for an effective preparedness program. *Id.* The United Steelworkers, therefore, urges EPA to reconsider the proposal to rescind the field and tabletop exercise requirements at 40 CFR § 68.96 within the Chemical Disaster Act and implement these requirements as expeditiously as practicable in accordance with section 112(r)(7) of the CAA particularly in light of the *Air Alliance Houston* decision.

The United Steelworkers Object to Rescission of Public
Information Sharing Requirements within the Chemical Disaster Rule

The United Steelworkers also joins with the CSB in objecting to EPA’s proposal to eliminate the requirements for providing to the public upon request certain chemical hazard information and access to certain community emergency preparedness information. CSB Comments at 7. The United Steelworkers share the CSB’s belief that there “is an important need for information sharing among facilities, emergency responders, [LEPCs] and the community.” As noted in the CSB comments at 7-8 in citing to Chevron Refinery Fire, “transparency between industry and the public [improves] health and safety for the facility and the surrounding communities.”

While the Chemical Disaster Rule does not make unrestricted RMP information publicly available as urged by the USW to improve compliance by regulated facilities (see *id.* at 13678), as described in the preamble to the Chemical Disaster Rule (82 Fed. Reg. at 4669) the new requirements set forth in the final rule at 40 C.F.R. § 68.210(b) will require owners or operators to make the important chemical hazard information for all regulated processes at a stationary source available to the public upon request. See Nibarger Declaration ¶¶ 66-69. Accordingly, the United Steelworkers urge EPA to reconsider the proposal to rescind public information sharing requirements at 40 CFR 68.210 within the Chemical Disaster Rule and implement these requirements as expeditiously as practicable in accordance with section 112(r)(7) of the CAA particularly in light of the *Air Alliance Houston* decision.

The United Steelworkers Object to Rescission of Rescission of Supervisor Training Requirements

In addition, the United Steelworkers object to EPA's proposal to rescind Chemical Disaster Rule requirements set forth at 40 C.F.R. §§ 68.54 and 68.71 that expand initial and refresher training for employees operating a Program 2 or Program 3 covered process by clarifying that all employees "involved in" operating a process including supervisors responsible for directing process operations (82 Fed. Reg. at 4675) as well as process engineers and maintenance technicians who may occasionally be involved in process operations. 81 Fed. Reg. at 13686.

As noted in the Wright Declaration ¶¶ 48-49, "[r]efineries and chemical plants are complex and contain many potentially hazardous operations. Training is as important for supervisors, maintenance technicians, and control room operators as it is for the pilots of commercial airliners. Implementation of the new training requirements set forth in the Chemical Disaster Rule would make RMP covered facilities safer today." Moreover, as stated in Looking for Trouble at 9: "[t]he safety and health program should include training for the entire workforce. No training can anticipate every possible problem. Everyone should be trained to look for trouble. Everyone should know what to do when they find it. Accordingly, the United Steelworkers urge EPA to reconsider the proposal to rescind the training requirements public information sharing requirements within the Chemical Disaster Rule and implement these requirements as discussed in the preamble to the proposed Chemical Disaster Rule expeditiously as practicable in accordance with section 112(r)(7) of the CAA particularly in light of the *Air Alliance Houston* decision.

Conclusion

As poignantly described by the Lilienfeld Declaration ¶¶ 8-22, USW members and their families who work, reside and recreate in close proximity to chemical and petrochemical facilities continue to be confronted with the specter of catastrophic events that pose significant and immediate risk to their person and property from the potential releases of RMP regulated substances at chemical and petrochemical facilities including refineries in the Gulf Coast where last year certain refineries "crashed the units" and locked in United Steelworker members during Hurricane Harvey. If we continue as we are under the current regulatory scheme without the benefit of the Chemical Disaster Rule, the frequency and magnitude of catastrophic explosions at chemical and petrochemical plants will not decrease, the volume of hazardous pollutants released into the atmosphere during and after these events will not be reduced, and the harm to USW members and their families from these events including acute and chronic impacts due to chemical releases will not be addressed. In short, EPA's proposed rescission of the Chemical Disaster Rule harms United Steelworker members, our families and the communities where we live. See USW Petition to the EPA Administrator: Protect Our Workplaces and Communities (2018) (USW Comments

– Attachments 11-26) (Nearly 20,000 USW signatures calling on EPA to withdraw the proposal to rescind the Chemical Disaster Rule.). In particular, the delay of the March 2018 deadline for emergency response coordination requirements within the Chemical Disaster Rule means that another hurricane season has arrived without these important protections in place.

A refinery that loses power is actually more dangerous than one where power is maintained. Wind can entrain objects that can penetrate tanks of hazardous substances. Flooding can cause runaway chemical reactions, as we saw in the explosions at Arkema Chemical in Crosby, Texas, in the aftermath of Hurricane Harvey. Many refineries and chemical plants are in Texas, Louisiana, and other areas vulnerable to hurricanes or tornadoes. Delay of these accident prevention provisions within the Chemical Disaster Rule, therefore, harms and directly threatens USW members, their families, and other community members. USW members and families suffer not only injury and death from the catastrophic accidents that the Chemical Disaster Rule is meant to prevent, they also suffer harm from both short-term and permanent economic losses when their workplaces are destroyed or severely damaged. Even when the facilities are rebuilt, there may be a long period of unemployment, and if the employer goes bankrupt or chooses not to rebuild, the jobs may never come back.

The United Steelworkers firmly agree with EPA's finding that implementation of the Chemical Disaster Rule will result in a reduction of the frequency and magnitude of damages from releases. As noted by EPA, "[a]ccidents and releases from RMP facilities occur every year, resulting in fires and explosions, property damage, acute and chronic exposures of workers [including USW members who work in these facilities] and nearby residents [including USW members and their families] to hazardous materials, and resultant damages to health." 82 Fed. Reg. at 4683. EPA's findings regarding the benefits and modest costs resulting from implementation of the Chemical Disaster Rule have not changed or been refuted to justify such a dramatic change in direction regarding strategies to reduce the frequency and severity of accidents and releases from RMP facilities. On behalf of our members and their families, the United Steelworkers implore EPA to reconsider the proposal to rescind almost all of the requirements within the Chemical Disaster Rule and move forward with implementation of these requirements as expeditiously as practicable in accordance with section 112(r)(7) of the CAA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roxanne D. Brown".

Roxanne D. Brown
Legislative Director

LIST OF USW ATTACHMENTS

The following documents are attached to the USW's comments and are to be incorporated into the administrative record in their entirety for EPA's consideration:

1. *Air Alliance Houston v. EPA*, No. 17-1155 (D.C. Circuit) (August 17, 2018) (slip op.).
2. Declaration of Michael Wright (USW Director of the Health, Safety and Environment Department (October 24, 2017).
3. Declaration of Kim Nibarger (USW Oil Sector Bargaining Chair) (October 25, 2017).
4. Declaration of Ben Lilienfeld (USW Sub-District Director for Sub-District 1 within District 13) (October 25, 2017).
5. Declaration of Anna Fendley (USW Legislative Representative) (April 11, 2017).
6. Statement of Michael J. Wright (USW, Director of Health, Safety and Environment) before the CSB Public Hearing on Regulatory Approaches to Offshore Oil and Gas Safety (December 15, 2010).
7. Community Petitioners to EPA Administrator McCarthy (August 1, 2013).
8. CSB to James Belke (EPA) (Attention: Docket No. EPA-HQ-OEM-2015-0725, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 40 CFR Part 68) (July 20, 2018).
9. USW, "Papered Over: Safety and Health In U.S. Paper Mills (2010).
10. USW, "Looking for Trouble: A Comprehensive Union-Management Safety and Health Program" (2015).
- 11.– 26. USW Petition to the EPA Administrator: Protect Our Workplaces and Communities (2018).