

August 21, 2018

The Honorable Andrew Wheeler, Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Docket # EPA-HQ-OEM-2015-0725

Dear Acting Administrator Wheeler:

We submit this comment on the proposed rule, drawing on our prior experience in national security roles:

- Lieutenant General Russel L. Honoré, US Army (Ret): former commander of Joint Task Force Katrina, and founder of the GreenARMY;
- Major General Randy Manner, US Army (Ret), former acting director of the Defense Threat Reduction Agency;
- David Halperin, lawyer and former staff member of the National Security Council and Senate Intelligence Committee.

We strongly oppose the proposed rule. It would eliminate many of the important provisions of the Risk Management Program Amendments rule that the EPA issued on January 13, 2017. Such a move would increase dangers to U.S. national security by raising the risks of chemical explosions and releases on U.S. soil, whether from accident, natural disaster, or deliberate attack.

The American people need more, not less, protection from chemical disasters, so we urge you to cancel this rule and instead strengthen safety measures, as we describe below.

The August 17, 2018, ruling of the United States Court of Appeals for the District of Columbia Circuit that EPA acted arbitrarily, capriciously, and unlawfully in delaying for 20 months the effective date of the 2017 regulation underscores the reckless and lawless nature of the current process.¹ At the same time, media reports have

¹ Air Alliance Houston v. EPA, No. 17-1155 (U.S. Ct. App. D.C. Cir., Aug. 17, 2018); <https://www.documentcloud.org/documents/4775225-180817-Air-Alliance-Houston-et-al-v-EPA-OPINION.html> .

highlighted the undue influence of the chemical industry on EPA decision-making in the current administration, including the hiring of chemical industry executives as senior EPA officials.²

To protect our national security, EPA must change course.

For decades, our country has failed to squarely address the dangers of hazardous chemical facilities — from oil refineries to water treatment plants. An accident, natural disaster, or deliberate attack could trigger an explosion or chemical release that could kill thousands of people. Millions of our citizens live and work near these dangerous facilities.

After three years of intensive discussions with chemical companies, plant workers, affected communities, first responders and others, the EPA in January 2017 issued a rule to help protect the American people from these dangers. The rule strengthens the federal Risk Management Program (RMP), which addresses some 12,500 facilities that use or store large quantities of highly toxic or highly flammable chemicals.

The rule is urgently needed. The harms and risks of repeal and further delay are serious.

Let's be clear about what's at stake.

The world was outraged last year by a chemical attack in Syria that led to terrible suffering and death. It was so disturbing that the President reversed policy and ordered an attack.

Yet across our own country, hazardous chemical facilities are, in effect, as Senator Barack Obama said in 2006, “stationary weapons of mass destruction” — capable, if triggered, of causing the same kinds of harm as chemical weapons.

This is indeed a national security issue. The Administration must not merely pay lip service to national security concerns, and use them as a false justification for weakening the rule. Instead it should recognize that national security concerns compel the retention, and the strengthening, of the 2017 rule.

Our country knows the risk because there have been major incidents, like the 2013 West, Texas, ammonium nitrate explosion at an RMP facility. That tragedy killed 15

² See, e.g., <https://www.nytimes.com/2018/06/07/us/politics/epa-toxic-chemicals.html>; <https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html> .

Americans and injured 160 more. There have been thousands of other serious and deadly chemical incidents at facilities regulated by the RMP program -- including fatal explosions and fires at refineries in Washington and Texas, the 2012 massive Chevron Richmond refinery fire, and the fatal 2013 Geismar, Louisiana, Olefins plant explosion.

The thousands of incidents over recent years have underscored the failure by many in the chemical industry to minimize and safely secure toxic materials, and our government's failure to create comprehensive and fair rules to protect against such incidents.

The weight of these dangerous and sometimes fatal incidents, and the continuing threat to U.S. security, compelled President Obama to issue, on August 1, 2013, the Executive Order on Improving Chemical Facility Safety and Security (EO 13650), which directed federal agencies to act. That executive order led the EPA, after consulting with the Department of Homeland Security, the Occupational Health and Safety Administration, and other federal agencies, to issue the 2017 rule.

The EPA under the current administration has repeatedly highlighted the 2016 finding of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) that the West, Texas, explosion was set deliberately, and EPA in this proceeding is again seeking public comment on the significance of the BATF finding. EPA recognizes in its proposed rule commentary that outside experts have questioned the BATF conclusion³, but says that "EPA defers to BATF expertise in determining the cause of the West Fertilizer fire and explosion."

We don't think the outcome of a debate over the cause of one chemical incident, however deadly, should be determinative of what makes sense for chemical security rules to protect our people. Moreover, stronger chemical safety measures are needed whatever the explanation for West.⁴

The need for stronger provisions, and safer materials, is no less critical and urgent if

³ <https://www.houstonchronicle.com/news/houston-texas/houston/article/Experts-cast-doubt-on-ATF-s-arson-finding-in-West-11725989.php>;
https://www.csb.gov/assets/1/6/csb_comments_epa_rmp_20180720.pdf.

⁴ EPA recognizes that, regardless of cause, the West incident shows the need for stronger emergency response coordination than has existed. 83 Fed. Reg. at 24,870 ("EPA reaffirms [its] view [that the West incident still highlighted the need for better coordination between facility staff and local emergency responders."] Similarly, the D.C. Circuit Court of Appeals's recent decision held that the BATF finding did not justify delaying the effective date of the 2017 rule ("EPA cited many more incidents than just the West, Texas disaster throughout the development and promulgation of the rule.... 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..."). slip op. at 35-36.

West was caused by sabotage. Indeed, if West was a deliberate explosion, that should only heighten our concern: We know there have been numerous chemical accidents and natural disaster incidents in the past, but now there is at least evidence of a deliberate attempt to cause harm by attacking one of these facilities -- and of the vulnerability of one of our plants to such an effort.

Whatever happened at West, it is a serious concern that terrorists could trigger a chemical plant attack in our country, with devastating consequences.

9-11 hijacker Mohammed Atta, before he flew a jet into the World Trade Center, reportedly had been scouting U.S. chemical plant sites.⁵

In 2003, the government's National Infrastructure Protection Center warned that U.S. chemical plants could be terrorist targets.⁶ Security experts have warned of the relative ease with which determined attackers could thwart plant security. The potential for cyber attacks⁷ makes the challenge even more serious.

The EPA has identified 466 chemical facilities that each put 100,000 or more people at risk of a poison gas disaster.⁸ In 2004, the Homeland Security Council projected that a major attack would kill 17,500 people and injure tens of thousands.⁹

Even without the threat of sabotage, we are not just at risk, but actual harm is occurring regularly under EPA's existing framework.

From 2004 to 2013 there were some 1,500 U.S. chemical releases or explosions with reportable harm¹⁰, causing 17,000 injuries and 58 deaths. There have been hundreds more incidents since then, with more casualties.

We know the dangers, also, from the 1984 pesticide plant disaster at Bhopal, India, which caused 20,000 deaths. The Bhopal plant was owned by a U.S. company, Union Carbide. If that plant had been located in the U.S. and 20,000 people had died here, we would have fixed this problem long ago.

⁵ https://www.washingtonpost.com/archive/politics/2001/12/16/chemical-plants-are-feared-as-targets/82044d35-a3ff-499a-b4c1-3174854e80a4/?utm_term=.17ef5c7c8198

⁶ <https://www.nrdc.org/media/2003/030909>

⁷ <https://www.justice.gov/ag/page/file/1076696/download>.

⁸ <https://preventchemicaldisasters.files.wordpress.com/2015/03/rmp-facilities-in-the-united-states-as-of-december-2014.pdf>

⁹ https://www.epw.senate.gov/public/_cache/files/2a4a3b95-5710-4231-b9f5-82227e8ad904/orumtestimonycombined.pdf

¹⁰ https://www.eenews.net/assets/2017/02/27/document_pm_02.pdf

Our country received another serious warning in the wake of Hurricane Harvey last year, when a flooded organic peroxides manufacturing plant, operated by the French company Arkema, in Crosby, Texas, 20 miles from Houston, burned, as a result of the plant losing power and refrigerated materials decomposing.¹¹ Brock Long, the Federal Emergency Management Agency head, said at the time that the “the plume is incredibly dangerous.”¹² Residents around the area were evacuated. At least 15 first responders were treated at the hospital. Some of the emergency workers sued the plant¹³, as did Harris County, Texas¹⁴, and on August 3, 2018, a Harris County grand jury criminally indicted Arkema North America and two of its executives, charging that they recklessly released chemicals and put residents and first responders at risk of serious injury.¹⁵

The 2017 rule – the rule you now propose to undermine — would require plants like Arkema’s to engage in more coordination with local first responders to plan for incidents by sharing information that first responders need to protect communities, and make it easier for community members to learn about plant dangers. The rule also would require such plants to evaluate whether they need greater safety improvements and emergency preparedness, such as storing fewer chemicals, improving storage safety, and strengthening backup power so electricity would be maintained in a storm, and devising other ways to operate more safely and reduce hazards before foreseeable hurricane winds, flooding, or earthquakes hit. And the rule would have required three industries with the most serious accident records — refineries and coal products manufacturers, paper mills, and chemical manufacturers — to analyze whether it was feasible to move to safer technologies and materials.

Chemical industry lobbying kept important protections out of the 2017 RMP rule. In particular, community, labor, and environmental groups had strongly urged that plants be required to move to safer technologies where feasible¹⁶, as some responsible companies, such as Clorox, already have done voluntarily.¹⁷

But, as noted, the final RMP rule does provide for some critical, common-sense reforms: enhancing emergency preparedness; improving investigations of near-miss incidents and actual releases; instituting third-party audit requirements; increasing

¹¹ <https://www.csb.gov/CSB-releases-arkema-final-report/>

¹² <https://www.reuters.com/article/us-storm-harvey-fema-arkema-idUSKCN1BB1L9>

¹³ https://www.washingtonpost.com/news/energy-environment/wp/2017/09/07/in-scathing-lawsuit-first-responders-describe-vomiting-gasping-at-texas-chemical-plant-fire/?utm_term=.485be0b10276

¹⁴ <https://www.chron.com/news/houston-texas/article/Harris-County-sues-Arkema-for-chemical-disaster-12363560.php>

¹⁵ <https://app.dao.hctx.net/arkema-indicted-toxic-cloud>.

¹⁶ <https://preventchemicaldisasters.org/>

¹⁷ <https://www.americanprogress.org/issues/security/news/2006/04/24/1924/preventing-toxic-terrorism/>

public access to chemical hazard information; and requiring safer technology analyses (STAAs) including, for example, improving plant design to protect against chemical terrorism. EPA found in issuing the rule that it would reduce deaths, injuries, and other harm from RMP facility incidents involving both RMP-covered and non-RMP covered chemicals, as well as lead to “prevention of rare but extremely high consequence events,” such as a major Bhopal-level catastrophe.

Now EPA proposes to cancel all of the essential prevention measures — including inherently safer technology assessments, incident investigation improvements, and training — and most of the information measures, while weakening and postponing the other common sense emergency response measures, such as annual coordination with first responders, disaster drills and exercises, and even public meetings after a chemical disaster. That would be an enormous abdication of the government’s responsibility to protect our nation and our people. It would likely cost our country a great deal of money over time in recovery expenses from a greater frequency of chemical explosions — far more than the cost of implementing the 2017 rule.¹⁸ And it could lead to extensive, and even catastrophic, loss of lives.

Your proposal to reduce public access to information about chemical hazards at U.S. facilities is of particular concern to us.

EPA uses national security as an attempted justification to weaken the informational access for first responders, but EPA offers no evidence or gives no justification for why such public servants are not or cannot be adequately trained to keep such information safe. Nor does EPA provide any evidence that allowing a community member to request certain information from a facility would increase the likelihood that a terrorist would attack a facility.

In fact, evidence supports the need for the people most affected by a chemical incident to have information before it happens, so they can adequately prepare to protect themselves.¹⁹

¹⁸ We refer you to the testimony of consultant Paul Orum at your public hearing on June 14, 2018.

¹⁹ See, e.g.: Department of Homeland Security, CFATS: RBPS 9 – Response, Fact Sheet (<https://www.dhs.gov/sites/default/files/publications/rbps-9-fs-508.pdf>) and Guidance (<https://www.dhs.gov/sites/default/files/publications/CFATS-Risk-Based-Performance-Standards-508.pdf>); Department of Homeland Security, “Chemical Sector Security Awareness Guide” (Sept. 2012) (“The underlying message of the guide stresses the importance of communication, not only within the facility, but also with local law enforcement agencies and emergency response personnel. A quick and coordinated response is an important factor in addressing and eliminating security threats” (p.1)) <https://www.dhs.gov/sites/default/files/publications/DHS-Chemical-Sector-Security-Guide-Sept-2012-508.pdf> ; Partnership for A Secure America, “Chemical Terrorism: U.S. Policies to Reduce the Chemical Terror Threat” (“Invest in training and materials for first responders. Risk communication to the public.”) <http://www.psaonline.org/2008/09/01/chemical-terrorism/>

Determined attackers will be able to discover, through diligent research, where hazardous materials are stored, regardless of what EPA mandates; thus there's no good reason to leave first responders or community members in the dark, when informing them could improve public protection.

Instead of weakening the 2017 rule, EPA should implement and consider strengthening it, including by:

-- Requiring all RMP facilities to assess safer alternatives to existing chemical processes, alternatives that will eliminate or dramatically reduce the consequences of a catastrophic release of an acutely toxic substance. The 2017 rule exempted most of the 12,500 Risk Management Plan chemical facilities from requirements to conduct STAAs. The exempted facilities include, for example, water treatment plants, some of which put major cities at risk of a catastrophic release of chlorine gas.

-- Requiring all these RMP facilities to send their STAAs to the EPA and readily share the information with nearby communities and other interested parties, such as emergency responders, vendors of safer technologies, facility employees and contractors, and safety researchers.

-- Establishing a publicly accessible clearinghouse of safer available alternatives that could encourage and support the adoption of safer alternatives by more facilities as soon as practicable.

-- Starting with the highest risk facilities, requiring chemical facilities to substitute safer alternatives to their processes, wherever feasible, that will eliminate or significantly reduce the consequences of a catastrophic release. The coalition of community, worker, and environmental groups²⁰ that has engaged the EPA on these issues has recommended that EPA at the very least begin a pilot program to require IST implementation in a subset of RMP facility categories, such as waste water and drinking water treatment plants, bleach plants and hydrogen fluoride refineries, and for those facilities among the 2,000 high-risk facilities cited in the EPA's National Enforcement Initiative (NEI) 2017-19 proposal.

These provisions to improve chemical security are urgently needed to protect the American people. EPA should cancel the current proposed rule, implement the 2017 rule, and build on it with new provisions to further strengthen chemical security.

²⁰ <http://preventchemicaldisasters.org/>

That is the only responsible course if we are to protect the American people.
We would be pleased to discuss these matters further with you.

Sincerely,

Lieutenant General Russel L Honoré, US Army (Ret)

Major General Randy Manner, US Army (Ret)

A handwritten signature in black ink, appearing to read "David Halperin", followed by a long horizontal line extending to the right.

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