

September 28, 2022

Michael Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460

Dear Administrator Regan:

We are grateful that the EPA has taken a step forward by issuing a proposed Risk Management Program (RMP) rule. However, as individuals with extensive experience in national security and environmental protection, we must tell you that the rule is not nearly strong enough to protect Americans from chemical disasters. We strongly urge you to revise the rule to take the necessary steps to improve safety and security.

First, the subject of reducing threats to chemical facilities by domestic or foreign terrorists is conspicuously absent from the proposed rule.

Second, the proposed rule's downsizing of the safer technology and alternatives analysis (STAA) provision is extremely disappointing. Under the proposed rule, less than 5 percent of RMPs would conduct these STAAs, driven in part by dubious accident data. The frequency of accidents cannot be used to reliably predict catastrophic events, whether the cause is intentional or unintentional. The 1990 Clean Air Act's section 112r was inspired by the 1984 Union Carbide disaster in Bhopal, India. The Agency's prioritization of Program 3 facilities correctly speaks to the EPA's mandate to prevent worst-case scenarios like Bhopal.

The only silver lining in this down sized STAA provision is the focus on hydrogen fluoride (HF) refineries, thanks to the availability of safer alternatives. Yet other industries that have both catastrophic release potential and safer alternatives are not covered by the STAA requirement.

We recommend that you review the literature about the hundreds of cost-effective safer processes adopted by facilities that are compiled in a series of reports by the Center for American Progress, starting with the 2006 report, Preventing Toxic Terrorism.¹ There are also Program 2 facilities that pose catastrophic hazards to millions and also have cost-effective safer alternatives operating at hundreds of these facilities.

Among the facilities excluded from the proposed rule's STAA requirements are approximately 86 chlorine bleach plants that together have over 60 million people living in their vulnerability zones (VZ), including one with over 9 million people in its VZ. Also excluded are dozens of publicly-owned water treatment plants, including a dozen that each have over one million people in its VZ. All of these facilities have many operating

¹ <https://www.americanprogress.org/article/preventing-toxic-terrorism/>

safer alternatives, ranging from safer chemical substitutes, infra-red light, and just-in-time production.

The use of inherently safer alternatives is the only foolproof way to prevent worst-case scenarios from becoming catastrophic disasters. And the only way to ensure use of such safer technologies is to require them where ever they are feasible. Inherent safety has for decades been a widely accepted and central organizing principle of chemical safety, but targeted reduction performance standards are necessary to ensure adoption of practicable alternatives identified in STAAs.

We urge you not to pass up this rare opportunity to protect the 175 million Americans living and working in VZs around RMP facilities. Once requirements are in place they are more likely to spread to all aspects of industry, the way fire safe buildings have.

We urge you to issue a final rule that:

- Requires all RMP facilities to conduct STAAs and document feasibility with worker participation.
- Requires Program 2 and 3 facilities to implement feasible safer alternatives with worker participation.
- Makes Technology Transfer a resource of solutions data from converted and deregistered facilities.
- Provides all communities non-OCA information online.
- Provides workers with shutdown authority and whistleblower protection.
- Factors external events, whether natural disasters or intentional acts, into RMP rules and permits, by also requiring: safer shutdown/startups; back-up power; real time monitoring; and enhanced community notification and emergency response.

The above prevention requirements can be applied without waiting for more disasters and will also greatly enhance post-incidence sections of the rule, such as third party audits, root cause analysis, and defining a “near miss.”

Congress, in the 1999 Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRRA)², anticipated the possibility that EPA’s authority under §112(r) could protect the public against the effects of releases resulting from terrorist attacks on chemical facilities as well as accidental releases. Among other things, that legislation added a provision, § 112(r)(7)(H)(ix), requiring the Attorney General to “submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe

² Pub. L. No. 106-40, 113 Stat. 207.

facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity.” 42 U.S.C. § 7412(r)(7)(H)(ix).

After 9/11, EPA was designated the lead agency for reducing vulnerability to deliberate attacks on the nation’s chemical facilities. EPA Administrator Christine Todd Whitman directed the Agency to develop a strategy based on Clean Air Act authorities to reduce chemical facility hazards. The plan was supported by Tom Ridge, then director of the White House Office of Homeland Security but was scuttled in 2002 by the Office of Management and Budget.

In 2002 the EPA Office of Solid Waste issued an alert, entitled Chemical Accident Prevention: Site Security³, which included this advice: “Considering inherent safety in the design and operation of any facility will have the benefit of helping to prevent and/or minimize the consequences of any release.”

In January 2003 the EPA Office of Water and the Clean Water State Revolving Fund Branch issued a fact sheet that included this passage: “In some cases the types of activities that will need to be implemented may have a longer time horizon. For example, some communities are switching their treatment process to eliminate the use of gaseous chlorine. This type of project, which may require time for design and planning, will be on a longer timeline than a project needed to install adequate security fencing, and would thus go through the traditional process for funding CWSRF projects.”

With dozens of water treatment plants that have 100,000 or more people living in their vulnerability zone, using Clean Water Funds could address hazards in major cities where fence line communities are also often closest to the hazard. More than 550 water and wastewater facilities are known to have removed chemical hazards such that they are no longer covered by the RMP program.⁴ Persistent environmental justice disparities remain in communities around RMP water and wastewater plants in terms of housing value, household income, race and ethnicity, education levels, and poverty.⁵

Today the FBI and other agencies have added domestic terrorism to their priorities. The ongoing threats of cyber attacks (Colonial Pipeline, water treatment plants) by foreign and domestic actors as well as physical attacks are ignored at our peril. Inherently safer processes can render a potential target unattractive by the elimination of the magnitude of harm by a chemical release, regardless of its cause.

³ <https://www.epa.gov/sites/default/files/2013-11/documents/secale.pdf>

⁴ Safer Chemicals Create a More Secure America, Center for American Progress, 2010.

⁵ Who's in Danger; Race, Poverty, and Chemical Disasters, Environmental Justice and Health Alliance, 2014.

Even without the threat of sabotage, the inherent hazards posed to workers and communities by RMP facilities has not significantly diminished. The EPA cited 1,500 chemical releases causing 17,000 injuries and 58 deaths between 2004 and 2013. And there have been hundreds more incidents since then. The Department of Homeland Security noted in its proposed 2006 Chemical Facilities Anti-Terrorism Standards: “The consequences of a security event at a facility are generally expressed in terms of the degree of acute health effects (eg fatality, injury), property damage, environmental effects, etc...The key difference is that they may involve effects that are more severe than expected with accidental risk.”

If the final RMP rule allows more robust use of under-utilized safer available chemical processes it will more than reduce incidents, it will dramatically reduce the possibility of disasters that now threaten the safety and security of millions of Americans. We call on you to take these necessary steps to protect the public from catastrophe.

Sincerely,

Christine Todd Whitman, former Administrator, United States Environmental Protection Agency

Lieutenant General Russel L Honoré, US Army (Ret), Joint Task Force Katrina and founder, the GreenARMY

Major General Randy Manner, US Army (Ret), former Acting Director and Deputy Director, Defense Threat Reduction Agency

Robert M. Bostock, Assistant to the Administrator (U.S. EPA) for Homeland Security (2001-2003)

David Halperin, Lawyer and former staff member, National Security Council and Senate Intelligence Committee

David Michaels, PhD, MPH, Professor, George Washington University School of Public Health, Assistant Secretary of Labor for OSHA 2009-2017

Jordan Barab, Former Deputy Assistant Secretary of the Occupational Safety and Health Administration

Sanford Lewis, Attorney and author, The Safe Hometowns Guide

Mark Rossi, PhD, Executive Director, Clean Production Action

Genna Reed, director of policy analysis, Center for Science and Democracy, Union of Concerned Scientists

Alisa Gravitz, President & CEO, Green America

Charlie Cray, Senior Strategist, Political and Business Unit, Greenpeace USA

Peter Orris, MD, MPH Professor UIC School of Public Health Attending Physician
Occupational and Environmental Medicine UI Health

Paul Orum, author of Center For American Progress reports on chemical security

Rick Hind, former Legislative Director of Greenpeace USA

CC:

Elizabeth D. Sherwood-Randall, Assistant to the President for Homeland Security

Brenda Mallory, Chair of the Council on Environmental Quality

Barry Breen, Acting Assistant Administrator for Land and Emergency Management,
Office of Land and Emergency Management, EPA

Carlton Waterhouse, Deputy Assistant Administrator for Land and Emergency
Management, Office of Land and Emergency Management, EPA

Matthew Tejada, Director of the Office of Environmental Justice, EPA