

**Comments in Response to Federal Register Notice Number 2021-11280  
“Accidental Release Prevention Requirements:  
Risk Management Programs Under the Clean Air Act”**

**Docket Number EPA-HQ-OL EM-2021-0312  
Submitted via Regulations.gov**

July 31, 2021

We submit these comments on behalf of 19 New Jersey environmental, community and worker organizations.

Our organizations urge the U.S. Environmental Protection Agency (EPA) to issue a new Risk Management Program (RMP) rule that will more effectively prevent releases of highly hazardous substances, thus protecting workers, communities, and the nation’s industries.

More than 180 major explosions, fires, and toxic releases occur on average annually at chemical plants, oil refineries, water and sewage treatment facilities, and other sites across the nation that use hazardous chemicals.<sup>i</sup> Between 2015 and 2020, New Jersey had 11 incidents involving extremely hazardous substances.<sup>ii</sup>

Today, 92 New Jersey facilities continue to use extremely hazardous chemicals above thresholds, triggering regulation by the state’s Toxic Catastrophe Prevention Act (TCPA) Program, which implements the EPA’s Risk Management Program rules.<sup>iii</sup>

Chemical disasters lead to deaths and injuries, shelter in place and evacuation orders, environmental contamination, and facility shutdowns with job loss. Flooding, hurricanes, and other severe weather make incidents worse.

***And often these disasters most harm facility workers and low income and people of color communities. These disasters, however, are all preventable.***

Therefore, we urge EPA to restore the measures in the 2017 Obama-Biden RMP rule that were rolled back in 2019 and at the same time promulgate improvements, including adopting the following recommendations.

**1) Identify and adopt safer processes and chemicals, when practicable.**

The 1990 Clean Air Act Amendments specifies that RMP was intended “...to provide, to the greatest extent practicable, for the prevention and detection of accidental releases...”

Reports by the U.S. Chemical Safety and Hazard Investigation Board (CSB) urge EPA to adopt requirements for using inherent safety and higher order controls to the greatest extent feasible.<sup>iv</sup>

In 2008, New Jersey issued new TCPA rules requiring facilities to identify available inherently safer technology alternatives that minimize the potential for a release.<sup>v</sup> **These rules have reduced risks.** A N.J. Department of Environmental Protection survey found 48% of the 85 regulated facilities reported that they had implemented or were scheduled to implement IST measures.<sup>vi</sup>

These improvements were made in the oil refinery, chemical, food, water, wastewater and other sectors.

The survey concluded that “It is clear that IST evaluation has the potential to provide cost effective and technically feasible alternatives at many of the facilities of concern.”<sup>vii</sup>

Today, New Jersey continues to require all 92 TCPA facilities – more than half that are not in the oil, chemical, and paper sectors covered by the RMP STAA provisions in the rolled back 2017 rule – to conduct these assessments.<sup>viii</sup>

***To maximize prevention, EPA should require owners and operators of all RMP facilities to conduct STAA reviews and to implement safer approaches when found practicable.***

In 2017, the State of California enacted a rule to expand prevention activities by oil refineries.<sup>ix</sup> This rule addresses, in part, the hierarchy of hazard controls, inherent safety, independent protection layers, human factors, process safety culture assessment, implementation requirements, performance indicators, management of organizational change, and employee participation in all process safety elements.

EPA should review the California rules and incorporate similar requirements in the revised RMP rule, particularly for more complex facilities.

Many communities in New Jersey (and the nation) host multiple RMP facilities that are often located close together and have overlapping vulnerability zones. Often their residents are disproportionately low income and people of color.

EPA compiles an extensive amount of data from the approximately 12,000 facilities in its RMP data base. This data base, however, could be augmented to promote prevention.

EPA should systematically collect information on implemented hazard reduction measures, including from all RMP deregistered sites. Such “solutions data” should be reported to EPA with RMP filings; summarized from STAA analyses; provided by facility management at required public meetings; and disseminated through a new EPA hazard reduction clearinghouse.

Near misses that could result in a major release incident should be tracked by owners or operators.

EPA should require owners or operators to report serious “near misses” to the agency, which should compile these events and post them on a public online database.

## **2) Anticipate and address the impact of more severe weather.**

***3,856, or approximately one-third of all RMP facilities, are sited in areas known to be prone to climate risks due to flooding, hurricanes, wildfires, or other extreme weather.***<sup>x</sup> Because data is not available on all-natural disaster risks, this likely underestimates the danger.

EPA should issue rules to more effectively address extreme weather caused by climate change by expanding RMP coverage to additional facilities in areas prone to natural disasters and by requiring that owners or operators:

- During PHAs, require comprehensive assessment of natural disaster-related hazards and risks.
- Implement mitigation measures, such as ensuring the availability of backup power supplies.
- Conduct third party audits to focus on the adequacy of prevention and emergency response planning for extreme weather.
- While developing facility Emergency Response Plans, address natural disaster-related issues.

## **3) Better protect and engage communities.**

Before EPA issued their 2019 RMP reconsideration rule, the agency found that their action “...may have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples...”<sup>xi</sup> This admission compels EPA to issue a new RMP rule that supports environmental justice for the communities hosting chemical facilities.

EPA should issue rules to protect communities more effectively by requiring that owners or operators:

- Assess disparate impacts on low income and communities of color during the PHA and other hazard assessment processes.
- Make more RMP information available to the public, including PHAs, safer alternatives assessments, incident investigation reports, third-party audits, facility emergency response plans, etc.

- Conduct real-time fence line monitoring for chemical releases, including during emergencies and extreme weather events, with contemporaneous data posted to the facility's website for public review.
- Provide timely and effective emergency alerts via cell phone and other means to communities during incidents in the language(s) of the community.

Under the existing RMP rule at §68.210 (b) Availability of information to the public, "The owner or operator of a stationary source shall hold a public meeting to provide information required under §68.42(b), no later than 90 days after any RMP reportable accident at the stationary source with any known offsite impact specified in §68.42(a)."

EPA should improve this provision by requiring owners and operators to also hold a public meeting, even if they have not had a reportable accident, upon receipt of 25 or more signatures of people residing or employed within the county (or counties) surrounding the facility who sign a petition to the owner or operator indicating a concern about a potential accidental chemical release from the facility.

EPA should also improve this section of the rule by requiring that the owner or operator: a) better publicize the meeting to the public; b) provide additional information to the public before and at the meeting, including the most current RMP, OCA, and STAA analysis for the facility; and c) offer language translation at the meeting for those who do not speak English.

#### **4) Involve workers and their unions.**

According to the CSB, "...a lack of effective worker participation can lead to an increase in the risk of injury to workers and, in the event of a serious safety incident, can adversely impact the company and members of the public who live near these industrial facilities."<sup>xii</sup>

EPA should issue rules to allow workers and their representatives, including contractor employees and their representatives, to help prevent chemical releases by requiring that owners or operators:

- Include an employee participation element at Program Level 1 and 2 facilities. Workers at all RMP sites, not only Program Level 3 sites, should be able to help protect the public and environment.
- Provide for meaningful employee and employee representative participation in every phase of the RMP process, including through being part of PHA, audit, and incident investigation teams.
- Disseminate RMP information and provide training to employees, contractor employees, and their representatives, including PHAs, safer alternatives assessments, incident investigation reports, third-party audits, emergency response plans, etc.
- Assess the consequences of incidents when conducting PHAs on their own employees and contractors and on employees of neighboring industrial facilities.

- Develop “stop work authority” programs for workers and their representatives to halt operating units and tasks that may pose a catastrophic risk until the matter is satisfactorily resolved by all parties.

Also, Clean Air Act Section 112(r) requires employers to afford employees and their representatives rights to participate in EPA and implementing agency inspections and audits, including through accompanying inspectors.<sup>xiii</sup> EPA guidance explains these rights.<sup>xiv</sup> The rule should codify these statutory guarantees.

Thank you for reviewing these recommendations.

Respectfully,

Debra Coyle McFadden, Executive Director, New Jersey Work Environment Council

Del Vitale, District Four Director, United Steelworkers

Jeff Sanford, President, International Brotherhood of Teamsters Local 877

Debbie White, President, Health Professionals and Allied Employees/AFT

Fran Ehret, New Jersey Director, Communications Workers of America (CWA)

Sean M. Spiller, Vice President, New Jersey Education Association

Jennifer Higgins, Treasurer, American Federation of Teachers New Jersey

Carol Gay, President, New Jersey Industrial Union Council

Amy Goldsmith, New Jersey State Director, Clean Water Action

Doug O'Malley, Director, Environment New Jersey

Fletcher Harper, Executive Director, GreenFaith

Liz Smith, Executive Director, Statewide Education Organizing Committee

Alberto Arroyo and Megan Chambers, Co-Managers, Laundry, Distribution & Food Service Joint Board, Workers United, SEIU

Helen Ireland, Director of Community Service and Education, United Food and Commercial Workers (UFCW) Local 360

Margaret Kelly, Vice President/Director of Field Services, UFCW Local 152

David Weiner, President, CWA Local 1081

Jim Young, Co-Director, The Labor Institute

Avery W. Grant, Executive Director, Concerned Citizens Coalition of Long Branch

Ben Haygood, Director of Environmental Health Policy, Isles

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<sup>i</sup> Federal Register, Vol. 85, No. 35, February 21, 2020, page 10078, <https://www.csb.gov/assets/1/6/2020-02418.pdf>

<sup>ii</sup> NJ Work Environment Council correspondence with N.J. Department of Environmental Protection, TCPA Program, March 12, 2021.

<sup>iii</sup> NJ Department of Environmental Protection Data Miner, <https://www13.state.nj.us/DataMiner>

<sup>iv</sup> See [www.CSB.gov](http://www.CSB.gov) and go to Completed Investigations. One example of such a CSB recommendation is found in its report on the 2010 explosion and fire that led to the deaths of seven employees when a nearly forty-year-old heat exchanger failed during a maintenance operation to switch a process stream between two parallel banks of exchangers at the Tesoro refinery in Anacortes, Washington, <https://www.csb.gov/file.aspx?DocumentId=5851>

<sup>v</sup> NJ Department of Environmental Protection, *N.J.A.C. 7:31 Toxic Catastrophe Prevention Act Program*, February 1, 2016, [https://www.nj.gov/dep/rules/njac7\\_31.html](https://www.nj.gov/dep/rules/njac7_31.html)

<sup>vi</sup> NJ Department of Environmental Protection, “Inherently Safer Technology Implementation Summary”, January 15, 2010, page 5, [https://www.nj.gov/dep/enforcement/tcpa/downloads/IST\\_SUMWEB.pdf](https://www.nj.gov/dep/enforcement/tcpa/downloads/IST_SUMWEB.pdf)

<sup>vii</sup> *Ibid.*, page 5.

<sup>viii</sup> NJ Department of Environmental Protection, *N.J.A.C. 7:31 Toxic Catastrophe Prevention Act Program*, February 1, 2016, [https://www.nj.gov/dep/rules/njac7\\_31.html](https://www.nj.gov/dep/rules/njac7_31.html)

<sup>ix</sup> California Title 8, Division 1, Chapter 4 OSHSB-98(2/98) Subchapter 7., “General Industry Safety Orders Group 16. Control of Hazardous Substances Article 109. Hazardous Substances and Processes, Process Safety Management for Petroleum Refineries”, (5) 2017, pages 24-25, <https://www.dir.ca.gov/OSHSB/documents/Process-Safety-Management-for-Petroleum-Refineries-apprvdtxt.pdf>

<sup>x</sup> Center for Progressive Reform, Earthjustice, Union of Concerned Scientists, “Preventing Double Disasters: How the U.S. Environmental Protection Agency Can Protect the Public from Hazardous Chemical Releases Worsened by Natural Disasters”, July 2021, page 6, <https://cpr-assets.s3.amazonaws.com/documents/preventing-double-disasters-final.pdf>

<sup>xi</sup> U.S. Environmental Protection Agency, “Regulatory Impact Analysis Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)”, April 27, 2018, page 80, <https://www.epa.gov/rmp/final-risk-management-program-rmp-reconsideration-rule#additional-resources>

<sup>xii</sup> U.S. Chemical Safety and Hazard Investigation Board, “The Importance of Worker Participation”, September 2019, page 1, [https://www.csb.gov/assets/1/6/worker\\_safety\\_digest.pdf](https://www.csb.gov/assets/1/6/worker_safety_digest.pdf)

<sup>xiii</sup> “Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].” 42 U.S.C. § 7412(r)(6)(L), <https://www.csb.gov/assets/1/6/csblegislativhistory.pdf>

<sup>xiv</sup> U.S. Environmental Protection Agency, “Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r)”, EPA 550-K-11-001 February 2011, <https://www.epa.gov/sites/production/files/2013-09/documents/caa112r-rmpguide.pdf>