Rulemaking Comments of the Attorneys General of New York, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the County Attorney of Harris County, Texas

On EPA's Proposed Rule:

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention

(Docket EPA–HQ–OLEM–2025–0313)

MAY 11, 2026

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A. Introduction and Executive Summary

The undersigned Attorneys General and County Attorney (States and Municipalities) submit these comments in opposition to the Environmental Protection Agency's (EPA) proposed rule, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention, published at 91 Fed. Reg. 8970 (Feb. 24, 2026) (Proposed Rule). The Proposed Rule would rescind certain parts of EPA's Risk Management Program (RMP) regulations issued pursuant to section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r). In particular, the Proposed Rule would undo certain provisions that EPA properly adopted in its 2024 update of the RMP rule.

Section 112(r)(7) of the Clean Air Act mandates that the "objective" of the RMP regulations shall be "to prevent the accidental release [of regulated substances] and to minimize the consequences of any such release." 42 U.S.C. § 7412(r)(1). Further, the regulations shall "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances." *Id.* § 7412(r)(7)(B)(i). The provisions of the 2024 Rule meet those objectives and the other statutory requirements. The provisions of the Proposed Rule do not. The States and Municipalities urge EPA to withdraw the Proposed Rule, which is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

These comments are organized as follows: Part B describes recent chemical accidents in our jurisdictions that further show the need for EPA's chemical accident safeguards. Part C contains relevant background on the RMP regulations. Part D discusses why EPA lacks authority to rescind the 2024 Rule, which restored and improved provisions that EPA had adopted in 2017 and revoked in 2019. Part E includes our comments on different aspects of the Proposed Rule, including the following key recommendations:

1. Safer Technology Alternatives Analysis (STAA): EPA should maintain the STAA requirements of the 2024 Rule, including evaluation, practicability assessment, and implementation, for existing processes in the petroleum refining and chemical manufacturing sectors. STAA requirements for existing processes are critical because the majority of industrial danger resides in aging infrastructure that is already in operation. EPA's proposal to weaken or eliminate the STAA requirements violates the Clean Air Act and should not be finalized.

2. Information Availability: EPA should maintain the information availability requirements of the 2024 Rule, including requirements to provide information in two other languages spoken by the community. Contrary to EPA's assertions, reducing burdens on facilities and an Executive Order designating English as the official language do not provide a reasoned basis to limit access to critical chemical hazard information. As EPA has previously determined, access to chemical hazard information, including in languages spoken by the community, is important to reducing the consequences of accidents. EPA should also immediately restore the online RMP Data Tool, complete with mapping and other search features, to facilitate public access to risk management plan information.

3. Third-Party Audits: EPA should maintain the third-party audit requirements of the 2024 Rule. Self-auditing may be insufficient to prevent accidents and a lack of rigorous compliance audits has contributed to several accidents at RMP facilities. EPA's proposals to either rescind or limit the third-party audit requirements of the 2024 Rule fail to satisfy the Clean Air Act requirements to prevent releases and minimize their consequences. 42 U.S.C. §§ 7412(r)(1), (r)(7)(B). Moreover, the proposals are arbitrary and capricious given the evidence that third-part audits can improve safety.

4. Employee Participation: EPA should maintain the employee participation requirements of the 2024 Rule. Contrary to EPA's assertion, aligning the RMP regulations with the Occupational Safety and Health Administration (OSHA) Process Safety Management (PSM) standard does not provide a reasoned basis to eliminate employee

participation and these requirements were well supported by the 2024 rulemaking record. As explained in the 2024 Rule, EPA and OSHA have separate statutory mandates but have closely coordinated to minimize the regulatory burden and avoid conflicting requirements. As EPA previously determined, employee participation is critical for protecting workers, communities, and the environment.

5. Community and Emergency Response Notifications: EPA should maintain the community and emergency response notification provisions of the 2024 Rule. In the 2024 Rule, EPA concluded that the owner or operator of a facility is ultimately responsible for ensuring an effective emergency response. EPA does not provide a reasoned basis to shift facilities' responsibility to local responders. EPA should also improve emergency notifications by requiring facilities to develop procedures with community input, provide emergency response notifications in languages spoken by the surrounding community, and require real-time fenceline air monitoring for air toxics.

6. Stationary Source Siting: EPA should retain the language added by the 2024 Rule, which explicitly requires facilities to consider stationary source siting in hazard evaluations. The siting of processes and equipment within a stationary source can impact the surrounding community not only through the proximity of an accidental release to offsite receptors such as people, infrastructure, and environmental resources, but also through increasing the likelihood of a secondary "knock-on" release by compromising nearby processes. EPA's proposal to rescind the stationary source siting language violates the Clean Air Act's requirement to prevent releases to the greatest extent practicable. 42 U.S.C. § 7412(r)(7)(B). The proposal is also arbitrary and capricious because EPA provides no evidence to support its speculative justifications for the recission.

7. Natural Hazards: EPA should keep the regulatory text that was added by the 2024 Rule to emphasize that natural hazards are among the hazards that must be addressed in Program 2 hazard reviews and Program 3 process hazard analyses. Natural hazards can cause or contribute to chemical accidents, and the number and severity of these

occurrences are likely to increase due to climate change. EPA's proposal to delete the language requiring the evaluation of natural hazards violates the Clean Air Act requirement to prevent accidental releases to the greatest extent practicable. 42 U.S.C. § 7412(r)(7)(B). EPA also fails to provide a reasoned basis for recission because it fails to consider the benefits of the provisions and relies on rationales that it previously considered and rejected in 2024.

8. Power Loss: EPA should retain the power loss requirements of the 2024 Rule. Since power loss can result in serious accidents, it is critical that facilities anticipate how power loss affects the safeguards that prevent releases of hazardous chemicals. Moreover, it is important that monitoring equipment have back up power so that it can function properly during a natural hazard event. EPA's proposal to rescind these requirements violates the Clean Air Act requirement to prevent accidental releases to the greatest extent practicable. 42 U.S.C. § 7412(r)(7)(B). The proposal is also arbitrary and capricious because EPA attempts to justify it by relying on unsupported speculation that the rule will cause confusion and ignoring the agency's justifications for the 2024 Rule.

9. Declined Recommendations: EPA should keep the requirements of the 2024 Rule that facilities report justifications for declining hazard evaluation recommendations regarding natural hazards, power loss, and siting. Making these recommendations public keeps the public informed of hazards from facilities, supports emergency response planning, and incentivizes facilities to implement recommendations that increase safety. Rescinding the 2024 Rule requirements runs contrary to the Clean Air Act's requirements to prevent and minimize chemical releases and minimize the consequences of releases. 42 U.S.C. §§ 7412(r)(1), (r)(7)(B). It is also arbitrary and capricious because it fails to provide a reasonable explanation for the change and consider the benefits of the 2024 Rule.

10. Emergency Response Exercises: The States and Municipalities support maintaining the emergency response exercise requirements of the 2024 Rule.

B. Recent Chemical Accidents in our States and Municipalities

The States and Municipalities continue to experience serious chemical accidents, harming our residents and damaging property. We highlight here some of the significant accidents that have occurred in our jurisdictions since many of the States and Municipalities last submitted multistate comments in October 2022.[1] These continuing accidents, and their impacts on local communities, further demonstrate the need to strengthen, not weaken, RMP regulations. The danger posed by EPA's proposed rollback of the 2024 Rule would be exacerbated if the White House succeeds in defunding the Chemical Safety and Hazard Investigation Board (CSB)[2], which is charged with investigating these chemical accidents and recommending revisions to the RMP regulations to prevent future accidents[3].

- ***California***
    - *Chevron Refinery*. In October 2025, an explosion occurred at the Chevron El Segundo Refinery, seriously injuring four workers and resulting in a shelter-in-place advisory for the neighboring city of Manhattan Beach.[4] The refinery has been cited numerous times for environmental and safety violations.[5]

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[1] As discussed in Section C, *infra*, the comments that many of the States and Municipalities submitted in October 2022 are attached to these comments as Attachment A and incorporated by reference.

[2] Rebecca Trager, *Congress rescues Chemical Safety Board that was earmarked for closure by Trump Administration*, Chemistry World (Feb. 4, 2026), https://www.chemistryworld.com/news/congress-rescues-industry-watchdog-earmarked-for-closure-by-trump-administration/4022869.article.

[3] *See United States v. Exxon Mobil Corporation,* 943 F.3d 1283, 1288 (9th Cir. 2019).

[4] Phil Helsel, *Fire at Los Angeles-area Chevron oil refinery is contained*, NBC News (Oct. 3, 2025), https://www.nbcnews.com/news/us-news/fire-burns-los-angeles-area-chevron-oil-refinery-rcna235351; Leanne Suter, *4 contract workers sue Chevron after refinery fire, alleging they have serious injuries*, ABC 7 (Oct. 10, 2025), https://abc7.com/post/4-contract-workers-sue-chevron-el-segundo-refinery-fire-alleging-have-serious-injuries/17981043/.

[5] Tony Briscoe and Connor Sheets, *Chevron's El Segundo refinery has a history of safety and environmental violations*, LA Times (Oct. 4, 2025), https://www.latimes.com/environment/story/2025-10-04/chevrons-el-segundo-refinery-had-a-history-of-safety-environmental-violations.

- *Martinez Refinery*. In February 2025, a fire occurred at the Martinez Refinery in Martinez due to a hydrocarbon leak. The fire injured six workers and resulted in a partial evacuation of the facility. It also prompted shelter-in-place orders for residents of Martinez, along with parts of Pacheco and Clyde, who have respiratory sensitivity.[6]
- *Arctic Glacier Premium Ice*. In January 2024, an ammonia leak at a Fremont ice packaging facility resulted in an hour-long shelter-in-place order, in addition to evacuation of the facility. First responders arrived at the scene to find a "large cloud" above the business.[7]
- *Martinez Refinery*. In November 2022, the Martinez Refinery released more than 20 tons of "metal-laden dust" into the surrounding community without notifying local health officials. As a result of this chemical discharge, which contained higher than normal amounts of heavy metals, local soil may have been contaminated, and residents were later warned not to consume produce grown in the community.[8]

- ***Colorado***
  - *Suncor Energy*. In December 2022, a fire sparked by a vapor release at a refinery in Commerce City sent two workers to the hospital with burns. The incident came after several malfunctions at the plant as a result of extreme cold.[9]

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[6] J.R. Stone, *Many Martinez residents angry after recent refinery fire that prompted shelter-in-place orders*, ABC 7 (Feb. 3, 2025), Martinez Refining Company Fire: Many residents angry after Saturday's Level 3 incident that prompted shelter-in-place orders - ABC7 San Francisco.

[7] Jason Green, *Ammonia leak at Fremont ice business spurs shelter-in-place order*, The Mercury News (Jan. 8, 2024), Ammonia leak at Fremont ice business spurs shelter-in-place order.

[8] Bay City News, *Here's why residents are being warned against eating food grown in soil near Martinez Refinery*, ABC 7 (Mar. 8, 2023), Residents warned against eating food grown in soil because of heavy metals from Martinez Refinery flare up - ABC7 San Francisco.

[9] Sam Tabachnik, *Two Suncor employees injured after fire breaks out at Commerce City plant*, The Denver Post (Dec. 24, 2022), Fire at Suncor injures two employees as Commerce City refinery.

Following the fire, environmental groups monitoring pollution there postulated that spiked levels of PFAS (toxic, forever chemicals) in the nearby creek and river could have been driven, in part, by runoff from PFAS in firefighting foam used in the incident.[10]

- ***Harris County, Texas***
  - *PEMEX Refinery*. In October 2024, a hydrogen sulfide release at the PEMEX refinery in Deer Park resulted in the deaths of two workers, and injured 35 more.[11] The event, which also resulted in a three-hour shelter-in-place order for the city, was investigated by CSB.[12]
  - *ALTIVIA Chemical*. In December 2023, a phosgene leak at the ALTIVIA Chemical complex in La Porte resulted in the hospitalization of eight workers and an hour-long shelter-in-place order for the surrounding area. Phosgene is used to manufacture chemicals, pesticides, and pharmaceuticals, but it can also serve as a chemical warfare agent.[13]
  - *99 Cent Only Stores*. In February 2023, a 99 Cents Only Store distribution center in Katy experienced a leak in its refrigeration system that resulted in the release of anhydrous ammonia. The incident resulted in the evacuation of the facility and a shelter-in-place order within a two-mile radius for several hours.[14]

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[10] Michael Booth, *Suncor "forever chemicals" in metro Denver creek appear to spike*, The Colorado Sun (Apr. 27, 2023), Suncor forever chemicals discharge spikes in metro Denver.
[11] Sarah Grunau et al., *Two dead, about 35 injured after hydrogen sulfide release at Deer Park Pemex plant*, Houston Public Media (Oct. 11, 2024), Two dead, about 35 injured after hydrogen sulfide release at Deer Park Pemex plant – Houston Public Media.
[12] *See* CSB, PEMEX Deer Park Chemical Release (Feb. 23, 2026), PEMEX Deer Park Chemical Release | CSB.
[13] Lea Wilson, *8 people taken to hospital in La Porte following "chemical emergency" in La Porte, OEM says*, KHOU 11 (Dec. 5, 2023), Chemical emergency leads to shelter-in-place in La Porte | khou.com.
[14] Emily Mae Czachor, *Texas officials investigate chemical leak that triggered shelter-in-place order*, CBS News (Feb. 12, 2023), Texas officials investigate chemical leak that triggered shelter-in-place order - CBS News.

- ***Illinois***
    - *Seymour Paint*. In December 2024, an explosion and subsequent fire occurred at a paint factory in Sycamore. The explosion seriously injured two workers, resulting in their hospitalization.[15]
    - *Viking Chemical*. In August 2023, a leak at a chemical plant in Rockford injured five workers, two of whom had to be hospitalized. The nature of the chemical was not publicly released, despite the fact that neighbors reported the smell of chlorine or bleach in the air, and that a "plume of chemicals" was seen escaping the facility.[16]
- ***Massachusetts***
    - *Home Market Foods*. In December 2022, the severing of a pipeline at a meat processor in Norwood caused an ammonia leak that killed one HVAC contractor and injured another.[17]
- ***Michigan***
    - *Pfizer / Pharmacia & Upjohn (P&U)*. In March 2024, over 1,000 gallons of methylene chloride (a potential carcinogen) spilled in the process area of a Pfizer manufacturing plant in Portage. An unknown amount of this chemical was released into the sewage system, flowing to the Kalamazoo Water Reclamation Plant, and prompting a "no-contact" advisory for portions of the Kalamazoo River.[18]

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[15] Kristen Kazarian, *Explosion at Paint Facility Leaves 2 Hospitalized*, Powder and Bulk Solids (Dec. 17, 2024), Explosion at Paint Facility Leaves 2 Hospitalized.
[16] Blake Dietz, *Five injured in chemical leak at Rockford plant*, Fox 39 (Aug. 10, 2023), Five injured in chemical leak at Rockford plant | MyStateline | WTVO WQRF News, Weather and Sports.
[17] Michael Yoshida, *DA identifies man who died in Norwood ammonia leak*, 7News (Dec. 19, 2022), DA identifies man who died in Norwood ammonia leak - Boston News, Weather, Sports | WHDH 7News.
[18] Samantha May, *Over 1,000 gallons of methylene chloride spilled at Pfizer plant*, News Channel 3 (Mar. 14, 2024), Over 1,000 gallons of methylene chloride spilled at Pfizer plant.

- ***Minnesota***
    - *Pilgrims Chicken.* In June 2025, a spill of peroxyacetic acid occurred when the chemical was being transported within a Pilgrim's Chicken processing plant in Cold Spring. Following the spill, 26 workers were hospitalized and released the same day.[19]
- ***New Mexico***
    - *HF Sinclair Oil Refinery*. In October 2025, an explosion at an oil refinery in Artesia sent three workers to the hospital. The incident prompted officials to close nearby roads for an hour and issue a shelter-in-place advisory for anyone in the path of the smoke.[20]
    - *Southwest Cheese Plant*. In December 2024, a spill in a cheese factory in Clovis caused chlorine to be mixed with an acid, creating a toxic vapor. The spill injured 20 workers and hospitalized 11, with two hospitalized in critical condition.[21]
- ***New York***
    - *HP Hood.* In December 2023, acid was introduced into a tank containing chlorine at a dairy product packaging plant in Vernon. The spill produced toxic fumes, prompting an evacuation of the facility, and a three-hour shelter-in-place order for about 50 nearby residents. One worker was also treated for injuries at the scene.[22]
    - *Momentive.* In December 2022, a performance material distributor's waste treatment facility in Waterford

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[19] Corey Schmidt, *UPDATE: 25 Pilgrim's Chicken employees discharged from hospital after chemical spill, open Saturday*, St. Cloud Times (June 6, 2025), Pilgrim's Chicken chemical spill sends 26 to hospital in Cold Spring.

[20] Latisha Romine, *Explosion at refinery in Artesia injures 3*, Artesia Daily Press (Nov. 3, 2025), Explosion at refinery in Artesia injures 3 - Artesia Daily Press.

[21] Jordan Honeycutt, *2 employees in critical condition after chemical spill at Clovis cheese factory*, KRQE (Dec. 31, 2024), 2 employees in critical condition after chemical spill at Clovis cheese factory.

[22] *UPDATED: Shelter-In-Place Order for Ward Street in Vernon*, WKTV (Dec. 22, 2023), UPDATED: Shelter-In-Place Order for Ward Street in Vernon | Local | wktv.com.

experienced a hydrochloric acid vapor release. Both the facility and four neighboring homes were evacuated as a result of the incident. The evacuation order lasted about an hour.[23]

- ***Oregon***
  - *ATI Millersburg Operations*. In September 2025, zirconium tetrachloride was released at a steel plant in Albany. The released substance reacted in the air, forming hydrogen chloride gas as a product. This toxic gas was inhaled by seven steelworkers, resulting in their hospitalization.[24]
- ***Virginia***
  - *BAE Systems*. In October 2024, Hurricane Helene caused significant flooding at an Army ammunition plant in Radford. As a result of the flooding, 13 totes, each containing 275 gallons of dibutyl phthalate (DBP), were swept into the nearby New River. This led to potentially thousands of gallons of DBP, an oily liquid that can cause developmental and reproductive issues, being released in a drinking water source for the local community.[25]
  - *Cuisine Solutions*. In July 2024, an ammonia leak at a food processing plant in Sterling sent 33 workers to the hospital. 17 of these workers were hospitalized in serious but not life-threatening condition, while five were in very serious condition.[26]

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[23] *Incident evacuates employees at Momentive site*, News10 (Dec. 7, 2022), Incident evacuates employees at Momentive site.

[24] Anna Del Savio, *Albany steelworkers exposed to toxic gas*, Northwest Labor Press (Oct. 15, 2025), Albany steelworkers exposed to toxic gas - NW Labor Press.

[25] Brent Bonfleur and Chloe Vincente, *Target 7: DEQ reports thousands of gallons of chemicals unaccounted for in New River from Radford plant*, WDBJ 7 (Nov. 8, 2024), Target 7: DEQ reports thousands of gallons of chemicals unaccounted for in New River from Radford plant.

[26] Ciara Wells, *33 people sent to the hospital after ammonia leak at a Sterling food processing plant*, WTOP News (Aug. 1, 2024), 33 people sent to the hospital after ammonia leak at a Sterling food processing plant - WTOP News.

- *AdvanSix Plant*. In September 2023, a plastic factory in Hopewell experienced an oleum leak. The leak resulted in a shelter-in-place order for the plant and two nearby facilities. This was one of three chemical leaks to occur at the same facility in 2023.[27]

- ***Washington***
  - *BP Cherry Point Refinery*. On April 18, 2026, there was an accident at BP's Cherry Point Refinery. Three people were hospitalized following reports of what sounded like an explosion. The accident is being inspected by multiple Washington State agencies, including the Northwest Clean Air Agency and Washington State Department of Labor and Industries.[28]
  - *Lineage Logistics*. In April 2024, a fire occurred at a cold storage facility in Kennewick. Because the fire occurred near ammonia and propane tanks, there was a danger of heat or fire tornadoes. In response, local officials issued a "Level 3" evacuation, ordering those in the area to leave immediately. The evacuation order was lifted after three hours and local residents were permitted to return to their homes, but a shelter-in-place advisory was issued for those with compromised respiratory systems. The fire also caused a partial collapse of the facility.[29]

This evidence that serious accidents harming workers, residents, property, and the surrounding environment continue to occur offers

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[27] Luca Powell, *New leak reported at Hopewell plastics plant that has been subject of scrutiny*, Richmond Times-Dispatch (Sept. 16, 2023), AdvanSix plant leaks ammonia, nitrogen oxide.

[28] Annie Todd, *Update: BP refinery incident being inspected by state labor and air agencies*, Cascadia Daily News (Apr. 21, 2026), Update: BP refinery incident being inspected by state labor and air agencies.

[29] Morgan Huff et al., *UPDATE: Level 3 Evacuation lifted for Lineage warehouse fire*, Apple Valley News Now (Apr. 21, 2024), UPDATE: Level 3 Evacuation lifted for Lineage warehouse fire | News | applevalleynewsnow.com.

support for maintaining and strengthening RMP regulations that provide protection from chemical hazards; EPA's proposed weakening of the regulations would move in the opposite direction.

C. Litigation and Regulatory Background

The Risk Management Program

Congress enacted section 112(r) of the Clean Air Act in 1990 in the aftermath of the 1984 accident at the Union Carbide plant in Bhopal, India, where more than 3,000 people died after a tank leaked a toxic chemical that the facility used to manufacture pesticides. *See* H.R. Rep. No. 101-490 at 154-57 (citing the Bhopal incident in support of the need to amend the statute).[30]

In section 112(r), Congress directed EPA to issue regulations that "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for the response to such releases by the owners and operators of the sources." 42 U.S.C. § 7412(r)(7)(B). Congress also directed OSHA to promulgate regulations to prevent and minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures and management practices (referred to as "process safety management" regulations). *See id.* § 7412(r)(6)(K). The law also created CSB to investigate and report on major chemical accidents, including their causes and recommendations for avoiding future accidents. *Id.* § 7412(r)(6).

EPA issued initial regulations pursuant to section 112(r)(7) in 1994 and 1996 that established the list of chemical substances with threshold quantities regulated under the program and that required facilities to comply with safeguards to prevent and mitigate accidental releases, respectively. 59 Fed. Reg. 4478 (Jan. 31, 1994) & 61 Fed. Reg. 31668 (June 20, 1996). The RMP regulations require facilities to conduct a worst-case scenario analysis and a review of accident history,

[30] Excerpts from the legislative history cited in these comments are attached as *Attachment 1* to the Comments of the State and Municipalities on the Proposed 2024 Rule (Attachment A).

coordinate procedures with local emergency response organizations, conduct a hazard assessment, document a management system, implement a prevention program and emergency response program, and submit a risk management plan that addresses all aspects of the RMP for all covered processes and chemicals. *See* 87 Fed. Reg. at 53562-63. A process at a source is covered under one of three different prevention programs (Program 1, Program 2, or Program 3) based directly or indirectly on the threat posed to the community and the environment. *Id.* at 53563. Program 3 facilities have the most requirements due to the potential for greater harm if an accident were to occur. *See id.*

The 2017 Chemical Disaster Rule

Prompted by the 2013 explosion at the West Fertilizer facility in West, Texas, which killed 15 people, and other serious accidents such as a refinery explosion in 2010 in Washington State that killed seven, President Obama issued an executive order in 2013 that required EPA and other federal agencies to review—and consider strengthening—regulations to prevent or mitigate chemical accidents. *See* Executive Order 13,650: Improving Chemical Facility Safety and Security (Aug. 1, 2013).[31]

In March 2016, EPA issued a notice of proposed rulemaking to amend the accidental release prevention regulations and related programs. *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 81 Fed. Reg. 13638 (Mar. 14, 2016). In January 2017, EPA promulgated the final rule to "improve safety at facilities that use and distribute hazardous chemicals." *Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act* (Chemical Disaster Rule), 82 Fed. Reg. 4594 (Jan. 13, 2017). The Chemical Disaster Rule

[31] Available at: https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security; *see also* Chemical Safety Board, Process Safety Management for the 21st Century (Feb. 1, 2017), https://www.csb.gov/recommendations/most-wanted-program-modernize-us-process-safety-management-regulations/#:~:text=Process%20safety%20regulations%20in%20the,Safety%20Management%20(PSM)%20program.

revised dozens of RMP requirements in three major areas: (1) accident prevention, including expanded post-accident investigations, more rigorous safety audits, safety training, and safer technology requirements; (2) emergency response, including more frequent coordination with local first responders and emergency response committees and more intensive incident-response exercises; and (3) public information disclosure, including public disclosure of safety information and public-meeting requirements. *Air All. Houston v. EPA*, 906 F.3d 1049, 1055-56 (D.C. Cir. 2018).

The Delay Rule and Litigation

The first Trump Administration delayed the Chemical Disaster Rule's March 14, 2017 effective date soon after taking office and again on June 14, 2017, when EPA promulgated the *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date* (Delay Rule), 82 Fed. Reg. 27133 (June 14, 2017). The Delay Rule sought to delay the effective date of the Chemical Disaster Rule to February 19, 2019, for the stated purpose of allowing EPA to reconsider the Chemical Disaster Rule. *Id.* at 27135.

In June and July 2017, several of the States and Municipalities and over a dozen community and environmental groups filed petitions for review of the Delay Rule in the D.C. Circuit. *Air. All. Houston*, 906 F.3d at 1057. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) intervened on behalf of the community and environmental groups. *Id.* In August 2018, the court vacated the Delay Rule. *Id.* at 1066.

The 2019 Rollback Rule and Litigation

On May 30, 2018, EPA proposed repealing critical aspects of the Chemical Disaster Rule, including almost all of the accident prevention requirements. *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 83 Fed. Reg. 24850, 25852 (May 30, 2018) (Proposed 2019 Rollback Rule).

Several of the States and Municipalities submitted comments on the Proposed 2019 Rollback Rule, explaining why the proposal was unlawful under the Clean Air Act and unsupported by the record.[32] In August 2019, several of the States and Municipalities submitted supplemental comments on the Proposed 2019 Rollback Rule to highlight numerous chemical accidents that had occurred and information that had been made public after the close of the comment period.[33] And in October 2019, several of the States and Municipalities submitted CSB's preliminary investigation results regarding the June 2019 Philadelphia Energy Solutions Refinery accident.[34]

In December 2019, EPA published the final rule, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 84 Fed. Reg. 69834 (Dec. 19, 2019) (2019 Rollback Rule). The 2019 Rollback Rule repealed critical aspects of the Chemical Disaster Rule, including those requiring safer technology and alternatives analysis, third-party audits, and more robust incident investigation. *Id.* at 69836. Several of the States and Municipalities, community and environmental groups, and the United Steelworkers filed petitions for review of the 2019 Rollback Rule in the D.C. Circuit.[35]

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[32] Comments from States and Municipalities on Proposed 2019 Rollback Rule (Aug. 23, 2018), https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-1925. The States and Municipalities' Comments are attached hereto as Attachment B and hereby incorporated by reference.

[33] Supplemental Comments from States and Municipalities on Proposed 2019 Rollback Rule (Aug. 20, 2019), https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-1998. The States and Municipalities' Supplemental Comments are hereby incorporated by reference and also attached as *Attachment 2* to the Comments of the State and Municipalities on the Proposed 2024 Rule (Attachment A).

[34] Second Supplemental Comments from States and Municipalities on Proposed 2019 Rollback Rule (Oct. 28, 2019), https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-2001. The States and Municipalities' Second Supplemental Comments are hereby incorporated by reference.

[35] *See State of New York, et al. v. Andrew Wheeler, et al.*, Case No. 20-1022 (D.C. Cir.); *State of Delaware v. EPA, et al.*, Case No. 20-1034 (D.C. Cir. 2020); *United Steel, Paper and Forest v. EPA, et al.*, Case No. 20-1005 (D.C. Cir. 2020); *Air Alliance Houston, et al v. EPA, et al*, Case No. 19-1260 (D.C. Cir.).

The 2024 Safer Communities Rule and Litigation

In 2021, President Biden issued an executive order that directed federal agencies to "immediately review" and, as appropriate, address actions from the last four years that conflict with a policy to protect public health and the environment, in part by limiting exposure to dangerous chemicals. Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021). EPA reviewed the 2019 Rollback Rule to decide whether any reconsideration of that action was necessary in light of the Order. To facilitate that review, the pending litigation challenging the 2019 Rollback Rule was placed in abeyance. *Air Alliance Houston v. EPA*, No. 19-1260, ECF Doc. No. 1890098 (D.C. Cir. Mar. 16, 2021).

Meanwhile, EPA announced that it intended to initiate new notice and comment proceedings to review and revise the 2019 Rollback Rule. EPA held listening sessions in June and July 2021, and solicited written comments on potential changes to the 2019 Rollback Rule. EPA received over 100 oral comments and 379 unique written comments, including from the State of New York and Harris County, Texas.[36]

On August 18, 2022, EPA issued a proposed rule, Safer Communities by Chemical Accident Prevention (the Proposed 2024 Rule).[37] EPA subsequently held three virtual public hearings in September 2022. The State of New York submitted oral and written comments at the September 26, 2022 hearing.[38]

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[36] Testimony of Laura Mirman-Heslin, Assistant Attorney General, Environmental Protection Bureau, Office of the New York State Attorney General Letitia James (July 8, 2021), https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0043; Testimony of Sarah Jane Utley, Environmental Division Director, Office of the Harris County Attorney Christian D. Menefee (July 30, 2021), https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0080. This testimony is hereby incorporated by reference.

[37] *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*, 87 Fed. Reg. 53556 (Aug. 31, 2022), https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0003.

[38] Testimony of Sarah K. Kam, Assistant Attorney General, Environmental Protection Bureau, Office of the New York State Attorney General Letitia James (Sept. 26, 2022),

On October 31, 2022, many of the States and Municipalities submitted comments on the Proposed 2024 Rule.[39] The States and Municipalities supported the proposal's restoration of safeguards that were unjustifiably repealed in EPA's 2019 Rollback Rule.

On March 11, 2024, EPA issued the final rule, Safer Communities by Chemical Accident Prevention (the 2024 Rule).[40] EPA explained that the 2024 Rule is intended "to further protect vulnerable communities from chemical accidents, especially those living near facilities in industry sectors with high accident rates."[41] The 2024 Rule restored the main provisions from the Chemical Disaster Rule and improved on that rule in several respects.

As to accident prevention, the 2024 Rule included the requirements contained in the Chemical Disaster Rule with several changes and amplifications, including the following:

- ***Safer Technologies and Alternatives Analysis.*** The 2024 Rule restored the Chemical Disaster Rule's obligation for certain types of facilities (including chemical manufacturers and petroleum refiners) to conduct a safer technologies and alternatives analysis, and went a step further by requiring the implementation of at least one feasible measure. *See* 40 C.F.R. §§ 68.3, 68.67(c)(9) and (h).
- ***Third-Party Compliance Audits and Root Cause Analysis.*** The 2024 Rule requires third-party compliance audits and root

https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0135. This testimony is hereby incorporated by reference.

[39] Comments of States and Municipalities on the Proposed 2024 Rule (Oct. 31, 2022), https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0444. The States and Municipalities' Comments are attached hereto as Attachment A and are hereby incorporated by reference.

[40] *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*, 89 Fed. Reg. 17622 (Mar. 11, 2024), https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0488.

[41] EPA, *Risk Management Program Safer Communities by Chemical Accident Prevention Final Rule*, https://www.epa.gov/rmp/risk-management-program-safer-communities-chemical-accident-prevention-final-rule.

cause analysis incident investigations for facilities with a prior accident. *See* 40 C.F.R. §§ 68.3, 68.58, 68.60, 68.79, 68.80, 68.81.

The Rule also added other accident prevention requirements, including the following:

- ***Employee Participation.*** The 2024 Rule encourages employee participation, training, and opportunities for employee decision making. For example, the 2024 Rule allows partial or complete process shutdowns based on the potential for a catastrophic release. The 2024 Rule also implements a process to allow employees and their representatives to anonymously report specific unaddressed hazards or other noncompliance. *See* 40 C.F.R. §§ 68.62, 68.83.
- ***Natural Hazards.*** In light of increased vulnerability of facilities to severe weather, as demonstrated by the 2017 Arkema fire, the 2024 Rule requires evaluation of the risks of natural hazards and climate change, including any associated loss of power. *See* 40 C.F.R. §§ 68.3, 68.50, 68.67, 68.170, 68.175.

As to emergency response, the 2024 Rule includes requirements similar to those contained in the Chemical Disaster Rule with respect to incident-response exercises. 40 C.F.R. § 68.96(b). The 2024 Rule also added other requirements that ensure the timely sharing of chemical release information with local responders and implement a community notification system to warn the community surrounding a facility of an impending chemical release. *See* 40 C.F.R. §§ 68.90(b), 68.95(a) and (c).

As to public information disclosure, similar to the Chemical Disaster Rule, the 2024 Rule provides nearby communities with access to certain chemical hazard information to be better prepared if an accident at a nearby facility were to occur. *See* 40 C.F.R. § 68.210.

On May 9 and 10, 2024, a group of states and industry petitioners filed petitions for review challenging the 2024 Rule in the D.C. Circuit. *See* ECF Doc. Nos. 2053737, 2054427. Many of the States and Municipalities, as well as several community and environmental

organizations, and the United Steelworkers intervened in support of EPA and the 2024 Rule. *See* ECF Doc. No. 2061291. These petitions for review are consolidated under Case No. 24-1125, *Oklahoma v. EPA*.

On May 10, 2024, the industry petitioners filed a petition for reconsideration of the 2024 Rule with EPA under section 307(d)(7)(B) of the Clean Air Act and requested stay of the Rule. On December 26, 2024, EPA denied the industry petitioners' petition for reconsideration, as well as their request that the 2024 Rule be stayed. EPA concluded that the petition for reconsideration failed to identify any information or circumstances that warrant mandatory reconsideration under section 307(d)(7)(B) of the Clean Air Act.

On February 24, 2025, the industry petitioners filed a petition for review challenging EPA's denial of their petition for reconsideration in the D.C. Circuit. Many of the States and Municipalities, as well as several community and environmental groups, and the United Steelworkers intervened in support of EPA and the 2024 Rule. This petition for review was also consolidated under Case No. 24-1125, *Oklahoma v. EPA*. All of the cases under Case No. 24-1125 are currently in abeyance pending further order of the court.

This Rulemaking

On March 12, 2025, EPA announced that it is reconsidering the 2024 Rule.[42] EPA stated that it "is committed to fulfilling President Trump's promise to unleash American energy, lower costs for Americans, revitalize the American auto industry, restore the rule of law, and give power back to states to make their own decisions."[43]

On February 24, 2026, EPA issued the Proposed Rule. 91 Fed. Reg. 8970. EPA asserted that the Proposed Rule would "reduce regulatory burden by ensuring regulatory consistency, avoid duplicative requirements, and eliminate unnecessary burdens placed on facilities

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[42] EPA, *EPA Announces Reconsideration of the Risk Management Plan to Boost Safety, Competitiveness of American Business* (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-announces-reconsideration-risk-management-plan-boost-safety-competitiveness.

[43] *Id.*

where there is not specific data available to show that the current RMP rule would reduce or has reduced accidental releases."[44]

D. The Proposed Rule Does Not Demonstrate a Sufficient Basis for EPA to Revise the RMP Regulations Adopted in the 2024 Rule

To justify its Proposed Rule, EPA is required to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*). An agency action is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency." *Id.*

Although agencies are free to change existing policies (within statutory boundaries), they must provide a reasoned explanation for the change. *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 585 (2025); *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). The agency must at least "display awareness that it is changing position" and "show that there are good reasons for the new policy." *FCC v. Fox*, 556 U.S. at 515. Further, an agency must provide a more detailed explanation for its policy where, as here, a new policy rests on factual or legal determinations that contradict those underlying the agency's prior policy, and where, as here, "its prior policy has engendered serious reliance interests that must be taken into account." *Id.* "Unexplained inconsistency" in agency policy is "a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *National Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). An arbitrary and capricious

[44] EPA, *Common Sense Approach to Chemical Accident Prevention Proposed Rule*, https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule.

regulation of this sort is itself unlawful and receives no deference. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

EPA's proposed rescission of the enhanced safeguards contained in the 2024 Rule, which protect workers and communities from dangerous chemical accidents, is inconsistent with the Clean Air Act's directive that EPA provide for the prevention of accidental releases "to the greatest extent practicable." 42 U.S.C. § 7412(r)(7)(B). EPA's contention that "the number of accidental releases has steadily declined," 89 Fed. Reg. at 8972, does not affect the practicability of additional prevention. Similarly, EPA's alleged intention to avoid "duplicative requirements, re-align[] RMP requirements with OSHA PSM requirements, and eliminat[e] unnecessary burdens placed on facilities where there is not specific data available to show that the current RMP standards would reduce or have reduced the number of accidental releases," 91 Fed. Reg. at 8972, is not a proper basis under the Clean Air Act for removing effective provisions. EPA's proposed rationales in support of the rescissions do not justify falling short of the statutory mandate.

Accidental Releases Remain a Significant Concern to Communities

As EPA acknowledges, "accidental releases remain a significant concern to communities[.]" 91 Fed. Reg. at 8976. Indeed, in promulgating the 2024 Rule, EPA concluded that "[t]he fact that accidents continue to occur shows that we still have reason to exercise statutory authority to promulgate reasonable regulations to provide for the prevention and detection of those accidents to the greatest extent practicable when the opportunity exists to improve the performance of our regulatory program."[45]

In the Proposed Rule, EPA states that "the number of accidental releases has steadily declined," which according to EPA means that "many of the sources subject to the 2024 [Rule] prevention measures

[45] EPA, *Response to Comments on the 2022 Proposed Rule: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention* (Response to Comments on the Proposed 2024 Rule), at 6, EPA-HQ-OLEM-2022-0174-0583 (Dec. 15, 2023), https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0583.

already had successful prevention programs in place." 91 Fed. Reg. at 8976. However, as EPA previously acknowledged, relying only on "annual count of total accidents," rather than also considering the need to address "low probability, high consequence" accidents is improper. 87 Fed. Reg. at 53565.[46] The legislative history demonstrates that Congress enacted section 112(r) to avoid or mitigate low probability, high consequence incidents, not just to decrease the number of accidents. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 25-26. Therefore, a supposed decline in the number of accidental releases does not provide EPA with a reasoned basis to rescind provisions of the 2024 Rule and EPA has failed to reconcile this new position with its past findings. Furthermore, in the 2024 Rule, EPA recognized that there is a significant delay in the reporting of accidents that makes the most current years of RMP data incomplete. 87 Fed. Reg. 53592-93. Without the full accident data, it is not possible for EPA to reliably determine the magnitude of any trend.

The 2024 Rule Avoids Duplicative Requirements

In promulgating the 2024 Rule, EPA properly determined that the rule was not duplicative of other requirements. *See, e.g.*, 89 Fed. Reg. at 17637 (concluding that the natural hazard assessment provisions are not duplicative); 17667 (concluding that the community notification of RMP accident provision was not duplicative); 17671 (concluding that the information availability provision was not duplicative); 17677 (concluding that the process safety information provision was not duplicative). In addition, EPA explained that "as with any RMP provision, if a regulated source is already subject to another requirement that duplicates a requirement found in the final rule, the source may use its compliance with that other requirement to demonstrate compliance with the equivalent requirement in part 68." Response to Comments on the Proposed 2024 Rule at 16. In now stating

[46] In addition, Community Petitioners provided evidence calling into question EPA's conclusion that even the total number of accidents materially decreased during 2004-13 and 2014-16 (the time periods EPA considered in the 2019 Rollback Rule). *See* Community Petitioners' Comments on the Proposed 2019 Rollback Rule (Aug. 23, 2018), https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-1969.

that the Proposed Rule aims to prevent duplicative requirements, EPA fails to reconcile these past findings with its new policy.

EPA and OSHA Have Separate Statutory Mandates and Have Closely Coordinated

In promulgating the 2024 Rule, EPA explained that the RMP regulations need not be identical to OSHA's process safety management regulations. 89 Fed. Reg. at 17632. As discussed in comments submitted by many of our States and Municipalities on the Proposed 2019 Rollback Rule, there is no requirement in the statute that EPA defer to OSHA in rulemaking or proceed simultaneously with OSHA in making regulatory changes. Comments of States and Municipalities on Proposed 2019 Rollback Rule at 29-32; *see also* Comments of State and Municipalities on the Proposed 2024 Rule at 26-27.

In the 2024 Rule, EPA reiterated that EPA and OSHA have separate statutory mandates under the Clean Air Act and the Occupational Safety and Health Act. 89 Fed. Reg. at 17632; *see also* Response to Comments on the Proposed 2024 Rule at 15-17 (explaining that "[e]ach agency has distinct rulemaking procedures and the statute itself contemplates that the rulemakings may proceed on different schedules"). Nonetheless, because the OSHA PSM standard and EPA RMP regulations are closely aligned, since the inception of the RMP regulations, EPA and OSHA have closely coordinated to minimize the regulatory burden and avoid conflicting requirements. 89 Fed. Reg. at 17632; *see also* Response to Comments on the Proposed 2024 Rule at 15-17 ("EPA has coordinated, and will continue to coordinate, with OSHA on revisions to the RMP rule and PSM standard to ensure RMP provisions do not contradict OSHA PSM requirements").

Given the separate statutory mandates the agencies have and the close coordination between them that has already occurred, contrary to EPA's assertion, aligning the RMP regulations with OSHA regulations

is not a reasoned basis to rescind provisions of the 2024 Rule. *See* 91 Fed. Reg. at 8977.

The Rulemaking Record Supports the 2024 Rule

In the Proposed Rule, EPA seeks to "eliminate unnecessary burdens placed on facilities where there is not specific data available to show that the current RMP standards would reduce or have reduced the number of accidental releases." 91 Fed. Reg. at 8972.

However, EPA engaged in reasoned decision-making in promulgating the 2024 Rule. In the 2024 Rule, EPA concluded that "promulgation and implementation of the final rule will improve the health and safety protection provided by the RMP rule and result in a reduced frequency and magnitude of damages from releases, including damages that are quantified . . . such as fatalities, injuries, property damage, hospitalizations, medical treatment, sheltering in place, and so on." 89 Fed. Reg. at 17628. EPA also concluded the 2024 Rule will reduce baseline damages that are not quantified, including "lost productivity, responder costs, property value reductions, damages from catastrophes, transaction costs, environmental impacts, and so on." 89 Fed. Reg. at 17628. EPA stated that when considering the 2024 Rule's "likely benefits of avoiding some portion of the monetized accident impacts, as well as the additional nonmonetized benefits, EPA believes the costs of the rule are reasonable in comparison to its expected benefits." 89 Fed. Reg. at 17629. EPA's "judgment as to what regulations are 'reasonable' is informed by both quantifiable and unquantifiable burdens and benefits[,]" as discussed in the 2024 Rule. 89 Fed. Reg. at 17629. And EPA supported each of those findings with ample evidence in the record.

In sum, EPA has failed to reasonably explain its decision to rescind provisions of the well-supported 2024 Rule.

E. Comments on Specific Aspects of the Proposed Rule

The States and Municipalities' comments on the specific aspects of the Proposed Rule are set forth in this section. The comments follow the

requested number and comment headings that EPA included in the proposal.

1. Safer Technology Alternatives Analysis

Safer technology alternatives refer to risk reduction strategies developed through analysis using hierarchy of process risk management strategies (or hierarchy of controls), which consist of strategies that are inherent, passive, active, and procedural. 81 Fed. Reg. at 13662-63. STAA includes concepts known as Inherently Safer Technology (IST) or Inherently Safer Design (ISD), which are those strategies that permanently reduce or eliminate hazards associated with materials and operations used in a process. *Id*. The four major inherently safer strategies are: minimization (using smaller quantities of hazardous substances), substitution (replacing a material with a less hazardous substance), moderation (using less hazardous conditions or a less hazardous form, or designing facilities that minimize the impact of a release), and simplification (designing facilities to eliminate unnecessary complexity and make operating errors less likely). *Id*. at 13663. This philosophy can be applied initially to a process's design phases and then continuously throughout a process's life cycle by identifying and assessing hazards and developing a control strategy. *Id*.

In the 2024 Rule, EPA adopted three measures related to STAA: (1) a requirement that petroleum refining and chemical manufacturing facilities with Program 3 processes conduct STAA; (2) a requirement that a subset of petroleum refining and chemical manufacturing facilities also conduct a practicability assessment for IST/ISD if they are located within 1 mile of another such facility, are a refinery with HF alkylation processes, or have had a reportable accident within 5 preceding years; and (3) a requirement for the same subset of facilities to implement at least one practicable passive measure or similarly protective active or procedural measure after each STAA. 89 Fed. Reg. at 17643.

EPA is now proposing to rescind the requirements of the 2024 Rule and instead require an initial STAA evaluation for all new Program 3 processes, regardless of their sector. 91 Fed. Reg. at 8978.

EPA states that new processes would include new processes designed and added to existing RMP facilities and newly built facilities, but it does not include a definition of "new covered process" in the proposed regulatory text. *Id.* Processes considered new would commence operation three years after the effective date of the rule. *Id.* EPA proposes that the STAA evaluation should be performed by a team knowledgeable in process safety and equipment design. *Id.* at 8982.

Under the 2024 Rule, 1,489 facilities in the petroleum and chemical manufacturing sectors must comply with the requirement to perform a STAA evaluation for 4,429 covered processes by May 2027.[47] But if EPA's proposal is finalized, only 350 processes per year would be subject to STAA evaluation, which is a 92 percent reduction in coverage from the 2024 Rule.[48] Furthermore, under the 2024 Rule, 648 facilities[49] in the petroleum and chemical manufacturing sectors would have to assess and document the practicability of IST/ISD by May 2027, but under the Proposed Rule, no facility will be required to do so. Finally, under the 2024 Rule, 662 facilities[50] in the petroleum and chemical manufacturing sectors would have to implement at least one safer measure such as IST, but under the proposal, no facility will be required to do so.

First, EPA's proposal to eliminate or weaken the 2024 STAA requirements should not be finalized because it violates Clean Air Act requirements including those to "prevent the accidental release and to minimize the consequences of any such release [of regulated substances]," 42 U.S.C. § 7412(r)(1); provide for prevention of accidental releases "to the greatest extent practicable," *id.* § 7412(r)(7)(B)(i); "minimize accidental releases," *id.* § 7412(r)(7)(B)(ii); and "protect

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[47] Regulatory Impact Analysis: Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention Proposed Rule (2026 RIA), Exhibit 3-5 at p. 26, EPA-HQ-OLEM-2025-0313-0058 (Jan. 2026), https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0058. The numbers cited are EPA's estimate from the 2023 RMP database.
[48] *Id.* Exhibit 3-6 at pp. 26-27.
[49] *Id.* Exhibit 3-7 at p. 27.
[50] *Id.* Exhibit 3-8 at p. 28.

human health and the environment," *id*. EPA cites no evidence or data showing that removing the STAA requirements of the 2024 Rule would advance these core objectives of the Clean Air Act. Congress' directive to prevent accidental releases "to the greatest extent practicable" is meant to serve the Act's goals of preventing both catastrophic chemical releases as well as more frequent, less severe releases. By ignoring and failing to address these statutory requirements, EPA violates the Clean Air Act and fails to demonstrate that its interpretation is the "best reading of the statute," as required by the Supreme Court's *Loper Bright* decision. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 373 (2024).

STAA requirements for existing processes are critical because the majority of industrial danger resides in aging infrastructure that is already in operation. Most chemical accidents occur at facilities that have been running for decades and use the most hazardous chemicals and oldest technology. In the Proposed 2024 Rule, EPA noted that facilities in the petroleum and chemical manufacturing sector are two to seven times more likely to have accidents. 87 Fed. Reg. at 53578. EPA found that requiring STAA for these facilities "may prevent serious accidental releases in the future." *Id*. An STAA evaluation requirement for existing processes forces facilities to periodically check if a safer substitute or chemical has been invented since the process first began operating. Without STAA requirements for existing processes, owners have a financial incentive to keep repairing dangerous old equipment, rather than integrating safety upgrades into long-term capital improvement plans.

The Proposed Rule states that EPA "now believes that it is more appropriate to take a performance-based approach to STAA. This will allow the Agency to focus compliance efforts on facilities that are having accidents, especially those having offsite impacts affecting the surrounding community without burdening those facilities that are not having accidents." 91 Fed. Reg. at 8979. The problem with this approach is that it is a reactive strategy—it essentially waits for a violation or an accident to occur before demanding any change. By that

point, the damage to the workers, community, and/or environment has already occurred and EPA has not upheld its statutory duty to prevent and minimize the consequences of accidental releases.

Compounding the deficiency, the Proposed Rule suggests that the agency would limit post-accident STAA investigations to the circumstances of the particular accident: "the Agency may require STAA actions through enforcement actions that are specific to a facility or situation, and therefore more appropriate, without placing a broad requirement to conduct a practicability assessment that may not appropriately address the risks at a given facility that has had an accident." *Id.* at 8981. The apparent presumption that the only danger at a facility is that a particular accident could recur is without foundation and contrary to the statutory objective of "prevent[ing] the accidental release" of hazardous substances. 42 U.S.C. § 7412(r)(1).

In contrast, STAA requirements are preventative, encouraging or requiring facilities to find safer ways to operate before an accident occurs. EPA acknowledges "that there is value in examining safer alternatives and considering IST for improving process safety, and that owners and operators should consider and address inherent safety at their facilities, as appropriate." 91 Fed. Reg. at 8978.

Moreover, since EPA does not have the resources to inspect every high-risk facility every year, a STAA requirement puts the burden of proof on the facility to document that it is using the safest practicable technology. And when STAA is required for more processes, it drives the market for safer chemicals and technologies. As more facilities look for safer alternatives, those alternatives become less expensive and more readily available.

Massachusetts' experience with its Toxics Use Reduction Act (TURA) confirms that analyzing safer alternatives can have verifiable benefits for businesses. TURA, which took effect in 1989, requires companies that use large quantities of certain toxic chemicals to document their good faith efforts to consider technically feasible, safer alternatives. Companies must compare feasible alternatives with

current practices, considering the full costs of their current use of toxic chemicals, including compliance costs and costs in the event of an accidental release. Mass Gen. Laws ch. 21I, § 11(A); 310 Mass. Code Regs. 50.46, 50.46A. A recent report by the Toxics Use Reduction Institute demonstrated that "toxics use reduction results in lower costs, improved throughput, reduced regulatory burdens, expanded market access and increased resource efficiency. These outcomes help companies gain a competitive edge in a marketplace that is challenging and rapidly evolving."[51]

EPA must, at a minimum, keep the STAA requirements of the 2024 Rule, including evaluation, practicability assessment, and implementation, for existing facilities in the petroleum and chemical manufacturing sectors. Given the statute's mandate that EPA provide for the prevention of accidental releases "to the greatest extent practicable," 42 U.S.C. § 7412(r)(7)(B), EPA is required to show that it would be impracticable for facilities to comply with the 2024 Rule's STAA provisions in order to narrow the scope of that obligation. It has not done so here.

While EPA should also require an initial STAA evaluation for all new Program 3 processes, regardless of their sector, it should not limit STAA evaluation to this tiny subset of new processes. Including a STAA evaluation when designing all new processes, including Program 1 and Program 2 processes, ensures that those processes are safer from the start. It may be more economical to build safer processes from scratch than to retrofit preexisting processes. A STAA evaluation at the design phase may also spur innovation and encourage facilities to discover more efficient, modern technologies that perform better than older ones. Choosing safer options during design prevents facilities from being forced to use hazardous materials simply because the equipment has already been purchased and in this way, an up-front requirement avoids facilities from being locked-in to certain chemicals or technology.

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[51] Toxics Use Reduction Institute, Enhancing Competition through Toxics Use Reduction, at 42 (Apr. 2026), https://www.turi.org/publications/enhancing-competitiveness-through-toxics-use-reduction/.

Furthermore, hazardous chemicals are not exclusive Program 3 facilities. Program 1 and Program 2 facilities use substances that pose significant off-site risks and in fact these facilities have had accidents that have caused serious harm. Requiring a STAA evaluation for all new processes ensures a consistent standard of safety.

In addition, there is no definition of "new covered process" in the proposed regulatory language. EPA must include a specific definition to ensure that all existing and new facilities will follow the requirement for new processes. This includes regulatory language that will ensure the STAA evaluation requirement applies *before* a facility decides which chemicals to use in a process. Regulatory change is necessary because under current regulations a process only becomes covered by RMP regulations *after* it has a chemical above a certain quantity. 40 C.F.R. § 68.3. EPA must make it clear that facilities must satisfy the STAA evaluation requirement when they design or build a process that will be covered in the future.

EPA seeks comment on whether paragraph (c)(9)(iii) of 40 C.F.R. § 68.67 should be modified to clarify that the STAA evaluation for new processes shall be performed by a team knowledgeable in process design. 91 Fed. Reg. at 8982. The States and Municipalities believe this clarification would be helpful to include because STAA isn't just a safety checklist but rather an engineering challenge that requires a team with deep process design knowledge. Since processes are interconnected, there may be consequences of making a change that are not obvious to those without this expertise. Design engineers are trained to look at the source of a hazard, while other professionals may not. For example, a safety officer might suggest a better alarm, while a design engineer can suggest a different design that makes the alarm unnecessary in the first place.

EPA also seeks comment on requiring STAA implementation to capture processes with heightened risk, which could include facilities found to have not reported RMP accidents, with one accident that resulted in offsite injuries, found to have multiple serious violations during an EPA inspection, or with substantial property damage due to a

reportable accident. 91 Fed. Reg. at 8982-83. The States and Municipalities support a STAA implementation requirement for facilities with heightened risk, regardless of their sector and regardless of whether the process is new. Such a requirement would ensure that sites with demonstrated safety failures are forced to re-evaluate their processes. This moves beyond simply fixing the latest problem and requires looking for inherently safer ways to operate. Moreover, multiple serious violations or accidents that have caused substantial property damage may be precursors to catastrophic events. Mandating STAA at these sites provides a formal mechanism to identify and mitigate hazards before they lead to a fatality or substantial offsite impact. Finally, by triggering STAA implementation for facilities that fail to report accidents, EPA would create a strong regulatory incentive for accurate reporting.

EPA seeks comment on additional conditions that may qualify a process to be of a heightened risk. 91 Fed. Reg. at 8983. Additional conditions that EPA should consider are: proximity to other high-risk facilities or processes; use of extremely dangerous chemical processes such as hydrofluoric acid alkylation in refineries; potential offsite consequences measured by the distance of the facility to public receptors like homes, schools, or hospitals; natural hazard vulnerability for facilities located in areas prone to natural hazards; and if systems are vulnerable to power loss, such as systems that employ chemicals that may become unstable without active cooling powered by electricity.

EPA seeks comment on allowing facilities to seek an exemption from STAA implementation. 91 Fed. Reg. at 8983. The States and Municipalities do not support such an exemption because the most effective way to prevent a release is to eliminate the hazard through IST/ISD. Exemptions may allow facilities to rely on safety measures such as alarms, sensors, or containment walls, which are prone to mechanical failure, human error, or power outages. If an exemption process exists, facilities may dedicate resources to legal and administrative workarounds rather than engineering safer solutions.

This may stall innovation and keep dangerous outdated processes in operation simply because they are already built.

EPA seeks comment on requiring a STAA practicability analysis for new Program 3 processes, regardless of sector. 91 Fed. Reg. at 8983. The States and Municipalities believe there should be such a requirement. As mentioned above, the design phase offers the most effective and least costly opportunity to implement IST/ISD and EPA "does not expect that a practicability analysis for new processes would add additional burden to owners and operators." *Id*. Requiring owners and operators to identify, evaluate, and document the practicability of implementing inherent safety measures will help ensure that new processes are not built using outdated, hazardous methods simply because they are the status quo. It will also facilitate the implementation of safer technologies early in a facility's lifecycle.

Hydrofluoric acid provisions

The Proposed Rule removes STAA requirements for petroleum refineries using hydrofluoric acid (HF) alkylation in existing processes. EPA states "placing burdensome STAA practicability assessment and implementation requirements on owners and operators of NAICS 324 sources with HF alkylation processes may result in facilities limiting their consideration of more costly options, even if they may be more effective in preventing accidental releases." 91 Fed. Reg. at 8980. EPA further states that given the high costs of implementation, owners and operators are in the best position to determine if implementation is appropriate.

But it is precisely because of the high cost of implementation that mandatory STAA is needed for HF alkylation units. Facilities will rarely voluntarily adopt safer alternatives because of the high upfront costs but the risk of a catastrophic release of HF in densely populated areas is too high to leave to the owner or operator's discretion. As the Proposed Rule states, "The Agency recognizes that the extreme toxicity of HF is of concern to the public. The EPA also acknowledges that there

are potentially safer alternatives available for HF alkylation that have been successfully implemented by refineries." 91 Fed Reg. at 8980.

From the outset of the federal RMP program, hydrofluoric acid has been a significant concern. In the 1990 Clean Air Act amendments, Congress specifically directed EPA to study the "potential hazards of hydrofluoric acid . . . considering a range of events including worst-case accidental releases and . . . make [appropriate] recommendations to Congress." 78 42 U.S.C. § 7412(n)(6). That "Hydrogen Fluoride Study," which EPA finalized in 1993, described the chemical's extraordinary hazard:

> HF can travel significant distances downwind as a dense vapor and aerosol under certain accidental release conditions. Because HF can exist as an aerosol, the cloud can contain a substantially greater quantity of the chemical than otherwise would be the case. Thus, the potentially high concentration of HF in these dense vapor and aerosol clouds could pose a significant threat to the public, especially in those instances where HF is handled at facilities located in densely populated areas.[52]

Since EPA issued the Hydrogen Fluoride Study, the risk of a catastrophic release of the chemical has become increasingly clear and the States and Municipalities have experienced serious accidents that caused or nearly caused the release of hydrofluoric acid. Three stand out. A 2015 explosion at the Torrance, California refinery spread debris, narrowly missing two tanks containing hydrofluoric acid.[53] A 2018 explosion at the Husky Superior Energy refinery in Wisconsin similarly scattered debris near a tank storing hydrofluoric acid and injured more than a dozen employees.[54] Just two months later, a leak of hydrogen fluoride and propane occurred at the Philadelphia Energy Solutions

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[52] EPA, *Hydrogen Fluoride Study: Report to Congress, Section 112(n)(6) Clean Air Act As Amended,* 123 (1993), https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=10003920.txt.
[53] CSB, *ExxonMobil Torrance Refinery Explosion* (May 3, 2017), https://www.csb.gov/exxonmobil-torrance-refinery-explosion-/.
[54] CSB, *Husky Energy Superior Refinery Explosion and Fire* (Dec. 19, 2022), https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/.

Refinery in South Philadelphia, creating a ground-hugging cloud that ignited, resulting in several violent explosions that destroyed much of the refinery.[55] The communities near refineries in our jurisdictions and around the country that use hydrofluoric acid continue to endure the tremendous fear that an even more tragic release could occur within their communities at any time.

The Proposed Rule attempts to justify eliminating the STAA requirement for HF alkylation with the assertion that "multiple other chemicals . . . had higher annual frequencies of accidents occurring per facility over HF." 91 Fed Reg. at 8980. But this justification is contrary to the statutory mandate and arbitrary. First, such a comparison has no relevance to the statute's practicability standard. 42 U.S.C. § 7412(r)(7)(B). Second, neither the Proposed Rule nor the Accident History Document it relies upon meaningfully evaluate the "consequences" of an HF release. 91 Fed Reg. at 8980; 42 U.S.C. § 7412(r)(7)(B). Due to the extremely dangerous nature of HF, EPA should comply with the statutory mandate and keep the 2024 Rule's requirements for petroleum refineries using HF alkylation in existing processes.

2. Information Availability

The Chemical Disaster Rule added new information availability requirements, including the requirement for the owner or operator to provide—within 45 days of receiving a request by any member of the public—specified chemical hazard information for all RMP-regulated processes. 87 Fed. Reg. at 53600. The provision required the owner or operator to provide ongoing notification on a company website, on social media platforms, or through other publicly accessible means such that the information was available to the public upon request, along with the information elements that may be requested and instructions for how to request the information. *Id.*

[55] CSB, *Philadelphia Energy Solutions (PES) Refinery Fire and Explosions* (Oct. 11, 2022), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.

In the 2019 Rollback Rule, EPA removed these requirements allegedly because of a risk-benefit calculation, observing that much RMP information was available through other means while widespread anonymous access to the consolidated information posed potential security risks. 84 Fed. Reg. at 69887.

In the 2024 Rule, EPA amended 40 C.F.R. § 68.210 to allow the public to request information similar to the Chemical Disaster Rule, but limited access by requiring residents to show that they reside within six miles of a facility. 89 Fed. Reg. at 17670. Having received such a request, the facility would be required to provide certain chemical hazard information and access to community emergency preparedness information. *Id.* at 17670. The 2024 Rule also required that information be provided in at least two other major languages in the community. *Id.* at 17671.

In connection with the 2024 Rule, EPA also released a Public Data Tool, which made most RMP non-offsite consequence analysis data publicly available online. 91 Fed. Reg. at 8983. However, EPA removed the RMP Public Data Tool without public notice on April 18, 2025.

The States and Municipalities support improving access to chemical hazard information, including making information available in multiple languages. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 1, 39, 20-22, 53, 56-57, 59-60, 62-63. As EPA has found, "public disclosure of risk management plan information would likely lead to a reduction in the number and severity of accidents." 89 Fed. Reg. at 17670; *see also* 87 Fed. Reg. at 53601. Furthermore, "comparisons between facilities, processes and industries would likely lead industry to make changes and would stimulate dialogue among facilities, the public, and local officials to reduce chemical accident risks." 89 Fed. Reg. at 17670-71; *see also* 87 Fed. Reg. at 53601. In addition, given the opportunity, the public would use hazard information to take action, leading to risk reduction, as demonstrated by the reduction in emissions that followed the disclosure of information from the Toxic Release Inventory. 89 Fed. Reg. at 17670-71; 87 Fed. Reg. at 53601. EPA also found that "community involvement is integral

to a well-functioning accident prevention program" and that translating information helps accomplish this objective. 89 Fed. Reg. at 17671.

Proposed Modifications to the RMP Public Data Tool

In the Proposed Rule, EPA proposes to provide certain RMP information through the RMP Public Data Tool instead of requiring owners or operators to provide this information in response to requests from community members under 40 C.F.R. § 68.210(d). 91 Fed. Reg. at 8983. EPA also proposes to limit the RMP Public Data Tool by removing the map display and restricting the search function to county or facility name. *Id*. at 8984.

EPA must improve information access to prevent accidental releases to the maximum extent practicable. *Air All. Houston*, 906 F.3d at 1062. Therefore, EPA should immediately restore access to the original version of the RMP Public Data Tool, which was removed in April 2025. However, even if EPA restores the RMP Public Data Tool, that tool's availability cannot justify eliminating other information availability requirements. Communities should still be able to receive chemical hazard information directly from facilities. Furthermore, EPA points to no record evidence that the RMP Public Data Tool will lead to security issues. Reducing the burden on facilities is not a reasoned basis to rescind 40 C.F.R. § 68.210(d) or limit the RMP Public Data Tool. *See* 91 Fed. Reg. at 8984.

Proposed Rescinded Provisions

Nor is reducing the burden on facilities a reasoned basis to rescind the other information availability requirements contained in the 2024 Rule. 91 Fed. Reg. at 8983. For example, as to the notification of availability of information requirement, community members may simply not know to look for chemical hazard information on an EPA website. Therefore, contrary to EPA's contention, notification of availability on the facility's website, social media platforms, or other publicly accessible means remains essential for disseminating chemical hazard information. *Id*. at 8984. EPA also offers no reasoned basis to

shift the burden from facilities to local responders to provide this important information. *Id.*

As to the requirement to provide information in two other languages spoken by the surrounding community, EPA concluded in the 2024 Rule that this requirement appropriately "reflects a balance of the right-to-know purposes of Clean Air Act section 112(r)(7)(B)(iii) with the time and financial burden of providing such translations." Response to Comments on the Proposed 2024 Rule at 252. EPA concluded that "community involvement is integral to a well-functioning accident prevention program, and the translation requirement promotes accomplishing this objective." *Id.*; *see also* Comments of States and Municipalities on the Proposed 2024 Rule at 1, 39, 20-22, 53, 56-57, 59-60, 62-63.

Although EPA now asserts that translation costs for facilities could be significant without adding commensurate benefit, EPA's Regulatory Impact Analysis estimated a cost of only $1,400-$15,000 per facility. 2024 Rule Regulatory Impact Analysis at 110. In 2024, EPA determined that the cost of translation was adequately balanced by the advancement of the right-to-know purposes of the Act. Moreover, the Clean Air Act prioritizes the minimization of consequences to human health and safety from accidental releases, not the minimization of industry costs. 42 U.S.C. §§ 7412(r)(1), (r)(7)(A), (B). EPA has provided no basis in the statute or record that would allow it to choose to weaken health and safety regulations based on cost to industry.

In addition, E.O. 14,224, "Designating English as the Official Language of the United States," has no bearing on EPA's statutory obligation to prevent accidental releases to the maximum extent practicable. *See Air All. Houston*, 906 F.3d at 1062. Relying on this Executive Order to justify this proposal is unlawful and arbitrary. First, such orders provide no independent basis for rulemaking authority, nor can they compel EPA to act contrary to the statute or arbitrarily. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) ("administrative agencies may act only pursuant to authority delegated to them by Congress."). Second, the Executive Order specifically states

that "nothing in this order . . . requires or directs any change in the services provided by the any agency. . . Agency heads are not required to amend, remove, or otherwise stop production of documents, products, or other services prepared or offered in languages other than English." 90 Fed. Reg. 11363 (Mar. 2, 2025). It is arbitrary to rely on an Executive Order that does not require EPA to eliminate translation requirements.

In sum, EPA has not provided a reasoned basis to rescind the information availability provisions of the 2024 Rule.

3. Third-Party Audits

Compliance audits entail a systematic evaluation of the full prevention program for covered processes. "The third-party audit provision is intended to reduce the risk of future accidental releases by requiring an objective auditing process to assist owners and operators in determining whether facility procedures and practices comply with [the prevention program requirements of the RMP rule], are adequate, and are being followed." 89 Fed. Reg. at 17660.

Incident investigations often reveal that facilities have deficiencies in some prevention program requirements related to the process in which the accident occurred. CSB has identified deficient or absent audits as a factor in several accidents. It identified a lack of rigorous compliance audits as a contributing factor behind the March 2005 explosion and fire at the BP Texas City Refinery, which killed 15 people and injured another 180. 81 Fed. Reg. at 13654. CSB also found numerous auditing deficiencies in its investigation following a January 2008 explosion at Bayer CropScience, LP in West Virginia. *Id.* at 13655. After a July 2009 fire and explosion at the Citgo Corpus Christi Refinery, CSB found that Citgo had never conducted a safety audit of HF alkylation operations at either of its U.S. refineries. *Id.* at 13654.

In 2017, the Chemical Disaster Rule added a requirement that facilities must engage a third-party to conduct an independent compliance audit when they (1) have an RMP-reportable accident or (2) have been notified by an implementing agency of a determination of either conditions that could lead to an accidental release or problems

with a prior third-party audit. 82 Fed. Reg. at 4620. EPA found that "in some cases, self-auditing may be insufficient to prevent accidents, determine compliance with the RMP rule's prevention program requirements, and ensure safe operation." 81 Fed. Reg. at 13654.

In 2019, the Rollback Rule rescinded the third-party compliance audit requirements set forth in the Chemical Disaster Rule. 83 Fed. Reg. at 24872. The 2024 Rule restored the third-party audit requirement. It required that the next mandatory compliance audit for an RMP facility would be a third-party audit when either (1) the facility has an RMP-reportable accident from a covered process or (2) an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of the regulations. 89 Fed. Reg. at 17659.

EPA is now proposing to either rescind the third-party audit requirement entirely or to modify the requirement so that it applies only to facilities that have had two RMP-reportable accidents in a five-year period. This requirement would apply for ten years while the agency collects data on the value of the third-party audit requirements. 91 Fed. Reg. at 8987.

The States and Municipalities oppose removal of the third-party audit requirement. Rescinding this requirement would not prevent accidental releases to the maximum extent practicable, as is required by the Clean Air Act. *See Air All. Houston*, 906 F.3d at 1062. It would also arbitrarily run counter to record evidence of the need for third-party audits. All facilities with Program 2 and 3 processes should be required to conduct a third-party audit after one RMP-reportable accident or discovery of significant non-compliance. One reportable accident should trigger this requirement because "EPA views one 40 CFR 68.42(a) accidental release as a serious matter, considering the possible outcomes are deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage." 89 Fed. Reg. at

17660. Further "having even one accident should be a cause for concern considering most RMP facilities have never had any accidents." *Id*.

EPA acknowledges that it "continues to agree conceptually" with the 2024 Rule provision that allows an implementing agency to require a third-party audit due to conditions at the stationary source that could lead to the accidental release of a regulated substance. 91 Fed. Reg. at 8987. Nonetheless, it is proposing to rescind it because there are no parameters on what "conditions" could be and it could create confusion for regulated entities and implementing agencies. *Id*. Rather than rescind the requirement, EPA should issue guidance on what "conditions" could lead to accidental releases.

Nor is EPA's alternative proposal of requiring a third-party audit for facilities that have had two RMP- reportable accidents within five years sufficient. Under this proposal, a facility could have incidents every six years and never be required to obtain a third-party audit. EPA states that one reason it is proposing to rescind the third-party audit requirement is because it does not have "data to provide a clear direction for implementing a third-party audit program." 91 Fed. Reg. at 8987. This rationale is arbitrary because in implementing the 2024 Rule, EPA found that facilities "will benefit from an independent objective audit of their compliance with prevention program requirements," 89 Fed. Reg. at 17660, and EPA provides no evidence to doubt that conclusion now. If EPA would like to gather more data on third-party audits, it should maintain the 2024 Rule requirements "to collect enough information on the effectiveness of third-party audits, to evaluate whether third-party audits have the perceived benefits that have been contemplated since . . . 1995." *Id*.

4. Employee Participation

In the 2024 Rule, EPA added additional regulatory provisions to the employee participation requirements for owners and operators of regulated facilities with Program 2 and 3 processes. 89 Fed. Reg. at 17662. EPA specifically required employers to consult with employees when making decisions on implementing recommendations from process hazard analyses, compliance audits, and incident investigations;

provide employees the opportunity to stop work under certain circumstances; and provide opportunities for employees to report late or unreported accidents and other areas of RMP non-compliance to EPA and other relevant authorities. 89 Fed. Reg. at 17662-63. EPA proposed these requirements so that facilities will have measures in place to ensure process safety and to prevent or minimize accidental releases of hazardous substances. 87 Fed. Reg. at 53588.

The States and Municipalities support EPA improving worker participation at RMP facilities. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 55-57. The direct participation and involvement of workers in ensuring and advancing the safety of process operations are critical for protecting worker safety, communities, and the environment. 87 Fed. Reg. at 53587. CSB has recognized that ineffective worker participation can be a contributing factor to chemical disasters if workers and their representatives are not properly engaged in process operations to help identify and mitigate hazards and reduce risks. 87 Fed. Reg. at 53587.

Plan Development, Annual Notice, and Training

In the Proposed Rule, EPA proposes to rescind the requirements under 40 C.F.R. § 68.62(a)(2) and 40 C.F.R. § 68.83(a)(2) for owners or operators of facilities with Program 2 and Program 3 processes to provide training on the employee participation plan. 91 Fed. Reg. at 8991. EPA asserts that rescission of these requirements will align the employee participation provision with the OSHA PSM standard and reduce burdens on facilities. *Id*. However, as discussed above, alignment of the RMP regulations with the OSHA PSM standard is not a reasoned basis to rescind these requirements.

EPA also asserts that there is not enough information to justify these requirements, 91 Fed. Reg. at 8991, but these requirements were amply supported by the rulemaking record. 87 Fed. Reg. at 53587; *See also* Comments of the States and Municipalities on the Proposed 2024 Rule at 55-56. In the 2024 Rule, EPA concluded that "management, employees, and their representatives involved in the process could

benefit from training on employee participation plans to ensure facility stakeholders are aware of the information included in the plans or otherwise available." Response to Comments on the Proposed 2024 Rule at 211-12. EPA further concluded that "training on employee participation plans will help employees identify, and owners and operators correct, issues that may prevent and mitigate accidents." Response to Comments on the Proposed 2024 Rule at 211-12. Rescinding the training requirements seems calculated to render the employee participation plan a paper exercise. EPA fails to provide a reasoned explanation for rescinding these requirements as well as reconcile its past findings with its new policy.

Employee Accident and Noncompliance Reporting

EPA also proposes to rescind the requirements under 40 C.F.R. §§ 68.62(b)(1)-(3) and 68.83(e)(1)-(3) for owners or operators of facilities with Program 2 and Program 3 processes to develop a process for employees to report (including anonymously) to the owner or operator and/or the EPA, unaddressed hazards, accidents, and other noncompliance and retain records of the reports. 91 Fed. Reg. at 8991. EPA states that these requirements are redundant with existing noncompliance reporting methods and eliminating these provisions will realign employee participation provisions with the OSHA PSM standard. *Id*. at 8991-92. EPA further states that rescinding these provisions eliminates concerns about unvalidated noncompliance reports. *Id*. at 8991.

As discussed above, alignment of the RMP regulations with the OSHA PSM standard is not a reasoned basis to rescind these requirements. Furthermore, in the 2024 Rule, EPA concluded that because not all facilities provide a welcoming atmosphere for employees to share safety concerns, these requirements provide a necessary minimum standard of conduct. 89 Fed. Reg. at 17,665. EPA also already addressed concerns about unvalidated noncompliance reports by providing training. *Id*. EPA fails to provide a reasoned explanation for rescinding these requirements.

Recommendation Decisions

EPA further proposes to rescind the requirement under 40 § 68.83(c) for owners or operators at facilities with Program 3 processes to consult with employees in incorporating recommendations and findings from process hazard analyses, compliance audits, and incident investigations. 91 Fed. Reg. at 8991. EPA states that rescission will realign the employee participation provisions with the OSHA PSM standard. *Id*. at 8992. EPA also states that this provision is unnecessary because at least one employee may already be involved in the process hazard analyses, compliance audits, and incident investigations. *Id*. EPA also states that it lacks information that these requirements have had any demonstratable impact on safety and seeks comment offering any specific information. *Id*.

As discussed above, alignment of the RMP regulations with the OSHA PSM standard is not a reasoned basis to rescind this requirement. *See also* Response to Comments on the Proposed 2024 Rule at 197-98. Including this requirement in the 2024 Rule was amply supported by the rulemaking record. 87 Fed. Reg. at 53588; *see also* Comments of States and Municipalities on the Proposed 2024 Rule at 55-56. In the 2024 Rule, EPA found that the requirement "helps ensure that a well-informed approach is applied when finalizing resolutions for reducing hazards and mitigating process safety risks." Response to Comments on the Proposed 2024 Rule at 197. In the 2024 Rule, EPA stated that it "continues to believe that involving directly affected employees and their representatives in recommendation discussions and decisions will help ensure that the most effective recommendations for reducing hazards and mitigating risks to employees and the public are given the proper consideration." Response to Comments on the Proposed 2024 Rule at 198. EPA fails to provide a reasoned explanation for rescinding these requirements.

Stop Work Authority

EPA also proposes to rescind the requirement for owners and operators at facilities with Program 3 processes to (1) provide

knowledgeable employees authority to recommend partial or complete shut down of a unit (under 40 C.F.R. § 68.83(d)(1) and (2)) and (2) allow a qualified operator to partially or completely shut down a unit according to the operating procedures of 40 C.F.R. § 68.69(a) in the event of a potential catastrophic release (40 CFR § 68.83(d)(2)). 91 Fed. Reg. at 8991. EPA states that rescission of the stop work authority provisions realigns the provisions with the OSHA PSM standard. *Id*. at 8992. EPA also states that previous RMP rule requirements address many aspects of a stop work authority and that the requirements proposed to be rescinded are not necessary and may also cause confusion and burden for regulated entities. *Id*. at 8993.

As discussed above, alignment of the RMP regulations with the OSHA PSM standard is not a reasoned basis to rescind this requirement. Furthermore, in the 2024 Rule, EPA required that existing stop work authorities be included in the written employee participation plan. 89 Fed. Reg. at 17663. EPA fails to explain how doing so may inadvertently cause confusion. 91 Fed. Reg. at 8993. The stop work provisions are the final tool to prevent a catastrophic release. Eliminating those provisions is contrary to the statutory mandate that the regulations should "provide, to the greatest extent practicable, for the prevention" of accidental releases. 42 U.S.C. § 7412(r)(7)(B.) EPA fails to provide a reasoned explanation for rescinding this requirement.

5. Community and Emergency Responder Notification

The 2024 Rule requires facilities to implement procedures for informing the public about accidental releases or to meet the requirement with other existing notification mechanisms under 40 C.F.R. §§ 68.90(b)(3) and 68.95(c); to partner with local response agencies to ensure a community notification system is in place and to document the collaboration under 40 C.F.R. §§ 68.90(b)(6) and 68.95(a)(1)(i); and to provide necessary entities with initial accidental release information under 40 C.F.R. §§ 68.90(b)(3) and 68.95(c). *See* 89 Fed. Reg. at 17666. These provisions are intended to provide surrounding communities with the information they need to prepare for potential emergencies. 89 Fed. Reg. at 17666.

Community Notification System and Coordination Clarification

EPA is proposing to modify 40 C.F.R. §§ 68.90(b)(6) and 68.95(a)(1)(i) to specifically require that local responders notify communities of accidental releases. 91 Fed. Reg. at 8994. Although EPA characterizes this revision as a clarification, it is in fact a change in position, and EPA does not provide a reasoned explanation to support this change.

In the 2024 Rule, EPA recognized that in most instances, government emergency response officials will notify communities. 89 Fed. Reg. at 17668; Response to Comments on the Proposed 2024 Rule at 224-25. However, EPA also recognized that in some instances, local public responders may not be able to provide an emergency response. 89 Fed. Reg. at 17667-68; *see also* 2024 Response to Comments on the Proposed 2024 Rule at 224-25. Though not a chemical accident, the 2025 Eaton Fire in Altadena, California was a tragic illustration that local public responders sometimes do not provide adequate community notification.[56] In the 2024 Rule, EPA concluded that the owner or operator of a facility is ultimately responsible for ensuring an effective emergency response in the event of an accidental release at their facility. 89 Fed. Reg. at 17667-68; *see also* Response to Comments on the Proposed 2024 Rule at 224-25. Therefore, EPA did not make community notification of an accidental release the sole responsibility of local responders. 89 Fed. Reg. at 17667-68; *see also* Response to Comments on the Proposed 2024 Rule at 224-25. The Proposed Rule fails to provide a reasoned explanation for changing these requirements.

Documentation Requirements

EPA is also proposing to eliminate related requirements under 40 C.F.R. §§ 68.90(b)(6) and 68.95(a)(1)(i), which require the owner or operator to "document coordination with local authorities, including: The names of individuals involved and their contact information (phone

[56] *LA County releases after-action review of alert notification systems for Eaton, Palisades fires,* NBC Los Angeles (Sept. 25, 2025), https://www.nbclosangeles.com/news/local/county-after-action-review-eaton-palisades-fire-responses/3783002/.

number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities" as provided in 40 C.F.R. § 68.93(c). 91 Fed. Reg. at 8994. Instead, EPA proposes to require the owner or operator to submit (1) the type of community notification system; and (2) whether the local responder or the owner or operator will notify the community in their RMP submission to EPA under 40 C.F.R. § 68.180. 91 Fed. Reg. at 8994. However, EPA offers no reasoned explanation for eliminating the documentation requirements.

Other Comments to Improve Emergency Notification Procedures and Mechanisms

EPA is also soliciting comments on actions EPA could take to improve emergency notification procedures and mechanisms. 91 Fed. Reg. at 8994-95. As the States and Municipalities have previously explained, incident notification procedures have been inadequate, with some community members not learning about a release until hours afterward. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 58-59. There are several ways in which EPA should improve emergency notification procedures and mechanisms.

First, EPA should require that facilities develop emergency notification procedures with community input so that the facilities can learn what public engagement measures would be most accessible and timely for the public. Historically, facilities have not adequately accounted for the specific access and timing needs of nearby communities. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 58-59.

Second, EPA should also explicitly require that facilities provide emergency response notifications in Spanish and other languages appropriate for the surrounding community. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 58-59. Indeed, in the 2024 Rule, EPA stated that it "expects notifications to be understood by community members potentially affected and therefore would expect

multilingual notifications if necessary." Response to Comments on the Proposed 2024 Rule at 226.

The States and Municipalities also note that the Federal Emergency Management Agency has established the Integrated Public Alert & Warning System for community notification, which provides authenticated emergency and life-saving information to the public through mobile phones using wireless emergency alerts. 87 Fed. Reg. at 53597. It also provides alerts to radio and television via the Emergency Alert System and on the National Oceanic and Atmospheric Administration's Weather Radio. *Id.* The Emergency Alert System devices found at radio, TV, and cable stations can support multiple languages and wireless emergency alerts can support both English and Spanish. *Id.*

Indeed, the States and Municipalities are committed to ensuring emergency alert access in multiple languages. For example, in October 2022, citing the deadly aftermath of Hurricane Ida in New York City, which disproportionately affected immigrants from Asia with limited English proficiency, New York Attorney General Letitia James sent a letter to the Federal Communications Commission (FCC) Chairperson and the President and CEO of CTIA (the Wireless Association), urging them to work together to expand language accessibility for severe weather alerts.[57] In January 2025, the FCC finalized and unanimously adopted a new rule, which plans to expand emergency alerts to 13 additional languages.[58] Wireless providers that participate in Wireless Emergency Alerts will need to support template-based multilingual alerts in the 13 most commonly spoken languages in the United States, as well as English and American Sign Language, by June 12, 2028.[59]

The States and Municipalities thus urge EPA to require RMP facilities and emergency responders to comply with a checklist of

[57] Letter from Attorney General James, Wireless Emergency Alerts - Expanding Language Access, (Oct. 26, 2022).
[58] Press Release, Attorney General James Demands FCC Expand Multilingual Emergency Alerts, (Nov. 7, 2025).
[59] FCC, Multilingual Wireless Emergency Alerts, (Feb. 5, 2026).

measures and procedures that address the needs of individuals with limited English proficiency working at and living near RMP facilities to effectively access RMP procedures and protections. The Department of Justice Civil Rights Division's Federal Coordination and Compliance Section's guide entitled *Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery* provides tools that EPA should consider requiring for all RMP facilities, including:

- reviewing and translating public-facing materials to ensure vital documents remain accessible during a disaster or emergency.
- incorporating the concept of "access and functional needs" (sometimes referred to as "at-risk" or "vulnerable") populations into their disaster preparedness plans to address the access and functional needs of persons with limited English proficiency, individuals with disabilities, those without access to transportation, children, and the elderly.
- practicing how to translate and distribute translated media alerts, issue multilingual evacuation announcements, work with interpreters, and other critical communications to reach individuals with limited English proficiency.
- coordinating with non-English media—in television, print, and radio, as well as through online platforms and social media—to assist with sharing emergency information to individuals with limited English proficiency in nearby areas.[60]

The presence of state and/or local alerting authorities—with the designated authority to alert and warn the public when there is an impending natural or human-made disaster, threat, or dangerous or missing person—in all 50 states provides, in many instances, the necessary infrastructure for facilities to ensure that a community notification system is operational within any impact zones of releases

[60] U.S. Dept. of Justice, Civil Rights Division, Federal Coordination and Compliance Section, *Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery (*2016 LEP Guide*)* (2016), https://www.justice.gov/crt/file/885391/dl?inline.

that occur from their facility. 87 Fed. Reg. at 53597. However, EPA should consider that this notification system may not be appropriate or sufficient for all communities, including those that are linguistically isolated or have limited access to internet, power, safe infrastructure, or trusting relationships with their emergency responders.

Indeed facilities receiving federal financial assistance are required to address such impediments under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq*.—as the Department of Justice recognized in issuing its 2016 Limited English Proficiency (LEP) Guide and the EPA Office of Land and Emergency Management recognized in its 2022 Environmental Justice Action Plan[61]. The LEP Guide states that under Title VI, it is unlawful to deny the benefits of or discriminate on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.[62] Thus, as DOJ's Title VI Legal Manual explains,[63] once a public or private entity—like an RMP facility—receives federal financial assistance, it is unlawful for any of its programs and activities to discriminate on the basis of race, color, or national origin. The prohibition on national origin discrimination requires recipients to take reasonable affirmative steps to ensure that limited English proficient persons have meaningful access to the same benefits, services, information, and any other vital aspect of the recipient's programs or activities as everyone else.[64] EPA should adopt

[61] EPA, *EPA Finalizes Environmental Justice Action Plan for Land Protection and Cleanup Programs* (Sept. 30, 2022), https://perma.cc/HE8A-YFF8.
[62] 2016 LEP Guide at i-ii (recognizing Title VI "prohibition on national origin discrimination requires recipients to take steps to ensure that Limited English Proficiency persons have meaningful access to the same benefits, services, information, and any other vital aspect of the recipient's programs or activities as everyone else"); *see also* U.S. Dept. of Health & Human Services, *Ensuring Effective Emergency Preparedness, Response, and Recovery for Individuals with Access and Functional Needs: A Checklist for Emergency Managers*, https://www.justice.gov/crt/file/885396/dl?inline (listing action steps emergency responders can take to address the needs of individuals with disabilities, children, older adults, and populations having limited English proficiency, limited access to transportation, and/or limited access to financial resources to prepare for, respond to, and recover from the emergency).
[63] U.S. Dept. of Justice, *Title VI Legal Manual*, Section V.A, 1-3 (Apr. 22, 2021).
[64] 2016 LEP Guide at i-ii.

analyses, procedures, and protections to ensure RMP facilities receiving federal financial assistance comply with Title VI.

Third, EPA should require real-time fenceline air monitoring for air toxics at the most dangerous RMP facilities. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 67-70. In the 2024 Rule, EPA acknowledged "the need for considering expanding fenceline monitoring for RMP-regulated facilities." Response to Comments on the Proposed 2024 Rule at 355-58; *see also* 87 Fed. Reg. at 5360; 89 Fed. Reg. at 17667.

As EPA has recognized, the agency has the authority to require fenceline air monitoring.[65] In Clean Air Act section 112(r)(7)(A), EPA is specifically given authority "to promulgate release prevention, *detection, and correction* requirements which may include *monitoring*." 42 U.S.C. § 7412(r)(7)(A) (emphases added). And section 112(r)(7)(B)(i) authorizes EPA to issue "reasonable regulations" for the "prevention and detection of accidental releases" and for the responses to such releases by owners and operators of stationary sources. *Id.* § 7412(r)(7)(B)(i).

Real-time fenceline air monitoring will help fulfill EPA's mandate to prevent and mitigate accident consequences. *See* Comments of States and Municipalities on the Proposed 2024 Rule at 67-70. Fenceline monitoring may assist in identifying an accidental release and in the event of an accidental release give the community immediate notice of the emergency and any necessary mitigation responses they should employ (shelter in place, close windows, evacuate, etc.), which would assist in limiting the consequences of a release. Fenceline air monitoring can also help communities advocate for vigorous enforcement of regulatory requirements; push companies to use safer chemicals; alert and educate friends, family members, and community members; and encourage the media to report on polluting facilities in

[65] EPA, *Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention* (EPA Technical Background Document), at 25, EPA-HQ-OLEM-2022-0174-0066 (Apr. 19, 2022), https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0066.

their areas.[66] Also, as Harris County previously testified, not only would this data benefit communities, it would assist emergency response organizations when making emergency response decisions such as evacuations and shelter-in-place orders.[67] Furthermore, facilities can also use fenceline air monitoring information to take the initiative to improve safety at their operations.

The current monitoring of air toxics is inadequate and can readily be improved as recognized in a 2020 Government Accountability Office report.[68] According to a Reuters 2020 report, the government network of 3,900 monitoring devices nationwide has routinely missed major toxic releases and day-to-day pollution dangers.[69] In fact, Reuters reported that the network identified no risks from ten of the biggest refinery explosions over the past decade, including the 2019 Philadelphia refinery explosion.[70] Significantly, air monitoring is even worse during natural disasters and a 2019 EPA Office of Inspector General report called for EPA to improve its natural disaster air monitoring.[71]

As EPA has recognized, real-time fenceline monitoring has already been implemented in various jurisdictions and at various facilities.[72] For example, California adopted a refinery air monitoring statute, requiring local air districts and refineries to develop and

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[66] *See, e.g.,* Union of Concerned Scientists, *Environmental Justice for Delaware*, at 18-19 (2017), https://www.ucsusa.org/sites/default/files/attach/2017/10/ej-for-de-report-ucs-2017.pdf.

[67] Testimony of Sarah Jane Utley, Environmental Division Director, Office of the Harris County Attorney Christian D. Menefee, EPA-HQ-OLEM-2021-0312-0080 (July 30, 2021), https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0080.

[68] Government Accountability Office, *Air Pollution: Opportunities to Better Sustain and Modernize the National Air Quality Monitoring System* (Nov. 12, 2020), https://www.gao.gov/products/gao-21-38.

[69] Reuters, *Special Report: U.S. Air Monitors Routinely Miss Pollution - Even Refinery Explosions* (Dec. 1, 2020), https://www.reuters.com/article/usa-pollution-airmonitors-specialreport/special-report-u-s-air-monitors-routinely-miss-pollution-even-refinery-explosions-idUSKBN28B4RT.

[70] *Id.*

[71] EPA Office of Inspector General, *EPA Needs to Improve Its Emergency Planning to Better Address Air Quality Concerns During Future Disasters* (Dec. 16, 2019), https://www.epa.gov/office-inspector-general/report-epa-needs-improve-its-emergency-planning-better-address-air-quality.

[72] EPA Technical Background Document at 27.

implement air monitoring requirements at the fenceline of refineries and within adjacent communities by January 2020. (Assembly Bill 1647 (2017); Cal. Health & Safety Code section 42705.6). In the years that proceeded, the local air districts that have refineries in their jurisdictions each adopted rules implementing the air monitoring requirements. California's Office of Environmental Health Hazard Assessment (OEHHA) issued a report in 2019 on refinery chemical emissions that recommended which chemicals should be monitored. Of the 188 chemicals identified as emitted from California refineries, OEHHA identified 18 chemicals, many of which are RMP-regulated chemicals, as the top candidates for air monitoring based on their toxicity, average levels of emissions from refineries statewide, and involvement in multiple refinery processes and incidences.[73]

The vast majority of refineries in California are located within three air districts: the Los Angeles region (South Coast Air Quality Management District), the Bay Area region (Bay Area Air Quality Management District), and the Central Valley region (San Joaquin Valley Air Pollution Control District, SJVAPCD). The refinery air monitoring statute adopted in 2017 directs the air districts to establish regulations implementing fenceline and community air monitoring at and around the state's refineries. The fenceline monitoring must include equipment that can detect or estimate the quantity of fugitive emissions, gas leaks, and other air emissions from refineries, and this data must be provided to the public as quickly as possible.[74] California Health & Saf. Code, § 42705.6, subds. (a)(2), (d). Each district has imposed its own monitoring requirements, but there is some overlap in their approaches. Community groups represented by Earthjustice and the California Attorney General successfully sued SJVAPCD in 2020 regarding its adoption of refinery air monitoring rules that illegally

[73] OEHHA, *Analysis of Refinery Chemical Emissions and Health Effects*, at vi (Mar. 2019), https://oehha.ca.gov/media/downloads/faqs/refinerychemicalsreport032019.pdf.

[74] The community monitoring must be capable of measuring and recording "air pollutant concentrations in the ambient air at or near sensitive receptor locations near a petroleum refinery, and that may be useful for estimating associated pollutant exposures and health risks and in determining trends in air pollutant levels over time." California Health & Saf. Code, § 42705.6, subd. (a)(1).

exempted several refineries within its jurisdiction from complying with any of the air monitoring requirements prescribed by the refinery air monitoring statute. SJVAPCD adopted regulations in October 2022 without those exemptions as a result of the litigation.[75]

Earthjustice also issued a report discussing some of the implementation challenges of the California refinery fenceline monitoring program and providing recommendations to fix these problems and strengthen the program.[76] EPA can look to California's program (and its critiques) and other programs to expeditiously develop real-time fenceline air monitoring requirements.

6. Stationary Source Siting

The location of stationary sources can significantly affect the severity of an accidental release. 81 Fed. Reg. at 13670. The lack of sufficient distance between a stationary source and neighboring residential areas was a significant factor in the severity of several major chemical accidents, including the Bhopal disaster and the West Fertilizer accident. *Id*.

The 2024 Rule added regulatory language to require that hazard evaluations explicitly define stationary source siting as inclusive of "the placement of processes, equipment, and buildings within the facility, and hazards posed by proximate stationary sources, and accidental release consequences posed by proximity to the public and public receptors." 89 Fed. Reg. at 17635-36. This applied to Program 2 hazard reviews under 40 C.F.R. § 68.50(a)(6) and Program 3 process hazard analyses under 40 C.F.R. § 68.67(c)(5). This language was added because the siting of processes and equipment within a stationary source can impact the surrounding community not only through the proximity of an accidental release to offsite receptors such as people,

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[75] *See* San Joaquin Valley Air Pollution Control District, Petroleum Refinery Air Monitoring, https://ww2.valleyair.org/air-quality-information/air-monitoring/petroleum-refinery-air-monitoring/.

[76] Earthjustice, *Crossing the Fenceline: Critical Reforms to California's Petroleum Refinery Emissions Monitoring Law* (2022), https://earthjustice.org/wp-content/uploads/fenceline_2022.pdf.

infrastructure, and environmental resources but also through increasing the likelihood of a secondary "knock-on" release by compromising nearby processes. 87 Fed. Reg. at 53571. To give just one example, the proximity of the fluid catalytic cracker unit to the hydrogen fluoride tank nearly caused catastrophic consequences in the 2015 explosion of that unit at the former ExxonMobil refinery in Torrance, California.[77]

EPA now proposes to remove the language added by the 2024 Rule on the basis that it caused confusion and unnecessarily added a redundant requirement as part of the siting evaluations. 91 Fed. Reg. at 8995. Alternatively, EPA seeks comment on just removing the phrase "and hazards posed by proximate stationary sources." *Id*. at 8996.

The States and Municipalities are opposed to EPA's proposal. The 2024 Rule did not add any additional requirement but rather made more explicit what is required to be addressed in a stationary source siting evaluation. EPA claims that it "may have inadvertently created an additional burden for regulated entities who interpret the amplifying language as requiring a separate analysis for each individual element of the siting provision . . . regardless of whether a hazard was identified." 91 Fed. Reg. at 8995. But the solution to that problem is simply to set forth guidance informing regulated entities that a separate analysis for each element is not required in such a situation. In 2022, EPA found that "[d]espite enforcement and the consequences of catastrophic accidents, issues of siting continue to threaten process safety." 87 Fed. Reg. at 53573. Nothing in the Proposed Rule indicates that these issues are no longer a threat to process safety, so the clarifying language should remain in place.

In addition, EPA states that it "is proposing to refocus the RMP stationary source siting requirements to be consistent with the OSHA PSM requirements." 91 Fed. Reg. at 8995. But in EPA's response to comments on its 2024 Rule, it stated that it " disagrees with comments that implementing the facility siting requirements would create the

[77] *United States v. Exxon Mobil Corporation,* 943 F.3d at 1288.

opportunity for inconsistent enforcement between EPA and OSHA. The OSHA PSM standard and RMP rule both require that facility siting be addressed as one element of a [process hazard analysis]." 89 Fed. Reg. at 17641. EPA fails to reconcile its prior findings with its new policy. As discussed above, alignment of the RMP regulations with the OSHA PSM standard is not a reasoned basis to rescind this language.

The States and Municipalities are also opposed to removing the language regarding hazards posed by proximate sources. EPA claims that language may have diverted facility staff from evaluating hazards present at their own facilities to instead focus on hazards posed by proximate facilities, 91 Fed. Reg. at 8996, but it provides no evidence that that is occurring. In 2022, EPA found that communities are affected not only by an initial chemical release but also "by increased likelihood of subsequent releases from other nearby processes compromised by the initial release." 87 Fed. Reg. at 53572. For this reason, the proximate sources language should remain in the regulations.

7. Natural Hazards

Natural hazards cause or contribute to chemical accidents, and the number and severity of these occurrences are likely to increase due to climate change. Between 2004 and 2020, RMP facilities have reported that natural hazards caused or contributed to more than 80 accidents. 87 Fed. Reg. at 53567-68. Some accidents caused or exacerbated by natural hazards—such as the 2017 Arkema accident in Harris County, Texas caused by heavy rainfall from Hurricane Harvey—resulted in numerous injuries to workers and first responders. In its report on the Arkema fire, CSB noted the increasing risk severe weather poses for chemical facilities.[78] CSB found that the Arkema team that performed the process hazard analysis for its low temperature warehouses did not document any flooding risk.[79] The

[78] CSB, *Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby Following Hurricane Harvey Flooding*, 16 (May 2018), https://www.csb.gov/assets/1/20/final_arkema_draft_report_2018-05-23.pdf.
[79] *Id*. at 84.

Board noted that in recent years, flooding from extreme rainfall events has increased, and that a 2015 EPA report found that this trend is projected to continue as a result of climate change, increasing the flood risk in many parts of the country.[80]

The 2024 Rule added amplifying regulatory text to emphasize that natural hazards are among the hazards that must be addressed in Program 2 hazard reviews and Program 3 process hazard analyses. 89 Fed. Reg. at 17635. The rule added the following language as one of the things that must be identified in the reviews and analyses: "Natural hazards that could cause or exacerbate an accidental release." *Id.* at 17686, 17688. EPA stated that "making more explicit this already-existing accident prevention program requirement will ensure the threats of natural hazards are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities." 87 Fed. Reg. at 53567.

EPA now proposes to remove the amplifying language that was added by the 2024 Rule. 91 Fed. Reg. at 8996. As an alternative, EPA proposes to modify the regulatory text at 40 C.F.R. § 68.50(a)(1) and § 68.67(c)(1) to add the following words in italics: "The hazards, *including natural hazards*, associated with the process and regulated substances." *Id.* at 8997.

The States and Municipalities are opposed to the removal of the language set forth in the 2024 Rule. About one-third of RMP facilities are located in areas at risk of climate-related events, such as wildfire, flooding, hurricane storm surge or coastal flooding.[81] These natural hazards have the potential to initiate accidents at RMP facilities and that risk is increasing as a result of climate change. 87 Fed. Reg. at 53567. For this reason, it is important that there is specific language making owners and operators aware that such hazards must be identified and considered. Consideration of the resiliency of RMP

[80] *Id.* at 15 (citing EPA, *Climate Action Benefits Report* (June 22, 2015)).
[81] U.S. Government Accountability Office, *Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change*, GAO-22-104494 (Feb. 28, 2022), https://www.gao.gov/products/gao-22-104494.

facilities to extreme weather events is further warranted because of the direct, substantial, and cumulative risk these facilities pose to low-income communities and communities of color.

EPA does not provide a reasoned basis for its change in position. It asserts that the 2024 Rule "creates confusion as to how the natural hazards should be evaluated." 91 Fed. Reg. 8996. But any confusion could be alleviated by the issuance of Agency guidance. EPA also speculates, without evidence, that "a regulatory emphasis on natural hazards could inadvertently require a source to divert resources and focus from other, more prevalent hazards." *Id*. But in the 2024 Rule, EPA found that "[b]y amplifying and making more explicit the need to evaluate natural hazards as potential causes of releases, EPA expects those facilities that are currently not performing such evaluations will better understand what the rule requires." 89 Fed. Reg. at 17637. Therefore, the language's purpose is to raise awareness of the need to examine natural hazards, rather than distract from studying other hazards. Finally, EPA asserts that rescinding the language would realign the regulatory text with the OSHA PSM requirements. 91 Fed. Reg. at 8996. In fact, in 2024, EPA noted it had "coordinated with OSHA throughout the rulemaking process to ensure the intent of adding explicit natural hazard regulatory text does not create conflicting requirements between the two regulatory programs." 89 Fed. Reg. at 17637.

The language from the 2024 Rule should stay in the regulations, but if EPA does make a change, it should adopt its alternative proposal of adding the phrase "including natural hazards." EPA acknowledges the importance of owners and operators understanding the risks caused by natural hazards: "EPA maintains that extreme weather and natural hazards can increase the likelihood of an accidental release and should be examined in order to prevent or mitigate releases of RMP-regulated substances at covered facilities." 91 Fed. Reg. at 8997. For this reason it is important to specify in the regulations that "natural hazards" must be examined.

8. Power Loss

Power loss at an RMP facility can be caused by a natural hazard or some other event and can lead to a variety of negative impacts. According to EPA in 2022, "[p]umps and compressors may stop running, stirrers may quit mixing, lights may go out, and instruments and controls may malfunction. These equipment outages can lead to tank overflows, runaway chemical reactions, temperature or pressure excursions, or other process upsets which could lead to a spill, explosion, or fire." 87 Fed. Reg. at 53569. Because power loss has resulted in serious accidents at RMP facilities, EPA concluded "[w]hen a facility relies on electrical power for any aspect of its process operations, it is imperative to anticipate how power loss affects the safeguards that prevent releases of hazardous chemicals." *Id.*

The 2024 Rule added a new requirement that hazard evaluations explicitly address the risk of power failure, as well as standby or emergency power systems. 89 Fed. Reg. at 17635. It also added a requirement that facilities have standby or backup power for air pollution control or monitoring equipment associated with the prevention and detection of accidental releases from RMP-regulated processes and to document when equipment associated with the prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards. *Id.* EPA is now proposing to rescind these requirements. 91 Fed. Reg. at 8997-98.

The States and Municipalities are opposed to the proposal to rescind the power loss requirements from the 2024 Rule. EPA attempts to justify the recission of the requirement that facilities explicitly consider power loss on the ground that "evaluating hazards from power loss was already required." 91 Fed. Reg. at 8998. But in 2022, EPA persuasively disagreed with commenters contending that the then-proposed provisions were unwarranted, explaining, "EPA believes making more explicit this already-existing accident prevention program requirement to evaluate hazards of the process will ensure that threats of power loss are properly evaluated and managed to prevent or

mitigate releases of RMP-regulated substances at covered facilities." 89 Fed. Reg. at 17639. EPA now claims that "adding unnecessary language has the potential to cause confusion with the regulated community," 91 Fed. Reg. at 8998, but it provides no evidence of this and any confusion could be resolved through Agency guidance.

EPA next attempts to justify the recission on the ground that the 2024 Rule took "the language for Program 3 [process hazard analysis] . . . out of alignment with the OSHA PSM [process hazard analysis] language . . . which may also create unnecessary confusion for regulated entities." 91 Fed. Reg. at 8998. But this was also raised by commenters on the Proposed 2024 Rule and EPA responded that it "seeks only to better reflect its longstanding regulatory requirement that loss of power is among the hazards that must be addressed within hazard evaluations, rather than impose additional regulatory requirements (and thus potential additional costs) that conflict with the OSHA PSM regulatory requirements." 89 Fed. Reg. at 17639. Once again, any confusion can be addressed by Agency guidance and alignment of the RMP regulations with the OSHA PSM standard is not a reasoned basis to rescind this requirement.

With regard to backup power for monitoring equipment, EPA now states that it "recognizes that while backup power could have some mitigation benefits for facilities, facilities are in the best position to determine when backup power is most appropriate to realize those benefits." 91 Fed. Reg. at 8998. But in the proposal for the 2024 Rule, EPA stated it is "concerned that the threat of extreme weather events has and will be used by some owners or operators to justify disabling equipment designed to monitor and detect chemical releases of RMP-regulated substances at their facility. . . To prevent accidents, RMP owners or operators are required to develop a program that includes monitoring for accidental releases. EPA does not believe natural disasters should be treated as an exception to this requirement." 87 Fed. Reg. at 53571. EPA does not reconcile its past position with its new policy.

Regarding the recission of the requirement that owners or operators document when monitoring equipment is removed due to safety concerns from imminent natural hazards, EPA claims that it may distract facility personnel from recovery efforts following a natural disaster, even though it provides no evidence of this and acknowledges that the documentation could be provided after the hazardous situation has passed. EPA goes on to say that "there is no data showing that the documentation requirement would provide benefits to accident prevention or emergency response." But in the Proposed 2024 Rule, EPA found that there was a benefit to preventing facilities from evading monitoring requirements during natural disasters. 87 Fed. Reg. at 53571. It noted: "A large-scale natural disaster may threaten multiple RMP facilities in a community simultaneously, leaving communities to endure the direct effects of a natural disaster without receiving warning of associated chemical releases. EPA wants to ensure RMP-regulated substances at covered processes are continually being monitored so that potential exposure to chemical substances can be measured during and following a natural disaster." *Id.* EPA provides no reasoned basis for its change in thinking now.

9. Declined Recommendations

EPA has found 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 responders and the local community." 87 Fed. Reg. at 53574. Further, "when local citizens have adequate information and knowledge about facility hazards, facility owners and operators may be motivated to further improve their safety in response to community pressure and oversight." *Id.*

The 2024 Rule added requirements that Program 2 and Program 3 facilities report justifications for declining hazard analysis and process hazard analysis recommendations from natural hazards, power loss, and siting under 40 C.F.R. § 68.170(e)(7) and § 68.175(e)(8). 89 Fed. Reg. at 17635. It also required that Program 3 facility owners and operators report declined recommendations from safety gaps between

codes, standards, or practices under the process hazard analysis in 40 C.F.R. § 68.175(e)(9). *Id.* at 17692. EPA is now proposing to rescind the declined recommendation requirements. 91 Fed. Reg. at 9000.

The States and Municipalities are opposed to EPA's proposal to rescind the declined recommendation requirements. EPA says it is "proposing this change to reduce confusion for communities, better align the EPA and OSHA's PHA provisions, eliminate unnecessary burden for regulated entities, and alleviate unintended consequences from public pressure on RMP-regulated facilities." 91 Fed. Reg. at 8999. This new position is contrary to EPA's position in its response to comments on the Proposed 2024 Rule. At that time, EPA found that "the requirements are important to help the public understand how facilities address the hazard that may affect their community to keep the risk at or below an 'acceptable level.'" 89 Fed. Reg. at 17642. EPA also stated that the requirements "will promote better community emergency planning." *Id.* Once again, EPA has once again "offered an explanation for its decision that runs counter to the evidence before the agency." *State Farm*, 463 U.S. at 43.

Furthermore, without this requirement, owners and operators can continue to ignore recommendations from hazard evaluations with no justification, even if the recommendations are feasible and effective. Requiring reporting and justification of those hazard mitigation recommendations that are not implemented is necessary to ensure that accident prevention occurs "to the greatest extent practicable" under Clean Air Act Section 7412(r)(7). Indeed, EPA acknowledges in its Proposed Rule that "when local citizens have adequate information and knowledge about the risks associated with facility hazards, facility owners and operators may be motivated to further improve their safety performance in response to community oversight." 91 Fed. Reg. at 8999. EPA claims that public pressure may cause facilities to prioritize issues raised by the public rather than the highest risk hazards, *id.*, but EPA presents no evidence of this and it is likely that any public pressure would concern the highest risk hazards. EPA also raises concern that the public may not understand why a facility is declining a certain

recommendation, *id*. at 9000, but that is why EPA should require a narrative justification for the declined recommendation.

10. Emergency Response Exercises

EPA is proposing to retain the emergency response exercise requirements from the 2024 Rule, including requiring 10-year field exercises. 91 Fed. Reg. at 9000. According to EPA, some facilities are located in areas where the local responders may not have the ability to participate in exercises or coordinate with facilities. 91 Fed. Reg. at 9001. The States and Municipalities support maintaining the emergency response exercise requirements of the 2024 Rule.

Conclusion

The States and Municipalities oppose the Proposed Rule's rescission of requirements in the 2024 Rule. EPA must prevent and mitigate chemical accidents "to the greatest extent practicable." 42 U.S.C. § 7412(r)(7)(B). EPA's rescission of provisions in the 2024 Rule is contrary to its statutory duties, arbitrary and capricious, and will endanger workers, communities, and the environment.

Attachments

Attachment A – Comments of States and Municipalities on the Proposed 2024 Rule.

Attachment B – Comments of States and Municipalities on the Proposed 2019 Rollback Rule.

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