

October 21, 2015

Dear Administrator McCarthy,

We want to thank you for your time and candid discussion on October 13 of the forthcoming EPA Risk Management Plan (RMP) rulemaking. We are pleased to hear your support for greater transparency and access to more information for local communities, and enhancing emergency response preparation in an updated RMP rule.

However, we were disappointed to hear that the RMP rule may not include new requirements to use inherently safer technologies (IST) where feasible to eliminate or reduce catastrophic hazards – the approach previously endorsed by former EPA administrator Christine Todd Whitman and President Obama when he served in the Senate and as a presidential candidate. Still, we are encouraged to hear your interest in requiring facilities to assess the feasibility of using safer chemicals or processes.

While we agree with previous Agency statements that EPA has the legal authority to require conversion to inherently safer technologies where feasible, and we believe that such requirements can be effectively and efficiently implemented, we appreciate that there are time constraints involved with finalizing a rule in 2016. In order to protect communities at the greatest risk of catastrophic chemical facility hazards in the near term, we respectfully urge you to include at minimum a pilot project which would require assessment and, where feasible, implementation of conversion to safer chemicals and processes for a subset of chemical facilities. We recommend prioritizing sectors for the pilot program based on the magnitude of the hazards facilities pose and whether the sector includes facilities that have already adopted safer alternatives. Such a pilot program will help to demonstrate the effectiveness and practicality of hazard elimination requirements, provides a foundation for future expansion of an IST requirement to other high risk chemical facility sectors, and is consistent with the principles the Obama administration put forward in 2009.

Below is a revision of our priority recommendations presented to you at our October 13th meeting:

- 1) Require all RMP facilities to conduct and submit alternatives assessments that meet specified criteria to determine the feasibility of using safer chemicals and/or processes, building on lessons from the New Jersey IST program and other relevant state or local programs; require that these assessments include a comprehensive analysis of the financial benefits as well as safety enhancements of options and make these assessments publically available.
- 2) Begin a pilot program to require IST implementation in a subset of RMP facility categories where the feasibility of safer alternative chemicals and processes have been well demonstrated such as waste water and drinking water treatment plants,

bleach plants and hydrogen fluoride refineries, and for those facilities among the 2,000 high-risk facilities cited in the EPA's National Enforcement Initiative (NEI) 2017-19 proposal* (excerpted below) where an IST alternative is feasible. In addition, EPA should urge chemical manufacturers of ammonium nitrate (AN) to voluntarily make a non-weaponized formula of AN (which already exists) available for use in fertilizer.

- 3) Ensure the protection of disproportionately at-risk populations and underserved communities. Launch an immediate national emergency response survey to be completed within six months to assess the capacity of local first responders and medical facilities to respond to worst case chemical disaster scenarios as reported to the EPA through RMP facility reports. This would include assessment of training needs, availability of state-of-the art response and rescue equipment and hospital capacity. Consider providing technical assistance grants (TAG) similar to those available under Superfund that would be available to fence line communities to secure technical assistance for evaluating alternative assessments submitted by local facilities, as well as for other priority community needs related to chemical facility safety. EPA's Office of Environmental Justice could also consider providing Environmental Justice Partnership grants, including potentially to the same communities receiving TAG grants, to support community chemical facility accident prevention and response needs. Provide funding through the NIEHS Worker Education and Training Program for joint community and worker training in IST analysis, implementation and oversight.
- 4) Require the involvement of workers and their representative unions in the alternatives assessments and feasibility analyses of IST. Ensure that all facility employees have whistleblower protection (i.e., ability to anonymously report safety concerns), participate in inspections and in alternatives analyses assessments, and have adequate education and training to participate in those processes. Ensure that workers and communities are fully trained and empowered to participate in planning and reviewing assessments and decisions.
- 5) Increase the scope of reportable RMP elements to include "near misses" or process upsets, which will ensure that the industry records these events. In addition, the EPA should establish a clearinghouse of de-registered RMP facilities that have adopted safer chemicals or processes to eliminate catastrophic hazards. This information is critical in preventing future catastrophic events and is an essential transparency tool for future policy changes. There also needs to be improved public access to an expanded scope of RMP information, which currently is not accessible online and is difficult to interpret, even for those with technical training and industry experience.

Thank you again for your time and consideration. The current decades-old RMP rule is woefully inadequate and is in need of significant modification. The RMP rulemaking provides the agency with a clear window of opportunity to address these deficiencies. We hope we can work together on an updated RMP rule that incorporates requirements which take advantage of technological advances in preventing chemical facility disasters that have been made over the last two decades as well as ensuring that communities have substantially improved access to information about facilities that affect their health and safety. We look forward to the opportunity to discuss these priorities with you and your staff before a proposed rule is issued next year.

Sincerely,

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“(3) Reducing the Risks and Impacts of Industrial Accidents and Releases. It is an all too common occurrence for industrial facilities to have serious accidents and explosions that kill or injure employees and emergency responders, and release chemicals that threaten neighboring communities. Thousands of facilities across the country produce, process, store, and use extremely hazardous substances that are acutely toxic or can cause serious accidents. These facilities vary widely in nature, from municipal water treatment plants to the largest refineries in the United States and are often extremely large and complex. *Across the country, approximately 150 catastrophic accidents occur per year among the universe of regulated facilities* (emphasis added). These accidents pose a risk to neighboring communities and workers because they result in fatalities, injuries, significant property damage, evacuations, sheltering in place, or environmental damage. Approximately 2,000 facilities are currently considered “high-risk” because of their proximity to densely populated areas, the quantity and number of extremely hazardous substances they use, or their history of significant accidents.

Most of these serious accidents are preventable if the necessary precautions and actions are taken. Failure to adequately train personnel, maintain equipment, conduct routine inspections, or take other common sense precautions contribute to the dangers these facilities pose to their workers and to surrounding communities. This potential NEI would be a targeted focus on the facilities and the chemicals that pose the greatest risks, with a goal of increasing industry attention to preventing accidents, instead of addressing problems after accidents happen, thereby reducing the risk of harm to communities and workers.”

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