



CREATING GOOD JOBS, A CLEAN ENVIRONMENT, AND A FAIR AND THRIVING ECONOMY

October 31, 2022

U.S. Environmental Protection Agency

Comments on Proposed Rule: Safer Communities by Chemical Accident Prevention Proposed Rule

Docket ID: EPA-HQ-OLEM-2022-0174

The BlueGreen Alliance (BGA) is a coalition of labor unions and environmental organizations collectively representing millions of members and supporters. We are calling on the U.S. Environmental Protection Agency (EPA) to improve the proposed Risk Management Program (RMP) rule by strengthening prevention measures that protect workers and fenceline communities.

Background

The EPA's RMP covers approximately 12,000 commercial and industrial facilities that use or store large amounts of specific, highly toxic or highly flammable chemicals.ⁱ The RMP is the nation's primary defense against catastrophic industrial chemical releases, fires, and explosions. The RMP rule is meant to save lives—the lives of our workers, fenceline communities, and first responders. The EPA estimates that 177 million people in the United States live close enough to an industrial facility to be harmed by a chemical release, fire, or explosion. That is more than half the U.S. population and what's more, that risk falls disproportionately on low-income and communities of color.ⁱⁱ

Children are particularly vulnerable, with one in three school children attending school in the disaster zone of a hazardous facility.ⁱⁱⁱ Low income children of color are even more at risk, being more than twice as likely as their counterparts above the poverty line to live in fenceline communities. Moreover, it is well-recognized that infants and children are uniquely vulnerable to toxic chemical exposures, which can result in lifelong damage to the developing brain and other organ systems.^{iv}

Workers too are threatened by chemical disasters while at work and also at home if they live in a fenceline community. Workers are also the first line of defense, when a chemical disaster occurs, resulting in higher injury rates than the surrounding community due to the lack of protections in process safety.^v Process safety, done well, creates systems of inherently safer technologies that minimize risk of exposure and chemical disaster. When industry claims that worker injury rates

are decreasing they are referring only to personal safety metrics rather than process safety which addresses the major hazards.

California's Process Safety Management

California's Process Safety Management (PSM) regulation can serve as a model for process safety measures in the RMP rule that are protective and preventative. In 2017, the state of California adopted a comprehensive refinery PSM rule to protect workers and fence-line communities. A RAND economic analysis of the PSM found that the cost of compliance with the regulations, which were passed on to consumers, resulted in a price increase of about \$0.004 per gallon of gasoline in California. The analysis also found that each major refinery incident avoided saved facility owners approximately \$220 million "not including the potential costs associated with worker fatalities and injuries or damage to surrounding communities." Yet another projected benefit from the analysis was the improved reliability of the state's fuel supply.^{vi}

RMP accident rates data is incomplete

In relying on accident data for years more recent than 2015 in its proposed rulemaking, EPA underestimates the annual numbers and rates of accidents and their consequences. The incorrect claim that the number of accidents is declining is based on data for recent years that is necessarily incomplete, due to delayed reporting. There is, in fact, no statistically significant change in accident rates for the period 2004-2015. Moreover, for the years 2010-2015, there is a non-statistically significant increase in impact accident rates. The year 2015 is the most recent year for which data are complete when extracted from the database in the middle of 2021.^{vii} Any justification by EPA to limit the number of RMP regulated facilities required to take prevention measures, based on accident rate data, is irresponsible. By doing so, it weakens its case for a strong rule.

Furthermore, past frequency of accidents cannot be used to reliably predict rare catastrophic releases, whether intentional (e.g., sabotage) or unintentional. For example, assume that an event that kills 1,000 people has the unacceptably high probability of 1 in 1,000 per year under current regulations and that stricter regulations would be required to reduce this risk. In a period of two decades, there would be a 98% probability that such an event would not have occurred. At the same time, there would be an egregiously high 2% probability (1 in 50) that an event killing 1,000 people would occur in the next two decades. Hence looking at the actual data from the last two decades, which would likely reflect that no such severely adverse event had occurred, would not provide adequate information as to whether the risks faced over the next two decades were acceptably controlled. Only by reducing or removing the hazards can chemical disasters be prevented. Below are specific recommendations for doing just that.

13 Recommendations for Strengthening the Proposed RMP Rule:

Employee Participation Requirements

As stated by EPA in the proposed rule, “worker involvement in process safety could help prevent and mitigate accidents.” To take it a step further, we believe worker involvement in process safety is, in fact, necessary to prevent and mitigate accidents. However, the proposed rule would only require employers to “consult with” employees on process safety plans, which does not ensure meaningful participation nor does it have employees included in all stages of developing and implementing an RMP. Below are specific recommendations for strengthening employee participation requirements in the proposed rule, all elements of which are found in California’s PSM regulation:

1. **Workers involved in all RMP decisions:** For all program levels, require employers to have employees (including contractors) or employee representatives, chosen by the workers, at the decision-making table, to participate in all stages of developing and implementing a risk management program and to have access to all documents or information pertaining to RMP
2. **Stop work authority:** We are pleased to see the ‘stop work authority’ for Program 3 Level processes, however, this authority should be extended to Program 2 and Program 1 Level facilities as well, given that multiple program levels can exist within the same facility.
3. **Anonymous reporting requirements:**
 - a. Clarify the process by which employees anonymously report safety concerns to EPA including expected response time, response mechanism, etc.
 - b. Apply anonymous reporting requirements to all programs.
4. **Information available in primary language:** Require the owner/operator to provide training and all RMP information to each employee in a language that they comprehend.

Safer Technology and Alternatives Analysis (STAA)

The proposed rule would only require approximately 5% (nearly 600 facilities out of 12,000) of RMP facilities to conduct a Safer Technologies and Alternatives Analysis (STAA). This small subset of facilities is justified by the EPA based on the aforementioned incomplete incident rate data. Furthermore, for those facilities that would be required to conduct STAA, the proposed rule does not require RMP facilities to actually address the findings or to implement any inherently safer technologies or processes. Implementing inherently safer technologies by utilizing the hierarchy of control will greatly reduce the risk of chemical disaster as well as reduce the safety and health risks to workers and reduce the cumulative impacts for residents living in the vicinity of multiple RMP facilities. Below are recommendations to ensure that the safest chemicals, technologies, and processes are being deployed by all RMP facilities to avert catastrophic events:

5. **Require all RMP facilities to conduct STAAs** and address the findings, when practicable, in the following order: inherently safer technology (IST) or inherently safer design (ISD), passive safeguards, active safeguards, and procedural safeguards.
6. **Implement the hierarchy of controls:** Require all RMP facilities to develop robust corrective actions by applying the hierarchy of hazard controls “in sequence and priority order” when addressing process safety hazards. In the hierarchy, the regulation requires

consideration and implementation of first- and second-order inherent safety measures “to the greatest extent feasible,” but allows consideration and implementation of passive, active, or procedural safeguards with written justification. It is not permissible for facilities to reject inherent safety measures or other higher-order corrective actions “on the basis of cost alone.”

7. **Require an IST implementation calendar**, as well as written justification for any slippage of dates, so that inherent safety measures are scheduled for installation, rather than being agreed upon in concept but then scheduled for implementation many years into the future.

Natural Hazards

We support EPA’s requirement for Program 2 and 3 facilities to include explicit consideration of natural or “external” hazards and power loss in hazard reviews and process hazard analyses. There is a strong need for such requirements given that at least one-third of all RMP facilities are located in areas facing high climate risks based on a 2022 U.S. Government Accountability Office (GAO) report^{viii}. Additional measures that are needed to strengthen climate-related prevention and safety measures include:

8. **Expand natural hazards assessments to all Program facilities:** Explicitly require all facilities to assess and prepare for climate hazards.
9. **Implement natural hazard mitigation:** Require all Program 2 and Program 3 facilities that have identified natural hazards risks in hazard reviews to implement natural hazard mitigation as well as backup power systems (not just monitors), and for the agency to take the steps needed to enforce this requirement.
10. **Power loss:** EPA should require facilities to have enough back-up power to safely run or shut down the entire facility in the event of power loss.

Empower Fenceline Communities

All prevention measures will help to protect communities living on the fenceline of a chemical facility. However, the recommendations below will specifically help to empower communities by giving access to up to date RMP information as well as emergency planning.

11. **Information availability:** EPA should develop, maintain, and update a public, multilingual online database containing non-protected RMP information where any member of the public can access information about RMP facilities.
12. **Emergency response requirements:** Ensure workers and local communities are prepared for worst case scenarios by strengthening emergency response as proposed, and ensure information is available in multiple languages necessary to sufficiently communicate to all members of the public affected by a potential incidental release.
13. **Fenceline monitoring:** EPA should require real-time air fenceline monitoring and leak detection at all facilities and include penalties sufficient to deter removing air monitoring and control equipment from service before incidents or upsets.

Deliver on administration priorities for workers' rights, racial justice and climate justice:

President Biden has made workers, racial justice, and climate justice core tenets of his administration as exemplified by his Executive orders on Worker Organizing and Empowerment, (EO 14025) and EO 14008 which established the Justice40 Initiative to ensure 40% of federal investments and climate and clean energy benefit disadvantaged communities. A strong RMP rule focused on enforceable prevention measures can deliver on all three of these priorities and measurably improve the lives of nearly half the U.S. population that lives within the disaster zone of a chemical facility.

Endnotes

ⁱ U.S. Environmental Protection Agency (EPA), "Risk Management Plan (RMP) Rule Overview", 2018. Available online: www.epa.gov/rmp/risk-management-plan-rmp-rule-overview.

ⁱⁱ Environmental Justice Health Alliance for Chemical Policy Reform, Coming Clean, and Campaign for Healthier Solutions. *Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities*, 2018. Available online: <https://ej4all.org/life-at-the-fenceline>

ⁱⁱⁱ Center for Effective Government, *Kids in Danger Zones*, 2014. Available online: <https://www.foreffectivegov.org/kids-in-danger-zones>

^{iv} Center for Effective Government, "Poverty, Race, and Unequal Chemical Facility Hazards," 2016. Available online: www.foreffectivegov.org/sites/default/files/shadow-of-danger-highrespdf.pdf.

^v Morbidity and Mortality Weekly Report, "Persons Injured During Acute Chemical Incidents - Hazardous Substances Emergency Events Surveillance, Nine States, 1999-2008", 2015. Available online: <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6402a3.htm>

^{vi} Cal/OSHA, "Written Testimony: Updating the U.S. EPA Risk Management Plan (RMP) rule And OSHA Process Safety Management of Highly Hazardous Chemicals (PSM) standard, Pursuant to Executive Order 13990," 2021.

^{vii} United Auto Workers, "Comments submitted to EPA-HQ-OLEM-2021-0312", 2021. Available online: <https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0058>

^{viii} Government Accountability Office, *Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change*, 2022. Available online: <https://www.gao.gov/assets/gao-22-104494.pdf>