May 7, 2024

**RE: House Committee on Energy and Commerce Hearing on "EPA's RMP Rule: Failures to Protect the American People and American Manufacturing"**

The Honorable Cathy McMorris Rodgers
Chair,
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C.

The Honorable Frank Pallone, Jr.
Ranking Member,
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C.

The Honorable Buddy Carter
Chair,
Subcommittee Committee on Environment,
Manufacturing, and Critical Materials
U.S. House of Representatives
Washington, D. C.

The Honorable Paul Tonko
Ranking Member,
Subcommittee on Environment,
Manufacturing, and Critical Materials
U.S House Representatives
Washington, D.C.

Dear Chair McMorris Rodgers, Ranking Member Pallone, Subcommittee Chair Carter and Subcommittee Ranking Member Tonko:

The American Chemistry Council (ACC) is grateful to the Committee on Energy and Commerce's Subcommittee on Environment, Manufacturing and Critical Materials for hosting this hearing titled "EPA's RMP Rule: Failures to Protect the American People and American Manufacturing" and we appreciate the opportunity to provide this statement for the record on EPA's recent 'Safer Communities by Chemical Accident Prevention: Risk Management Plan' (RMP) final rule.

ACC is an industry trade association that represents more than 190 of America's leading chemical companies. Our members produce a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, more sustainable, and more productive. The business of chemistry is a $639 billion enterprise that supports over 25% of the U.S. gross domestic product, generates 10% of all U.S. goods exports, and directly provides more than half a million good-paying American jobs. The products we make are essential for growing food, delivering safe drinking water, and making life-saving medicines and equipment. They are also

helping America to become energy independent and to compete globally in critical technologies such as semiconductors.

ACC is concerned that, with the adoption of the new RMP rule, EPA has discarded its successful approach for enhancing chemical facility safety. Instead, the Agency has imposed broad new mandates that will not reduce the risk of accidental releases. We are further concerned that the rule weakens important safeguards needed to protect sensitive information, potentially increasing the risk of a harmful chemical incident. The new RMP rule adds to a surge in misguided regulations that undermine the ability of chemical manufacturers to create essential products here in the U.S. and support the broader economy.

ACC welcomes Congressional oversight of EPA's regulatory actions and urges the Committee to support Representative Crenshaw's Congressional Review Act (CRA) resolution to disapprove these harmful changes to the RMP program.

***America's chemical producers are committed to improving facility safety.***

ACC member companies recognize the necessity of safe and sustainable operations to protect the health of our workers, our local communities, and the environment. To demonstrate that commitment, ACC members are required by our bylaws to participate in the ACC Responsible Care® Initiative.

The Responsible Care program is a world-class environmental, health, safety, security, and sustainability initiative. Launched in the U.S. in 1988, the Responsible Care program requires executive endorsement of the Responsible Care Guiding Principles, reporting on environmental, health, safety, and security metrics, implementation of a Responsible Care Management System (RCMS/RC14001), undergoing third-party audits of that management system, and implementation of the Product Safety, Process Safety, and Security Codes.

ACC established the Process Safety Code in 2012 with the aim of supplementing existing RCMS process safety requirements by addressing process safety concepts such as leadership, accountability, and culture to help drive overall process safety improvement. The Code was updated in 2021 to reflect enhanced expectations for ACC members, including responsibilities for company senior leaders and facility management. The Code complements the existing requirements in the OSHA Process Safety Management (PSM) and EPA RMP standards.

The effect of Responsible Care is significant. Responsible Care companies have seen a 20% reduction in recordable injury and illness rates since 2010, and these facilities are four times safer than the rest of the U.S. manufacturing sector.[1]

***The EPA RMP program has been successful at reducing the number of accidental releases with offsite consequences.***

RMP, along with the OSHA Process Safety Management (PSM) standard, form the backbone of process safety management regulations in the United States under the Clean Air Act amendments of 1990. Following OSHA's mandate to protect worker health and safety, the PSM standard requires employers to conduct a Process Hazard Analysis (PHA) to evaluate chemical process hazards, prioritize risks, and determine what controls need to be put in place to mitigate those risks.

Congress intended for RMP and PSM to work in concert, with OSHA protecting workers at facilities, and EPA protecting communities from releases into the environment. As such, RMP builds on the requirements in PSM by requiring facility owners and operators to conduct an offsite consequence analysis (OCA) to determine the potential impacts of worst-case release to local communities and the environment.

Together, these two regulations have been enormously successful: the total number of process safety incidents has declined by more than 80% since 1996 according to government data. For RMP, specifically, EPA's own data[2] demonstrates the effectiveness of the rule: the number of accidents has dramatically decreased over time. In recent years, the number of incidents has decreased from a high 208 in 2007 to a low of 60 in 2020. Of the estimated 1,502 NAICS code 325 chemical manufacturing facilities regulated under the RMP rule, 76% (1,147 out of 1,502) have no accident history. Furthermore, a relatively small number of chemical facilities are responsible for a disproportionate number of incidents. Less than 4% (58 out of 1,502) of chemical facilities account for just under half (402 out of 815) of the chemical sector's incidents. These figures suggest that if EPA would focus enforcement efforts on less than 4% of chemical

[1] Responsible Care By The Numbers. American Chemistry Council, 2024. https://www.americanchemistry.com/the-science-behind-sustainability/responsible-care-driving-safety-industry-performance

[2] EPA, RMP Accidents 2004-2020 (Appendix A); 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 (April 19, 2022).

manufacturing facilities, the Agency could substantially reduce the number of incidents reported without any changes to the RMP regulation at all.

The RMP program has been successful thus far because it is a performance-based standard. Chemical manufacturing facilities are extraordinarily complex workplaces: no two facilities are the same, and even those that make the same chemical can use vastly different processes. As such, performance-oriented, programmatic standards give owners and operators the needed flexibility to make site-specific process safety decisions.

EPA's finalized rule abandons this successful, performance-based approach by imposing overly prescriptive new regulatory requirements that will not reduce the risk of accidental releases.

***EPA's information disclosure requirements put communities and national security at risk.***

EPA's final rule requires a chemical facility to provide any member of the public who works, lives, or 'spends significant time' within 6 miles of the facility with detailed and sensitive hazard information upon request. This creates opportunities for virtually anyone to learn about and misuse information about chemicals and their hazards or disrupt responses to emergencies.

This rule would require companies to provide the name of the regulated substance and the safety data sheet (SDS) for the substance. This information, which includes many chemicals identified by the Department of Homeland Security as posing a terrorism-related risk, is too security-sensitive to be shared with the general public without appropriate safeguards.

In addition, hazard information contained on a chemical SDS is too workplace-specific to benefit public safety, but it does impact security risk. SDSs contain data that is mostly pertinent to trained workers and emergency responder preparedness. Releasing the information publicly could highlight chemicals properties that could be exploited by terrorists or other bad actors.

EPA has not provided any sufficient substantiation or guidance as to what constitutes 'significant time', nor have they provided any information as to how employers are expected to verify such claims. This flies in the face of EPA's claims that they are properly limiting access to this sensitive information.

Equally concerning, EPA has also decided to provide most of this information to the public now with their release of the RMP Public Data tool. This tool allows anyone with an internet

connection to anonymously find the address of every RMP facility in the country, learn how many RMP-covered processes the facility has, what chemicals are used in the process, and generic information about the chemical. This information is materially similar to the information that EPA insists they are properly limiting access to with their six-mile radius. It is highly irresponsible to release such detailed information to anyone who cares to access it. Especially with the expiration of CFATS, it is critical for the security of chemical manufacturing facilities and their local communities that bad actors do not gain access to this information. While EPA states that this is a policy decision, not a regulatory decision, ACC finds the availability and ease of access of this information to be extremely concerning.

Facilities already share critical safety information with Local Emergency Planning Communities (LEPCs) under the Emergency Planning and Community Right-to-Know Act (EPCRA) so that LEPCs can understand the hazards and be ready in the rare event of an accidental release. EPA should seek to build upon these requirements by encouraging individuals to join their local LEPC. LEPCs receive relevant chemical hazard information as required by statute and are adequately positioned to provide the necessary information to local citizens without broadly disseminating sensitive information to the public. Joining an LEPC also gives interested individuals the opportunity to establish a relationship with the local responding agency and hear directly from emergency officials as to the nature of chemical risks and how to protect themselves.

EPA's information disclosure requirements present a risk to national security and to the local communities that this provision supposedly protects. Congress should carefully consider the impact on national security when evaluating the CRA petition.

***EPA's new STAA provisions will not improve rates of accidental releases and fail a cost-benefit analysis.***

EPA's final RMP rule now requires owners and operators of chemical manufacturing facilities to conduct a Safer Technology & Alternatives Assessment Analysis (STAA), including consideration of Inherently Safer Design or Inherently Safer Technology (ISD/IST), as part of the PHA. A subset of these facilities would then be required to conduct a practicability assessment to determine if it is feasible to implement the identified STAA. Further, in a provision that was added only in the final rule without an opportunity for public comment, certain facilities are required to implement at least one passive measure or IST.

ACC recognizes that certain IST and ISD are useful risk reduction tools in some circumstances, namely, when a facility is being designed or a significant retooling of an existing facility is being planned. However, in some cases, STAA approaches, and implementation may actually create new risks, or redirect the risk to offsite communities. For example, results of a STAA may suggest that a built facility minimizes the amount of a hazardous chemical stored on site. While this may reduce the risk of an accidental release at the facility itself, it merely transfers the risk from the facility – where it can be assessed and controlled through the PHA process – to the local community. Without reconfiguring the process to change the amount of a chemical that is needed, there is no change in the amount of a chemical required to fulfill the process. As a result, a facility will receive more frequent shipments of the chemical, either via rail or truck. This necessarily means that hazardous shipments will be more common throughout the local communities – possibly putting them at more risk - that the minimization was meant to eliminate. In fact, this scenario was recognized by the Center for Chemical Process Safety (CCPS) in a 2010 study sponsored by the Department of Homeland Security (DHS).[3]

In short, STAA is not a panacea that will eliminate the risk of operating a chemical manufacturing facility. In our comments to the Agency on the proposed rule, ACC suggested that, if EPA moved forward with such requirements, that facilities should only be required to consider STAA during the design and development phase of a new RMP process. This is a reasonable approach that recognizes when STAA is most effective and will have the greatest impact on risk reduction.

Rather than taking industry's comments into account, EPA doubled down and even expanded upon the STAA requirements by requiring implementation in some cases, ignoring its own long history of rejecting such requirements and arguably violating the Administrative Procedures Act by circumventing the rulemaking process. The new requirements account for an astonishing 83% of the costs of the final rule and, as described above, are unlikely to measurably improve process safety.

EPA has a long history of considering and then ultimately rejecting STAA and IST/ISD requirements in the RMP rule, going back to the original 1996 requirements.[4] Congress later

[3] CCPS, Final Report: Definition for IST in Production, Transportation, Storage, and Use. Prepared by The Center for chemical Process Safety, (July 2010) at B-2, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.aiche.org/sites/default/files/docs/embedded-pdf/ist_final_definition_report.pdf

[4] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31688, 31674 (June 20, 1996).

considered and rejected an IST requirement for the DHS CFATS program, and DHS noted that Congress has prohibited them from adopting an IST requirement when implementing CFATS.[5] In 2017, EPA finalized a requirement to conduct a STAA requirement as part of the RMP amendments, which was later rescinded in 2019 when EPA determined the requirement was unnecessary and would not clearly reduce accidents. EPA's own history provides multiple explanations as to why a STAA requirement should not be required as part of these rules, and the Agency has not provided a sufficient explanation as to why their perspective has changed yet again now.

STAA has not been proven to be effective at reducing the number of serious chemical releases. The significant body of academic literature on STAA developed over the past decades shows consensus only on the theoretical value of such requirements as a tool for informing future decisions, not practical effectiveness. And, as EPA itself noted in the preamble to the 2022 proposed amendments to RMP, states that have implemented such requirements in their own regulations do not see significant differences in the rate of accidental releases.[6]

All this is set against the backdrop of the costs of the rule: an estimated $256.9M per year (3% discount rate), of which the new STAA provisions account for $214.2M (83%). EPA's own accident history data shows that 90% of the costs of this rule will fall upon facilities that have not had any RMP-reportable accidents in the past five years.[7]

The CRA provides an appropriate way for Congress to prevent such expansive regulatory burdens that fail to provide demonstrated safety benefits.

***EPA's new RMP requirements continue to add to the regulatory burden faced by the chemical manufacturing industry and will increase costs for critical chemistries and products.***

The Biden-Harris Administration wants to revitalize domestic manufacturing, create good-paying American jobs, strengthen American supply chains, and accelerate industries of the

[5] DHS, Chemical Facility Anti-Terrorism Standards, 72 Fed. Reg. 17688, 17719 (Apr. 9, 2007).
[6] Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention. 87 Fed. Reg. 53576 (proposed August 31, 2022). "The analysis suggested that accident rates in jurisdictions that adopted STAA-like programs were not lower than national incident rates. Based on this assessment, EPA stated that STAA regulations would likely not be effective at reducing accidents applied on a national scale…"
[7] U.S. EPA, 2023, *Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention Final Rule*, OLEM and OEM, August 30; and U.S. EPA, 2022. RMP Accidents 2004-2020 (Appendix A); Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs under the Clean Air Act, Section 112 (r)(7) Safer Communities by Chemical Accidents Prevention.

future. Congress has advanced these priorities through passage of the Inflation Reduction Act, the CHIPS and Science Act, and the Infrastructure Investment and Jobs Act. And yet this and other regulatory actions taken by the Administration stand in stark contrast to these stated objectives.

Chemistries like formaldehyde, which is a critical to the manufacturing and processing of semiconductors; chlorine, without which many water treatment plants cannot ensure clean drinking water for American citizens; and ethylene oxide, which is necessary to produce lithium-ion batteries that power electric vehicles are all subject to RMP regulations and a host of other regulations. The RMP rule will make it more difficult to manufacture these critical chemistries without providing any significant added safety benefit, will only hinder the Administration's goals, weaken the country's supply chain, and increase the costs on vital products and services for Americans.

Congress should seriously consider the cumulative burden of RMP and other regulations and their impact in achieving Congress' policy goals.

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ACC and our members take the safety and health of our workers, our local communities, and the environment seriously, and we have actively attempted to work with EPA on smart, targeted regulations that will improve process safety and reduce the number and impact of accidental releases. Unfortunately, EPA's new rule misses the mark. ACC urges the Committee to take up Representative Crenshaw's Congressional Review Act petition (H.J. Res. 123) to disapprove the RMP amendments.

Sincerely,

Dr. Kimberly Wise White
Vice President, Regulatory & Scientific Affairs
American Chemistry Council

cc. Committee on Energy and Committee