MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA
3M

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Eurofins TestAmerica

Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
TRC Environmental Corporation
Trinity Consultants
Wood, PLC

INDIVIDUAL MEMBERS

Ronald E. Bastian, PE
Ronald O. Kagel, PhD

ACADEMIC MEMBERS
(Includes faculty from:)

Clarkson University
Colorado School of Mines
Lamar University
Louisiana State University
Mississippi State University
New Jersey Institute of Technology
University of California – Berkeley
University of Dayton
University of Kentucky
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October 31, 2022

U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

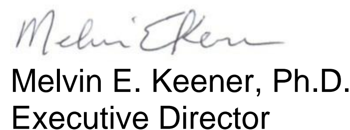
Attn: Docket ID No. EPA-HQ-OLEM-2022-0174

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit a response to the *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*; Proposed rule. 87 FR 53,556 (August 31, 2022). CRWI is a trade association comprised of 26 members representing companies that own and operate hazardous waste combustors and companies that provide equipment and services to the combustion industry.

Attached are our comments. They are organized based on the list provided in the preamble of the proposed rule.

Thank you for the opportunity to comment. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,



Melvin E. Keener, Ph.D.
Executive Director

cc: D. Grant, EPA

Issue 1. Natural Hazards

CRWI believes that the most appropriate time to consider natural hazards is during the design phase for a project. This is what occurs for RCRA Subtitle C facilities. For example, 40 CFR 264.18(a)(1) does not allow building a Treatment, Storage, and Disposal Facility (TSDF) within 200 feet of a fault that has been active in the last 11,650 years. If a TSDF is built in a flood plain, that facility must be "designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood."[1] In addition, TSDFs are required to have contingency plans that address emergency scenarios[2] not considered in the design phase. RCRA required contingency plans already address natural hazards that may be common to the area. These include storms, tornados, hurricanes, and high rainfall events. The proposed rule also requires considering events "caused by climate change." This term is not defined and subject to individual inspector interpretation. The examples cited by the TSDF requirements are good examples of specificity necessary to ensure regulatory certainty and consistency in enforcement. CRWI believes that any additional requirements for TSDFs would be redundant and increase costs without any environmental benefit. CRWI believes that facilities with RCRA Subtitle C permits should be excluded from this requirement. At the very least, the RMP regulations should be modified to allow one contingency plan to meet all regulatory requirements.

Issue 2. Power Loss

In 68.50(a)(3) and 68.67(c)(3), the Agency is proposing that hazard evaluations must address standby or emergency power systems to prevent or mitigate releases of RMP regulated chemicals. EPA is also proposing that air pollution control or monitoring equipment associated with prevention and detection of accidental releases from RMP regulated processes have standby or backup power.

CRWI members operate RCRA and MACT EEE permitted units. These units often include sophisticated air pollution control and monitoring equipment to comply with MACT EEE and RCRA permit requirements. Should a facility lose external power, waste feed is automatically cut off, the unit shuts down, and an emergency vent may open to prevent an explosion or equipment damage. For our industry, it is not economically practical nor is it safe to develop backup power systems due to the large electrical load requirements. No matter how well you design a backup system, there would be at least 30 seconds to several minutes before any diesel generated backup power can come on line. This is not fast enough to forestall the regulatorily-required automatic shutdown. The large amounts of power required to run high-horsepower pumps, compressors, and fans makes battery backup infeasible. From a practical standpoint, this proposed requirement would require hazardous waste

[1] 40 CFR 264.18(b)
[2] 40 CFR Part 264 Subpart D

combustors to keep an on-site diesel generator operating all of the time for the few instances when the power grid goes down. This does not make sense from either an economic or environmental standpoint. CRWI sees no practical reason for requiring backup power for hazardous waste combustors. Provisions are already in place to minimize emissions should the facility lose power. We suggest that 40 CFR Part 63 Subpart EEE and RCRA Subtitle C sources be excluded from any regulations requiring backup power.

Issue 3. Stationary Source Siting

CRWI believes that expansion of the facility siting considerations to include proximate facilities is inappropriate, unless limited to proximate facilities under common control. An owner/operator cannot require other facilities to provide information, especially if the other facility is not RMP covered, or is a competitor with whom sharing of confidential business information could run afoul of antitrust regulations or other requirements. As such, this consideration should not be included in the final rule.

Issue 4. Hazard Evaluation Recommendation Information Availability

In 68.50(a)(3), (5), and (6); 68.67(c)(3), (5), and (8); 68.170(e)(7); and 68.175(e)(8), the Agency is proposing that recommendations from hazard evaluations should be included in the facility RMP.

Typically, this information is already documented as part of the Process Hazard Analysis (PHA) or Layers of Protection Analysis (LOPA). Adding this requirement to the RMP final rule produces double documentation without added benefit. We suggest it be removed in the final rule. If retained, the RMP regulations should be modified to allow one contingency plan to meet all regulatory requirements.

CRWI believes that the requirement for identifying declined recommendations does not add value. All sites have a method for tracking declined recommendations. Requiring them to be available to the EPA and subsequently the public does not add value. This information will discourage teams from making potential recommendations and will only be used to discredit the site to or by the public.

Finally, all PHA/LOPA action items are already available to EPA auditors during an in-person RMP review. This forum allows for proper regulatory oversite by the EPA and grants the facility the ability to provide proper context regarding progress made. CRWI believes that this proposed regulation change is redundant and unnecessary.

Issue 6. Root Cause Analysis

Facilities that are included in OSHA's Process Safety Management programs already conduct root cause analysis as the part of an incident investigation. The

majority of TSDFs already investigates all reportable incidents to determine the root cause. For our industry, this proposed requirement would be a duplication of effort. Duplication of effort would not increase environmental protection. CRWI suggests that the final rule create an exclusion for those facilities that already conduct root cause analysis under other regulations. If retained, the RMP regulations should be modified to allow one contingency plan to meet all regulatory requirements.

Issue 7. Third Party Compliance Audits

The proposed provisions reflect EPA's belief that most accident-prone facilities have not been able to properly evaluate and apply appropriate prevention program measures to regulated processes to stop accidents from occurring. What the proposed requirement fails to identify is that the third party auditor may not be fully competent on the process/hazards they are evaluating. The proposed requirement should be rewritten to allow (not require) the facility in question to use a knowledgeable auditor to assess the issue. This will allow the use of an in-house second party audit.

EPA is seeking comments on whether auditors should be mutually approved by the owner/operator and employees. CRWI disagrees with auditors being mutually approved by the company and employees. Most employees, not involved with administrating the RMP and Process Safety Management programs, only have a superficial understanding of these types of programs. Requiring employee input on third party auditors will significantly increase the time needed to vet and approve auditors to conduct audits and will delay the process overall. CRWI believes this provision will not resolve the issues it intends to address. As such, we suggest it not be included in the final rule. Should the Agency include it, we suggest the language be modified to allow the use of second party in-house auditors.

On the requirements to list each finding from an audit that the company declines to accept and justify it in the RMP, CRWI believes this is unnecessary and potentially detrimental to the EPA's underlying objective of having all declined audit recommendations to be reported to the EPA during a RMP submission. The proposed requirement will discourage facility leaders from encouraging their audit teams to identify completely the potential hazards in order to limit the amount of information required to be reported to the EPA. If adopted, this will require continuous and frequent plan modifications and updates. Audit findings are already addressed and documented. This information is readily available to EPA. CRWI believes this proposed regulation change is not necessary and potentially detrimental to stated objectives. As such, this proposed change should not be included in the final rule.

Issue 8. Employee Participation

In the proposed rule, EPA states that employee participation is a key element of a company's commitment to safety. CRWI agrees. In fact, this is already a part of Process Safety Management (PSM) requirements under OSHA. Employees are often notified of changes through standard operating procedures (SOP), process hazard analysis (PHA), and other methods. Employees already participate in developing SOPs and PHAs reviews. In addition, stop work authority is already regulated and maintained under OSHA and incorporated into many PSM programs. As such, the proposed language only duplicates other requirements and does not provide additional benefits. CRWI suggests that these requirements not be included in the final rule. Should the Agency include them, they should allow exclusions where those requirements are duplicative.

CRWI is also concerned about the 30 day written response to the authority being exercised. Should this response only be required when the request to stop work or shut down is denied? If it is granted, what is the point of the response. The 30 day written response does not seem to have a legitimate purpose in such cases. The concerns should be discussed with the "operator in charge" and a decision made to either stop the work/shut down or not. If the employee then wants to lodge a complaint anonymously or otherwise under section (e), a response process would be appropriate. Perhaps the 30 day response is only appropriate for section (e), instead of (d).

EPA also proposes that facilities develop and implement a process for anonymously reporting unaddressed hazards that could lead to a catastrophic release, unreported RMP reportable events, or any other issue of non-compliance with 40 CFR Part 68. CRWI would like to point out that those processes are already in place. Any employee or their representative can contact EPA or the local permitting agency to point out unaddressed problems. There are already protections for these individuals under whistleblower provisions. The proposed language in 40 CFR 68.83(e) is not needed and should be deleted in the final rule.

Issue 9. Proposed Modifications and Amplifications to Emergency Response Requirements

EPA proposes in 40 CFR 68.90(b) to require that non-responding facilities develop and implement procedures to notify the public and appropriate federal, state and local emergency response agencies about releases of RMP regulated substances and ensure a community notification system is in place to warn the public within the threatened area. EPA is proposing these notifications be available upon request to the public living within six miles of the facility.

CRWI agrees that a reportable RMP event would initiate notification to appropriate local, state and federal agencies. However, the regulated entities are not the

appropriate entity to "Provide ongoing notification ... [regarding] where to access information on community preparedness, shelter in place and evacuation procedures." This is clearly in the purview of the Local Emergency Planning Committee (LEPC). The LEPC should be responsible for maintaining that information. A regulated entity should not be held responsible for this information that is clearly community type information. If the LEPC changes the location of the information and the regulated entity is not aware of that, they would be out of compliance. As such, this information should not be required to be maintained by the regulated entity.

Proposed paragraphs 68.90(b)(3) and 68.95(c) would require a facility to provide initial RMP release information during a release to ensure information is available to the public and appropriate federal, state and local emergency response agencies. The facility must ensure the public is promptly notified via local responders. Information required in the notification include: chemical(s) released; estimated time it began; estimated quantity released; potential quantity to be released; and potential consequences to human health and the environment. Follow-up reports are required when updated information available. Annual emergency response coordination meetings and notification exercises should ensure these plans are in place and practiced. EPA expects the facility to discuss the community plan with LEPC as part of coordination activities. CRWI believes that EPA needs to clarify the intent of the proposed requirement. We assume that any notification would only be applicable if the released RMP chemical can affect the public. The proposed language in the prepublication notice reads as if the organization would need to notify the public for any RMP chemical release, even those contained on site.

The Agency proposes that these notifications be made to everyone within six miles of the facility. CRWI believes this distance is arbitrary. The potential affected area around a facility depends upon the chemicals of concern. For some chemicals at some locations, releases may only go a few feet. For others, a release may impact a population for several miles. The specific information for each RMP facility will vary depending on applicable chemicals. Said differently, one size does not fit all – or even most. For RCRA Subtitle C permitted facilities, this consideration is already taken into account in their contingency plan. In addition, the Pipeline and Hazardous Materials Safety Administration has an Emergency Response Guidebook (https://www.phmsa.dot.gov/training/hazmat/erg/emergency-response-guidebook-erg) to provide case-by-case determinations on how to respond to releases. This guidebook is available to every LEPC and the public can purchase a copy. CRWI suggests dropping the six mile requirement and allowing the facility and the LEPC to determine the area that needs to be notified when a release occurs.

Issue 10. Emergency Response Exercises

RCRA contingency plans already address the issues raised in this section of the proposed rule. These facilities already reach out to LEPCs. In addition, CRWI

members have response plans under the Clean Water Act that currently require field exercise. CRWI suggests the final language allow facilities to avoid duplication of already existing requirements under other statutes.

Issue 11. Information Availability

In 68.210(d), EPA proposes that facilities provide, upon request by any member of the public residing within six miles of a stationary source, information that includes the names of regulated substances held in a process, SDSs for all regulated substances located at the facility, the five-year accident history information required to be reported under § 68.42, and others.

It would be difficult for the facilities to verify whether someone requesting the information actually lives within six miles. Property owner databases don't reflect renters. Anyone can look up an address within six miles and then put a PO Box as the mailing address. CRWI is also concerned about the requirement the information be provided in the language in which it was requested. There are no limits on the number of languages. Not all information like SDS's are available in the hundreds of possible languages. Companies should be able to limit responses to 3-5 languages in predominant use in the county/state/region.

CRWI believes that sharing information, to a certain extent, is beneficial to all parties. However, there is some information that should not be shared with the public. Examples include Confidential Business Information (CBI), trade secret information, and information that may allow groups to target facilities. EPA already has a CBI program in place to address the first issue. The ability to exclude CBI must be incorporated into the final rule. In addition, most of this information is already available under Emergency Planning and Community Right-To-Know Act reporting requirements. This information is also included in the current risk management plans which are available to the public.

While CRWI members are more than willing to share appropriate information with the public, we have limited abilities to verify who is making the request. We would not be able to discern whether the inquiry is from a concerned local citizen or someone with nefarious intent. That job should reside with EPA and the Department of Homeland Security. Given that the information required under these proposed revisions is already available for another source, we suggest this provision be dropped in the final rule.