



May 13, 2016

Mr. James Belke
U.S. Environmental Protection Agency
Office of Emergency Management
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Comments on proposed regulatory changes to EPA's Risk Management Program (RMP) Rule, as authorized by Section 112(r) of the Clean Air Act.

Docket ID: EPA-HQ-OEM-2015-0725

Dear Mr. Belke:

Attached are comments from the Association of Metropolitan Water Agencies (AMWA) on the proposed regulatory changes to EPA's Risk Management Program (RMP) Rule. We appreciate the decision to keep with long-standing precedent and not mandating Inherently Safer Technology requirements for the water sector, a position long supported by AMWA. However, we also recommend additional evaluation of the expansion of regulatory requirements related to incident investigation and the sharing of sensitive information. Overall, we question the need for increased regulation with very little potential for additional risk reduction vis-à-vis the existing RMP requirements for a sector that has an extremely low incident level.

If you have any questions related to AMWA's comments, please contact AMWA's Director of Regulatory Affairs, Scott Biernat (biernat@amwa.net).

Sincerely,

Diane VanDe Hei
Chief Executive Officer
Association of Metropolitan Water Agencies

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Association of Metropolitan Water Agencies (AMWA)
Comments on proposed regulatory changes to EPA's Risk Management Program (RMP)
Rule, as authorized by Section 112(r) of the Clean Air Act

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to provide comment on EPA's proposed changes to the Risk Management Program (RMP) Rule, as authorized by Section 112(r) of the Clean Air Act. While AMWA encourages the reevaluation of all regulatory programs to assess their effectiveness and evaluate the need for updates on a regular basis, we urge EPA to exercise caution to ensure any additional regulatory requirements are fully justified based on the potential for measurable risk reduction. In the case of the EPA's proposed RMP Rule updates, EPA's own analyses suggest that the potential risk reduction benefits of many of the proposed changes may not justify the resource expenditure.

Overall, the accident rates for all sectors covered under the RMP are extremely low. We are not starting from a baseline of no regulation. The RMP requirements as they currently stand require a substantial baseline level of effort and have been largely successful in minimizing the incident risk across all industries. The water sector, which AMWA represents, has a 10-year baseline accident rate of 0.07 accidents per facility.¹ Rather than suggesting the need for numerous revisions that will result in the diversion of resources from more pressing needs, we would suggest that metrics at this low of a level indicate that the program as it now exists has been successful and further mandatory requirements are not necessary at this time for most sectors, and particularly for the water and wastewater sector.

Particularly important in this suggestion is EPA's own acknowledgment of the inability to quantify the marginal benefits of the proposed RMP regulatory changes.² We do not live in a zero-risk world, especially when dealing with the types of industrial processes employed by the sectors subject to RMP regulations. Therefore, it is valid to ask how much additional risk reduction can realistically be achieved for any additional expenditure. Given the extremely low baseline for additional improvement, it is not unrealistic to believe that the marginal benefits for many sectors subject to the regulatory revisions are not measurable.

In fact, we could very well be at an inflection point where additional spending and resource expenditures to address a nearly non-existent problem will crowd out resources critical for addressing other needs that may have a far greater marginal impact on furthering public health and safety. This is especially true in the drinking water sector, where utilities already struggle to keep up with infrastructure maintenance and expansion needs and face

¹ Regulatory Impact Analysis for Accidental Release Prevention Requirements: Risk Management

² Ibid. P. 101

a long list of existing regulations and potential emerging contaminants that must be addressed.

Recent events in Flint, Michigan related to lead contamination provide a poignant example of the tragic consequences when operating in a resource-constrained environment. Flint and many communities like it across the nation need every additional dollar they can muster to be put toward their main public health mission – providing safe drinking water to their citizens.

It is within this context that AMWA provides the following additional comments.

Safer Technology Alternatives Analysis Mandates

AMWA's comments submitted to EPA on October 17, 2014 in response to the agency's request for information on potential regulatory changes to the RMP strongly advised against imposing new rules requiring drinking water facilities to carry out mandatory Safer Technology Alternatives Analysis (STAA) review or implementation activities. AMWA therefore agrees with EPA's observation that "facility owners or operators are in the best position to identify which changes are feasible to implement for their particular process," and we applaud the decision to not require the owners and operators of water and wastewater utilities to carry out mandatory STAA activities. This decision recognizes that the drinking water industry, in particular, is governed by public health mandates that require great flexibility in the selection of treatment processes that minimize health risks.

AMWA does not believe that a STAA mandate for drinking water utilities through section 112(r), or any form of mandatory inherently safer technology requirements, could appropriately capture the variety of contingencies water utilities must consider when choosing a treatment chemical. Any EPA definition of a "safer" chemical alternative in the context of section 112(r) would focus primarily on preventing an accidental chemical release. But a comprehensive consideration of "safer" technology from a water service point of view would also have to take into account a wide array of safety and health considerations as well as numerous risk trade-offs for all water consumers, not just those in close proximity to a theoretical chemical release. Water utilities must consider how to best meet their primary objective of ensuring that any treatment method fully complies with the statutory and regulatory requirements of the Safe Drinking Water Act (SDWA).

These are the types of evaluations that drinking water utility operators undertake when carrying out independent reviews of alternative disinfectant chemical options – a part of providing their core service. Any STAA review or implementation requirement under a revised RMP would therefore be repetitive and potentially counterproductive to water utilities that have already considered the public health benefits and risk tradeoffs associated with their selected disinfectant chemical. We therefore encourage EPA to keep

any such mandatory STAA requirements for water and wastewater treatment facilities out of the final revisions to the RMP.

Evaluation of Reportable Incidents

AMWA supports efforts to ensure that all incidents are thoroughly investigated and that lessons learned are effectively utilized to prevent future accidents. However, the scope of the investigation should be related to the scale of the event. A root cause analysis (RCA) is unnecessary for all incidents. Rather than adopting regulatory requirements for conducting RCAs, this is an area where appropriate guidance and tools to assist the regulated community would be more appropriate, particularly for those industries with simple and constant processes such as those most employed by water and wastewater utilities. Such an approach would allow facilities to better customize an investigation to match the scale of the reportable incident.

The requirement to conduct a third party compliance audit as a result of a reportable incident also appears to be overly prescriptive. There is a lack of evidence that third party audits are generally more robust and objective than internal compliance audits, and are likely unnecessary and overly burdensome for minor incidents or near misses. Third party compliance audits may be a reasonable option for major accidents that result in significant offsite impacts, but discretion to require them should be left to state and local officials who are most familiar with the particular event and internal capabilities of the particular site and local emergency management structure.

Like the evaluations themselves, additional flexibility should be given for the manner and timing for follow-up reporting and outreach. Resource intensive follow-up actions such as public meetings should certainly be an option for communicating about an incident, but wide discretion should be given regarding the necessity of this approach versus alternative options. And for all follow-up reporting and outreach, it is important that adequate time is available to allow investigations to be completed, the timing of which is highly dependent on the scale and complexity of the incident. Again, these are issues that appear to be better served by additional guidance and tools rather than an overly prescriptive regulatory approach.

Public Information Sharing

AMWA also urges EPA to use caution when broadening of the public notification requirements under the RMP. Historically, AMWA has supported efforts that make necessary RMP information available to appropriate personnel while also making it difficult to access for those who may misuse that information.

Following the September 11, 2001 terrorist attacks, EPA removed RMP database information from its website, where it had previously been widely available to the public. Among this information were facility-specific lists of covered chemicals used, preventative measures in place to protect against threats, and locations within a facility where such chemicals were used and stored. In the aftermath of the terrorist attacks, it was decided that making this sensitive information widely available in electronic form could provide terrorists and criminals with a roadmap attack a facility.

In particular, AMWA recommends that “information on emergency response exercises ... including schedules for upcoming exercises, reports for completed exercises ... and any other related information” not be among the information that a covered facility must make available to the public. To the extent that a report for a completed exercise details any security deficiency uncovered during the exercise, it would not be wise to make such information publicly available where it could be accessed and exploited by individuals or groups who may wish to carry out an attack against the facility.

We would remind EPA that the sharing of certain information from the RMP database with local first responders also mandated through the Emergency Planning and Community Right-to-Know Act §301-303, which requires certain entities to coordinate emergency response plans with state and local emergency planning commissions.

While we do not object to, and in fact encourage, sharing RMP information – including the additional information as described in the proposed RMP revisions - with first responders, Local Emergency Planning Committees (LEPCs) and other local emergency response agencies, care needs to be taken in the method(s) for sharing the information with the broader public.

Promoting information sharing by encouraging easy access and the publication of RMP database information online for all members of the public to see – regardless of their motivations – does not correspond to historical thinking on the matter and should not be changed in the RMP rule revisions. Public access by more secure means such as through public reading rooms where there is accountability and a potential paper trail when accessing sensitive information is more in line with security needs in our current threat environment.

Other RMP Requirements

In addition to our specific comments regarding STAA, incident investigations and public disclosure requirements, we request that EPA take a harder look at all additional proposed RMP Rule changes. While the individual requirements may appear sensible in theory, the overall impacts need to be closely and thoroughly evaluated to determine whether they provide a real opportunity for further risk reduction without inviting unintended consequences.

EPA correctly used the low baseline of incident risks and the evaluation of those risks relative to other sectors subject to RMP requirements as factors to establish which sectors should be subject to proposed STAA requirements. We see no reason not to apply the same reasoning when evaluating the need of other proposed increases in regulatory requirements.

In particular, more rigorous analyses of marginal and overall net benefits are needed. Given the arguments laid out previously, a plausible case can be made that a negative net-benefit may be realized for some sectors. Although EPA described the potential benefits in its Regulatory Impact Analysis, much deeper analyses based on historical data are needed to evaluate expected marginal and net benefits, with an emphasis on working from the extremely low baseline of incidents to improve upon.

In lieu of one-size-fits-all mandates of the proposed RMP Rule changes, EPA should look to provide additional guidance, outreach and training within the structure of the current RMP. With little margin for real improvement upon an excellent historical baseline, most sectors would be better served by such an approach that allows maximum flexibility tailored to local needs.

Conclusion

In conclusion, AMWA would like to reiterate its support for the RMP and the risk minimization that it promotes. However, given the success of the program as measured by extremely low incident rates in the water and other sectors, we remain skeptical of the additional benefits that will be achieved by the proposed RMP regulatory changes. We respectfully request that EPA more closely reevaluate all the proposed RMP Rule requirements by sector and with a more thorough evaluation of the minimal potential to reduce already low incident rates and to avoid unintended consequences.