



THE UNITED STATES  
CONFERENCE OF MAYORS



February 3, 2022

Barry Breen  
Acting Assistant Administrator  
Environmental Protection Agency  
Office of Land and Emergency Management  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

RE: Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Retrospection ([RIN# 2050-AH22](#))

Dear Mr. Breen,

The Fall 2021 Unified Regulatory Agenda states that the U.S. Environmental Protection Agency (EPA) plans to prepare a notice of proposed rulemaking for the existing Risk Management Program (RMP), which implements the requirements of section 112(r)(7) of the 1990 Clean Air Act amendments. The Regulatory Agenda states that EPA plans to issue the proposed rule by September of this year. We recognize that some entities are advocating for the agency to act more rapidly. The undersigned organizations ask that the proposed action not be undertaken in haste without EPA adhering to the consultation requirements of the Small Business Regulatory Enforcement Act (SBREFA) and Unfunded Mandates Reform Act (UMRA).

While EPA held listening sessions on this topic in 2021, the request for public comment was not organized in a manner that fostered thoughtful technical analysis of potential regulatory modifications. At a minimum EPA must engage in pre-proposal consultation to allow the signatories to this letter to provide insight from our constituencies to inform the agency's deliberative process. Drinking water and wastewater systems are uniquely impacted by prospective changes to existing RMP requirements. The unique role of local government services warrant EPA utilization of the flexibility afforded under CAA section 112(r)(7).

EPA's economic analysis supporting the 2017 rulemaking substantially underestimated compliance costs for the water sector. The American Water Works Association estimated the costs to the water sector alone would have been approximately \$160 million per year. Local governments would be required to support all RMP facilities seeking to conduct training exercises with local emergency responders. This is an important consideration, especially in communities with multiple RMP facilities, since local government will be expected to support exercises with all RMP entities. Therefore, the overall burden on local government is much greater and was not accounted for by the agency's analysis.

For context, there are over 50,000 community water systems and almost 16,000 wastewater treatment works in the United States. Currently, approximately 2,000 water sector facilities are subject to the RMP regulations, 49 percent of which are classified as small entities by the U.S. Small Business Administration. These facilities, which are operated predominantly by local government, are subject to RMP requirements but also must utilize certain chemicals that are required by and used in accordance with regulations under the Safe Drinking Water Act, the Clean Water Act, the Federal Insecticide Fungicide, and the Rodenticide Act.

We would like to emphasize that drinking water and wastewater systems do not represent the same risk profile as many of the other entities regulated by the RMP program and that the sector has demonstrated a strong record of safety throughout the life of the program. EPA recognized this point in the final 2017 Amendments Rule, stating that the water sector *"is among the least accident-prone sectors covered under the risk management program."*

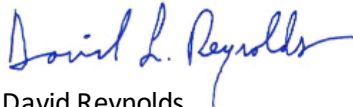
In 2022, any new rulemaking must consider the burdens imposed by more recent regulatory developments, like the Lead and Copper Rule Revisions promulgated in 2021. The agency's current RMP effort must also consider actions taken by community water systems to implement §2013 of America's Water Infrastructure Act of 2018 (AWIA). All community water systems serving more than 3,300 persons are required by AWIA to assess their risk and resilience to multiple hazards. New RMP requirements may delay actions being undertaken by systems under 42 U.S.C. 200(i)(2) to mitigate threats, including climatic impacts, chemical hazards, and cyber-threats.

The rule development process for the 2017 RMP rulemaking lacked transparent, substantive engagement with knowledgeable stakeholders. This led to multiple unjustified requirements, many of which were subsequently rescinded in the 2019 RMP rulemaking. If EPA proceeds with a proposal to revise the RMP requirements, the undersigned organizations strongly urge EPA to adhere to congressional intent as outlined under UMRA and SBREFA by engaging in pre-proposal consultation,


given the reasonable prospect that changes will impose new and significant economic burdens on local governments.

We welcome the opportunity for a discussion of this matter. Please feel free to contact any of us directly.

Sincerely,



David Reynolds  
Director of Federal Relations  
Association of California Water Agencies



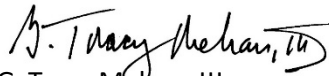
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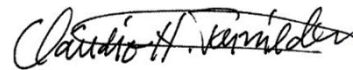
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