



October 31, 2022

Michael S. Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Via electronic submission

Re: EPA-HQ-OLEM-2022-0174; Proposed Revisions to the Risk Management Program Regulations

Dear Administrator Regan,

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. AMWA is an organization of the largest publicly owned drinking water systems in the United States. Members serve over 100,000 customers and collectively provide clean drinking water to over 160 million people. 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.

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. Overall, the accident rates for all sectors covered under the RMP are extremely low. The water sector, which AMWA represents, has a baseline accident rate of 0.02 accidents per facility from 2016-2020.¹ Rather than suggesting the need for numerous revisions that will result in the diversion of resources from more pressing needs, the association suggests that metrics at this low of a level

¹ Regulatory Impact Analysis, US EPA, Safer Communities by Chemical Accident Prevention Proposed Rule. <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0083>

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indicate that the program as it now exists has been successful and further mandatory requirements are not necessary at this time particularly for the water and wastewater sector. Therefore, AMWA specifically asks EPA to consider sector exemptions mirroring those employed in the Safer Technology Alternatives Analysis (STAA) requirements for other provisions included in this proposed rule.

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

1. Natural Hazards, 2. Power Loss, and 4. Hazard Evaluation Recommendation Information Availability

AMWA strongly encourages efforts be taken by facilities to prepare for natural hazards and power loss that could result in accidental releases. The water sector has taken many steps to improve climate resilience and improve infrastructure. The water sector has been a great steward of protecting water resources, and any new requirements with significant costs not only affect the facility, but ratepayers as well. Blanket requirements across all sectors result in water utilities being subject to costs for provisions that may have little effect on incident rates. Requiring facilities with miniscule accident rates to plan and provide justifications for climate related events that “could trigger” a release only adds unnecessary burdens that divert resources from where they are needed most.

Large utilities often require significant backup power to keep operations running in the event of a power loss. Has EPA considered how new aspects of this proposed rule could affect a facility with respect to Reciprocating Internal Combustion Engine (RICE) regulations? These requirements limit the amount of time backup power can run and requires certain maintenance that facilities must comply with.

Additionally, EPA Office of Land and Emergency Management recently proposed a Clean Water Act hazardous substance worst-case discharge planning rule that essentially has facilities plan for climate and other natural hazard related accidental discharges. Those in the water sector are in a unique position where the storage of chlorine is covered under both proposed rules. AMWA requests that EPA consider how these rules overlap, and work to limit burdens that will be placed on the water sector as these proposed rules are finalized.

3. Stationary Source Siting

EPA states that it is not proposing additional requirements but simply making “more explicit what is required to be addressed in a stationary source siting evaluation.” AMWA stresses the importance of refraining from adding any burdens to facilities while amending this language. EPA asserts that these provisions are already “mandatory,” so this explicit language should not require any additional efforts from water utilities. Again, justifications on decisions made will require time and effort from facilities that could be better spent elsewhere.

5. Safer Technology Alternatives Analysis

AMWA has consistently advised against imposing new rules requiring drinking water facilities to carry out mandatory STAA review or implementation activities. AMWA therefore supports EPA’s proposal 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 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, 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 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 consider 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). 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.

6. Root Cause Analysis and 7. Third Party Compliance Audits

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 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 because 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 should be left to state and local officials who are most familiar with the event and internal capabilities of the 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.

8. Employee Participation

The safety of employees is a main priority for AMWA members. Providing safe drinking water to the public requires content attention, and water utilities work hard to ensure risk of accidental release is minimal both for its employees' health and the health of the public. The requirements proposed in the RMP rule revisions are intended to protect worker safety, and AMWA understands the importance of these provisions. While AMWA agrees actions should be taken to maximize worker safety, EPA should do so in a simple manner that does not apply unnecessary burdens to facilities already succeeding in preventing accidental releases. AMWA recommends EPA provide brief and simple guidance to facilities to implement worker safety protocols and anonymous reporting opportunities.

9. Proposed Modifications and Amplifications to Emergency Response Requirements 10. Emergency Response Exercises, and 11. Information Availability

AMWA also urges EPA to use caution when broadening 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 to attack a facility.

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.

While we do not object to, and in fact encourage, sharing RMP information 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 with regard to critical infrastructure protection 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 paper trail when accessing sensitive information is more in line with security needs in our current threat environment.

Many water utilities already conduct field exercises within the time frame EPA is proposing, so AMWA is supportive of this provision. However, if EPA moves forward with requiring reports following an exercise, AMWA recommends making the reports simple and easy to generate, further reducing burdens on facilities. For facilities that conduct exercises more frequently than every 10 years, they should not be penalized with more administrative paperwork and required to submit an overly burdensome and lengthy report each time.

15. Other

In addition to AMWA's specific comments regarding STAA, incident investigations and public disclosure requirements, we request that EPA reevaluate the proposed RMP Rule changes and their overall benefits. 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. Therefore, EPA should employ the same reasoning when evaluating the need of other proposed increases in regulatory requirements.

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, the water sector 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 an eye toward a more thorough evaluation of the minimal potential to reduce already low incident rates and to avoid unintended consequences.

AMWA appreciates the opportunity to provide this feedback to EPA on its proposed revisions to the RMP rule. If you have any questions about these comments, please contact Brian Redder, AMWA's Manager of Regulatory and Scientific Affairs, at Redder@amwa.net.

Sincerely,



Thomas Dobbins
Chief Executive Officer

cc: Jennifer McLain, OGWDW
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