ASSOCIATION OF METROPOLITAN WATER AGENCIES

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The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Re: Docket No. EPA–HQ–OEM–2015–0725, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*

Dear Acting Administrator Wheeler,

The Association of Metropolitan Water Agencies (AMWA) welcomes the opportunity to comment on several proposed changes to EPA's Risk Management Program (RMP) Amendments rule, which the agency issued on January 13, 2017. AMWA is an organization of the nation's largest publicly owned drinking water utilities, and our members provide drinking water service to more than 156 million people. Many of our members are regulated under the RMP, as authorized by Section 112(r) of the Clean Air Act, due to their use of gaseous chlorine as a primary disinfectant of drinking water supplies.

For reasons explained in the provided attachment, AMWA is generally supportive of the proposed rule to revise several portions of the 2017 Amendments. We also provide feedback on several portions of the 2017 Amendments that EPA does not propose to repeal, but for which the agency is considering altering its approach to implementation.

Twice in recent years AMWA has provided comment in response to potential revisions to the RMP rule. In 2014, the association responded to a request for information that sought stakeholder comment on numerous aspects of the RMP, including whether the rule should be revised to "require a safer alternatives options analysis" by drinking water utilities and other regulated entities. Similarly, in 2016 AMWA submitted comments on EPA's proposed rule regarding Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, which was subsequently made final on January 13, 2017. In each case, the association noted the exceptionally low accident rate for facilities in the water sector, and questioned whether additional burdens that would be imposed through new RMP regulations would lead to any meaningful improvement in the safety of these facilities. As the association commented in 2016, the low accident rate for water facilities indicates "that the [RMP] 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."

Today, AMWA continues to believe that any new regulatory proposal that seeks to further reduce an already-low accident rate in the water sector must carefully be considered against the additional expenditures and diversion of resources that water facility operators would incur to achieve compliance with the new standards. Additionally, any new regulations on the drinking water sector that could lead to changes in water chemistry (such as through the required substitution of one disinfectant chemical or process with another) could carry risks to both public health and a community's compliance with other federal statues and regulations. In sum, AMWA believes EPA should tread very carefully when developing new RMP regulations that would result in new compliance burdens but potentially only marginal public safety improvements.

In conclusion, AMWA reiterates its support for the RMP, and recognizes it as an effective regulatory program to minimize the offsite consequences of an unplanned chemical release. The association believes that many of the 2017 Amendments to the RMP would impose additional cost and resource burdens on covered drinking water facilities without generating meaningful reductions in the frequency of incidents or their effects, so we are generally supportive of the proposed rule's plan to rescind many of these requirements. However, as noted in our attachment, other parts of the 2017 Amendments do hold value while being minimally burdensome, and therefore should be maintained.

AMWA is pleased to submit these comments for EPA's consideration. Our specific comments are provided as an attachment. If you have any questions, please contact Stephanie Hayes Schlea (schlea@amwa.net), AMWA's Manager of Regulatory and Scientific Affairs.

Sincerely,

Diane VanDe Hei
Chief Executive Officer

Attachment

cc: David Ross, Assistant Administrator for Water
Peter Grevatt, Director, Office of Ground Water and Drinking Water

AMWA Recommendations on Selected Components of the Proposed Rule

AMWA generally supports the proposed rule's intention to reverse several revisions to the RMP that were finalized in the 2017 Amendments. The RMP as it existed before the 2017 Amendments was an effective program that did not require wholesale revision, and the proposed rule would largely return the RMP to that previous state. Additionally, the proposed rule offers several pathways for minor enhancements to the program that AMWA believes to be reasonable. AMWA offers the below comments on several specific aspects of the proposed rule that are most relevant to drinking water facilities subject to RMP regulation.

Safer Technologies Alternatives Assessment (STAA): The 2017 Amendments require covered facilities in the paper manufacturing, petroleum and coal, and chemical manufacturing sectors to conduct an STAA aimed at examining alternative chemicals or processes that could replace or reduce the facilities' use of the covered chemical. The proposed rule would remove this requirement.

While the STAA process required by the 2017 Amendments would not affect drinking water facilities, AMWA wishes to reiterate its opposition to any mandate that would require drinking water facilities to reconsider or replace their chosen process for disinfecting drinking water before its delivery to the public. In the context of the RMP, any "alternative" disinfectant would have to be examined primarily based on the possible reduction of offsite consequences in the event of its accidental release. Consideration of an alternative disinfectant on these narrow terms would therefore downplay the critical question of how effective an alternative would be in actually disinfecting drinking water to make it suitable for public consumption and in achieving compliance with state and federal water quality standards. In other words, any comprehensive consideration of alternate water disinfection technologies would have to encompass 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 from the treatment plant. It is unclear whether a hypothetical STAA conducted under the RMP would allow for such a broad consideration of risk factors, so AMWA strongly believes it is appropriate to exclude drinking water utilities from any such required analysis in the future.

AMWA does not offer an opinion on the proposal's elimination of STAA for facilities in the paper manufacturing, petroleum and coal, and chemical manufacturing sectors, but we appreciate that the proposed rule would not expand STAA into the water sector.

Root Cause Analysis: The 2017 Amendments require a "root cause" analysis as part of any investigation following a reportable chemical release or a "near-miss" incident that could have resulted in such a release from a covered facility. This analysis would require facilities to identify "underlying causes" of an incident, rather than only the "immediate cause." The proposed rule would remove this requirement.

While AMWA supports efforts to ensure that all chemical release incidents are thoroughly investigated and that lessons learned are utilized to prevent future releases, the association's 2016 comments to EPA argued that requiring a root cause analysis for each chemical release incident would be unnecessary. Instead, AMWA encouraged EPA to offer guidance and tools to help regulated entities customize an investigation to match the scale of the reportable incident. AMWA's position remains the same, and therefore the association supports the proposed rule's elimination of a mandatory root cause analysis following any reportable release.

Third-Party Audits: The 2017 Amendments require a covered facility to contract with an independent third party to conduct a compliance audit after each reportable chemical release, with the goal of having an "objective auditing process to determine whether" the facility "is effectively complying with the accident prevention procedures" of the RMP. The proposed rule would remove this requirement.

AMWA's 2016 comments called the requirement for third-party audits "overly prescriptive," and argued that they would not necessarily yield better results than internal compliance audits. While the association believes that third-party audits could be a reasonable option following major events that lead to significant offsite impacts, there is no evidence to suggest they would be beneficial in every circumstance. AMWA therefore supports the proposed rule's rescission of required third-party audits.

Public Information Availability: The 2017 Amendments require covered facilities to make available to the public certain information, such as specified chemical hazard information for all regulated chemicals held at a given facility and a schedule of upcoming emergency response exercises. In the event of a reportable chemical release, the 2017 Amendments require the facility to hold a public meeting to provide specified information within 90 days of the incident. The proposed rule would maintain the requirements to provide a public exercise schedule and to hold a public meeting no later than 90 days following a reportable release, but other public information requirements would be rescinded.

Additionally, EPA seeks comment on whether a public meeting should be required within 30, 45, or 60 days following a reportable release, rather than 90 days, and whether a public meeting should be required after all reportable releases or only those with significant offsite consequences. Releases with significant offsite consequences would encompass those defined in Section 68.42(a) of the RMP rule, which "resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage."

AMWA's 2016 comments expressed concerns with making information about hazardous chemicals held at particular water treatment facilities broadly available to the public, in

order to reduce the likelihood that the information could be accessed and exploited by individuals or groups who may wish to carry out an attack against the facility. In particular, AMWA noted that 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. The association believes that any requirement for a facility owner or operator to provide specified chemical hazard information to any member of the public upon request would represent a step backward toward a scenario where this critical information could become easily accessible to individuals with ill intent. AMWA therefore supports the proposed rule's elimination of this requirement.

Nevertheless, AMWA continues to support efforts to make chemical hazard information available directly to appropriate local emergency response personnel who may be called upon to respond to an incident at the facility. AMWA does not believe restricting public access to the information would interfere with this objective.

AMWA also believes it is reasonable for owners or operators to release a public schedule of upcoming emergency response exercises to be held at a covered facility. Making the public aware in advance of plans to carry out these training exercises should not interfere with their effectiveness, and could preemptively mollify any concerns about an incident or an attack at the facility that could arise when members of the public witness the exercise in progress. We should note that AMWA's 2016 comments recommended 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, but that comment was in response to the proposed version of what became EPA's final 2017 Amendments. The proposed version would have required facility owners or operators to broadly make public "information" about upcoming exercises and "reports for completed exercises," in addition to schedules. AMWA is pleased that the final 2017 Amendments scaled back this requirement to only extend to exercise schedules, and the association is comfortable with the proposed rule's maintenance of this standard.

AMWA agrees with the proposed rule's preservation of a requirement for a covered facility to hold a public meeting no later than 90 days following a reportable chemical release. We recommend against shortening this timeframe to 30, 45, or 60 days, given that based on the status of the recovery and/or investigation following a major incident at a facility, too short of a timeframe could lead to a meeting where the public is not able to glean a significant degree of useful information. Conversely, the proposed rule would not prevent a facility owner or operator from holding a public meeting earlier than the 90-day limit if he or she were prepared to do so.

AMWA further believes it would be reasonable to limit the 90-day meeting requirement only to incidents with significant offsite impacts as specified in Sec. 68.42(a) of the existing rule, and as EPA is considering in the proposed rule. These more significant

incidents are most likely to attract public attention and concern, and therefore would likely result in the most meaningful post-incident dialogue with the public. And again, any facility would still be free to convene a public meeting following a release without significant offsite consequences even if it were not required by the regulation.

Emergency Response Coordination: The 2017 Amendments required increased coordination between covered facilities and local emergency response agencies that may be called on to respond to a chemical incident at the facility. Specifically, facilities and emergency response officials would be required to work together to hold tabletop exercises at least every three years, and field exercises at least every ten years. The Amendments define what components each type of exercise must include in order to fulfill the requirement. The proposed rule would retain the requirement to hold tabletop exercises at least every three years, but would eliminate the minimum frequency requirement for field exercises, though they would still be periodically required.

AMWA's 2016 comments did not discuss schedules for field and tabletop exercises, but the association believes that the final rule should maintain a minimum frequency requirement for each. Ongoing coordination with local emergency response officials is critical to an effective incident response, and a defined minimum exercise schedule will help ensure that appropriate officials remain in contact with each other, even as turnover and the passage of time could threaten to undermine these relationships. AMWA is comfortable with the three and ten-year minimum timeframes for tabletop and field exercises provided in the 2017 Amendments, and does not believe that either would be overly burdensome to covered water facilities. Additionally, AMWA recognizes that these are minimum frequency schedules, and that covered facilities and local emergency response officials would be free to hold any exercises on a more frequent schedule should they desire to do so.

In order to make the exercise requirements of the proposed rule more clear, AMWA encourages EPA to replace the term "field exercise" with one of the three types of operations-based exercises described under the Homeland Security Exercise and Evaluation Program (HSEEP): drills, functional exercises or full-scale exercises. Using the definitions provided under HSEEP would further clarify any expectations for field exercises and eliminate any opportunity for the activities required under the current exercise scope to be misinterpreted. Further, EPA's current use of "tabletop exercise" indicates that the agency is already amenable to using the HSEEP framework in its exercise classifications.