National Association of Chemical Distributors

Advancing **Stewardship,** Creating **Connections**™

October 29, 2014

Environmental Protection Agency
OSWER Docket
EPA Docket Center
Mail Code 2822-1T
1200 Pennsylvania Avenue NW
Washington, DC 20460
Via Electronic Submission: http://regulations.gov

Re: Docket ID No. EPA-HQ-OEM-2014-0328, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act

The National Association of Chemical Distributors (NACD) submits the following comments in response to the request for information published in the July 31, 2014, *Federal Register* issue regarding **Docket Number EPA-HQ-OEM-2014-0328, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act.**

About NACD

The National Association of Chemical Distributors is an international association of nearly 440 chemical distributors and supply-chain partners. NACD's membership comprises businesses representing in total more than 85% of the chemical distribution capacity in the nation and generating 90% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned. The typical chemical distributor has 26 employees and operates under an extremely low margin.

Chemical distributors provide a unique and integral role in the supply chain. Manufacturers increasingly rely on chemical distributors to market and sell their products in a variety of packaging sizes to an incredibly varied customer base. Every seven seconds, an NACD member company is moving chemical products to and from their facility. This constant movement of those products results in chemicals being frequently added to and removed from inventory. Unlike the regular changes in inventory, NACD members' safety processes remain the same.

NACD Members' Commitment to Safety

A member-voted condition of membership in NACD is a signed commitment to NACD Responsible Distribution®. Under this robust program, each member must follow 13 Codes of Management Practice in order to protect the environment, promote health and safety of employees and community members, enhance product stewardship, and ensure the security of its facilities and products. Under each Code, member companies have an active program designed to improve safety continuously and reduce incidents. Each member must develop, implement,

and undergo periodic third-party verification of policies and procedures in each of the 13 areas, which include Risk Management, Handling & Storage, Emergency Response & Public Preparedness, Community Outreach, and Product Stewardship.

Owners and managers of NACD member companies have a personal stake in the safety and security of their employees, companies, and communities. They demonstrate this through the commitment to Responsible Distribution, relationships with employees, involvement in local communities, including participation in Local Emergency Planning Committees, and careful compliance with numerous environmental, transportation, safety, and security regulations at the federal, state, and local levels.

Harmonization of PSM and RMP Elements

The Executive Order was specifically created to encourage agency coordination and improve the exchange and sharing of information. In the EO Working Group Action Plan, EPA and OSHA agreed to harmonize their regulations.

EPA must ensure coordination and consistency in the comparable issues that cross over both OSHA Process Safety Management (PSM) and EPA Risk Management Plan Program (RMP) to minimize regulatory burdens and avoid conflicting requirements for regulated facilities. EPA has committed, in the Working Group Action Plan, to release a proposal for the revised RMP in one year and finalize the rule within two years. OSHA is on a seven-year rulemaking timeline while EPA is on a two-year track. Potential updates to the RMP program must be evaluated in parallel with the PSM program and, therefore, EPA should not fast-track the rulemaking process but rather allow for adequate time for the regulated community to consider carefully changes to these programs and provide input.

Moreover, according the EO Action Plan, OSHA is commencing the Small Business Regulatory Enforcement Fairness Act (SBREFA) process within one year. The SBREFA process is normally a four-month process. By the time OSHA completes the SBREFA process, EPA will be well on its way to releasing a proposal for a revised RMP. This furthers the argument that coordination between OSHA and EPA will be challenging and highly unlikely and is concerning, as there is a broad level of consistency between the dozen overlapping elements of RMP and PSM.

Updating the List of Regulated Substances

EPA requests input on updating the current list of regulated substances. Section 112(r)(3) of the 1990 CAAA authorized EPA to develop a list of substances that are known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment in the case of an accidental release. Rather than proposing categories of substances such as "toxic or flammable," "high and/or low explosives," "reactive substances," and other broad, undefined categories of substances, EPA **must** assess the risks of specific individual chemicals and their probability to cause harm in a release. Any additions of individual chemicals should be proposed in a formal rulemaking and comment process and based on sound science and data to support their addition to the list.

The lists of hazardous chemicals subject to the EPA RMP regulations are comprehensive and were carefully considered when developed. The agency should use caution in adding additional chemicals to these lists. EPA should only amend these lists when substantial data has been developed on a scientific basis to warrant the inclusion of the chemicals. EPA should publish its research and data-gathering methodology for identifying, defining, and quantifying the hazards associated with a chemical to demonstrate that any proposed changes to the RMP program are justified and would enhance safety. As part of this data analysis, the agencies must also demonstrate how inclusion would protect the community and environment under RMP. Any additions to the list must be subject to the formal rulemaking process with adequate opportunity for data submission and comment. Once adopted after a complete rulemaking procedure, EPA should be sure to add any new covered chemicals to Consolidated List of Lists.

EPA should not be permitted to add chemicals to the RMP lists without going through a formal rulemaking process that includes detailed hazard and cost-benefit analyses and the opportunity for comment for each chemical compound. Following these normal procedures provides more certainty and stability to facilities and regulators alike, which enhances compliance.

Expanding RMP Coverage and Requirements for Reactivity Hazards

EPA requests information on how the RMP standard could be amended to address chemical reactivity hazards. NACD recommends that EPA refrain from attempting to define or specifically cover chemical reactivity hazards through the RMP standard. Chemical reactivity involves too many factors and is too complex to be effectively defined. In fact, chemicals themselves are reactive by nature; they are meant to react. Due to the intrinsic reactivity and extrinsic circumstances, such as operating conditions, lack of agitation, and containment, a list of regulated substances does not solve the problem of chemical accidents. Updating the list may result in unintended consequences where facilities do not report information because a substance is explicitly omitted from the list. No organization, such as the National Fire Protection Association (NFPA), nor state law that addresses reactive hazards, such as the New Jersey Toxic Catastrophe Prevention Act (NJ TCPA), has been able to reach a consensus on how to define or regulate this area consistently, demonstrating the complexity of the issue.

The NJ TCPA program has been costly for NACD members operating in the state. Calculations based on reactivity are difficult to perform. Reactivity testing is typically more expensive than preparing a risk management plan. At the core of many chemical distributors' products are diluted chemicals. The NJ program does not provide for variance in concentration. For instance, many dilute chemicals pose no safety harm because they are no longer reactive when their concentration is under 50%. Because there is no concentration range considered, many "reactive" chemicals regulated by the NJ TCPA do not pose a hazard and therefore benefits to improving safety are outweighed by the burdens and costs of the requirements.

RMP already covers several highly reactive substances, Program 3 requires facilities report reactive hazards under process safety information, and RMP-regulated facilities evaluate reactivity during Process Hazard Analyses. There are also other regulations that address reactive hazards. For example, the U.S. Department of Transportation has product segregation rules to

prevent reactive incidents in transit. NACD members have reported that EPA has inconsistently defined "reactive" within General Duty Clause inspections at their facilities.

Because chemical reactive hazards are so difficult to define and regulate without creating an excessively complex system, NACD recommends that EPA and other agencies partner with process safety experts and industry organizations to provide more education and resources on reactive hazards.

Revising the RMP Program to Require Additional Risk Management Program Elements

EPA is requesting comments on additional management system elements that could be added to the RMP program such as elements from the CCPS Risk Based Process Safety program. While it may be worthwhile for EPA to consider the latest management system elements, it will be important to complete a thorough analysis on how these changes would impact the regulated community and if the elements would be appropriate for the broad range of regulated facilities. RMP already includes significant management system elements. In addition, one of the objectives of Executive Order 13650 is to reduce government stove-piping. Accordingly, any management system changes must be globally considered in relation to all agency requirements to ensure clarity and consistency as well as provide that each regulatory agency primarily addresses its core scope of authority. Again, any proposed changes would need to go through the formal rulemaking process.

Amending RMP to Require Evaluation of RAGAGEP Updates

EPA requests comments on a proposal to require facility operators to evaluate and document updates to recognized and generally accepted good engineering practices (RAGAGEP). NACD opposes this proposal because it is unnecessary, would be too costly and time consuming, and would provide limited or no benefit relative to the burdens. OSHA regulations currently ensure that employers examine all pertinent safety updates applicable to RAGAGEP. Under the current regulations, an essential practice for facility operators is to review the most updated industry standards and practices as part of the PSM process hazard analysis. Employers should not be forced to re-document their safety evaluations every time an update to a standard is published. This would be unworkable, considering the fact that codes and standards are continually updated. If this requirement were to be implemented, staff would constantly need to monitor code changes, obtain the new codes from the various code organizations (frequently at a substantial cost), re-write the company's procedures to incorporate the changes, implement the updates, and train all impacted employees on the changes. This would be a never-ending cycle that would be particularly burdensome for small businesses.

Expanding Mechanical Integrity Requirements to Cover Any Safety-Critical Equipment

EPA requests comments on expanding the mechanical-integrity requirements of the RMP program to cover all equipment the employer identifies as critical in addition to the equipment specifically listed in the standard. NACD believes the expansion to cover all safety critical process equipment is unnecessary. The elements currently listed in the standard cover the vast majority of safety-critical equipment. In addition, employers already have the flexibility to

expand beyond this list where appropriate. The current provision strikes a good balance between clarity and flexibility and need not be amended.

Revising the RMP Program to Require Third-Party Compliance Audits

EPA requests comments on whether the RMP program should be amended to require third-party audits and if the frequency requirements for audits should be increased from the current three years. NACD believes both of these changes are unnecessary.

NACD strongly supports audits; however, facilities should continue to have the flexibility to select the audit methods most appropriate for their unique operations. Of upmost importance is that the auditor has a thorough knowledge of a facility's processes. This flexibility and understanding of the facility's processes are the keys to improving safety. Third-party auditors cannot be inherently familiar with all processes and systems at a facility without substantial retraining and, therefore, cannot provide a benefit to the facility. There is also a concern of conflict of interests rising in situations where an auditor will identify an issue and suggest a solution in order to profit from a problem that was initially questionable.

EPA should continue to provide facility operators the ability to select the audit method most suited to their individual operations, whether internal or using third-party firms. A mandate to use third-party auditors would impose substantial costs on companies. In addition, internal company audits provide many benefits that would be lost with third-party audits. For example, some companies have hired personnel to perform internal auditing functions, including RMP audits. Adopting a regulatory mandate to perform third-party audits could cost jobs such as this and further reduce mutual safety goals whereby these employees also supplement other safety and environmental auditing. Some companies may not be able to support both in-house internal auditing and contract auditing.

In addition, the case has not been made to justify increasing the frequency of required audits from the current three years and how requiring third-party audits ensures process safety by reaching outlier facilities. The lack of qualified auditors, the potential for conflicts of interest, and the substantial costs on companies do not justify requiring overly burdensome third-party audits as part of the RMP program.

Effects of OSHA PSM Coverage on RMP Applicability

EPA seeks information on the impact of OSHA's retail facility exemption on the RMP program and whether the RMP program tiering should be changed. The agency estimates there are fewer than 400 RMP facilities currently reporting Program 2 processes as non-agricultural bulk chemical distributors, with many of those being NACD members. Chemical distributors are unique in their operations. NACD members provide local bulk storage and large packaging capabilities while others resell chemical ingredients in small quantities such as less than a truckload, containers and drums, and very small units, or a combination of those functions. Many NACD members are exempt from OSHA's PSM standard under the current retail exemption and therefore subject to Program 2 processes under RMP. If OSHA were to restrict eligibility for its retail exemption, this would have a significant impact on NACD members. EPA

estimates that half of the approximate 400 non-agricultural bulk chemical distributors would be ineligible for the PSM retail facility exemption and therefore subject to RMP Program 3.

OSHA has proposed to limit the exemption for only facilities under NAICS codes 44 and 45 and has proposed to restrict eligibility for the exemption to facilities selling small containers, packages, or allotments. Clarification of "small" is needed for NACD facilities to determine whether their facility would be exempt as a retail facility. While the proposed rule is still pending, there is a lot of uncertainty and clarification is needed for NACD members to evaluate whether the retail facility exemption would apply to them. Until there is a final rule, any theory on the effects of OSHA PSM coverage on RMP applicability is speculative, and the specific impact to NACD members cannot be determined.

NACD members would need adequate time to evaluate the final rule and potentially have to report under the PSM standard. Not only would these NACD members then need to develop compliance expertise for a program unfamiliar to their current regulatory compliance practices, but they would also have to report under a more rigorous program under RMP. Once there is a final determination of applicability under the PSM standards, NACD members can begin to evaluate additional requirements of the RMP program. EPA should give facilities, especially small businesses impacted by OSHA's retail facility exemption modifications, additional time to comply with Program 3 requirements and an opportunity to provide input on any proposed changes to the RMP program. Because of the significant impact to chemical distributors in particular, EPA should wait until OSHA issues a final determination on the retail facility exemption before making any changes to the RMP program tiering.

Additionally, if EPA were to change the program tiering, irrespective of the retail facility exemption, Program 3 should not apply to facilities where the only RMP process is storage for regulated substances. The more rigorous requirements of Program 3 are not applicable to storage operations. Merely storing regulated chemicals for transport to retail customers should be considered a Program 2 process. As chemical distributors, this process would apply to many NACD facilities and would clarify any uncertainties potential changes to the PSM retail facility exemption would create. Additionally, since most NACD members are small businesses, modifying Program 2 applicability to chemical distributors would reduce the costs and burdens of compliance for small businesses. On the contrary, eliminating Program 2, or requiring all PSM-regulated facilities to comply with Program 3, would negatively impact small businesses and disproportionately impact chemical distributors.

NACD recommends EPA modify the eligibility requirements for Program 2 to cover non-agricultural bulk chemical distributors or, in the alternative, extend the compliance period for Program 3 processes in the event that current exempt facilities under the PSM retail facility exemption are no longer eligible.

Safer Technology and Alternatives Analysis

EPA is considering proposing an amendment to the RMP regulations that requires a safer alternatives options analysis. The RFI gives the impression of evidently proposing a rule

mandating IST analysis without consideration on which method. NACD strongly opposes the concept of regulatory "inherently safer technology" mandates. In their request for information, EPA even acknowledges the challenges to mandatory IST implementation.

Mandating IST, a vague and undefined term, is impractical and would significantly increase the potential for unintended consequences.

Specifically:

- No external entity can properly gauge which chemicals should be used in products in real time. Supply-chain disruptions require manufacturers to make minor, immediate product adjustments. An outside agency cannot properly address the broad range of factors such as risk-shifting, technical efficacy, cost, and product quality that a manufacturer must evaluate.

- Requiring manufacturers to hold smaller quantities of hazardous materials on site would exhaust their limited inventories faster. Distributors would need to deliver hazardous chemicals to these facilities more frequently, thereby significantly increasing the number of miles driven to deliver the same amount of product and ultimately increasing and shifting risk to the public roadways. In addition, there is a higher risk of incident during product loading and unloading. More shipments would increase the number of times chemicals must be loaded and unloaded, thereby increasing risk. Fixed-site risks are more manageable than those with a transportation component.

- Many incidents are the result of failure to comply with existing regulations. Adding a new, sweeping requirement such as IST would penalize companies that already comply. A better approach is more consistent enforcement of existing regulations and compliance assistance.

In the 1996 RMP rulemaking, EPA came to some of these same conclusions about IST. In the *Federal Register* notice of the final RMP rule, the EPA stated it did not believe a requirement that owners or operators conduct searches or analyses of alternative process technologies for new or existing processes will produce significant additional benefits. NACD agrees with the EPA that the application of good Process Hazard Analysis techniques often reveals opportunities for continuous improvement of existing processes and operations without a separate analysis of alternatives and that IST analysis will not produce additional benefits beyond those accruing to the rule already.

<u>Emergency Drills to Test a Source's Emergency Response Program or Plan</u>
EPA is considering requiring RMP-regulated facilities to perform exercises or drills as an element of the emergency response program. The requirement for coordination with local emergency responders is already adequately addressed in the multiple interconnected standards as well as OSHA's 29 CFR 1910.38. This particular OSHA regulation provides the minimum requirements for an emergency action plan, including that a facility must have procedures in place for reporting a fire or other emergency information to local responders. An additional

reporting requirement will not provide an improved level of workplace safety, and companies already provide information to various regulatory agencies and organizations as part of other regulatory requirements including RMP, EPA's SARA reporting requirements, and DHS's Chemical Facility Anti-Terrorism Standards program. This is an area where there should be better coordination and harmonization between the EO Working Group agencies and development and strengthening of uniform programs like EPA's E-plan across all states to provide responders with real time and better information.

Emergency Response and Public Preparedness is NACD's Responsible Distribution Code VII of management practices and includes testing emergency response plans. NACD members can conform to this part of the code by full scale drills, internal tabletop exercises, and working with local responders. NACD recommends EPA develop best practices and guidance for conducting exercises and drills to reach out to those facilities that are not part of a program like Responsible Distribution rather than requiring facilities to report what they already are doing.

Automated Detection and Monitoring for Releases of Regulated Substances

EPA is considering expanding requirements for automated detection and monitoring systems that would supplement existing requirements. Most chemical distributors handle multiple products and use distribution processes such as storing, repacking, diluting, and shipping, so upgrading equipment would not be feasible, particularly for small businesses. Additionally, due to the very nature of storage and distribution processes, chemical compounds come and go, making it hard to identify a single piece of equipment capable of monitoring for and detecting a release automatically. Detection equipment should be considered using a risk-based approach. The level of potential benefit, the probability of a release, and the risk of harm should be considered. Facilities integrate automated detection as part of off-site consequences and potential hazard analysis. NACD recommends EPA consider monitoring as a mitigating factor to reduce hazard levels.

Additional Stationary Source Location Requirements

EPA is considering changes to include more specific siting requirements such as establishing buffer or setback zones. Establishing buffer or setback zones is under the jurisdiction of local zoning laws and therefore setting federal requirements would overstep state and local zoning processes. The EPA should not set these requirements for existing facilities.

Compliance with Emergency Response Program Requirements in Coordination with Local Responders

EPA is requesting information on expanding emergency response requirements. NACD agrees that someone has to respond if local responders are unable to; however, many of the issues discussed in the RFI are related to CERCLA, EPCRA and SARA authority and not the RMP program. Facilities provide information on their chemicals to various agencies and response organizations as required by other regulations such as EPA's Emergency Planning and Community Right-to-Know Act (EPCRA) Tier II reporting and DHS's Chemical Facility Anti-Terrorism System (CFATS). EPCRA was intended to improve the availability of chemical information to members of the local community and aid emergency first responders.

Unfortunately, it appears the entities and processes it established a quarter-century ago have withered away in a great many states and locales. While many active and well-functioning local emergency planning committees (LEPCs) exist today, too many are poorly resourced, or are not well-managed. Charging EPA to revitalize EPCRA presents the most immediate opportunity to improve access to chemical emergency information needed by local emergency responders.

Rather than adding another requirement to the RMP program, EPA should work with other government agencies and state/local organizations to recognize measures already in place and to access information. Any additional requirements to provide emergency response planning information should be harmonized between regulatory agencies. Adding a coordination requirement to the RMP program would simply add another layer of confusion to the already cumbersome list of federal requirements that the EO was created to address.

In addition, NACD has concerns about federal mandates for industry to coordinate with local authorities. NACD strongly supports the concept of coordination with these local officials in principle. In fact, under Responsible Distribution, NACD members are required to coordinate with local emergency responders by making them aware of the potential hazards of the chemicals they have on site, conducting plant tours, and coordinating emergency response plans. Our concern about regulatory mandates is that many local emergency response providers have limited resources and are not always available to devote the manpower and resources to these activities. Every community is different; and while this may be achievable in some areas, others simply do not have the resources. Industry cannot compel the local authorities to be involved in the process, so the regulatory burden should not be placed on industry. NACD is concerned about the prospect of members being placed in the position of being in violation of the regulations because the local response authorities simply do not have adequate time and resources to devote to these activities in some communities. Many NACD member companies contract directly with competent for-profit emergency response contractors in their local communities because of the lack of resources in the public sector.

In previous meetings, NACD has provided EPA with Code VII of Responsible Distribution, Emergency Response and Public Preparedness and has engaged in discussions with EPA and other industry associations on how industry can work with EPA to revitalize LEPCs, identify best practices, and leverage industry programs. NACD is committed to continuing to work with EPA to ensure emergency responders have the information they need to protect communities where chemicals are stored.

<u>Incident Investigation and Accident History Requirements</u>

EPA is considering broadening the incident investigation and accident history requirements to direct facilities to report near-misses in addition to reporting their five-year history of accidents from covered processes resulting in death, injury, or significant property damage. EPA is also asking whether companies should be required to conduct a root cause investigation, complete their investigations by certain deadlines, and share information with the public about incidents and near-misses. Through participation in Responsible Distribution, NACD members investigate accidents; however, the term "near-miss incident" is difficult to define across the board at a

national level because what might be considered a near-miss at one location may not be a near-miss at another location due to the differing operations. While EPA does not release RMP data to the public, RMP information may be accessed via Federal Reading Rooms open to the public that are in every state. In addition, the community can access off-site consequence analysis information for all of the facilities that are located in or potentially impact the jurisdiction of the LEPC where a person lives or works. NACD does not support the proposal to share near-misses and, further, NACD is not aware of any EPA-provided examples of facility incidents where the current incident investigation procedures were either inadequate or contributed to a chemical safety accident.

Worst Case Release Scenario Quantity Requirements for Processes Involving Numerous Small Vessels Stored Together

EPA seeks information on whether to revise the RMP program to account for processes involving numerous small vessels stored together. NACD disagrees that revising the worst case scenario quantity to consider the sum of all containers would better represent the true worst case scenario for storage processes. Grouping packages will increase the impact radius in a worst case scenario, so instead of evaluating the largest tote of chemical material, a facility would have to determine the worst case scenario for all of the totes. A facility could have 20 totes of chemical product and the impact radius would be as large as the five boroughs of New York City, even when the release of an individual container may have an impact radius limited to one to two miles. Even the NJ TCPA program requires facilities to consider only the largest container or pipeline. In a cumulative scenario, the likelihood of all small containers failing at the same time is not a realistic release scenario. The regulations have already considered a release that may cause other components of a system to fail, and the registrant must take this into consideration during the PHA process.

The Health and Safety Executive (HSE) of the United Kingdom established a set of failure rates that have been in use for several years. In their report[1] the failure rate for ISO tankers is $4x10^{-6}$ per vessel year[2], meaning in a given year, the likelihood of one ISO tanker to fail is four in a million. The probabilities increase exponentially when calculating the potential of two vessels to fail at the same time, resulting in a one in 62.5 billion probability of both ISO tankers failing at the same time. Revising the worst case scenario to take into account all small vessels stored together would not represent a true worst case scenario; rather an analysis of the data demonstrates this to be a non-credible threat.

Additionally, modifying the worst case scenario analysis as proposed would cost Program 3 facilities with quality systems already in place approximately $35,000-$40,000 per facility. This estimate is based on NACD facilities in New Jersey with only one process, storing about half a dozen chemicals. Adding another process or more regulated chemicals would increase that

[1] Health and Safety Executive of the United Kingdom, "Failure Rate and Event Data for use within Risk Assessments," June 28, 2012, http://www.hse.gov.uk/landuseplanning/failure-rates.pdf.
[2] *Id.* At 60.

estimated cost to perform a worst case analysis. For NACD members, many of which are small businesses, the cost is prohibitively high especially considering the analysis would conclude that the risk is negligible.

TQs and Off-site Consequence Analysis Endpoints for Regulated Substances Based on AEGL Toxicity Values

EPA is considering the use of Acute Exposure Guideline Levels (AEGLs) to recalculate RMP reporting thresholds and toxic endpoints for off-site consequence analysis. NACD disagrees with EPA's assertion that using this method better reflects the potential for adverse effects of an accidental release upon a community. The current TQs are based on the Immediately Dangerous to Life and Health (IDLH) value developed by the National Institute of Occupational Safety and Health (NIOSH). IDLH guidelines are acute exposure guidelines. Since the establishment of the IDLH values in the 1970s, NIOSH has continued to review available scientific data to improve the protocol used to derive acute exposure guidelines, in addition to the chemical-specific IDLH values. **The IDLH methodology reflects the modern principles and understanding in the fields of risk assessment, toxicology, and occupational health and provides the scientific rationale for the derivation of IDLH values based on contemporary risk assessment practices**. Accordingly, IDLH values are based on health effects considerations determined through a critical assessment of the toxicology and human health effects data. This approach ensures the IDLH values reflect an airborne concentration of a substance that represents a high-risk situation that may endanger workers' lives or health. AEGLs on the other hand are intended to be guideline levels used during rare events or single once-in-a-lifetime exposures to airborne concentrations of acutely toxic, high-priority chemicals.[3]

Revising the RMP rule to incorporate AEGL values as the basis for TQs and toxic endpoints is not a reasonable approach due to the use of animal studies, the limited amount of human studies, and the lack of a systematic review of the current AEGLs. Using the IDHL values which are based on health effect considerations determined through a critical assessment of the toxicology and human health effects data makes the RMP rule more protective of human health and the environment, especially considering the use of off-site consequence analysis used in community response planning.

Replacing RMP with the "Safety Case" Regulatory Model

EPA's request for information considers a "safety case" regulatory model to replace or supplement existing RMP regulations. NACD strongly believes a "safety case" model would be counterproductive to the Executive Order's objective of improving chemical facility safety and security. Facilities, large and small alike, need regulatory clarity and consistency in order to comply with the rules effectively and to train new and current employees on these requirements. A "safety case" model is the opposite of clarity and consistency and would create confusion and uncertainty for both facilities and regulators. For such a system to work, ***all*** facility operators

[3] Department of Health and Human Services, Current Intelligence Bulletin 66, "Derivation of Immediately Dangerous to Life or Health (IDLH) Values," November 2013, http://www.cdc.gov/niosh/docs/2014-100/pdfs/2014-100.pdf

and ***all*** regulators would need extensive knowledge about, and would need constantly to keep current on, the latest safety measures and trends. This would be a monumental task, particularly for regulators, as best practices vary depending on the segment of the extremely diverse industries that handle and store chemicals.

In addition, such a "safety case" system would be far too subjective. Without clear standards, individual inspectors would be the ones to evaluate measures that are and are not acceptable to achieve the desired level of safety. Facility operators would have little knowledge of what constitutes compliance and would be subject to a particular inspector's opinion of what is acceptable. Such a vague system would be unworkable across the board.

In addition, regulations and enforcement must be consistent. A major concern about measures such as IST, general duty clauses, and "safety case" regulatory regimes is the fact that they are subject to the interpretation of a particular inspector. NACD members want to abide by the regulations, but this becomes difficult if satisfactory compliance depends on a facility's location in a particular region or who the individual inspector is.

Streamlining RMP Requirements

EPA invites comment on any potential revisions to the RMP rule that would make it easier for regulated facilities to comply with its requirements. The most important element of effective regulation is compliance assistance and outreach. In creating NACD's 15-page regulatory checklist and meeting with agencies, NACD staff discovered that most agencies, including the EPA, have excellent materials available on the web, including guidance documents, fact sheets, webinars, FAQs, and more. The problem is that it can be difficult to find these materials unless one is specifically looking for them. NACD encourages the agency to commit to industry outreach to make the regulated community aware of these tools. Trade associations like NACD can help with these efforts in reaching our members, particularly small companies who do not have dedicated regulatory staff to read the *Federal Register* and other Washington publications every day. We have mechanisms in place, including meetings, newsletters, and webinars, to get the word out.

The RMP program is one of the most comprehensive, complex, and robust regulations with which chemical facilities must comply. RMP has been impressively effective in preventing chemical incidents for those facilities in compliance. Catastrophic incidents have occurred at facilities that were in violation of the program — outliers. Because of RMP's complexity, compliance can be challenging, particularly for small businesses. Rather than making the RMP program even more complex, NACD strongly recommends EPA focus its efforts on outreach, compliance assistance, and effective enforcement of the current standard. This would be the most effective way to bring facilities into compliance and prevent future accidents.

If EPA chooses to pursue regulatory changes to the RMP program, NACD urges the agency to conduct full rulemaking processes, including Advanced Notices of Proposed Rulemaking, for each initiative. This will provide opportunity for careful consideration of hazard and cost-benefit analysis and adequate data and comment submission from interested parties. In addition,

because changes to the RMP regulations would have a substantial impact on small businesses, EPA would need to follow the Small Business Regulatory Enforcement Fairness Act and convene a Small Business Advocacy Review Panel to assess thoroughly the proposal's impact on small business.

Conclusion

NACD appreciates the opportunity to submit comments on these important issues. NACD strongly believes regulations that are clear, consistent and have adequate compliance assistance resources are most effective in preventing major chemical accidents.

The RMP is a comprehensive and robust regulatory program that has been proven effective in preventing chemical accidents. In all discussions of process safety, including the Executive Order 13650, Improving Chemical Facility Safety and Security (EO), OSHA's RFI for the PSM program, and the EPA RMP RFI, the examples of facility safety concerns articulated by those speaking to this issue have actually been examples of facilities not complying with existing regulations and not a lack or gap in the existing requirements. Developing additional regulations fails to address the problem of outlier operations.

In order to prevent chemical accidents, EPA needs to focus its efforts on better coordination with other federal and state agencies, more RMP compliance assistance and training, effective enforcement, and targeting outliers rather than adding unnecessary complexities to the regulation.

Thank you for the opportunity to provide these comments. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,

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