



THE UNITED STATES
CONFERENCE OF MAYORS



October 31, 2022

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

**RE: Risk Management Program Safer Communities by Chemical Accident Prevention
Proposed Rule (Docket ID No.: EPA-HQ-OLEM-2022-0174)**

Dear Acting Assistant Administrator Breen,

On behalf of the nation's mayors, cities, and counties we appreciate the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) Proposed Rule on Accidental Release Prevention Requirements: Risk Management Program (RMP) Under the Clean Air Act; Safer Communities by Chemical Accident Prevention. We urge the Agency to ensure that the costs and burdens on local governments are justified and that any new regulatory requirements placed on local governments will achieve the identified public benefits and protect public safety within the low-risk water sector, which has a demonstrated record of safety. **The water sector does not pose the chemical process safety risks that the proposed RMP rule aims to address and therefore we urge EPA to reevaluate the need for this rulemaking.**

Collectively, our organizations represent the nation's 3,069 counties, 19,000 cities, and the mayors of the 1,400 largest cities throughout the United States. The health, well-being, and safety of residents and communities are top priorities for local officials.

Cities, counties, and mayors across the country have a significant interest in the Risk Management Program Rule. Local governments play an instrumental role in managing and overseeing public safety policy and services including police and sheriff departments, 911 call centers, emergency management professionals, fire departments, public health officials and responsibilities, public records and code inspectors, among others. They are the first responders in any disaster and are often the first emergency response and recovery teams on the scene. Additionally, local governments across the country own and operate water and wastewater facilities.

Specifically, drinking water and wastewater systems are uniquely impacted by changes to existing RMP requirements. 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 governments, 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 Act, 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.”

As EPA moves forward with this proposed rulemaking, we offer the following overarching and specific considerations and recommendations and urge the Agency to address our concerns.

1. Cost-benefit analysis and Regulatory Impact Analysis (RIA) are incomplete and insufficient.

We are concerned that EPA’s cost-benefit analysis has underestimated the costs and overestimated the benefits of the Proposed Rule. Historically, EPA has not adequately considered the costs posed by the RMP program. With the 2017 rulemaking, the American Water Works Association (AWWA) estimated an annualized cost range of \$160-\$260 million to the water sector alone, compared to EPA’s estimated annualized cost range of \$9.8-9.9 million for state and local governments. Given this past experience, we urge EPA to include a full accounting of possible cost burdens posed by this Proposed Rule to local governments, rather than taking a surface level view of direct financial concerns.

Furthermore, as stated above, the water and wastewater sector are and have been considered by EPA to be among the safest of those covered under the RMP. Therefore, the additional costs, resources, and staff needed to fully implement and comply with the requirements of the proposed rule could pose an undue burden on a sector—and ultimately a community and its residents—that has consistently proven to be low-risk. We are concerned that the proposed changes will impose costs on local governments that are unjustified in the benefits that EPA believes will be achieved with the changes in this Proposed Rule.

a. High-cost burdens on local governments and water utilities, particularly small communities and small systems, will place undue hardship on ratepayers and environmental justice communities.

EPA’s cost-benefit analysis fails to consider the broad impacts the Proposed Rule will have on local governments. Specifically, we are concerned with the potential unintended consequences that may result in relation to our members’ economically disadvantaged communities, as well as the smaller communities and water systems that they operate.

Unlike private companies, water and wastewater services are funded by local user fees. Therefore, the additional compliance costs that will be incurred due to this rulemaking will be passed on to local residents and businesses in the form of higher water rates. Although all ratepayers regardless of economic status will be affected by increased water rates, there will be a greater disproportionate impact on low-, middle- and fixed-income populations. With only limited ability to reduce water usage and insufficient resources available to offer relief, these increased costs will only further exacerbate the affordability crisis for our members' communities, and especially for our economically disadvantaged and environmental justice communities.

In addition to the ratepayer impacts, about 2,000 water sector facilities will be subject to the proposed rule, and about half of those are considered small entities. Because smaller communities and water systems generally have less available resources and staff, we are concerned that the costs and impacts of a more prescriptive Risk Management Program will fall disproportionately on smaller communities, compounding their challenges of complying with new and existing federal mandates. Further, as it has been consistently noted, the water sector is among one of the safest entities covered under the RMP. With already low-incidence rates, the forced allocation of limited resources towards regulatory requirements that provide no increased public safety benefits would almost certainly result in additional burdens for the local governments which operate these facilities, as well as for the communities for which they serve.

Recommendation: EPA should take a broader view of cost-benefit analysis

We urge EPA to take a broader, more holistic and comprehensive approach to the cost-benefit analysis. For example, the Proposed Rule would require some facilities to conduct field exercises with local responders every ten years at a minimum, unless local responders indicate that frequency is infeasible. While it is not mandated that local responders participate in the field exercise, EPA should provide information on the costs, resources and time that such participation would place on local governments and the first responder community.

EPA should also consider how increased compliance costs will impact small communities and environmental justice communities. With the Administration's focus on environmental justice, it is important that affordability be a part of the equation. Additionally, in general and as discussed in more detail below, EPA should reconsider whether the specific revisions that it has proposed will in fact reduce the risk of potential releases of chemicals in communities.

Moreover, EPA should ensure that the Regulatory Impact Analysis appropriately identifies the costs and benefits associated with each of the Proposed Rule's provisions to ensure compliance with the Administrative Procedure Act. We note that AWWA has provided detailed input regarding EPA's failure to complete the Regulatory Impact Analysis efficiently and accurately. Specifically, AWWA found significant flaws in EPA's analysis, including that the Agency "failed to use fundamental economic science, failed to follow Executive branch guidelines for conducting an RIA, and failed to follow its own economic guidelines." The result of

these flaws leads us to believe that the Agency has over-inflated the benefits and underestimated the costs related to local governments' ability to implement these new requirements. Due to these methodological errors, we urge EPA to re-evaluate the RIA to accurately quantify the Proposed Rule's costs and benefits.

Recommendation: EPA should tailor regulatory requirements to water systems and provide additional flexibility for water systems, particularly for small systems.

Because water utilities make up a significant number of the entities subject to the RMP requirements but have a demonstrated safety record, EPA should tailor the regulatory requirements to areas and entities that pose the largest threat to public safety. This will help focus efforts on the areas where there can be the greatest public benefit and will avoid placing undue burdens or unjustified costs on local governments and water systems.

Moreover, if the Agency moves forward with this Proposed Rule, we encourage the Agency to allow for maximum flexibility for local governments and water systems, particularly small systems, in meeting the requirements of the Proposed Rule. EPA should avoid a top-down, one-size-fits-all approach, and instead offer flexibility to local governments to choose the best approach that is most appropriate for the community.

2. Concerns with definitions and regulatory requirements.

The proposed rule is complex and lengthy, and many of the provisions and definitions are overly broad and vague, which is likely to cause uncertainty at the local level. For example, we are concerned with the following:

Natural Hazards

EPA proposes to define natural hazards as “naturally occurring events that have the potential for negative impact including meteorological or geological hazards.” While our members are taking action to improve and strengthen their water infrastructure systems against extreme weather events, we question whether this broad definition will have the desired impact and public safety benefits and whether it will meaningfully address climate impacts at the local level, particularly within the water sector. Moreover, other federal laws, such as America's Water Infrastructure Act, require water systems to consider climate risk and incentivize actions to improve resilience. Adding new regulatory requirements will be overly burdensome for local governments and will likely not move the needle toward desired outcomes or public benefits. At a minimum, EPA should align its definition with one that has already been established.

Root Cause Analysis

EPA proposes to require certain facilities to conduct a root cause analysis as part of an incident investigation following an RMP-reportable accident. While root cause investigations are an important part of community safety programs, we are concerned with the burdens the requirement will place on smaller systems in terms of costs, staff time and other resources. We

recommend limiting this requirement to larger, more complex water systems, as well as limiting the requirement to the most significant events.

While EPA is not proposing a definition of “near miss” in this rulemaking, the Agency seeks comment on a potential definition and whether the Agency should establish a universal definition in the future. Any definition of this term must be clear and narrow to avoid placing undue burdens on local governments and diverting scarce resources away from other critical activities.

Community Notification of RMP Accidents

EPA proposes that facilities be required to develop a community notification process that would alert the public and the appropriate local responders in the case of an accidental release of RMP chemicals. While we acknowledge the importance of community notification in such an instance, we are concerned that the Agency has not accurately quantified whether all RMP facilities are actually located in areas covered by the Integrated Public Alert & Warning System (IPAWS). We recommend the Agency either confirm that all RMP facilities under this rule are located in areas already covered by IPAWS, or re-evaluate the impacts this would ultimately have on local governments who would need to allocate resources for the additional costs, staff, and time needed to implement and sustain such an alert system.

Information Availability

Additionally, EPA’s proposed rule would allow any member of a community living within six miles of an RMP-covered facility to request chemical hazard and emergency preparedness information in any language. While we appreciate EPA’s efforts to ensure transparency between facilities and the public, we are concerned the Agency has underestimated additional burdens that may be placed on these facilities, such as for translation costs. We emphasize that within these communities there might be members of the public who speak dozens of different languages. We urge the Agency to take these considerations into account as this would require an additional allocation of resources from local government entities and RMP-covered facilities, which the proposed rule did not consider. Any translation requirement should be narrowly tailored to avoid undue burdens on local governments.

Recommendation: EPA should clarify and narrow vague definitions, remove redundant requirements and reevaluate proposed requirements.

Definitions should be clear and specific to support compliance and to avoid confusion and duplication of effort at the local level. Broad terms and definitions could subject local governments to legal challenges in the form of citizen suits under the Clean Air Act. Additionally, proposed requirements, such as for field exercise frequency and third-party compliance audits, should be considered in light of a more thorough consideration of how the changes will reduce an already low incident rate within the water sector.


As you move forward with this Proposed Rule, we encourage EPA to continue to engage with local government officials and our organizations on the rule’s requirements and to ensure that a

final Risk Management Program Rule is justifiable, cost-effective, practicable and implementable at the local level. As intergovernmental partners, we thank you for the opportunity to comment on the Proposed Rule and for addressing our concerns. If you have any questions, please contact our staff: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; or Sarah Gimont (NACo) at 202-942-4254 or sgimont@naco.org.

Sincerely,



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