UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention, Proposed Rule, 91 Fed. Reg. 8970 (Feb. 24, 2026); Extension of Comment Period, 91 Fed. Reg. 16621 (Apr. 2, 2026)	))))))))	**Docket ID No. EPA-HQ-OLEM-2025-0313** *Via regulations.gov and e-mail* *May 11, 2026*

COMMENTS OF UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT, AIR ALLIANCE HOUSTON, CALIFORNIA COMMUNITIES AGAINST TOXICS, COALITION FOR A SAFE ENVIRONMENT, COMMUNITY IN-POWER AND DEVELOPMENT ASSOCIATION, THE COMING CLEAN NETWORK, ENVIRONMENTAL JUSTICE HEALTH ALLIANCE FOR CHEMICAL POLICY REFORM, MOMS CLEAN AIR FORCE, SIERRA CLUB, TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES, UNION OF CONCERNED SCIENTISTS, AND EARTHJUSTICE

The above-listed community, health, and environmental organizations submit these comments on the Environmental Protection Agency's proposed rule[1] and call on EPA to follow the law and protect communities from toxic chemical releases and disasters, instead of backsliding on health and safety.[2]

While EPA previously delayed and now again proposes to roll back vital safety protections, over 177 million Americans – nearly half the U.S. population – have been living in a worst-case scenario zone for one or more industrial chemical

[1] Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention, Proposed Rule, 91 Fed. Reg. 8970 (Feb. 24, 2026) (Proposed Rule or Proposed CSACAP); Comment Extension, 91 Fed. Reg. 16621 (Apr. 2, 2026).
[2] Some of the undersigned commenter organizations petitioned the President and EPA for action in 2012, and many have participated in every public participation opportunity – from listening sessions and public hearings to comment periods – from 2014 through the present.

facilities.[3] One in three schoolchildren go to school in one of these vulnerability zones.[4] In the decade since EPA first strengthened and the Trump administration first delayed protection, a relentless cycle of chemical fires, explosions, and toxic chemical releases has continued at industrial facilities around the country – with incidents reported to EPA, on average, every other day.[5]

Every single chemical emergency and disaster is one too many. Every person who has died, every family that has lost a loved one, and each of the over 20,150 people who have been injured or sought medical treatment from an industrial chemical facility should never have had to face these tragedies. Over 764,019 people have had to shelter in place or evacuate from 2004-2025.[6] These are people, not just numbers.

EPA first strengthened the rules in 2016 – and then turned around and delayed and unraveled those protections under the direction of this same President in his first term. EPA took an important step to strengthen safety protections under the Clean Air Act with its 2024 Safer Communities by Chemical Accident Prevention Rule.[7] That rule included measures to require facilities to prevent chemical disasters – including those with the most serious incident records and chemical hazard threats – to plan for natural hazards, to learn from past incidents, and to assess and implement safer alternatives; improved emergency response when they do occur; and increased public information access and transparency about the chemical hazards and safety planning at Risk Management Program ("RMP") facilities. The robust record accompanying the SCCAP Rule shows it would save lives, prevent injury and illness, protect the environment, protect property from damage and value loss, and prevent families and children from having to evacuate or shelter in place to try to avoid toxic chemical exposure.[8]

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[3] *See* EPA, Regulatory Impact Analysis: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) at 94 (Dec. 16, 2016) (2016 RIA), EPA-HQ-OEM-2015-0725-0734; *see* US Census Bureau QuickFacts (U.S. population as of Apr. 1, 2020, was 331,449,281), https://www.census.gov/quickfacts/fact/table/US/PST045219.

[4] More Than a Third of U.S. Schoolchildren are at Risk of Chemical Disaster, Moms Clean Air Force (March 12, 2026), https://www.momscleanairforce.org/chemical-accident-prevention-rule-rollback.

[5] *See* Table 1, in Part III.A.2, below, based on EPA April 2026 RMP Non-OCA Database, released at https://securefoia.epa.gov/app/ReadingRoom.aspx (OLEM: 2026-EPA-04048 Non-OCA RMP Database April 2026 (April 24, 2026)), as analyzed by Earthjustice.

[6] *See* Table 2, in Part III.A.2, below, based on EPA April 2026 RMP Non-OCA Database, as analyzed by Earthjustice.

[7] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 89 Fed. Reg. 17,622 (Mar. 11, 2024) (SCCAP Rule).

[8] EPA, SCCAP Docket, EPA-HQ-OLEM-2022-0174 (incorporated by reference).

Now, EPA's 2026 proposed rule would undo or weaken nearly all of the protections put in place in 2024 and abandon these gains. EPA's proposed rule asks Americans to accept the status quo level of incidents and harm, to rely on industrial facility owners and managers to just choose to keep people safe, and to ignore the catastrophic threat hanging over millions of Americans. That path is a dangerous one unmoored from fact and reality, and we know where it leads: to more disasters.

Contrary to EPA's argument, the repeated cycle of industrial chemical emergencies and disasters is not a problem that Americans just have to accept. The Clean Air Act requires EPA to act to protect health and safety. Congress granted EPA robust legal authority and responsibility to prevent chemical disasters. The Clean Air Act requires EPA to set safety rules that will advance prevention and "minimize accidental releases" and "minimize the consequences" of such releases. 42 U.S.C. § 7412(r)(1), (r)(7)(A), (B). EPA rules must assure prevention "to the greatest extent practicable." 42 U.S.C. § 7412(r)(7)(B)(i). EPA must respond to and should implement the expert recommendations of the Chemical Safety Board. 42 U.S.C. § 7412(r)(6). EPA must make RMP data fully accessible and available to the public online. 42 U.S.C. § 7412(r)(7)(B)(iii).

The independent U.S. Chemical Safety and Hazard Investigation Board (CSB) and other safety experts and States, along with communities, workers, and health professionals, have repeatedly evaluated the facts on this problem and have repeatedly called on EPA to use its full authority to prevent chemical emergencies and disasters.[9] Commenters stand united in sharing the CSB's vision of a "nation free from chemical disasters."[10] EPA must advance that vision instead of taking our nation backward on safety.

We urge EPA to fully implement the 2024 Safer Communities by Chemical Accident Protection (SCCAP or Safer Communities) Rule without further delay. We urge EPA to listen to Commenters here, and to the overwhelming support for safety and for retaining the protections of the Safer Communities Rule, as dozens

[9] In addition to documents listed in the Appendix that are being uploaded as attachments to accompany this comment, in support of these comments, Commenters also cite, rely on, and incorporate by reference into this docket: the prior 2016 and 2024 rule and 2021 listening session records – including Commenters' own and other safety-supportive prior comments, along with EPA's repeated findings, regulatory actions, and the evidence EPA has relied on in prior years to recognize the need to strengthen the RMP. This includes EPA Docket Numbers: EPA-HQ-OLEM-2022-0174; EPA-HQ-OLEM-2021-0312; and EPA-HQ-OEM-2015-0725.

[10] CSB, Mission, https://www.csb.gov/about-the-csb/mission/ (last accessed May 4, 2026) ("CSB's vision is 'a nation free from chemical disasters'").

of people testified in their oral comments to EPA during the March 10, 2026 public hearing,[11] and as the United Steelworkers, BlueGreen Alliance, Union of Concerned Scientists (UCS), and Texas Environmental Justice Advocacy Services (t.e.j.a.s.) conveyed in a press conference on March 25, 2026.[12]

As discussed here and in the more detailed comments below, EPA must not weaken or rescind any requirements currently in the Clean Air Act's Risk Management Program (RMP) rules as it has proposed. The important new protections put in place in the Safer Communities Rule must be fully implemented because they are necessary to assure prevention and minimize chemical releases and their consequences, as EPA determined in 2024.

EPA's proposal to take away or weaken vital regulatory safeguards flies in the face of EPA's legal responsibilities and binding constraints on the agency's authority, including guardrails for reasoned agency decision-making. The proposed changes to weaken, delay and rescind safety measures violate the Clean Air Act, and are arbitrary and capricious and not supported by the facts. 42 U.S.C. §§ 7412(r), 7607(d). EPA must not finalize its proposal to rescind or weaken the prevention, employee participation, emergency response, and informational provisions in the rules that require certain currently covered RMP facilities to:

- Evaluate and plan for **power loss and natural hazards** like hurricanes, floods, extreme heat and cold, earthquakes, and wildfires, and ensure **back-up power** for release monitoring equipment.

- Evaluate and plan for potential **impacts to people in local communities,** including in their **homes, schools, hospitals, places of worship,** and other community locations, and to prevent knock-on or domino incidents, as part of a **stationary source siting** review.

- Assess **safer technologies and alternatives** (whether or not the refinery or chemical facility is creating a "new" process).

[11] See March 10, 2026 Public Hearing Transcript, https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0096; and March 10, 2026 Public Hearing Recording, https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0097.

[12] S. Kelleher, Proposed EPA rollbacks would put communities at greater risk for chemical disasters, workers and advocates warn, The New Lede (Mar. 27, 2026), https://www.thenewlede.org/2026/03/proposed-epa-rollbacks-would-put-communities-at-greater-risk-for-chemical-disasters-workers-and-advocates-warn/; BlueGreen Alliance, Risk Management Program Press Event (March 25, 2026), https://www.youtube.com/watch?v=ZDtDqwPuQWs

- Evaluate the **practicability of and implement safer measures** (such as inherently safer technology) and report if they decline to do this.

- Ensure and document alignment with **recognized and generally accepted good engineering practices (RAGAGEP)** and any safety gaps.

- Provide for **employee participation** in and training for key safety planning steps and procedures, and ensure that employees have the ability to **report incident and compliance issues anonymously** to EPA, and can **stop work** during a hazardous incident and save lives.

- Ensure **independent compliance audits** led by a third party after every chemical emergency, without any sunset date, and that the audit is reported to the corporate Board and meets independence criteria (cooling off period, prohibition on audit team including company personnel).

- Partner with local responders to **ensure a community notification system is in place** and alerts can be understood by the local community.

- Provide **basic chemical hazard information** directly to local community members who request this.

- **Report to EPA** on hazards, planning, and safety information that is vital to advance compliance and accountability, and to ensure other facilities, EPA, and the public can learn from and credit those companies that actually invest in safety and prioritize workers' and neighbors' lives.

EPA must immediately restore the RMP Public Data Tool online – that the agency itself took down in spring 2025. EPA must ensure it includes the full information access it provided through mapping and search functions, and add all non-OCA RMP data into that tool. EPA should finalize a regulatory requirement for EPA to maintain an online public data tool that is automatically updated with the most current RMP data that the Clean Air Act and Freedom of Information Act require EPA to make publicly available. The proposed regulatory language on the tool is an important recognition of the agency's error as it rushed to do what industry trade groups had requested last year, without considering any public input, reliance on the tool, or impacts on safety.

EPA's proposal to prioritize the preferences of big corporations above the lives and well-being of workers, children, and first responders is the opposite of

"common sense." The proposal repeatedly regurgitates arguments from the first Trump administration and for-profit corporate and industry groups that EPA later found unjustified and ungrounded in law and fact. Instead of finalizing the proposed removal and weakening of safety requirements, Commenters call on EPA to recognize that the life of every worker, every first responder, every community member, and every child matters. No matter where a chemical incident occurs or how much EPA leadership may try to wish away the facts, no industrial chemical threat can be ignored or treated as tolerable. Every new incident shows that we cannot trust for-profit corporations alone to voluntarily choose to prioritize safety over profit.[13] Communities need the clear, enforceable regulatory improvements in the SCCAP Rule and the RMP Public Data Tool to protect health and safety and prevent chemical disasters.

As Trump EPA officials have delayed, weakened, and taken away protections across the last decade, first responders have arrived on scene after scene where workers and community members have lost their lives or been injured. Children have had to shelter in place at school, missing class – while their parents have had to lock down elsewhere. [14] Entire swaths of cities – such as Superior, Wisconsin and Philadelphia, Pennsylvania – have learned that they were in a worst-case scenario zone only after a multi-mile evacuation or near catastrophic event.[15] Some community members in these places did not even know about the danger they faced until a chemical emergency was in progress, involving a

[13] *See, e.g.*, news reports on incidents at RMP facilities, searchable at the Chemical Incident Tracker created by the Coalition to Prevent Chemical Disasters with support from Earthjustice, Union of Concerned Scientists, and Coming Clean at: https://preventchemicaldisasters.org/chemical-incident-tracker/tracker; EPA April 2026 RMP Non-OCA Database; *see also* SCCAP Rule, 89 Fed. Reg. at 17653.
[14] *See, e.g.*, CSB, Investigation Report, Storage Tank Fire at Intercontinental Terminals Company, LLC (ITC) Terminal, Deer Park, Texas (March 17, 2019), No. 2019-01-I-TX at 6 (July 6, 2023), https://www.csb.gov/intercontinental-terminals-company-itc-tank-fire/ ("local community experienced serious disruptions," including shelter in place orders across the entire City of Deer Park, affecting local schools in six school districts, parks, and local businesses, as well as major highway)
[15] *See, e.g.*, CSB, Investigation Report: FCC Unit Explosion and Asphalt Fire at Husky Superior Refinery, April 16, 2018, Report NO. 2018-01-I-WI (Dec. 23, 2022), https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/, EPA-HQ-OLEM-2025-0313-0049; CSB, Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit at 80 (June 21, 2019), Final Investigation Report, No. 2019-04-I-PA (published Oct. 11, 2022) (CSB PES Report), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.

chemical they had never heard about.[16] Local emergency responders created "Wally Wise Guy" – a turtle that explains to children how to "stay calm" and shelter-in-place.[17] Following an incident that could have been deadly, one company gave out stuffed animals to the community.[18] A coloring book and a plush husky dog will not keep any child safe from a chemical disaster. News has reported at least 88 incidents from January 21, 2025 through 2026 so far, at RMP facilities.[19] The CSB has deployed to investigate at least four fatal or serious chemical releases involving RMP facilities during the last year alone.[20] EPA must do its job to protect children, families, and communities nationwide.

EPA's proposed rule betrays this Administration's promises to "Make America healthy" as part of its "MAHA" campaign. Children are particularly susceptible to and affected by toxic chemical exposure, and it is unacceptable and capricious for EPA to ignore those impacts and not assure protection for children's health and safety in this rulemaking. It also runs directly contrary to its own purported commitment to children's health and safety in the agency's new March 2026 Children's Health Policy and accompanying Memo, where it recognized that: "Reducing environmental exposures during childhood, including from the impacts

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[16] *See, e.g.*, S. Schmidt, 'This is how I'm gonna die': Former employees remember the PES refinery explosion, 5 years later (June 21,2024), https://whyy.org/articles/pes-refinery-explosion-five-years-former-employees/ ("A worst-case-scenario incident at PES could have meant the release of 143,262 pounds of HF over 10 minutes, according to a risk management plan the company filed with the EPA. The toxic cloud could have traveled more than 7 miles and potentially impacted over 1,000,000 people, including those in schools, homes, hospitals, prisons, playgrounds, parks and a wildlife sanctuary.") ("At the time, many nearby residents were unaware how dangerous the explosion was").

[17] Deer Park TX LEPC, Welcome to Wally Wise Guy's Website, https://deerparktx.gov/1685/Wally-Wise-Guy (last viewed May 2, 2026).

[18] OpEd Duluth News Tribune (June 12, 2018), https://www.duluthnewstribune.com/opinion/readers-view-disappointed-with-husky-refinery-meeting

[19] List of News Reported RMP Incidents in 2025-26, created by searching for incidents at RMP facilities in news reports compiled in the Chemical Incident Tracker, https://preventchemicaldisasters.org/chemical-incident-tracker/tracker.

[20] CSB, Current Investigations, https://www.csb.gov/investigations/current-investigations/?Type=1 (U.S. Steel Corp. Clairton Plant Coke Oven Explosion, Clairton, PA, Aug. 11, 2025; Austin Powder & U.S. Nitrogen – Nitrogen Oxide Releases, June 11, 2025; Shell Polymers Monaca Chemical Release, Monaca, PA, June 4, 2025) (last viewed May 2, 2026). The CSB has also deployed to investigate fatal chemical releases at facilities that are either not currently covered by or not currently reporting to EPA under the RMP. *See, e.g.*, M. Tony, EPA targets chemical safety measures that loom large in WV, WV Gazette Mail (Apr. 29, 2026), https://www.wvgazettemail.com/news/energy_and_environment/epa-targeting-chemical-safety-protections-investigators-post-fatal-nitro-blast/article_c470a271-db39-4ed7-8756-08d7debc63ec.html; *see also* https://www.csb.gov/woodland-pulp-llc/.

of natural disasters and emergencies, will result in a healthier and more productive future for all Americans."[21]

For these and all of the reasons discussed below, EPA should abandon the elimination, weakening, and delay of any component of the existing RMP rules. Commenters appreciate the time and effort of EPA staff to consider these comments. An Appendix List of documents and data supporting these comments is provided for reference. For any questions or additional information, please contact any of the above-listed organizations or Emma Cheuse, Adam Kron, and Lillian Zhou at Earthjustice (echeuse@earthjustice.org, akron@earthjustice.org, lzhou@earthjustice.org).[22]

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[21] EPA Zeldin Memo, Issuance of the U.S. Environmental Protection Agency's Policy on Children's Health (Mar. 20, 2026), https://www.epa.gov/system/files/documents/2026-03/children-s-health-policy-memo-march-2026.pdf; EPA, Ofc. of the Administrator, U.S. Environmental Protection Agency Policy on Children's Health (March 2026), https://www.epa.gov/system/files/documents/2026-03/children-s-health-policy-march-2026.pdf (stating a commitment to implement Executive Order 13045: *Protection of Children from Environmental Health and Safety Risks*).

[22] Earthjustice appreciates the contributions of the following staff to this comment: Molly Prothero, Robyn Winz, Mahlet Asnake, Diana Olazabal, Randall Wilder, Fabiana Castillo, Jessica Hann, Mariana Lo, Alexandra Bogner and Les Thomas.

DETAILED COMMENTS

EPA SHOULD RESTORE AND STRENGTHEN HEALTH AND SAFETY PROTECTION FROM INDUSTRIAL CHEMICAL RELEASES

I. STATUTORY REQUIREMENTS

Congress enacted the Clean Air Act ("CAA") "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare," in response to the "mounting dangers" posed by air pollution and to promote "pollution prevention." 42 U.S.C. § 7401(a)-(b). Title III of the CAA Amendments of 1990, signed into law by President George H. W. Bush, substantially revised Section 112 of the CAA and added subsection 112(r) to achieve "Prevention of accidental releases." 42 U.S.C. § 7412(r)(1).[23] This provision focuses on "extremely hazardous" substances that "in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment." *Id.* § 7412(r)(3). The statute shows Congressional intent "to ensure adequate protections against highly dangerous accidental releases of chemicals." *Air*

[23] Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, § 112 (1990), https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg2399.pdf.

Alliance Houston v. EPA, 906 F.3d 1049, 1062 (D.C. Cir. 2018) (citing legislative history on the 1990 CAA Amendments).

CAA Section 112(r)(1)

Section 112(r)(1) provides that regulations promulgated under section 112(r) shall have the "objective" to "prevent the accidental release and to minimize the consequences of any such release of" hazardous substances. 42 U.S.C. § 7412(r)(1). Section 112(r)(1) has no language authorizing the use of cost or allowing EPA to use its regulatory power to remove regulatory requirements for the objective of cost savings.

Section 112(r)(1) also provides that owners and operators of regulated processes "have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur." 42 U.S.C. § 7412(r)(1). Section 654 of Title 29 provides that employers "shall furnish … a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees." EPA has acknowledged that Section 7412(r)(1) "imposed a general duty on industrial facilities handling any extremely hazardous chemicals to do so safely." 65 Fed. Reg. 48108 (Aug. 4, 2000).

While the duty in this part of Section 112(r)(1) applies to owners and operators, rather than EPA, it reflects EPA's obligation to ensure its regulations promulgated under section 112(r) – through 112(r)(7) – implement this duty. *See, e.g.*, 42 U.S.C. § 7412(r)(7)(B)(ii) (requiring that EPA's RMP rules ensure that the required risk management "plan shall provide for compliance with the requirements of this subsection," *i.e.,* § 7412(r)).

CAA Section 112(r)(7)(A)

CAA Section 112(r)(7)(A) provides that, "**[i]n order to prevent accidental releases of regulated substances**, the Administrator is authorized to promulgate release prevention, detection, and correction requirements." 42 U.S.C. § 7412(r)(7)(A) (emphasis added).

Agencies possess "only the authority that Congress has provided," *NFIB v. DOL*, 595 U.S. 109, 117 (2022), and therefore EPA is *only* authorized to regulate for the purpose of "prevent[ing] accidental releases of regulated substances." 42

U.S.C. § 7412(r)(7)(A). For example, CAA Section 112(r)(7)(A) does not reference cost or include authority to regulate based on cost. Therefore, EPA is not authorized to regulate for the purposes of providing cost savings to regulated entities.

This provision directs that: "[i]n order to prevent accidental releases of regulated substances," EPA is authorized to promulgate "prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements." *Id.* § 7412(r)(7)(A). EPA "may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source." *Id.*

Section 112(r)(7)(A) also requires that regulations promulgated pursuant to this subparagraph "shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable." *Id.*

CAA Section 112(r)(7)(B)

In section 112(r)(7)(B)(i), the Act directs EPA to "promulgate reasonable regulations … to provide, **to the greatest extent practicable, for the prevention** and **detection of accidental releases of regulated substances and for response** to such releases by the owners or operators of the sources of such releases." *Id*. § 7412(r)(7)(B)(i) (emphasis added). This provision further directs that: "As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections." *Id.* Such regulations "shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations." *Id.*

Congress included several detailed requirements regarding the substance of regulations EPA must promulgate under Section 112(r)(7)(B) that constrain its authority and responsibility in setting RMP rules, including the following.

Such regulations must require facilities "to **prepare and implement** a risk management plan **to detect and prevent or minimize accidental releases** of such substances from the stationary source, and to provide a prompt emergency

response to any such releases **in order to protect human health and the environment**." *Id.* § 7412(r)(7)(B)(ii) (emphases added). Risk management plans "shall provide for compliance with the requirements of this subsection [i.e., section 112(r)]" and "shall also include" each of the following components:

- "a hazard assessment to assess the potential effects of an accidental release of any regulated substance," including "an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations," an evaluation of "worst case accidental releases," and a previous release history of the past 5 years, *id.* § 7412(r)(7)(B)(ii)(I);

- "a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source," *id.* § 7412(r)(7)(B)(ii)(II); and

- "a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures," *id.* § 7412(r)(7)(B)(ii)(III).

The language requiring EPA's rules to ensure that risk management plans "provide for compliance with the requirements of this subsection" directly references and incorporates *all* requirements in other parts of section 112(r), including the objective and the General Duty requirements directed in section 112(r)(1), discussed above.[24]

This provision also directs that the risk management plans required by the rules "shall be available to the public under section 7414(c)" of the Act. *Id.*

[24] 42 U.S.C. § 7412(r)(1) (Purpose and General Duty) ("It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.").

§ 7412(r)(7)(B)(iii).[25] In 1999, Congress enacted the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA) that added restrictions on public access that applied only to off-site consequence analysis (OCA) information and directed EPA to issue regulations governing this information. After recognizing the value of public access to chemical hazard information to advance safety,[26] EPA issued those rules in 2000. 42 U.S.C. 7412(r)(7)(H); 65 Fed. Reg. 48108; 40 C.F.R. Part 1400, subpart A (1400.1-13).[27]

CAA Section 112(r)(7)(C)

Section 112(r)(7)(C) adds additional specific requirements for EPA's section 112(r)(7) regulations:

> "Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM)."

42 U.S.C. § 7412(r)(7)(C).

CAA Section 112(r)(7)(D)

Section 112(r)(7)(D) further directs that in exercising its regulatory authority (under paragraph (7)), EPA "shall consult" with the Labor and Transportation secretaries and "shall coordinate any requirements" established by the Occupational Safety and Health Administration (OSHA) or the Department of Transportation (DOT). 42 U.S.C. § 7412(r)(7)(D); *see also id.* § 7412(r)(7)(B)(i)

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[25] *See also* 42 U.S.C. § 7412(r)(7)(E) ("After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d).")

[26] EPA, Assessment of the Incentives Created by Public Disclosure of Off-Site Consequence Analysis Information for Reduction in the Risk of Accidental Releases at 4 (Apr. 18, 2000), https://www.epa.gov/sites/default/files/2014-01/documents/assessment_of_the_incentives_0.pdf (finding a need to assure public access to chemical hazard information "to reduce real impact associated with chemical accidents").

[27] Pursuant to those regulations, EPA established reading rooms where the public could access but not copy paper versions of the OCA information. 40 C.F.R. § 1400.3. Those regulations also provided for Internet access to certain components of OCA information and for the creation of a "vulnerable zone indicator system," that allows the public only to know if (or if not) a specific address is within the zone for one or more RMP facilities – but not the chemical hazard, facility, or the distance from it. 40 C.F.R. § 1400.4. *See* https://www.epa.gov/rmp/forms/vulnerable-zone-indicator-system.

("The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations."). Section 112(r)(7)(D) also makes clear that when EPA exercises its authority under section 112(r), the agency shall not be deemed to be exercising occupational safety and health authority such that its actions might supplant OSHA's independent regulatory authority to prescribe and enforce standards or regulations "affecting occupational safety or health" under 29 U.S.C. § 653(b)(1). This provision ensures that both agencies fully exercise their responsibilities and authority without preempting or preventing the other from doing so.

CAA Section 112(r)(6)

CAA Section 112(r)(6) establishes the Chemical Safety and Hazard Investigation Board (CSB), an expert board of safety professionals that investigates accidental releases and issues reports regarding chemical safety with recommended measures and corrective steps to reduce the likelihood or consequences of accidental releases. 42 U.S.C. § 7412(r)(6)(C).

Whenever the CSB makes a recommendation to EPA, EPA must "respond to such recommendation formally and in writing not later than 180 days after receipt thereof," and "shall indicate whether the Administrator will" (i) "initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation," or (ii) "decline to initiate a rulemaking or issue orders as recommended." *Id*. § 7412(r)(6)(I). If EPA declines to initiate rulemaking, only intends to implement a recommendation in part, or decides to vary from the schedule contained in the recommendation, it must produce a statement setting forth the reasons for such determination. *Id.*

Accordingly, wherever the CSB has made a recommendation in support of a safety measure that EPA is now proposing to eliminate, weaken, or delay, EPA must set forth a statement explaining why.

EPA and the CSB have entered into a Memorandum of Understanding that acknowledges the role and authority they each have in investigating incidents, the advisory role the CSB performs by providing recommendations to EPA, and also provides for information sharing.[28]

[28] EPA – CSB Memorandum of Understanding (1999), https://www.epa.gov/sites/default/files/2013-10/documents/csbepa.pdf.

II. REGULATORY FRAMEWORK

A. History of the Risk Management Program

In 1996, EPA promulgated the RMP regulations pursuant to section 112(r), establishing the list of regulated substances and thresholds and requirements for stationary sources to identify, evaluate, and implement measures to prevent chemical accidents.[29] Owners and operators of stationary sources subject to Section 112(r) must develop and implement an RMP subject to EPA approval, and generally include a hazard assessment, an accident prevention program, and an emergency response program.[30] RMP requirements vary by program level: Program 1 applies to low-risk processes with no history of significant accidents; Program 2 applies to processes handling regulated substances above threshold quantities that require emergency planning under EPA or OSHA guidelines; and Program 3 applies to higher-risk processes, including those subject to OSHA's Process Safety Management ("PSM") standard.[31] Those regulations took effect in 1999 and the first RMP compliance and reporting cycle was completed in 2004.

Although those rules have been important in improving safety, many fatal and harmful incidents continued to occur in the following years. In 2012, a coalition of dozens of nonprofit, labor, environmental, and community groups petitioned the President for action, including full enforcement of the Clean Air Act and the issuance of new rules.[32]

Following several high-consequence incidents—including the 2005 BP Texas City refinery explosion; the 2010 Tesoro Refinery explosion in Anacortes, Washington; the 2012 Chevron Refinery fire in Richmond, California; and the 2013 Williams Olefins explosion in Geismar, Louisiana—President Obama issued Executive Order ("EO") 13650, Improving Chemical Facility Safety and Security

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[29] Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), Final Rule, 61 Fed. Reg. 31068 (June 20, 1996) (1996 RMP Rule). Additional history on the RMP is summarized here: EPA, RMP Rule Overview, https://www.epa.gov/rmp/risk-management-program-rmp-rule-overview (last updated Dec. 4, 2025).

[30] 40 C.F.R. §§ 68.150–68.180, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-68/subpart-G.

[31] 40 C.F.R. §§ 68.10, 68.12. Section 304 of the 1990 Amendments directed the Secretary of Labor to develop a chemical process safety standard under the OSHA, which became OSHA's PSM standard. The PSM standard focuses on preventing accidental releases of highly hazardous chemicals in the workplace, complementing EPA's RMP program, which protects the public and the environment under §112(r).

[32] Letter from AFL-CIO *et al.*, to President Obama (May 16, 2012), https://s3.amazonaws.com/s3.documentcloud.org/documents/357316/coalition-letter-obama-chemical-disaster.pdf.

(2013), directing agencies to coordinate, review their rules, and evaluate ways to enhance safety and security by modernizing policies, regulations, and standards.[33]

Following that EO and in response to those and other serious chemical incidents, EPA first issued a Request for Information seeking data, information, and comment on safety and potential revisions to the RMP.[34] The agency then, in consultation with OSHA, proposed, took public comment on, and finalized amendments to RMP in 2016 that were published in January 2017, with an effective date of March 14, 2017 and compliance dates in 2018, 2021, and 2022.[35] The 2017 Amendments, also known as the "Chemical Disaster Rule" (CDR), introduced (1) preventative provisions, including Safer Technology and Alternatives Analysis (STAA), third-party safety audits, employee safety training, root cause analysis (RCA) of incidents; (2) strengthened emergency response, including enhanced more frequent coordination with local responders, and emergency planning exercises; and (3) expanded public access to RMP information, including disclosure of safety information and a public meeting requirement following an incident.

Soon after finalizing the 2017 RMP Amendments and before the rule took effect, the EPA delayed the effective date repeatedly without public notice-and-comment. 82 Fed. Reg. 8499 (Jan. 26, 2017); 82 Fed. Reg. 13968 (Mar. 16, 2017). Then, following notice and comment and a public hearing on a delay proposal, EPA issued a final rule that delayed the effectiveness for an additional 20 months, until February 19, 2019, through its "Delay Rule," citing pending petitions for reconsideration under CAA section § 307(d)(7)(B).[36]

Environmental and community groups and eleven States petitioned for review and the United Steelworkers intervened in support of that petition. Former regulatory officials and the Institute for Policy Integrity filed amicus briefs in support of petitioners. The D.C. Circuit vacated the Delay Rule as an unlawful "mockery of the statute," enforcing the Act's text directing that EPA may not

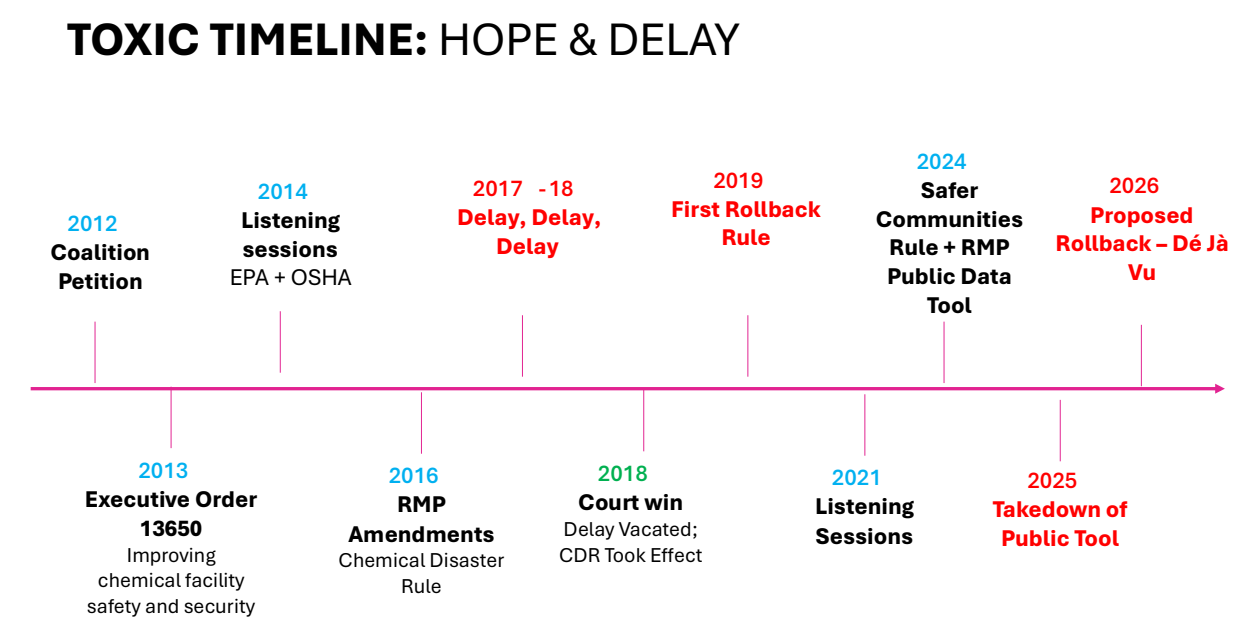
[33] E.O. 13650, in the docket at: EPA-HQ-OLEM-2025-0313-0028; EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Proposed Rule, 81 Fed. Reg. 13638, 13644, 13646 (Mar. 14, 2016) (discussing high-consequence incidents).
[34] EPA, Request for Information, 79 Fed. Reg. 44604 (July 31, 2014).
[35] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 82 Fed. Reg. 4042 (Jan. 13, 2017) (2017 RMP Amendments, often known as the "Chemical Disaster Rule" (CDR)).
[36] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date, 82 Fed. Reg. 27133 (June 14, 2017) (Delay Rule).

extend a rule's effective date based on reconsideration beyond the three-month statutory limit. *Air Alliance Houston*, 906 F.3d at 1064-65.

The court also recognized that section 112(r) "makes clear that Congress is seeking meaningful, prompt action by EPA to promote accident prevention." *Id.* at 1064. The court found that EPA did not "demonstrate, or even acknowledge, that EPA considered Section 7412(r)(7)'s statutory objectives, namely, to 'prevent accidental releases,' to 'minimize consequences of any such release,' to 'protect human health and the environment,' and to 'include procedures and measures for emergency response after an accidental release.'" *Id.* at 1064-65. The court also held EPA's Delay Rule to be arbitrary and capricious because EPA had failed to provide adequate justification for delaying "life-saving protections." *Id.* at 1065 ("EPA had found, and the record shows, that there was a need for improvements to protect worker and community safety, and to reduce facilities, injuries, life disruption, and other harm."). The court expedited issuance of the mandate at petitioners' request due to the safety impacts at issue from the delay of protections, and the 2017 Amendments took effect.[37]

While the court was considering the Delay Rule litigation, EPA issued a proposed rule on reconsideration to end, delay or weaken nearly all of the safety improvements contained in the CDR 2017 Amendments. 83 Fed. Reg. 24850 (May 30, 2018). Soon after the court issued the expedited mandate and before the main CDR compliance dates had passed, in December 2019, EPA promulgated a final Reconsideration Rule. 84 Fed. Reg. 69834 (Dec. 19, 2019) (2019 Recon Rule). That rule rescinded or significantly revised the most protective provisions of the CDR 2017 Amendments. Environmental and community petitioners challenged the 2019 Rollback Rule in court and petitioned for reconsideration.[38]

[37] Announcement of Effective Date, Final Rule, 83 Fed. Reg. 62268 (Dec. 3, 2018) (providing public notice that the rules were "in effect" following the court decision).
[38] AAH *et al.*, Recon Pet'n (2020), EPA-HQ-OEM-2015-0725-2098.



B. The 2024 Safer Communities by Chemical Accident Prevention (SCCAP) Rule

In spring 2021, EPA published notice that it would hold public listening sessions to "solicit comments and suggestions from stakeholders pertaining to the [agency's] review" of the RMP regulations and to inform "a regulatory proposal to revise the RMP regulations." 86 Fed. Reg. 28828 (May 28, 2021). EPA held virtual public listening sessions on June 16 and July 8, 2021, in coordination with OSHA, to solicit input on the adequacy of RMP.[39] During the June 16 and July 8, 2021, listening sessions, approximately 245 commenters participated.[40]

Following these sessions and consideration of comments received, EPA proposed the Safer Communities by Chemical Accident Prevention ("Safer Communities" or "SCCAP") Rule, amending RMP regulations. EPA held virtual public hearings on the proposed Safer Communities Rule in September 2022 with

[39] U.S. EPA, EPA Announces Public Listening Sessions on the Risk Management Plan Rule (May 26, 2021), https://www.epa.gov/newsreleases/epa-announces-public-listening-sessions-risk-management-plan-rule-0.

[40] 87 Fed. Reg. 53556, 53576 (Aug. 31, 2022). https://www.federalregister.gov/d/2022-18249/p-503; U.S. Envtl. Prot. Agency, June 16, 2021 Virtual RMP Listening Session Zoom Captioned Transcript (Aug. 31, 2022), EPA-HQ-OLEM-2022-0174-0012, https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0012; U.S. Envtl. Prot. Agency, July 8, 2021 Virtual RMP Listening Session Zoom Captioned Transcript (Aug. 31, 2022), EPA-HQ-OLEM-2022-0174-0019, https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0019.

124 verbal comments provided and 370 written comments received.[41] These comments included submissions from 101 unique organizations, individual community members, and mass mail campaigns comprising more than 57,000 letters and signatures.

On March 1, 2024, EPA announced the final SCCAP Rule.[42] EPA published the SCCAP Rule on March 11, 2024 (effective May 10, 2024), implementing a proactive prevention-focused approach that strengthens chemical accident prevention, employee participation, emergency preparedness, and public access to chemical hazard information.[43] This rule restored and expanded some safety provisions from the 2017 Amendments that EPA had previously rescinded, weakened, or delayed, and added new safety measures not included previously in the RMP rules.[44]

EPA determined revisions to the RMP regulations were necessary because serious accidental releases from RMP-regulated facilities continue to occur despite existing requirements.[45] EPA's SCCAP Rule and accompanying record material documented substantial evidence supporting its factual findings and determinations under section 112(r). *See, e.g.*, EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by

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[41] Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 87 Fed. Reg. 53556 (proposed Aug. 31, 2022), https://www.federalregister.gov/documents/2022/08/31/2022-18249/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act-safer, EPA-HQ-OLEM-2022-0174-0003; U.S. Envtl. Prot. Agency, SCCAP RMP Public Hearing Transcript (Oct. 21, 2022), EPA-HQ-OLEM-2022-0174-0157, https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0157; U.S. Envtl. Prot. Agency, SCCAP RMP Public Hearing Transcript (Oct. 21, 2022), EPA-HQ-OLEM-2022-0174-0158, https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0158; U.S. Envtl. Prot. Agency, SCCAP RMP Public Hearing Transcript (Oct. 26, 2022), EPA-HQ-OLEM-2022-0174-0160, https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0160.

[42] EPA Press Release (Mar. 1, 2024), https://www.epa.gov/newsreleases/epa-finalizes-stronger-safety-standards-protect-risk-communities-chemical-accidents; published at SCCAP Rule, 89 Fed. Reg. 17634 (Mar. 11, 2024).

[43] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 89 Fed. Reg. 17622 (Mar. 11, 2024) (SCCAP Rule); EPA Fact Sheet for Communities (Mar. 2024), https://www.epa.gov/rmp/fact-sheet-communities-safer-communities-chemical-accident-prevention-risk-management-program; EPA Fact Sheet for Facilities (Mar. 2024), https://www.epa.gov/rmp/fact-sheet-regulated-facilities-safer-communities-chemical-accident-prevention-risk-management.

[44] *See* 89 Fed. Reg. at 17630; EPA Fact Sheet for Facilities; EPA Fact Sheet for Communities.

[45] *See, e.g.*, EPA SCCAP, 89 Fed. Reg. 17634; EPA, Final SCCAP Rule Regulatory Impact Analysis and Cover Note at 19, EPA-HQ-OLEM-2022-0174-0587 (June 18, 2024) (SCCAP RIA), https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0587.

Chemical Accident Prevention, 89 Fed. Reg. 17822 at 17623-25, 17628-29, 17630-35 (Mar. 11, 2024).[46]

EPA concluded that the SCCAP Rule's targeted prevention, emergency response, and information availability provisions would yield net social benefits by preventing chemical incidents and catastrophes and the harm they cause to health and safety, by reducing deaths, injuries, evacuations and shelter-in-place events, property damage, and emergency response and cleanup costs, among other consequences. *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17624 ("EPA expects the final rule provisions to result in a reduced frequency and magnitude of damages from releases," both quantified and unquantified); SCCAP RIA at 12-13, 19. These provisions would "reduce the probability of a catastrophic release" and avoid related expenditures to address consequent harms. *Id.* at 12.

The RMP Coalition group petitioned EPA to "reconsider and rescind" the Safer Communities Rule.[47] In December 2024, EPA acknowledged and rejected each of the RMP Coalition's objections to the SCCAP Rule and denied the petition for reconsideration.[48]

C. The 2024 RMP Public Data Tool

Following the 1999 amendments that created special restrictions for OCA information, communities, workers, and health professionals have repeatedly called for public online access to non-OCA information contained in EPA's RMP database. Members of the public have also repeatedly sought and EPA has repeatedly provided this information as a whole, or in part, through the Freedom of Information Act. There are more than three requests for such information logged in

[46] See EPA SCCAP Rulemaking Docket, EPA-HQ-OLEM-2022-0174, incorporated by reference.
[47] RMP Coalition, Petition for Reconsideration and Request for Agency Stay Pending Reconsideration of Final Rule entitled Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, Docket No. EPA-HQ-OLEM-2022-0174, https://www.epa.gov/system/files/documents/2024-12/petition-for-reconsideration-and-request-for-stay-of-2024-rmp-final-rule.pdf (filed by National Association of Chemical Distributors, d/b/a Alliance for Chemical Distribution, the American Chemistry Council, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, and the Society of Chemical Manufacturers & Affiliates).
[48] EPA, Response to Petition for Reconsideration of the Safer Communities by Chemical Accident Prevention Rule (Dec. 30, 2024), Docket No. EPA-HQ-OLEM-2022-0174, https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0596.

2025 alone, and already logged in 2026.[49] From 2015 to August 2022 alone, members of the public requested the RMP information, including the full non-OCA database, and EPA released such information to the public under the Freedom of Information Act at least 242 times. SCCAP Proposed Rule, 87 Fed. Reg. 53602.

In 2022, EPA took public comment on whether to create online public access to the non-OCA RMP database. SCCAP Proposed Rule, 87 Fed. Reg. 53601-03. In March 2024, EPA launched a public information access or query tool that allowed people to access information about RMP facilities in their communities.[50] That tool was made available for public access at the website: https://cdxapps.epa.gov/olem-rmp-pds/. EPA also announced that it planned to update this tool to allow visualization of natural hazards related to climate change.

In 2024, EPA began testing and created a publicly available website for an RMP Natural Hazard Risk Assessment (NHRA) Tool that could assist RMP facilities and the public with assessing, planning for, and understanding certain threats related to natural hazards.[51] The website remains available, but EPA has not updated that site since December 2024 and has not released public guidance or fully launched that tool.

In January 2025, a set of industry trade groups sent a letter to Administrator Zeldin urging EPA to "immediately shut down and remove" the 2024 RMP Public Data Tool from EPA's website.[52]

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[49] *See, e.g.*, EPA FOIA Logs First Quarter 2026; Second Quarter 2026, Fourth Quarter 2025 https://www.epa.gov/system/files/documents/2026-04/2026-1st-quarter-foia-log.pdf; https://www.epa.gov/system/files/documents/2026-04/2026-2nd-quarter-foia-log.pdf; https://www.epa.gov/system/files/documents/2025-11/2025-4th-quarter-foia-log.pdf; *see also* RMP Database released at https://securefoia.epa.gov/app/ReadingRoom.aspx (found by searching for FOIA numbers: 2026-EPA-04048 Non-OCA RMP Database April 2026 (April 24, 2026); 2026-EPA-02057 Non-OCA RMP Database January 2026 (Jan. 12, 2026); 2026-EPA-01454 Non-OCA RMP Database December 2025 (Dec. 23, 2025); 2026-EPA-00702 Non-OCA RMP Database November 2025 (Nov. 12, 2025); 2026-EPA-00006 Non-OCA RMP Database October 2025 (Oct. 15, 2025); 2025-EPA-08029 Non-OCA RMP Database August 2025 (Aug. 19, 2025).

[50] EPA Press Release (Mar. 1, 2024), https://www.epa.gov/newsreleases/epa-finalizes-stronger-safety-standards-protect-risk-communities-chemical-accidents

[51] EPA, RMP Natural Hazard Risk Assessment Tool, https://cdxappstest.epacdx.net/olem-rmp-pds/nhra/ (last updated Dec. 5, 2024); EPA, Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule, January 2026 redline version of August 2025 draft, EPA-HQ-OLEM-2025-0313-0071 (discussing the RMP NHRA Tool, methodology, and indicators).

[52] Letter from the Am. Chemistry Council (ACC) and RMP Coalition to EPA Administrator Zeldin (Jan. 30, 2025), https://www.americanchemistry.com/content/download/18315/file/ACC-RMP-Coalition-Letter-to-Lee-Zeldin.pdf.

On April 18, 2025, EPA removed online public access to the RMP Public Data Tool. [53] EPA provided no public notice or announcement of its removal of the tool. A news outlet first reported the tool's online removal on April 21, 2025.[54] Soon after, labor, environmental, scientist, and safety groups that are part of the Coalition to Prevent Chemical Disasters sent a letter to EPA calling for the tool's reinstatement.[55]

As of April 2025, and through the present date, the link where this was formerly available now redirects to a different website that provides minimal information on the EPA RMP Federal Reading Rooms, a link labeled "Vulnerable Zone Indicator System," the Freedom of Information Act, and a statement that says:

> Page Being Updated
>
> The PDS tool is offline while the Agency evaluates and makes enhancements to reflect changes to the information of the Risk Management Program.[56]

D. The 2026 RMP Proposed Rule

On January 30, 2025, industry representatives sent a letter to EPA Administrator Lee Zeldin asking EPA to "correct" and remove core regulatory requirements in the SCCAP Rule.[57]

On March 12, 2025, Administrator Lee Zeldin announced that EPA would reconsider the Safer Communities Final Rule to "Boost Safety, Competitiveness of American Businesses" asserting that the SCCAP Rule raised national security

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[53] https://cdxapps.epa.gov/olem-rmp-pds/ (tool not available as of the date of comment filing).
[54] K. Schwenk, The Government's Chemical Disaster Tracking Tool Just Went Dark, The Lever (Apr. 21, 2025), https://www.levernews.com/the-governments-chemical-disaster-tracking-tool-just-went-dark/.
[55] Letter to OLEM from BlueGreen Alliance, Center for Envtl. Health, Coming Clean, Earthjustice, Envtl. Justice & Health Alliance for Chemical Policy Reform, Int'l Union UAW, League of Conservation Voters, NJ Work Environment Council, Texas Envtl. Justice Advocacy Services (t.e.j.a.s.), Union of Concerned Scientists, United Steelworkers Int'l Union, Paul Orum (Apr. 24, 2025), https://preventchemicaldisasters.org/news/press-releases/coalition-calls-for-reinstatement-of-public-data-tool.
[56] https://cdxapps.epa.gov/olem-rmp-pds/ page redirects to: EPA, How to Access Risk Management Plan Information, https://www.epa.gov/rmp/how-access-risk-management-plan-information (last updated Apr. 24, 2025).
[57] Letter from the Am. Chemistry Council (ACC) and RMP Coalition to EPA Administrator Zeldin (Jan. 30, 2025), https://www.americanchemistry.com/content/download/18315/file/ACC-RMP-Coalition-Letter-to-Lee-Zeldin.pdf.

concerns and reduced competitiveness.[58] That announcement came as part of a series of EPA "day of deregulation" announcements.[59]

EPA sent the proposed rule to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA) in fall 2025. OMB released the proposed rule back to EPA in early 2026. The proposed rule and supporting documentation (including the Technical Background Document (TBD), and the draft Regulatory Impact Analysis (RIA)) changed while undergoing OMB/OIRA review.[60]

On February 24, 2026, EPA issued the proposed rule at issue here.[61] EPA held no listening sessions and took no public comment before issuing a proposed rule. EPA provided only 15 days' public notice of the public hearing. Unlike prior sessions where EPA provided part of the public hearing time to accommodate different time zones, EPA announced that it would hold one hearing only during the Eastern workday from 12 to 5pm.

EPA held a public hearing on March 10, 2026, in which the vast majority of commenters called for EPA to implement, not weaken, the existing rules, and to fully and immediately restore the RMP Public Data Tool online.[62]

After some commenters requested a second public hearing and a comment extension, EPA granted a comment extension through May 11, 2026.[63] EPA has not responded in writing to the request for a second public hearing.

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[58] EPA Announces Reconsideration of the Risk Management Plan to Boost Safety, Competitiveness of American Businesses (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-announces-reconsideration-risk-management-plan-boost-safety-competitiveness (citing as one of the 31 announced actions "Reconsideration of Biden-Harris Administration Risk Management Program rule . . . (Risk Management Program Rule)").

[59] EPA Launches Biggest Deregulatory Action in U.S. History: Administrator Zeldin Announces 31 Historic Actions to Power the Great American Comeback (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.

[60] OMB Proposed rule redline: https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0070; OMB RIA redline: https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0073; OMB TBD redline: https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0071.

[61] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention, Proposed Rule, 91 Fed. Reg. 8970 (Feb. 24, 2026).

[62] See the Recording and Transcript of the March 10, 2026 public hearing, in the record at: https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0097 https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0313-0096.

[63] Letter from members of the Coalition to Prevent Chemical Disasters (Feb. 24, 2026), https://www.regulations.gov/comment/EPA-HQ-OLEM-2025-0313-0076.

III. EPA SHOULD FULLY IMPLEMENT NOT WEAKEN THE EXISTING RMP RULES AND 2024 RMP PUBLIC DATA TOOL

A. The ongoing problem of industrial chemical hazards and disasters shows a strong need for full implementation not weakening of the existing RMP rules.

1. Millions of people in harm's way

Millions of people are in harm's way nationwide from chemical emergencies and disasters because they live, work, or go to school near one or more RMP industrial facilities using, storing, or managing billions of pounds of chemicals regulated under the RMP rules.[64] These include extremely hazardous substances like hydrofluoric acid (HF), hydrogen sulfide, ethylene oxide, vinyl chloride, formaldehyde, chlorine, and more, that, if released, can cause death, injury, or serious harm to human health and the environment. 42 U.S.C. § 7412(r)(3); 40 C.F.R. § 68.130.

Over half of the American population – 177 million people – lives daily in a "worst-case scenario zone" for an industrial chemical catastrophe from one or more of the RMP chemicals.[65]

RMP facilities and chemical incidents are not equally distributed across local populations in the United States. RMP facilities are located in nearly every state and territory. But some states, counties, and cities have particularly high numbers of RMP facilities, and some have particularly high numbers of petroleum and chemical facilities along with higher incident numbers.[66] EPA data show:

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[64] *See* List of Active RMP Facilities (Apr. 2026), from the EPA April 2026 RMP (Non-OCA) Database as analyzed by Earthjustice (included in Appendix); *see also* t.e.j.a.s. et al. Comments, EPA-HQ-OLEM-2022-0174-0460 (Oc. 31, 2022).

[65] See 2017 RIA at 94, EPA-HQ-OEM-2015-0725-0734; see US Census Bureau QuickFacts (U.S. population as of Apr. 1, 2020, was 331,449,281), https://www.census.gov/quickfacts/fact/table/US/PST045219. EPA has not made the most current total worst-case scenario population exposure information available in this rulemaking.

[66] List of Active RMP Facilities (Apr. 2026); Active Facilities and Incidents by State and Territory (as of Apr. 2026 RMP Database); Active Facilities and Reported Harm Incidents by State and Territory (as of Apr. 2026 RMP Database); Active Facilities and Incidents by County (Apr. 2026 RMP Database); Active Facilities and Reported Harm Incidents by County (Apr. 2026 RMP Database); *see also* Comments of t.e.j.a.s. et al. at 20-22, EPA-HQ-OLEM-2022-0174-0460.

- Twenty percent of all RMP facilities are located in 70 counties – approximately 2.2% of all U.S. counties – with about 212 in Harris County, Texas, alone.[67]

- The states with the largest numbers of incidents across 2004-2025 are: Texas (624), Louisiana (320), California (249), Ohio (178), Iowa (176), and Illinois (171).[68]

- There are only 3 states that have had fewer than 10 chemical incidents during that same time period (Rhode Island, Connecticut, and New Hampshire).

- These comments attach example community spotlight maps showing RMP facilities near schools, day care centers, and other community locations to illustrate the threats and impacts to communities around the country, including for: Institute, WV; Houston, TX; New Castle, DE; Salt Lake City, UT; and Louisiana Parishes.[69]

Workers, emergency responders, and people living near the fenceline and within the worst-case scenario zone of RMP facilities face particularly serious immediate threats and harm from RMP chemical incidents and disasters. The most recent data provided by EPA on worst case scenario zones shows that 90% of these radii are under 6 miles, and 5% are 10 miles or more.[70] Geographic areas with higher numbers of RMP facilities face a greater regular threat of incidents and tend to have higher populations of low-income people and communities facing disproportionate burdens of an array of environmental threats.[71]

2. Chemical emergencies and disasters like clockwork every other day

Chemical incidents involving RMP chemicals have been reported to EPA on average *every other day* since 2004. Table 1 shows all chemical incidents reported to EPA during the most recent ten-year period for which facilities should have

[67] Apr. 2026 RMP Database; *see also* Comments of t.e.j.a.s. et al. at 20, EPA-HQ-OLEM-2022-0174-0460 (Oct 31, 2022).
[68] *See* Spreadsheet – List of Counties Highest RMP Incidents (included in the Appendix).
[69] *See* Community Spotlight Maps for: Institute, Houston, New Castle, Salt Lake City (SLC), Louisiana parishes (included in the Appendix).
[70] SCCAP Proposed Rule, 87 Fed. Reg. at 53601.
[71] SCCAP Rule, 89 Fed. Reg. at 17632 (finding "[t]he risk of being impacted by an accidental release is even more apparent in communities where multiple RMP facilities are in close proximity to residential areas"; "the more facilities near a community, the higher the likelihood that the community will be faced with such an event or multiple events") (citing 2022 Tech. Background Doc.); *id.* at 17685.

reported incidents in the most recent RMP update. This also shows the count across the overall 2004-25 timeframe in which facilities have been operating pursuant to the pre-existing rules. Incidents during the most recent calendar years are under-reported because of the 5-year RMP update cycle. *See*, *e.g.*, SCCAP Proposed Rule, 87 Fed. Reg. 53592; SCCAP Rule, 89 Fed. Reg. at 17633 & nn. 45, 46.

Table 1. RMP Chemical Incidents Reported to EPA

Metric	10 Years	Total (2004-2025)
Incident Count	1829	4018
Date Range	2011-01-01 to 2020-12-31	2004-01-01 to 2025-12-31
Average # of Incidents Per Year	182	182
Avg Days per Incident	2	2

Source: EPA April 2026 RMP Non-OCA Database, as analyzed by Earthjustice, showing the last 10 years that have had a full RMP reporting cycle.[72]

[72] That database includes chemical release incidents and harm reported to EPA through April 15, 2026, as provided in the most current RMP database "2026-EPA-04048 Non-OCA RMP Database April 2026," available at the OLEM FOIA reading room link, https://securefoia.epa.gov/app/ReadingRoom.aspx , and analyzed and summarized by Robyn Winz, Senior Research and Policy Analyst, Earthjustice; *see* Table 1 Incidents Spreadsheet in the Appendix accompanying these comments. The first column shows data for the most recent 10-year period for which full reporting should have occurred (i.e., 2011-2020, as shown).

Table 2. RMP Chemical Incidents with Harm Reported to EPA

Metric	10 Years	Total (2004-2025)
Incident Count	1265	2835
Date Range	2011-01-01 to 2020-12-30	2004-01-01 to 2025-12-31
Average # of Incidents Per Year	126	128

Source: EPA April 2026 RMP Non-OCA Database, as analyzed by Earthjustice, showing the last 10 years that have had a full RMP reporting cycle.[73]

EPA data from the last 10 years with a full reporting cycle show there were 182 reported incidents per year on average, including at least 126 per year, on average, with reported harm. See Tables 1, 2 above. These numbers are comparable – indeed nearly identical – to the average (182 and 128 per year) from the overall timeframe since full implementation of the 1996 rules (2004-2025). They are also close to the number EPA cites as a benchmark (147) in 2014. 91 Fed. Reg. 8976. As discussed later, the record does not support any finding that the annual number of incidents in 2023 was 81.[74]

Certain industry sectors with RMP facilities like the petroleum and chemical manufacturing sectors (NAICS codes 324 and 325), have long had higher incident numbers and rates than other sectors.[75]

EPA contends there has been a decline in raw incidents in recent years. It is unclear how EPA can reach that conclusion based on the data it reviewed, as further discussed later in these comments. Notably, EPA is comparing reporting years and decades when fewer numbers of high-risk facilities submitted their risk management plan updates, which necessarily skews the numbers. The entire

[73] *See* Table 2 Incidents Spreadsheet in the Appendix accompanying these comments. The first column shows data for the most recent 10-year period for which full reporting should have occurred.
[74] *See* Table 3 (showing that even though all incidents have likely not yet been reported for the year 2023, EPA's own data show at least 123 reported incidents occurred that year).
[75] EPA, Regulatory Impact Analysis: Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention Proposed Rule, at 67-69 Exs. 6-4, 6-5, EPA-HQ-OLEM-2025-0313-0058 (Jan. 2026) (2026 RIA); *see, e.g.*, 2024 SCCAP Rule, 89 Fed. Reg. 17633.

premise of EPA's Analysis of RMP Reportable Accident Data, found at EPA-HQ-OLEM-2025-0313-0060_content, is incorrect. It is statistically inaccurate for EPA to compare 2023 accident data to 2014, because only 15 refineries had submitted RMPs since 2023 (as of January 2026 database review). Data show that 25 active refineries submitted in 2023 or earlier, meaning reportable incidents in 2021, 2022, and 2023 could have occurred but were not reported as of the time of the database used for EPA's analysis, because RMP updates had not been filed yet.

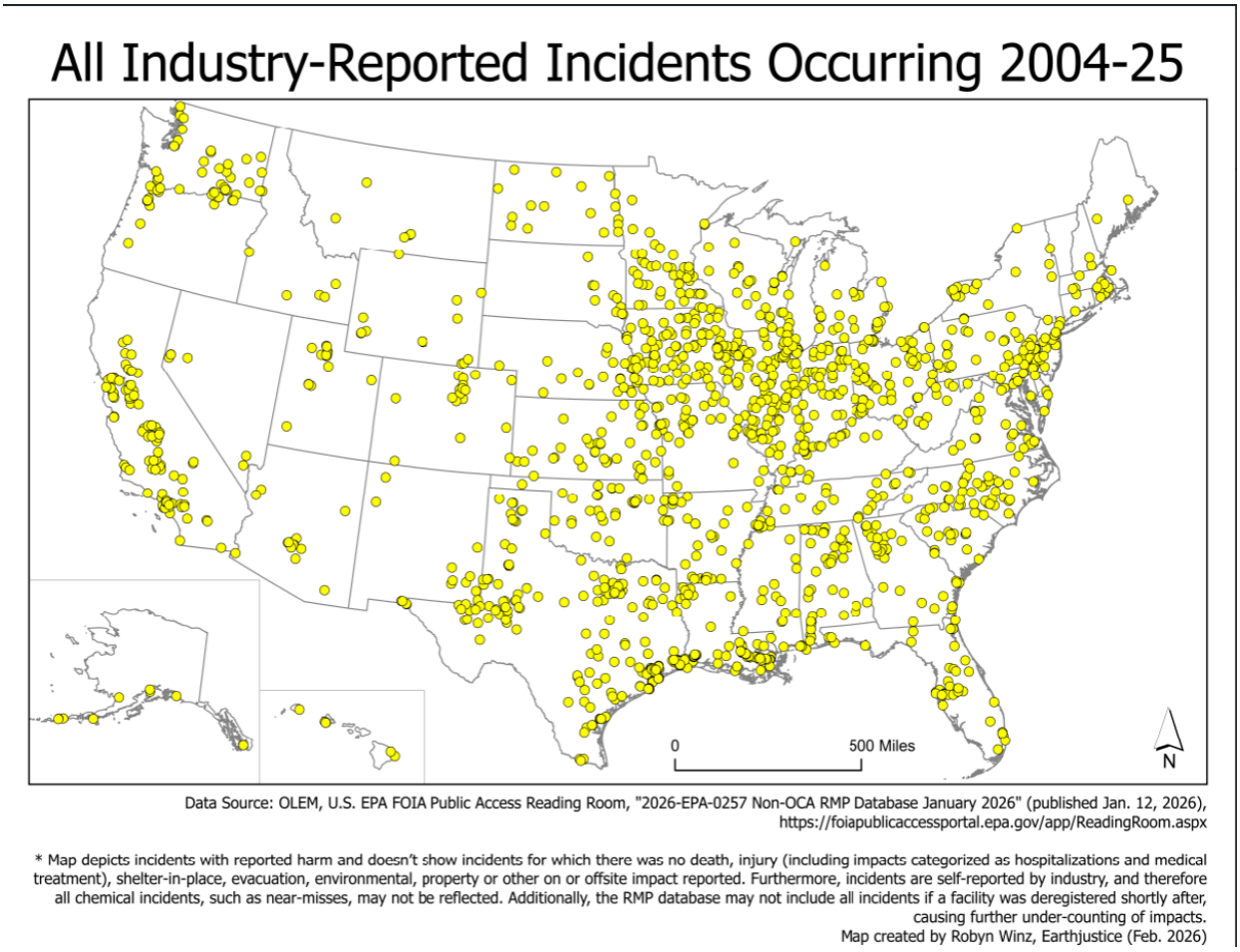
Raw incident numbers alone are a blunt tool to evaluate the danger as a wide range of factors can influence them and the harm they can cause – e.g., facility numbers, operational and production status and trends, levels of staffing, employee training, unionization, the presence of technology and other measures in place at a facility, natural hazard incidence, impact location and preparation, how close community members are, government inspection and enforcement activity. As EPA admits in the 2026 RIA, uncertainty and change from RMP regulatory frameworks themselves across time periods can affect these rates, among other factors.[76] EPA's analysis and presentation of the raw incident numbers do not include any analysis of other factors that could have affected incident trends, or that might even show whether there has been a true decline – e.g., EPA does not provide the facility operating hours or production levels to be able to compare incident rates more effectively across years.

Still, the best available current data demonstrate an overall relatively constant level of reported RMP incidents of at least 110 or more per year (even in the most recent years for which data are incomplete) and serious harm to health, safety, and property.[77] Thus, even assuming a decline in incidents, across any selected time period in recent years, every incident matters. And the overall raw incident and harm numbers over time remain at serious levels that could not lawfully or rationally be ignored.

As maps of incidents reported to EPA show, the problem of chemical emergencies and disasters is affecting communities around the country.

[76] EPA-HQ-OLEM-2025-0313-0058.
[77] See Table 3; *see also* Table 1 Spreadsheet and Table 2 Spreadsheet.

Map 1: Industry-Reported Incidents 2004-25

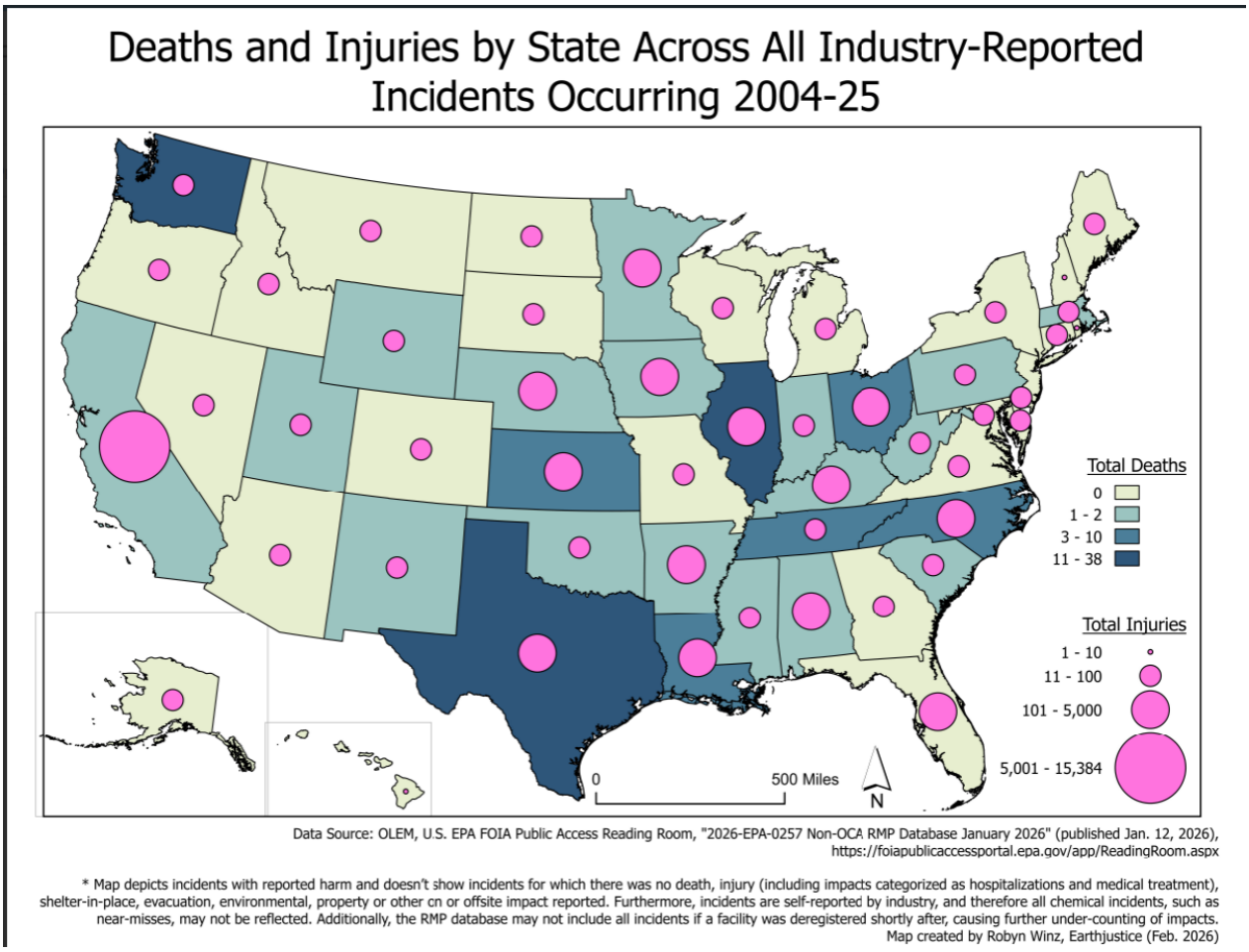


Data Source: OLEM, U.S. EPA FOIA Public Access Reading Room, "2026-EPA-0257 Non-OCA RMP Database January 2026" (published Jan. 12, 2026), https://foiapublicaccessportal.epa.gov/app/ReadingRoom.aspx

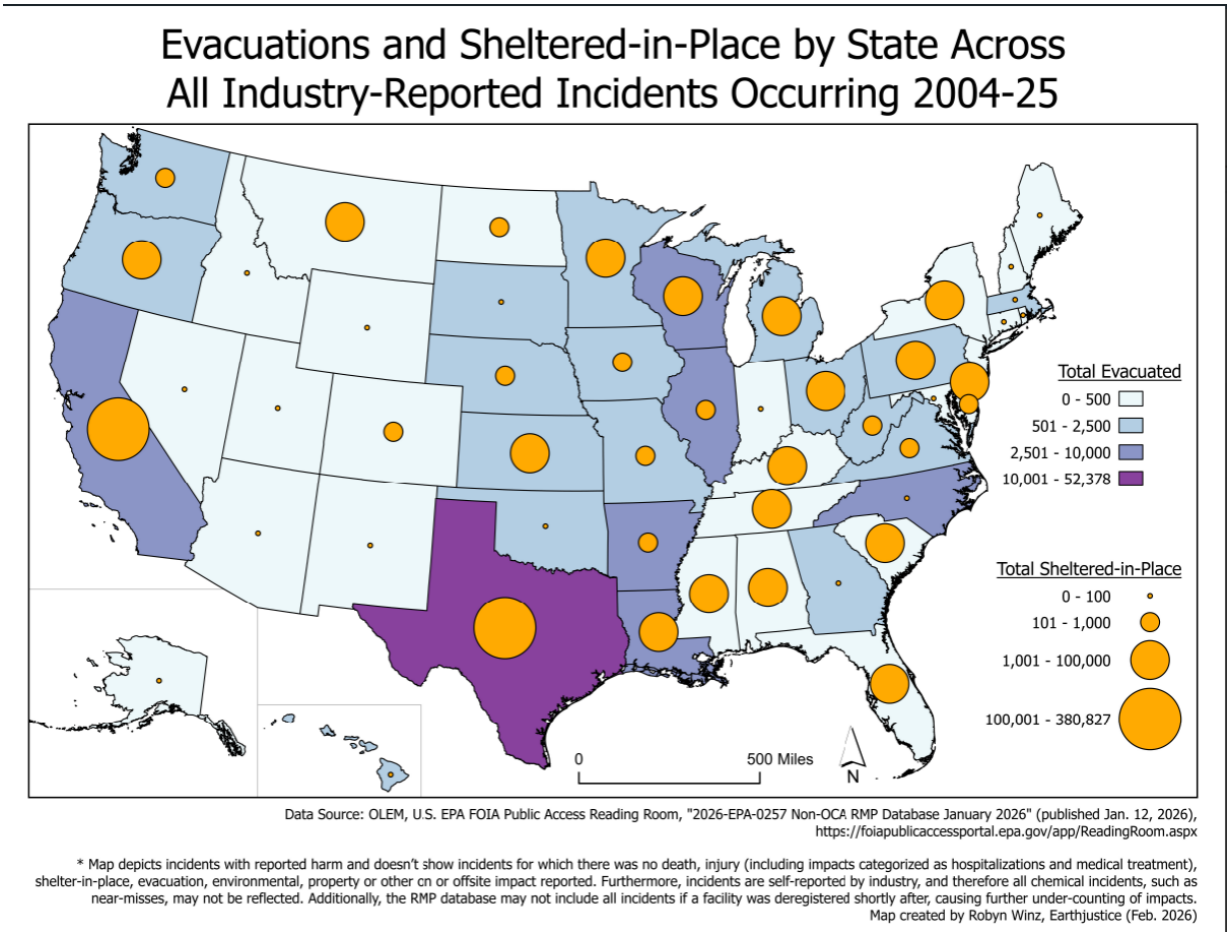
* Map depicts incidents with reported harm and doesn't show incidents for which there was no death, injury (including impacts categorized as hospitalizations and medical treatment), shelter-in-place, evacuation, environmental, property or other on or offsite impact reported. Furthermore, incidents are self-reported by industry, and therefore all chemical incidents, such as near-misses, may not be reflected. Additionally, the RMP database may not include all incidents if a facility was deregistered shortly after, causing further under-counting of impacts.

Map created by Robyn Winz, Earthjustice (Feb. 2026)

Map 2: Deaths and Injuries by State 2004-25



Map 3: Evacuations and Sheltered-In-Place by State 2004-25



3. <u>EPA's incident analysis underestimates and misses chemical incidents and their consequences</u>

EPA purports to use its Accident History spreadsheet to justify its proposed deregulation. But that Accident History spreadsheet shows the annual average from 2004-2008 was actually 183.6 – comparable to the average from the last 10 years shown here – and that the average from 2014-18 was 128.2, again, comparable to the last 10 years of reported harm incidents shown here.[78] Notably, and in violation of public notice-and-comment, neither EPA's Technical Support Document nor its Accident History Document explain the methodology EPA used to analyze these data, or why EPA did not use the most currently available database for the incident analysis. EPA assessed incidents based on two outdated

[78] EPA, Accident History Document: Common Sense Approach to Chemical Accident Prevention at 19 Exh. 3-11: Onsite Impacts by Year: 2004-2023, EPA-HQ-OLEM-2025-0313-0060.

versions of the database from 2020 and 2023, without adding incidents missing from prior years into its analysis.[79] EPA provides no explanation for why it cut off its review of incidents based on a 2023 RMP database. The proposed rule was published in February 2026, but EPA cut off its review of reported data as of 2023.

A comparison of the April 2026 RMP database with EPA's Accident History Document shows that its analysis missed some incidents, and EPA appears to be ignoring at least 408 additional later-reported RMP incidents that occurred from 2014 through 2023 that were not included in the database EPA is using here. *See* Table 3, below. Exhibit 3-13a and 3-17a in EPA's Accident History Document were used for this comparison.[80] Because EPA did not provide complete dates for each incident in the list contained in Exhibit 3-17a, or a methodology for how to replicate that list, it was not possible to compare the list exactly.

Table 3. Later Reported RMP Incidents 2014-23 Missing from EPA's Analysis

Year	EPA "Accident History Document" Exhibit 3-13a	April 26 RMP Database	**Incidents missing from EPA analysis (later-reported)**	**% Undercount**
2014	147	204	**57**	**27.9%**
2015	149	204	**55**	**26.9%**
2016	129	158	**29**	**18.3%**
2017	111	152	**41**	**26.9%**
2018	105	152	**47**	**30.9%**
2019	119	160	**41**	**25.6%**
2020	85	110	**25**	**22.7%**
2021	86	120	**34**	**28.3%**
2022	83	120	**37**	**30.8%**
2023	81	123	**42**	**34.1%**
Total	**1095**	**1503**	**408**	**37.2%**

[79] 2026 RIA at 64-65 (stating that EPA compared data from the 2020 and 2023 databases, showing that it appears not to have added incident data reported from the 2023 database into the prior year analyses).
[80] EPA-HQ-OLEM-2025-0313-0060 (Exhibit 3-13a: Number of RMP-reportable Accidents by Sector, 2014-23; Exhibit 3-17a: Monetized Accident Costs by Accident, 2014-2023 (listing incidents only by year and not by date)).

Source: EPA April 2026 RMP Non-OCA Database, as analyzed by Earthjustice.[81]

Further, EPA did not provide any information showing how it took steps to deduplicate data, analyze data, or the raw data lists of facilities, incidents, or any of the other underlying data it considered from the 2020 and 2023 databases, other than just its conclusory final spreadsheets in the Accident History Document.[82] Those, alone, are insufficient for Commenters, much less a lay-person, to be able to understand or evaluate the actual data EPA is using to justify its proposed rule.

EPA's own database also does not include hundreds of incidents that appear to have occurred at an RMP facility but have not yet been reported. For example, news reports since 2021, compiled for RMP facilities as part of the Coalition to Prevent Chemical Incidents' Incident Tracker, have identified at least 296 incidents at RMP facilities that did not appear in EPA's database as of January 2026.[83]

4. Chemical incidents cause and threaten serious health, safety, and other harm

Chemical releases have caused severe and serious harm that RMP facilities reported to EPA from 2004-2025:

- 113 people died
- 20,150 people were injured, hospitalized, or sought medical treatment
- 764,019 people had to evacuate or shelter in place

[81] This analysis compared the April 2026 RMP Non-OCA Database incidents (Table 1 Incidents) in the years listed in the Table with EPA's Exhibit 3-17a in the Accident History Document for the same years, EPA-HQ-OLEM-2025-0313-0060. Because EPA did not provide the specific dates of incidents it used to calculate the totals in its accident history tables, it is not possible to isolate which incidents are missing from the slightly larger list that includes some facilities with multiple incidents in the same year. Based on our best attempt to compare these data, the list of 408 missing incidents appears to be part of this larger list: Table 3 Spreadsheet – Reported RMP Incidents 2014-23 by Facility & Year for Comparison to EPA Doc, included in the Appendix accompanying these comments. EPA should provide full information and the list of incidents used to create its table, to allow for meaningful public review and for a direct comparison and analysis of the data it used and to confirm the full list of later reported incidents from those same years.

[82] EPA Database Reference, EPA-HQ-OLEM-2025-0313-0069; Accident History Document, EPA-HQ-OLEM-2025-0313-0060.

[83] See Spreadsheet: News Reported RMP Incidents Not In RMP Database (included in Appendix).

- $6.74 billion in property damage occurred, along with unquantified environmental harm.[84]

The incidents during the last 10 years of available data caused some of the greatest levels of reported harm and reflect some of the greatest threats of catastrophe – such as large population evacuations, and near-misses for HF releases.[85]

The data also show health risks and impacts that the RMP incident reports do not currently capture or quantify but that are part of the harm to people near RMP facilities and cannot be ignored.[86] For communities that face more than one incident, the impacts from incidents can increase over time. A short summary of some of the recent scientific research is included in the Appendix to these comments, showing examples of scientific studies that EPA must and so far has failed to evaluate here.[87]

These can include various health impacts from toxic exposure in the aftermath of an incident, persistent contaminants from chemical releases that depose into the local environment, water, and soil, as well as non-cancer and cancer impacts from exposures to an individual or repeated incidents over time.[88] Some research has documented immediate and longer-term health threats to people living, working, and going to school near RMP facilities and during incidents – including elevated cancer risk from polyaromatic hydrocarbon contaminants and

[84] See Table 2, *supra* and Table 2 Spreadsheet – RMP Incidents with Harm Reported to EPA 2004-25.
[85] *See, e.g.*, SCCAP Rule, 89 Fed. Reg. 17634 (citing TPC explosion and fire in 2019) as "the largest number of persons ever evacuated (50,000 people) as the result of an RMP-reportable incident, as well as $153 million in offsite property damage"); *id.* at 17651 (discussing CSB reports of Husky and PES fires); *see also* Table 2 Spreadsheet – RMP Incidents with Harm Reported to EPA 2004-25.
[86] *See, e.g.*, SCCAP RIA at 12, 86 ("A benefit of the final rule in reducing the likelihood of an accident will be reduced long-term health risks from exposure to toxic chemicals."); Comments of t.e.j.a.s. et al. at 14-15, 21-22, 31 (Oct. 31, 2022), EPA-HQ-OLEM-2022-0174-0460 (citing sources); Air Alliance Houston et al., Comments at 14-17 (Aug. 23, 2018), EPA-HQ-OEM-2015-0725-1969.
[87] List of Recent Research Studies on Health Impacts Related to Chemical Incidents (March 2026)
[88] *See, e.g.*, S. Niu et al., Identifying long-term health risks associated with chemical incidents, J. Hazardous Materials 478 (2024), https://www.sciencedirect.com/science/article/abs/pii/S0304389424020119.

other chemical releases in Houston, TX following Hurricane Harvey,[89] and elevated benzene levels from the ITC Terminals Fire in Deer Park, TX.[90]

The impacts can include persistent, often unmeasured health threats even after the immediate emergency has ended. As one researcher found, analysis of air monitoring data before, during, and after an RMP facility fire showed that: "with regard to short-term air pollution exposure, the greatest risks for communities may have occurred after the more visible, elevated smoke plume dissipated, demonstrating the potential for invisible threats to persist in communities near the fenceline or gates of facilities, even after industrial fires are extinguished."[91]

5. Children's Health and Early Exposure Vulnerability

Children, including infants, in communities with RMP facilities face both particular vulnerability and greater exposure to toxic chemicals because they are growing and developing.[92] Scientific research has also shown particular susceptibility and impact from toxic chemical exposure can occur during

[89] Berberian et al 2024: Climate Justice Implications of Natech Disasters: Excess Contaminant Releases during Hurricanes on the Texas Gulf Coast (documented 2-3 times more releases during hurricane air events following Hurricanes Rita, Ike, and Harvey, predominantly from chemical manufacturing and refineries), https://pmc.ncbi.nlm.nih.gov/articles/PMC11325638/; *see also* Sansom et al 2021: Spatial Distribution of Polycyclic Aromatic Hydrocarbon Contaminants after Hurricane Harvey in a Houston Neighborhood (documenting elevated cancer risk from soil contamination in Manchester Houston neighborhood following Hurricane Harvey), https://pmc.ncbi.nlm.nih.gov/articles/PMC8009646/.

[90] Goldman et al 2022: Assessment of Air Pollution Impacts and Monitoring Data Limitations of a Spring 2019 Chemical Facility Fire, https://www.liebertpub.com/doi/pdf/10.1089/env.2021.0030 (studied air monitoring data and found benzene levels exceeded the Texas screening level for short-term exposure and greatly exceeded the California shelter-in-place level, with elevated levels recorded in the community including near an elementary school and church).

[91] Goldman et al. (2022), *supra*, https://www.liebertpub.com/doi/pdf/10.1089/env.2021.0030.

[92] *See, e.g.*, Etzel RA & Landrigan, ch. 2: Children's Exquisite Vulnerability to Environmental Exposures; Etzel RA & Balk SJ, ch. 3: The Chemical Environment and Children's Health, in Textbook of Children's Environmental Health, Second Edition (2024); UCSF, Pediatric Environmental Health Toolkit, https://peht.ucsf.edu/concept_detail.php?topic=concept1 (last viewed May 2, 2026); ATSDR Principles of Pediatric Environmental Health (Feb. 2012), https://static1.squarespace.com/static/58ed20e22994cac6dfee01f8/t/60b773c82bd961458e8ddfc9/1622635466158/PED+Enviro+Health.pdf; https://www.niehs.nih.gov/health/topics/population/children (summarizing research)

pregnancy, to the developing fetus.[93] This is in part because of the long-lasting health effects that can occur from even short-term exposure to hazardous chemicals during a period of days, weeks or months.[94]

Tables 4-6: Schools and Other Community Locations

One in three schoolchildren in the United States go to school in an area vulnerable to RMP chemical threats.[95] The most current data comparing school and other locations (other than homes) where families and children spend large amounts of time show that more than 80% of public schools and hospitals and more than 86% of childcare centers are within 10 miles of at least one RMP facility.[96] Even when looking only at the highest hazard facilities (i.e., Program 3), more than half of public schools, hospitals, and childcare facilities are within 6 miles. Communities near facilities with reported incidents have faced documented – not merely theoretical – threats and harm. Nearly 28% of public schools and 33% of childcare centers nationally are within 10 miles of an RMP facility that has already had an incident that released hazardous chemicals.

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[93] *See, e.g.*, ACOG Comm. Op. 832, *Reducing Prenatal Exposure to Toxic Environmental Agents* (July 2021), Reducing Prenatal Exposure to Toxic Environmental Agents; EPA, Children's Health: Children Are Not Little Adults (last updated Mar. 10, 2026) available at https://www.epa.gov/children/children-are-not-little-adults ("the timing of exposure to chemicals or other insults is critical in determining the consequences to children's health" and indeed, "the same dose of a chemical during different periods of development can have very different consequences"); *see also, e.g.*, Nat'l Research Council, NASEM, Pesticides in the Diets of Infants and Children at 3 (1993) ("A fundamental maxim of pediatric medicine is that children are not 'little adults.'").

[94] *See, e.g.*, N. Shad et al., Maternal exposure to volatile organic compounds and the risk of congenital anomalies: A systematic review and meta-analysis, Ecotoxicology & Envtl. Safety, Vol. 309, 119656 (Jan. 1, 2026), https://www.sciencedirect.com/science/article/pii/S0147651325020020?via%3Dihub#sec0075; *see also* S. Esposito et al., How air pollution fuels respiratory infections in children: current insights, Frontiers in Pub. Health (Apr. 28, 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12070440/pdf/fpubh-13-1567206.pdf ("Air pollution is a major risk factor for respiratory infections in children, both prenatal and postnatal exposure can have significant negative impact," including frequent hospitalization and early death).

[95] Ctr. for Eff. Gov't, Kids in Danger Zones Report (2014) (https://www.foreffectivegov.org/sites/default/files/kids-in-danger-zones-report.pdf.

[96] Children and Community Analysis – Proximity of Sensitive "Public Receptors" to RMP Facilities (2026), provided by Earthjustice, based on EPA Jan. 2026 non-OCA RMP database (included in the Appendix). This analysis is based on the following publicly available data sources: NCES EDGE, NCES PSS, CMS, Esri/USGS, HHS Archive.

Table 4. Community Receptors (n) Near Active RMP Facilities (11,486)

Receptor	National Total	Within 1 Mile		Within 3 Miles		Within 6 Miles		Within 10 Miles	
Public Schools	102,178	9,073	8.9	40,680	39.8	66,648	65.2	82,478	80.7
Hospitals	7,966	838	10.5	3,728	46.8	5,659	71.0	6,568	82.5
Childcare Centers	132,217	11,273	8.5	55,812	42.2	93,914	71.0	114,327	86.5
Total	325,863	29,503	9.1%	135,915	41.7%	225,411	69.2%	275,177	84.4%

Source: Children and Community Analysis, based on EPA RMP Non-OCA Database (Jan. 2026).

Across all active RMP facilities, the analysis finds that more than **80% of public schools, 87% of private schools, 82% of hospitals, 86% of parks, and 86% of childcare centers** are located within 10 miles of at least one RMP facility. Even at the conservative 1-mile radius, approximately 9,100 public schools, 1,700 private schools, 840 hospitals, 6,700 parks, and 11,300 childcare centers fall within the immediate hazard zone of an RMP facility.

Table 5. Community Receptors (n) Near OSHA PSM (Program 3 Proxy) RMP Facilities (Highest-Hazard Sites = 7331)

Receptor	National Total	Within 1 Mile		Within 3 Miles		Within 6 Miles		Within 10 Miles	
		n	%	n	%	n	%	n	%
Public Schools	102,178	6,327	6.2	33,805	33.1	59,386	58.1	76,535	74.9
Private Schools	22,345	1,247	5.6	7,577	33.9	14,446	64.7	18,639	83.4
Hospitals	7,966	573	7.2	3,026	38.0	5,069	63.6	6,066	76.2
Parks	61,157	5,483	9.0	23,849	39.0	40,526	66.3	50,395	82.4

Childcare Centers	132,217	8,699	6.6	48,198	36.5	86,608	65.5	109,442	82.8
Total	325,863	22,329	6.9%	116,455	35.7 %	206,035	63.5 %	261,077	80.1 %

Source: Children and Community Analysis, based on EPA RMP Non-OCA Database (Jan. 2026).

Restricting the analysis to the highest-hazard facilities — those subject to OSHA PSM requirements — still yields substantial exposure. More than **74% of public schools, 83% of private schools, and 83% of childcare centers** nationwide lie within 10 miles of a PSM facility. At 6 miles, over 58% of public schools and 64% of private schools remain within range, underscoring that the risk is not limited to a narrow industrial corridor.

Table 6. Community Receptors (n) Near Facilities with Recorded Accident History (2004–December 2025) (Facilities of focus = 642)

Receptor	National Total	Within 1 Mile		Within 3 Miles		Within 6 Miles		Within 10 Miles	
		n	%	n	%	n	%	n	%
Public Schools	102,178	746	0.7	5,648	5.5	15,376	15.1	28,075	27.5
Private Schools	22,345	126	0.6	1,058	4.7	3,407	15.3	6,885	30.8
Hospitals	7,966	63	0.8	468	5.9	1,269	15.9	2,247	28.2
Parks	61,157	587	1.0	3,963	6.5	10,657	17.4	19,498	31.9
Childcare Centers	132,217	991	0.8	7,970	6.0	23,003	17.4	43,443	32.9
Total	325,863	2,51	0.8 %	19,107	5.9 %	53,712	16.5 %	100,148	30.7 %

Source: Children and Community Analysis, based on EPA RMP Non-OCA Database (Jan. 2026).[97]

[97] Note that this analysis was performed based only on the incidents that had been reported as of Jan. 2026, and so is an undercount of incidents due to the additional incidents reported following that date.

These particular threats exist in part because the pre-2024 RMP rules do not require significant prevention and because, in most instances, there are not protective buffers between RMP facilities and what EPA calls "public receptors," that are actually places in local communities where people live, work, go to school, or seek care – like homes, schools, day care centers, hospitals, places of worship,[98] and playgrounds or parks where families and children regularly visit. Approximately 10% of RMP facilities report a potential vulnerability zone (PVZ), also known as a "worst case scenario zone," greater than 6 miles, and 5% report a PVZ of 10 miles or more.[99] The 2018 Husky Refinery explosion in Superior, Wisconsin prompted a 10-mile evacuation order, demonstrating real-world consequences at that distance.[100]

Community locations visited regularly by children and families are highly exposed to industrial chemical incident threats. Schools and childcare centers are the two largest receptor categories analyzed, with a combined national total of approximately 256,000 facilities. Of these, more than 196,000 (77%) are within 10 miles of at least one active RMP facility.[101] Their consistent appearance at high percentages across all facility subsets and radii highlights the particular vulnerability of children — who face heightened physiological sensitivity to acute chemical exposures — to the consequences of weakened RMP requirements.

6. Natural Hazard or NaTech Threats

The threat from chemical releases at RMP facilities is increasing due to the rise in extreme weather and climate change, as EPA found in the 2024 RMP Rule record.[102] It is also likely to increase even further due to the Trump

[98] This analysis was not able to include places of worship, but there is some publicly information that EPA can and should review highlighting lists of these and other "public receptors" where community members, including children and families, regularly visit that EPA should not ignore in its analysis. See, e.g., ArcGIS REST Services Directory, All_Places_of_Worship_HiFLD-Open, https://services.arcgis.com/XG15cJAlne2vxtgt/arcgis/rest/services/All_Places_Of_Worship__HiFLD_Open_/FeatureServer.

[99] SCCAP Proposed Rule, 87 Fed. Reg. at 53601.

[100] CSB, Husky Final Report, *supra*, at 11, https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/.

[101] Earthjustice, Children and Community Receptor Analysis (included in Appendix).

[102] See, e.g., A. Berberian et al., Climate Justice Implications of Natech Disasters: Excess Contaminant Releases during Hurricanes on the Texas Gulf Coast, Envtl Sci. & Tech. Vol. 58, Issue 32 (July 30, 2024), https://pubs.acs.org/doi/10.1021/acs.est.3c10797; *see also* Center for Progressive Reform et al., Preventing "Double Disasters": How the U.S. Environmental Protection Agency can protect the public from hazardous chemical releases worsened by natural disasters at 6 (July 2021), http://progressivereform.org/our-work/energy-environment/preventing-double-disasters/ (UCS et al., Preventing "Double Disasters").

administration's policies that favor greater greenhouse gas emissions. For years, the U.S. Chemical Safety Board,[103] the Government Accountability Office,[104] EPA's own Office of Inspector General and Office of Enforcement and Compliance Assurance,[105] and international governmental bodies have well documented the greater likelihood and harm from chemical releases that can occur as part of a natural hazard and called for action to plan and prevent such releases and the health and safety impacts they can create.[106] As the CSB has long recognized:

> Considering that extreme weather events are likely to increase in number and severity, the chemical industry must be prepared for worst case scenarios at their facilities. We cannot stop the storms, but working together, we can mitigate the damage and avoid a future catastrophic incident.[107]

Year after year, including in 2025, the CSB has urged chemical facilities "to prepare . . . to help prevent catastrophic chemical releases" due to the threat of harm to workers, emergency responders, and surrounding communities.[108] The CSB also highlighted the Center for Chemical Process Safety's Guidance on

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[103] *See, e.g.*, Statement from CSB Chairman Katherine Lemos on the Lessons from Hurricane Harvey Following Recent Extreme Weather in Houston (Mar. 4, 2021), available at: https://inspectioneering.com/news/2021-03-04/9560/statement-from-csb-chairman-katherine-lemos-on-the-lessons-from-hurricane-harvey.

[104] U.S. Government Accountability Office (GAO). Chemical accident prevention: EPA should ensure regulated facilities consider risks from climate change, GAO-22-104494 (Feb. 2022), https://www.gao.gov/assets/gao-22-104494.pdf

[105] EPA, Enforcement Alert: Risk of Chemical Accidents During Process Startup (Feb. 2021), https://www.epa.gov/sites/production/files/2021-02/documents/ncistartupsafety-enforcementalert.pdf; EPA Office of Inspector General, EPA Needs to Improve Its Emergency Planning to Better Address Air Quality Concerns During Future Disasters, Report No. 20-P-0062 (Dec. 16, 2019), https://www.epa.gov/office-inspector-general/report-epa-needs-improve-its-emergency-planning-better-address-air-quality.

[106] *See, e.g.*, OECD, Euro. Comm'n, U.N., Managing Risks from Natural Hazards to Hazardous Installations (Natech), A guide for Senior Leaders in Industry and Public Authorities (2024), https://unece.org/sites/default/files/2024-11/Managing%20Risks%20from%20Natural%20Hazards%20to%20Hazardous%20Installations%20%28Natech%29.pdf.

[107] CSB, News Release, Arkema Report, quoting CSB Chairperson Vanessa Allen Sutherland, https://www.csb.gov/csb-releases-arkema-final-report/ (May 24, 2018).

[108] CSB Safety Alert, U.S. Chemical Safety Board Urges Chemical Facilities to Take Action Now to Prevent Catastrophic Chemical Incidents During Hurricane Season, https://www.csb.gov/us-chemical-safety-board-urges-chemical-facilities-to-take-action-now-to-prevent-catastrophic-chemical-incidents-during-hurricane-season/ (July 2, 2025).

planning for natural hazards and take steps to assess risks and plan preparedness steps.[109]

Many RMP facilities do not plan for or assess natural hazards, as EPA found in 2024.[110] For example, a review of the RMP facility submissions from facilities within the storm surge areas of Lake Charles, Louisiana showed that 11 RMP facilities with reported incidents did not report flooding as a potential hazard in their RMP submissions at the time of the incident.[111] Similarly, nine such facilities did not report hurricanes as a potential hazard.[112] A recent Coming Clean, EJHA, and t.e.j.a.s. report found similar issues at facilities in Texas.[113]

The most recent data show that even with incident reporting delays and omissions, RMP facilities have reported a link with natural hazards at 230 incidents since 2025 that caused a human toll during the last two decades, including:

- 5 people who died
- 279 people injured or sought medical treatment
- 11,942 people who had to evacuate or shelter in place
- $280 million in property damage.[114]

RMP facilities have underreported climate and natural hazard-related incidents, as EPA previously found.[115] Even with significant under-reporting, there

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[109] CCPS Guidance Document on Planning for Natural Hazards (2019), https://www.aiche.org/sites/default/files/html/536181/files/downloads/Assessment%20of%20and%20planning%20for%20Natural%20Hazards.pdf).

[110] SCCAP Rule, 89 Fed. Reg. at 17636-37 (recognizing that some "facilities . . . are currently not performing such evaluations").

[111] *See* Lake Charles Spreadsheet, showing Facilities in Storm Surge Areas Not Reporting as a Hazard as of Jan. 2026 (included in the Appendix) (showing a column labeled MH-Flood to show whether flood risk was reported in the RMP submission).

[112] *See* Lake Charles Spreadsheet, showing Facilities in Storm Surge Areas Not Reporting as a Hazard as a Hazard as of Jan. 2026 (showing a column labeled MH-Hurricane to show whether hurricane risk was reported in the RMP submission).

[113] Coming Clean *et al.*, Disaster Déjà Vu (Feb. 2026), https://storymaps.arcgis.com/stories/e36bcda417ed4b1d872c279d6acdaea9.

[114] *See* List of Reported Nat Hazard Human Toll RMP Incidents (2004-25), based on April 2026 non-OCA RMP Database (included in Appendix).

[115] *See*, *e.g.*, 87 Fed. Reg. at 53567-68; 89 Fed. Reg. at 17636-37 (citing facility reports showing that some RMP accidents are being reported with a natural hazards and "unusual weather conditions" as a factor).

are numerous examples of spikes in RMP incidents and near-misses for RMP chemical releases during severe and extreme weather events in recent years.[116] Reports are only required where specific types of harm have occurred, and so the incident data that are publicly available both show the need to assess and plan for natural hazards and power loss and also underestimate the full impact and ongoing threat of double disasters.[117]

Other research supports evaluating and planning for natural hazards. For example:

- Extreme weather events are both worsening due to impacts of climate change and increasing the risk of chemical releases from industrial facilities covered by the RMP in areas like the Gulf where RMP facilities are particularly concentrated. One research study published in 2024 found the chemical release threat increased by 2 to 3 times during Hurricanes Rita, Ike, and Harvey in Texas.[118]

- Research on reported chemical incidents that occurred during or following Hurricane Ida (e.g., August 28-30, 2021) shows many additional incidents (approximately 16) that were reported through the National Response Center, and one in news reports that do not appear to be included in EPA RMP reports.[119]

- Research on reported chemical incidents that occurred during or following Hurricane Harvey (e.g., August 25-29, 2017) shows only 1 RMP incident report, but about 33 additional incidents reported through the National Response Center only.[120]

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[116] *See, e.g.*, 2022 Comments at 26-31 (citing research).
[117] *See, e.g.*, Data from the CSB and National Response Center https://www.csb.gov/assets/1/6/Copy_of_Accidental_Release_Events_2025-07-28.xlsx; SCCAP Proposed Rule, 87 Fed. Reg. 53569 (citing the National Response Center data on 3,077 reported accidents from 2004–2020 that were associated with power loss); National Response Center Incident Reports, available at https://nrc.uscg.mil/Default.aspx (including air and other types of chemical releases from RMP facilities, some facilities that should be but are not covered by the RMP, as well as other types of facilities).
[118] A. Berberian et al., Climate Justice Implications of Natech Disasters: Excess Contaminant Releases during Hurricanes on the Texas Gulf Coast, Envtl Sci. & Tech. Vol. 58, Issue 32 (July 30, 2024), https://pubs.acs.org/doi/10.1021/acs.est.3c10797.
[119] *See* Hurricane Ida Spreadsheet of Incidents Not in RMP Database as of Jan. 2026 (included in Appendix).
[120] *See* Hurricane Harvey Spreadsheet of Incidents Not in RMP Database as of Jan. 2026 (included in Appendix).

- Research on reported chemical incidents that occurred during or following the extreme cold weather event in Texas from February 11-20, 2021 shows only 7 RMP incident reports, but many additional incidents (approximately 1144) that were reported through the National Response Center.[121]

- When Texas experienced extremely low temperatures in February of 2021 during the winter storms Uri and Viola, many petrochemical and RMP facilities shut down after losing power.[122] As a result, about 194 facilities released at least 3.5 million pounds of toxic chemicals and there were hundreds of thousands of pounds of chemicals released in the Houston area alone.[123]

- The International Panel on Climate Change report, Climate Change 2022: Impacts, Adaptation and Vulnerability, found infrastructure failures caused by flooding and the need to account for natural hazard-related chemical releases and the risks these pose to local communities.[124]

- An independent academic Scientific American report highlighted recent chemical risks from extreme weather recognized toxic chemicals as "a silent and growing threat" due to floods like those in Hurricane Helene.[125]

- As the National Center for Environmental Economics found, over 90% of counties with RMP facilities experienced flooding in the last two decades

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[121] *See* 2021 Texas Cold Freeze NRC Reported Incidents Not in RMP Database as of Jan. 2026 (included in Appendix).
[122] U.S. EPA, Winter Storms Uri and Viola, https://response.epa.gov/site/site_profile.aspx?site_id=15082.
[123] E. Douglas, Texas plants released nearly as much pollution during winter storm as during Hurricane Laura, Tex. Trib. (Feb. 24, 2021), https://www.texastribune.org/2021/02/24/texas-winter-storm-pollution-emissions/; *d* K. Watkins, Houston-Area Refineries, Plants Emitted Thousands Of Pounds Of Additional Air Pollution During The Winter Freeze: State documents show facilities released some 700,000 pounds of excess air pollutants last week, as they faced electrical outages and equipment failures due to the severe winter weather, Houston Pub. Media (Feb. 24, 2021), https://www.houstonpublicmedia.org/articles/news/energy-environment/2021/02/24/392215/houston-area-facilities-emitted-thousands-of-pounds-of-additional-air-pollution-during-the-winter-freeze/.
[124] Pörtner, Hans-Otto, et al. "Climate Change 2022: Impacts, Adaptation and Vulnerability." IPCC Sixth Assessment Report (page 936) (2022), available at: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf.
[125] J. Elliott et al., In Floods like Hurricane Helene's, Toxic Chemicals Are a Silent and Growing Threat, Scientific American (Oct. 3, 3024), https://www.scientificamerican.com/article/in-floods-like-hurricane-helenes-toxic-chemicals-are-a-silent-and-growing-threat/.

and 25% faced hurricanes.[126] Further, "RMP facilities tend to be in regions that experience statistically significantly more floods, extreme winter weather events, extreme heat, and tornadoes than counties without RMP facilities."[127]

- The industry-led nonprofit corporate membership organization, Center for Chemical Process Safety, has recognized the need to address double disasters.[128] In some instances, individual industrial facilities have recognized the need for "well-prepared hazard evaluations . . . [that] already address [N]atech," showing that even some industry sectors have recognized it is in their own interest to try to prevent and reduce the threat of double disasters.[129]

EPA's Children's Health Protection Advisory Committee (CHPAC) has highlighted the particular harm in pregnancy and to children's health and welfare from the impacts of extreme weather linked with climate change and has recognized the need to protect children as: (1) "sea level rise and increasingly frequent severe weather events can lead to accidental releases of chemicals;" and (2) "heat can increase volatility of hazardous chemicals, thereby increasing human exposure," and has called for EPA to strengthen protections from natural disaster-related harm, including chemical contamination, across a range of authority.[130] In 2005 after Hurricanes Katrina and Rita, CHPAC also recognized the particular threats to children related to chemical contamination and other harm from natural disasters, calling for action to address and prevent health threats to children related to this extreme weather, highlighting chemical exposure in the air and water as serious impacts.[131] In later years, disaster experts have similarly highlighted the

[126] SCCAP Technical Background Document at 3 (2022) (citing data from Nat'l Center for Env'tl Econ., Natural Hazards and Technological Disasters at 5 (Dec. 2021), App. B), EPA-HQ-OLEM-2022-0174-0066, EPA-HQ-OLEM-2022-0174-0067.
[127] *Id.* App. B at 5, EPA-HQ-OLEM-2022-0174-0067.
[128] *See* Ctr. for Chem. Process Safety (CCPS), Am. Inst. of Chem. Eng'rs, CCPS Monograph: Assessment of and planning for natural hazards (2019), https://www.aiche.org/sites/default/files/html/536181/NaturalDisaster-CCPSmonograph.html.
[129] 87 Fed. Reg. at 53568.
[130] CHPAC Climate Letter to EPA Administrator Regan (Aug. 28, 2023), https://www.regulations.gov/document/EPA-HQ-OA-2023-0030-0025.
[131] Letter from Dr. Melanie Marty, CHPAC to Stephen L. Johnson, EPA, Response to Gulf Coast Hurricanes (November 15, 2005), available at https://www.regulations.gov/document/EPA-HQ-OA-2022-0557-0017.

need to assess impacts to children related to chemical exposure following or during a natural disaster.[132]

In 2024, EPA began to create and launched for testing a new RMP Natural Hazard Risk Assessment Tool.[133] EPA stalled that process and the tool has not been updated since December 2024. Information in this rule docket included an explanation of some data included in that tool and informed the analysis of natural hazard threats for these comments.[134] An analysis of the data downloaded from that tool shows serious natural hazard threats across all parts of the country and at the vast majority of RMP facilities, summarized as follows.[135]

EPA data show that at least 11,587 RMP facilities face at least one heightened climate hazard above EPA's identified level of concern. Across all facilities in the dataset, wind damage is the most common hazard, with 11,340 facilities projected to potentially experience wind speeds above the level of concern of 58 mph. The next-most prevalent threats in descending order are heat, cold, wildfire, drought, flood, earthquake, sea level rise, and storm surge.

[132] *See, e.g.*, U.S. Admin. For Strategic Preparedness & Response, Children's Environmental Health Post-Disaster Assessment Toolkit 2.0, at 5, 27, 29, 31, 33, 43, 45 (July 9, 2025) (explaining: "Wildfires, hurricanes, flooding, and other disaster events can create serious environmental hazards that harm human health. Children face greater risks from these hazards because of how their bodies develop, how they behave, and their dependence on adults for protection" and citing potential "higher risk" to children near chemical storage sites or plants that have hazardous chemical spills or leaks, along with other impacts from various types of natural disasters).

[133] EPA, RMP Natural Hazard Risk Assessment Tool, https://cdxappstest.epacdx.net/olem-rmp-pds/nhra/ (last updated Dec. 5, 2024).

[134] EPA, Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule, January 2026 redline version of August 2025 draft, EPA-HQ-OLEM-2025-0313-0071 (TBD Redline) (discussing the RMP NHRA Tool, methodology, and indicators).

[135] *See* Natural Hazard Threats and Risk Management Program Facilities, A Technical Review, prepared by Earthjustice (2026) (NHRA Technical Review) (included in Appendix); *see also* NHRA County Spreadsheet (providing additional county data for this analysis, included in Appendix).

Table 7 – Hazards and time frames in RMP NHRA dataset

Hazard	Direction	Level of concern	Unit	# facilities
cold	below	32	°F	6763
drought	above	64	%	5991
earthquake	above	5	% g	2076
flood	above	63	%	5191
heat	above	100	°F	7900
sea level rise	above	0.000	in	1686
storm surge	above	0.000	ft	917
wildfire	above	21	FWI	6727
wind	above	58	mph	11340

Source: EPA RMP NHRA Data Tool (data as of Dec. 2024).[136]

Although natural hazards create higher chemical incident risks across the country, counties across multiple regions face both a particularly high combined natural hazard risk and have multiple RMP facilities. To get a holistic sense of each county's risk across all reported hazards, it was necessary to assign each county a single, standardized value. This was done by calculating the percentile for each county's risk for a particular hazard so that risks across different hazards could be compared: the higher the risk, the higher the percentile value. This analysis assessed only "Early" (2015-2044) risk as the most immediate timeframe reported on in the RMP NHRA dataset. Then, all nine hazard categories (or fewer if some categories were not applicable or available to a county) were summed across the county and the data set was sorted by this new value, "Sum of Percentiles (Early)."[137]

[136] *Id.*
[137] *Id.* (providing more information about the methodology of this analysis).

Table 8 - Counties (having 10 Or More Facilities) with Highest Combined Hazards Sum of Percentiles (Early)

County	State	# facilities	Sum of Percentiles (Early)	Hazards
Imperial	CA	15	556.13469	heat, wind, drought, wildfire, earthquake
Maricopa	AZ	60	545.84871	heat, wind, drought, wildfire, earthquake
Stanislaus	CA	26	535.95480	heat, wind, drought, wildfire, earthquake
Yuma	AZ	25	535.42435	heat, wind, drought, wildfire, earthquake
Clark	NV	23	529.05904	heat, wind, drought, wildfire, earthquake
Riverside	CA	31	527.39852	heat, wind, drought, wildfire, earthquake
Merced	CA	11	517.29705	heat, wind, drought, wildfire, earthquake
Shelby	TN	28	503.66697	flood, heat, wind, drought, wildfire, earthquake
Oklahoma	OK	17	501.40683	heat, wind, drought, wildfire
Panola	TX	10	497.32472	flood, heat, wind, drought, wildfire
San Bernardino	CA	31	496.49446	heat, wind, drought, wildfire, earthquake
Jefferson	TX	50	496.37915	flood, heat, wind, drought, sea level rise, storm surge
Los Angeles	CA	105	495.68727	heat, wind, drought, wildfire, sea level rise, storm surge, earthquake
Denton	TX	12	494.83395	heat, wind, drought, wildfire
Pulaski	AR	22	491.92804	flood, heat, wind, drought, wildfire, earthquake
Garfield	OK	19	490.95941	heat, wind, drought, wildfire, cold
Morrow	OR	11	489.94465	heat, wind, drought, wildfire, earthquake
Rapides	LA	16	489.48339	flood, heat, wind, drought, wildfire
Grant	OK	10	489.39114	heat, wind, drought, wildfire, cold
Tulsa	OK	24	488.19188	heat, wind, drought, wildfire

Source: NHRA Technical Review (Table N) (data as of Dec. 2024).

The following 20 counties have both the largest number of RMP facilities and also face significant levels of EPA-identified natural hazards.

Table 9 – 20 counties with largest number of RMP facilities and associated hazards

County	State	# facilities	Sum of Percentiles (Early)	Hazards
Harris	TX	204	451.91421	flood, heat, wind, drought, wildfire, sea level rise, storm surge
Los Angeles	CA	105	495.68727	heat, wind, drought, wildfire, sea level rise, storm surge, earthquake
Kern	CA	82	478.13653	heat, wind, drought, wildfire, earthquake
Cook	IL	78	356.96494	heat, wind, wildfire, cold
Fresno	CA	71	475.27675	heat, wind, drought, wildfire, earthquake
Maricopa	AZ	60	545.84871	heat, wind, drought, wildfire, earthquake
Tulare	CA	59	470.38745	heat, wind, drought, wildfire, earthquake
Dallas	TX	58	470.08764	heat, wind, drought, wildfire
Tarrant	TX	52	470.52583	heat, wind, drought, wildfire
Jefferson	TX	50	496.37915	flood, heat, wind, drought, sea level rise, storm surge
Weld	CO	48	288.14576	heat, wind, drought, wildfire, cold
San Joaquin	CA	43	443.88838	heat, wind, drought, wildfire, earthquake
Brazoria	TX	41	395.96402	flood, heat, wind, drought, sea level rise, storm surge
Monterey	CA	38	350.69188	drought, wildfire, sea level rise, earthquake
Hidalgo	TX	36	462.59225	heat, wind, drought, wildfire
Yakima	WA	36	377.81365	heat, wind, drought, wildfire, cold, earthquake
Calcasieu	LA	34	472.97048	flood, heat, wind, drought, sea level rise, storm surge
Bexar	TX	33	431.71125	heat, wind, drought, wildfire
Wayne	MI	33	279.91236	flood, heat, wind, cold
Riverside	CA	31	527.39852	heat, wind, drought, wildfire, earthquake

Source: NHRA Technical Review (Table O) (data as of Dec. 2024).

7. Chemical Safety Board Recommendations

To address the serious ongoing problem of chemical disasters and emergencies, following incident investigations at refineries, chemical manufacturers, and other facilities, the CSB has issued recommendations on ways EPA should strengthen the Risk Management Program.[138]

These include, for example, the following open or partially open recommendations that were fully or partially implemented in the SCCAP Rule:

1. Natural hazard and extreme weather assessment and planning: "[c]larify requirements and provide direction for RMP facilities on how to incorporate risks from natural hazards and climate change into their risk management programs";[139]

2. Inherently safer technology: "require new and existing petroleum refineries with HF alkylation units to conduct a safer technology and alternatives analysis (STAA) and to evaluate the practicability of any inherently safer technology (IST) identified," and do so every 5 years;[140]

3. Inherently safer technology: "require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible," including automatic triggering for inherently safter systems analysis.[141]

The CSB has also provided recommendations to EPA in formal comments during the EPA-OSHA listening session and on each of EPA's proposed RMP rules over the last decade.[142] The CSB's comments have recommended and

[138] CSB, Recommendations to EPA, https://www.csb.gov/recommendations/?F_RecipientId=4846&F_All=y.
[139] CSB Bio-Lab Lake Charles Chemical Fire and Release (Aug. 27, 2020), 2020-05-I-LA-6, (Apr. 24, 2023), https://www.csb.gov/bio-lab-lake-charles-chemical-fire-and-release-/.
[140] PES, 2019-04-I-PA-R2 (Oct. 2022), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.
[141] Tesoro, 2020-08-I-WA-R1 (May 1, 2014), https://www.csb.gov/tesoro-anacortes-refinery-fatal-explosion-and-fire-/.
[142] *See, e.g.*, CSB Comment Letter to EPA at 6 (July 20, 2018), https://www.csb.gov/assets/1/6/csb_comments_epa_rmp_20180720.pdf; CSB Comment Letter to EPA at 4-5 (May 10, 2016), https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-0428; CSB Comment Letter to EPA at 13-17 (Oct. 29, 2014), https://www.regulations.gov/comment/EPA-HQ-OEM-2014-0328-0689.

supported EPA's inclusion of the following additions and improved components of the SCCAP Rule that EPA is now proposing to rescind or weaken:

1. Natural Hazards
2. Power Loss
3. Stationary Source Siting
4. Safer Technologies and Alternatives Analysis (STAA)
5. Third-Party Compliance Audits
6. Employee Participation
7. Information Availability.[143]

As the CSB highlighted in its comments, in various incident investigation reports, the CSB issued findings and recommendations to other entities that show the need for and support these components of the SCCAP Rule.[144]

The CSB has also published additional information about incidents that were reported to the CSB under its Accidental Release Reporting Rule, which covers both RMP and non-RMP facilities.[145]

B. Comments in EPA's Requested Order

#1 – STAA

The safer technology alternatives analysis (STAA) requirements – evaluation, practicability assessment, and implementation – are essential components of the existing RMP prevention measures because they are guaranteed to assure consideration and, in some instances, implementation of *safer* measures.

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[143] CSB Oct. 2022 Comments, https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0166.
[144] *See, e.g.*, *id.* at 4 (citing 8 incident investigation reports that grounded the CSB's STAA recommendation); *id.* at 8 (citing multiple incident investigations that grounded the CSB's third-party compliance audit recommendations); *id.* at 9 (citing investigations on multiple catastrophic incidents, including the 2012 Chevron Refinery fire, that grounded the CSB's recommendations on employee participation, including stop work authority); *see also* CSB reports discussed in later parts of these comments.
[145] Volume I of CSB Incident Reports; Volume II of CSB Incident Reports; Volume III of CSB Incident Reports; Volume IV of CSB Incident Reports, all available at: csb.gov.

EPA's proposal to eliminate or weaken the STAA requirements violates the Clean Air Act and should not be finalized.

First, EPA's interpretation of its legal responsibility is contrary to the Act. EPA has proposed to eliminate the safer alternative requirements for *nearly all* facilities currently covered by these requirements (and require just STAA evaluation, for only new Program 3 covered processes), and not to require practicability assessments or implementation for *any* facilities. These proposed revisions fail to meet the statutory requirements for RMP rules, including:

- to "prevent the accidental release and to minimize the consequences of any such release," 7412(r)(1), (r)(7)(A) (authorizing regulations "[i]n order to prevent accidental releases of regulated substances");
- to provide for prevention of accidental releases "to the greatest extent practicable," § 7412(r)(7)(B)(i);
- to "minimize accidental releases," § 7412(r)(7)(B)(ii);
- "to protect human health," and to minimize the consequences to health, including children's health, 7412(r)(7)(B)(ii); § 7412(r)(1);
- to "provide for compliance with" the General Duty Clause, 7412(r)(7)(B)(ii) (incorporating § 7412(r)(1));

Contrary to these statutory guardrails on its authority and rules, EPA prioritizes industry cost savings over the health and safety of the public, based on legally irrelevant and unauthorized extra-statutory deregulatory preferences.

EPA's proposal on STAA is also contrary to the Act, does not meet the requirements for reasoned decision making, and is arbitrary and capricious because:

(1) The STAA proposal relies on unsupported and irrational conclusions and incomplete data to contend that an alleged incident decline shows that the STAA requirements can be removed or weakened;

(2) The STAA proposal fails to show how hypothetical future, after-the-fact EPA enforcement of the pre-existing rules could substitute for stronger prevention and minimization requirements in rules before an incident occurs;

(3) The STAA proposal uses an incomplete and unsupported analysis of costs and foregone benefits to give preferential treatment to industry cost savings and extra-statutory deregulation goals above statutory objectives for incident prevention, and protection of human health and safety, including for children's health;

(4) The STAA proposal conflicts with the expert findings and recommendations of the U.S. Chemical Safety Board without a reasoned explanation;

(5) The STAA proposal contradicts EPA's own factual findings and determination in 2024 that the STAA requirements are needed, without providing the requisite "detailed justification" for the agency's about-face;

(6) EPA's alternative proposals for STAA, including to limit STAA evaluation only to new Program 3 processes, are also arbitrary because of the lack of requisite regulatory language to implement them effectively, and because of EPA's failure to demonstrate these proposed alternatives alone are sufficient to satisfy the Act.

a. Factual Background

i. <u>EPA's proposed rule changes</u>

The value of IST and evaluating it through STAA as a prevention measure is undisputed by EPA. 91 Fed. Reg. at 8978 ("EPA understands that there is value in examining safer alternatives and considering IST for improving process safety."); *id.* at 8982 ("the Agency acknowledges that there is value in assessing the practicability of implementing safer technologies"). Yet, EPA is taking comment on a proposal that would eliminate or weaken three existing STAA requirements.

First, the agency proposes to rescind the existing requirement to perform a STAA for most of the facilities currently covered by the STAA evaluation requirement. 91 Fed. Reg. at 8982 (proposing to modify 40 C.F.R. § 68.67(c)(9)(i) by removing the requirement for all NAICS 324 and 325 facilities to perform the STAA evaluation). EPA proposes instead that only "new Program 3 processes" will have to perform the STAA evaluation. 91 Fed. Reg. at 8982, 9010 (proposing that "new covered processes" shall consider and document STAA).

Under the existing rule (finalized in 2024), 1,489 facilities in the petroleum and chemical manufacturing sectors must comply with these requirements for

4,429 covered processes by May 10, 2027.[146] If EPA's proposal is finalized, only 350 processes per year would be subject to STAA evaluation—approximately a 92-percent reduction in coverage from the existing rule.[147]

In the preamble to the proposed rule, EPA states that it would require STAA evaluation only for new processes "designed and added to existing RMP facilities and those designed and built at newly operating facilities." 91 Fed. Reg. at 8982. "Processes considered new would commence operation three years after the effective date of this rule." *Id.* EPA proposes no regulatory definition of "new Program 3 process" or "new covered process." There is no proposal language that makes clear what kind of change to an existing process will have to occur for it to be "considered" or qualify as new enough to trigger the proposed STAA.

Second, EPA proposes to rescind completely the existing requirement for certain facilities to assess and document the "practicability" of IST/ISD. 91 Fed. Reg. at 8981-82 (proposing to rescind 40 C.F.R. § 68.67(c)(ii)). Under the existing rule, about 650 facilities in the petroleum and chemical manufacturing sectors would have had to meet these requirements, for a range of 1.4 to 15 processes per facility, by May 10, 2027.[148] Under the proposal, *no facility* will be required to do so.

Third, EPA proposes to rescind the existing requirement for certain facilities to implement at least one safer measure such as IST. 91 Fed. Reg. at 8981 (proposing to rescind 40 C.F.R. § 68.67(h)). Again, about 650 facilities in the petroleum and chemical manufacturing sectors would have had to meet these requirements by May 10, 2027, for a range of 1.4 to 15 processes per facility[149] But, under the proposal, none will have to do so.

Across the three rescissions of STAA requirements in the proposal, EPA cites no evidence or data showing how removing the STAA evaluation for most currently covered facilities and eliminating the STAA practicability assessment and implementation requirements would advance the objectives of prevention of releases or minimization of releases or consequences, or assure prevention to the

[146] Regulatory Impact Analysis (2026 RIA), Exhibit 3-5 at 26 (Jan. 2026), EPA-HQ-OLEM-2025-0313-0058. The numbers cited are EPA's estimate from the 2023 RMP database and EPA admits that it removed some facilities from the count for the RIA analysis because they are regulated by similar state or local requirements in California or New Jersey.
[147] *Id.* at Exhibit 3-6. EPA's 2026 RIA states that it provides the number of facilities, but it only provides EPA's estimate of new Program 3 processes.
[148] 2026 RIA, Exhibits 3-7, 3-8 at 27-28 (Jan. 2026), EPA-HQ-OLEM-2025-0313-0058.
[149] 2026 RIA at 27-28.

greatest extent practicable, and protect human health. 42 U.S.C. §§ 7412(r)(1), (7)(A), (B). EPA attempts to contend that it can advance the statutory objectives while weakening the RMP regulations. Relatedly, EPA revives its argument from 2019 (reversed in 2024) that a "compliance- and performance-driven" or enforcement-only approach *after* incidents occur "is more practicable because it provides regulatory relief" to certain facilities that are covered by the existing requirements. 91 Fed. Reg. at 8979 ("This will allow the Agency to focus compliance efforts on facilities that are having accidents . . . without burdening those facilities that are not having accidents."); *id* at 8979. EPA's contentions fail to justify its rollback proposal.

ii. The value of Inherently Safer Technology or Design (IST/ISD) to improve safety

EPA has long recognized the value of facilities performing an STAA evaluation as the rules currently require. This evaluation is a well-understood method of assessing chemical processes to identify if any "inherently safer" technology, chemical, process, operational design or other measures are available that would reduce the likelihood of or harm to health and safety from the release of a chemical from the process. As defined in the existing RMP rules, "inherently safer technology or design" (IST/ISD) means:

> risk management measures that minimize the use of regulated substances, substitute less hazardous substances, moderate the use of regulated substances, or simplify covered processes in order to make accidental releases less likely, or the impacts of such releases less severe.

40 C.F.R.§ 68.3 (as promulgated in the SCCAP Rule, 89 Fed. Reg. at 17685).

By definition, "inherently safer" technology and alternatives are "safer" because the hazard has either been reduced or eliminated permanently. [150] This method reduces or eliminates a hazard before an incident, at the core of the process, rather than relying on add-on equipment or backup systems alone. As expert engineer Trevor Kletz has described it, in helping to shape modern

[150] *See, e.g.*, Am. Inst. of Chem. Eng'rs (AICHE), Ctr. for Chem. Process Safety (CCPS), Process Safety Glossary, Inherently Safer: "A condition in which the hazards associated with the materials and operations used in the process have been reduced or eliminated, and this reduction or elimination is permanent and inseparable," https://www.aiche.org/ccps/resources/glossary?title=hazard+evaluation#views-exposed-form-glossary-page (viewed Mar. 15, 2026); *see also* AICHE, CCPS, Inherently Safer Chemical Processes: A Life Cycle Approach, 2nd. ed., (2009), EPA-HQ-OLEM-2025-0313-0055.

industrial chemical process safety: "what you don't have, can't leak."[151] Where a hazard is fully eliminated, certain types and levels of severity of an incident simply become impossible. Therefore, implementation of IST is guaranteed to prevent certain types of incidents. If an industrial incident occurs it will likely cause fewer deaths, injuries, and health effects for people exposed because IST has removed the source of the greatest harm.

EPA has twice required STAA for the petroleum (refinery) and chemical manufacturing sectors (NAICS codes 324 and 325) – the second time after EPA had completely revoked the requirements in 2019 during this president's first term.[152] In each instance, EPA determined these requirements are necessary to serve the Act's goals of protecting health and safety.[153]

EPA continues to recognize "value in examining safer alternatives and considering IST for improving process safety." 91 Fed. Reg. at 8978. EPA even admits that "technological advances" have occurred during the history of the Risk Management Program "that have resulted in improvements in preventing and mitigating chemical accidents in the United States." 91 Fed. Reg. at 8972.

Commenters again direct EPA to the robust, longstanding evidence showing the value of an STAA or IST analysis. This includes, for example:

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[151] P. Amyotte & F. Khan, The role of inherently safer design in process safety (Dec. 15, 2020), https://onlinelibrary.wiley.com/doi/full/10.1002/cjce.23987?msockid=2455b97fc0036ff901b0afa5c18b6e99 (quoting Professor Trevor Kletz).

[152] EPA first finalized an STAA evaluation requirement in the 2016 RMP Amendments known as the "Chemical Disaster Rule." 82 Fed. Reg. 4594 (Jan. 13, 2017). The 2017 amendments required facilities in certain industry sectors (petroleum, NAICS 324, chemical, NAICS 325, and pulp and paper, 322) to perform an STAA and document the practicability of any inherently safer technology. *Id.* After removing that requirement in the 2019 Reconsideration Rule, 84 Fed. Reg. 69834, in 2024 EPA again put in place a requirement for an STAA evaluation for the petroleum and chemical sectors (NAICS 324 and 325). SCCAP Rule, 89 Fed. Reg. 17622. EPA tailored that requirement to ensure it would apply to existing facilities and industry sectors with the most severe incident history. *Id*.

[153] *See, e.g.*, 2024 SCCAP Rule, 89 Fed. Reg. at 17633 ("EPA now believes the benefits of rule-based prevention for certain high-risk classes of facilities could help prevent high consequence accidents that affect communities and are therefore reasonable and necessary to meet the statutory objective 'to the greatest extent practicable.'"); *id.* at 17634 ("these are necessary updates to the existing RMP rule to ensure chemical accident prevention and mitigation."); *id.* at 17635 ("[t]his type of regulation does not create . . . unnecessary burdens" and EPA expects most facilities will proactively make the necessary prevention improvements in order to comply with the rule and thus avoid enforcement"); *see also* 2024 RIA at 81 (explaining how the STAA requirements "help reduce the prevalence of higher risk processes" and finding that "[t]hey prevent accidents by either eliminating the possibility of an accidental release entirely by making a process more fault-tolerant, such that a minor process upset, or equipment malfunction is less likely to result in a serious accidental release; and by making releases that do occur, less severe").

(1) Factual findings that EPA has made in prior rulemaking dockets;

EPA has repeatedly recognized the value and effectiveness of STAA to prevent incidents and harm.[154] EPA has implemented and then revoked and then implemented again various versions of this requirement, but the recognition of its value has remained constant for at least a decade.

(2) Expert findings, investigation reports, and recommendations of the U.S. Chemical Safety Board to which EPA is required to give particular weight and respond under CAA § 7412(r)(6);

The U.S. Chemical Safety Board (CSB) has recommended that EPA require IST evaluation and the implementation and use of IST in multiple final investigation reports and comments in prior rulemakings. The following are notable examples.

- Following the Chevron Richmond Refinery Fire in 2012, the CSB found that: "Using inherently safer design concepts to eliminate the hazard . . . will prevent future similar failures in refineries."[155]

- In the Philadelphia Energy Solutions Investigation Report (2022), the CSB recommended that EPA:

  Revise 40 C.F.R. Part 68 (EPA Risk Management Plan) to require new and existing petroleum refineries with HF alkylation units to conduct a safer technology and alternatives analysis (STAA) and to evaluate the practicability of any inherently safer technology (IST) identified. Require that these evaluations are performed every 5 years as a part of an initial PHA as well as PHA revalidations.[156]

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[154] *See, e.g.*, citations in prior footnote, *supra*; *see also* SCCAP Proposed Rule, 87 Fed. Reg. 53575-79; SCCAP Final Rule, 89 Fed. Reg. 17647-54; 2016 Chemical Disaster Rule (CDR) Amendments, 82 Fed. Reg. 4629, 4632; CDR Proposal, 81 Fed. Reg. 13663-69; 2017 CDR Response to Comments at 1, 1-18, 23, 99-104, 107-109, 115-17, 127, 132-34, 143, 163, 190-91, 194-96, 199-200, 202-03, 214-18, 220, 225, 236, 246, 251, https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0729.

[155] CSB, Chevron Richmond Refinery Pipe Rupture and Fire, Aug. 6, 2012, Final Investigation Report, No. 2012-03-I-CA at 7, 45-47 (Jan. 2015), https://www.csb.gov/chevron-richmond-refinery-fire/.

[156] CSB, Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit at 80 (June 21, 2019), Final Investigation Report, No. 2019-04-I-PA (published Oct. 11, 2022) (CSB PES Report), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/; *see also* CSB, Wake Up Call: Refinery Disaster in Philadelphia (Oct. 27, 2022), https://www.csb.gov/csb-releases-new-safety-video.

- In the Tesoro Investigation Report (2014), the CSB recommended that EPA:

  Revise the Chemical Accident Prevention Provisions under 40 CFR Part 68 to require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible when facilities are establishing safeguards for identified process hazards. The goal shall be to reduce the risk of major accidents to the greatest extent practicable, to be interpreted as equivalent to as low as reasonably practicable (ALARP). Include requirements for inherently safer systems analysis to be automatically triggered for all management of change, incident investigation, and process hazard analysis reviews and recommendations, prior to the construction of a new process, process unit rebuilds, significant process repairs, and in the development of corrective actions.[157]

- In its investigation report following the Husky Refinery incident in 2018, the CSB reiterated its recommendation to require IST evaluation and practicability assessment at refineries using HF. That incident was a near-miss for an HF release and triggered a 10-mile evacuation. The CSB also highlighted a specific type of inherently safer design that, if implemented a part of a recommended fitness-for-service assessment, could have prevented the specific incident there.[158]

- The CSB has also submitted comments to EPA calling for the finalization and expansion of STAA requirements.[159]

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[157] CSB, Investigation Report: Catastrophic Rupture of Heat Exchanger, Tesoro Anacortes Refinery, Anacortes, Washington, April 2, 2010, Report No. 2010–08–I–WA (May 2014), http://www.csb.gov/assets/1/7/Tesoro_Anacortes_2014-May-01.pdf ("Revise the Chemical Accident Prevention Provisions under 40 CFR Part 68 to require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible in establishing safeguards for identified process hazards.").

[158] CSB, Investigation Report: FCC Unit Explosion and Asphalt Fire at Husky Superior Refinery, April 26, 2018, Report No. 2018-02-I-WI (Dec. 23, 2022), https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/, EPA-HQ-OLEM-2025-0313-0049.

[159] *See, e.g.*, CSB Oct. 2022 Comments, https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0166; *see also* CSB Comment Letter to EPA at 6 (July 20, 2018), https://www.csb.gov/assets/1/6/csb_comments_epa_rmp_20180720.pdf; CSB Comment Letter to EPA at 4-5 (May 10, 2016), https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-0428; CSB Comment Letter to EPA at 13-17 (Oct. 29, 2014), https://www.regulations.gov/comment/EPA-HQ-OEM-2014-0328-0689.

(3) Evidence from other jurisdictions that have STAA-similar requirements in place.

In enacting section 112(r), Congress evaluated the safety rules of other jurisdictions – specifically highlighting New Jersey, California, and the European Union (EU)'s Seveso Directive as models.[160] The Senate Report found that these "innovative and aggressive accident prevention and risk reduction programs . . . could serve as models for new, national efforts."[161]

In the years since, these and additional jurisdictions have updated or implemented versions of STAA or IST requirements that are similar to and illustrate the value of the SCCAP Rule. Their efficacy and likelihood of harm reduction are documented in EPA's 2024 regulatory docket.[162] Some of these requirements have been in place for years and have led many industrial chemical facilities in those jurisdictions to update their technology and processes to operate more safely.[163]

The **Research Memo on IST Measures (March 2026),** prepared by Earthjustice and included in the Appendix, and comments submitted in 2022 provides additional detail on many of these requirements.[164] The best available information shows the value and effectiveness of such requirements from Contra Costa, New Jersey, Massachusetts, California, and the EU. These available data belie EPA's proposed conclusion that there is no demonstration of the effectiveness of such measures to prevent chemical incidents and harm. Instead, they support EPA's conclusion in 2024.

For example, according to a European Commission Report on the Implementation of the Seveso III Directive 2012/18/EU (which supersedes the Seveso I Directive introduced following the Seveso, Italy 1976 disaster and fatal 1977 explosion in Flixborough, England), between 2015-2018, the number of major industrial accidents in the EU decreased to 25 per year for 12,000

[160] Sen. Rep. 101-228 at 119-20.
[161] *Id.* at 121/3528.
[162] *See, e.g.*, SCCAP Final Rule, 89 Fed. Reg. at 17636; SCCAP RTC at 90-91, 97-99, EPA-HQ-OLEM-2022-0174-0583; *see also* Comments of Air Alliance Houston *et al.* (Aug. 23, 2018) (2018 Comments) at 29-42 & Exhibits at 155-58, EPA-HQ-OEM-2015-0725.
[163] Research Memo on IST Measures, prepared by Earthjustice (included in Appendix).
[164] Comments of t.e.j.a.s. et al., EPA-HQ-OLEM-2022-0174-0460 (Oct. 31, 2022).

facilities.[165] That was down from 30 per year documented in the first such report.[166] A subsequent 2025 Report on the Implementation of the Seveso III Directive found that from 2019-2022, the average annual number of major industrial accidents dropped to under 22, with these accidents having less damaging impacts.[167] Notably, these numbers are *6 times lower* than the annual average in the last 10 years in the United States. *See* Part III.A, above (citing RMP data).

A UAW expert analysis of refinery incidents and harm before and after implementation of the California refinery IST and related requirements shows substantial reductions in both incidents and harm.[168] Data from Contra Costa County similarly documents a decline in both incidents and their severity following implementation of its Industrial Safety Ordinance.[169]

Further, the repeated demonstration of a transition from a more hazardous to some type of safer measure at a facility in jurisdictions requiring STAA or similar evaluations shows a per se improvement to safety. That is because, if an incident still occurs, whether related to human error or action, a lack of investment or maintenance, natural hazards, or other factors, in all instances where safer technologies or measures have been implemented, there is likely to be no incident at all or less harm if an incident occurs. Even where evaluated and not yet implemented, the IST/ISD evaluation provides relevant information that can inform the overall safety planning at the facility and that the facility knows could potentially increase its liability, providing incentive to invest in safety in the future, even if it has not yet done so.

The research provided, including some updates on developments, reflects information available to the public that Commenters were able to gather during the public comment period provided here. EPA should have access to additional

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[165] Euro. Comm'n (EC), *Industrial Accidents: Commission Report Shows Improvement in Preventing Major Accidents Involving Dangerous Substances*, (Sept. 29, 2021), https://environment.ec.europa.eu/news/commission-report-shows-improvement-preventing-major-accidents-involving-dangerous-substances-old-2021-09-29_en.

[166] EC, Report on the Application in the Member States of Directive 96/82/EC on the Control of Major-Accident Hazards Involving Dangerous Substances for the Period 2012–2014, COM (2017) 665 final (Nov. 16, 2017) (EC-MAH Report (2017), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0665.

[167] EC, Seveso III Implementation Report: European industrial safety improved (Sept. 19, 2025), https://environment.ec.europa.eu/news/seveso-report-european-industrial-safety-improved-2025-09-19_en.

[168] UAW Comments (May 2026), filed in EPA-HQ-OLEM-2025-0313.

[169] *See* Contra Costa Health Servs., ISO Annual Performance Review and Evaluation Report (Mar. 2022).

information. It has the authority and ability to seek this type of information from states, local jurisdictions, and facilities themselves. *See, e.g.*, 42 U.S.C. § 7414. It sought such information in prior rulemakings both from the public in listening sessions, and from agencies with relevant expertise, including the CSB. Yet the record fails to show that EPA has done any new information-gathering to inform this proposed rule.

Table 9. State and Local Requirements on IST/ISD (Similar to STAA)

New Jersey	**IST**: minimize or eliminate the potential for an Extraordinarily Hazardous Substance (EHS) release. N.J. ADMIN. CODE § 7:31-1.5(a). - Reducing the amount of EHS material that potentially may be released; substituting less hazardous materials; using EHSs in the least hazardous process conditions or form; and designing equipment and processes to minimize the potential for equipment failure and human error. N.J. ADMIN. CODE § 7:31-4.12. - Feasibility **Risk reduction plan**: identifies the risk reduction measures, recommends corrective actions, and provides for scheduling and implementation of remedial actions. N.J. ADMIN. CODE § 7:31-1.5(a). - "recommendations resulting from the [incident] investigation to prevent a recurrence." § 7:31-4.1(c). - "feasible risk reduction measures" and justifications. § 7:31-4.2. - "recommendations to reduce risks"; remedial actions and alternatives to correct the deficiencies. § 7.31-9.5. In 2022, New Jersey readopted the Toxic Catastrophe Prevention Act Program rules at N.J.A.C. 7:31 to

	continue in effect for a seven-year period ending in September 24, 2029.[170]
California	**IST**: "an approach to safety that focuses on eliminating or reducing the hazards . . . , permanent and inseparable from the material or operation. . . compared to a process with only passive, active, and procedural safeguards." CAL. CODE REGS. Tit. 19, § 5050.3(cc) (previously 2735.3(cc)). "to reduce each hazard to the greatest extent feasible" and "effectively reduce remaining risks" using other safeguards. § 5110.16(e)(3), (f)(1)-(3) (previously 2762.13).

Massachusetts	**Toxics Use Reduction**: "reduce, avoid, or eliminate the use of toxic or hazardous substances . . ., so as to reduce . . ., without shifting risks . . . ." 310 MASS. CODE REGS. 50.10:
	
	- "Input substitution, product reformulation, production unit redesign or modification, production unit modernization, improved operation and maintenance of production unit equipment and methods, recycling, reuse, or extended use of toxics." Id.
	- Requirements for developing toxics use reduction plans, *id.* 50.40-50.49:
	  o Notify and solicit comments from employees
	  o Policy to encourage reduction
	  o "[E]valuate the technical feasibility"
	- "a statement of facility-wide management policy regarding toxics use reduction." MASS. ANN. LAWS CH. 21I, § 11.

[170] Department of Environmental Protection, Notice of Readoption, Toxic Catastrophe Prevention Act Program, N.J.A.C. 7:31 (Sep. 24, 2022), https://dep.nj.gov/wp-content/uploads/rules/readopt/readopt-20221107b.pdf.

Washington	• **IST** in Hazard analyses. Chapter 296-67 WAC (Dec. 27, 2023)[171] - Employers must perform and document a process hazard analysis within 3 years of the effective date of Part B that looks closely at the effectiveness of safeguards that apply to particular processes, helping the refinery to identify, evaluate and control hazards associated with each process. - Employers must also develop and implement hierarchy of hazard control analyses to identify and prioritize the risks posed by each process safety hazard, and then to identify, analyze and document inherent safety measures and safeguards for each process safety hazard. - Employers are encouraged to implement the most effective safety measures when considering competing demands, and costs when correcting hazards.
Contra Costa/Richmond, California	**IST**: "feasible alternative . . . meant to eliminate, minimize, or reduce the risk of a major chemical accident or release by modifying a process rather than adding external layers of protection." Contra Costa County, Cal., Ordinances ch. 450 § 8.014(g). "root cause analysis"; "select and implement each inherently safer system . . . to the greatest extent feasible and as soon as administratively practicable. . .

[171] The Washington standards were promulgated after the SCCAP 2024 Rule was finalized. *See* Allison Harper, New Process Safety Management for Refineries in Washington Coming in 2024, SBH LEGAL, (Jan. 22, 2024), https://sbhlegal.com/new-process-safety-management-for-refineries-in-washington-coming-in-2024/.

	not [] based solely on evidence of reduced profits or increased costs." § 8.016(i).[172]
Jefferson County, Kentucky	**IST**: "The owner or operator shall consider, in the following order of preference inherently safer technology or design, passive measures, active measures, and procedural measures. A combination of risk management measures may be used to achieve the desired risk reduction." REGULATION 5.15 § 4.2.3.8.1. "The owner or operator shall determine the practicability of the inherently safer technologies and designs considered" REGULATION 5.15 § 4.2.3.8.2.[173]
European Union	Seveso-III Directive (2012/18/EU, Aug. 13, 2012; Seveso-II, 96/82/EC; Seveso, 82/501/EEC)) Requires facilities to demonstrate "all measures necessary" to prevent and mitigate major accident hazards, and to continually review and update safety reports, including by taking into account "new technical knowledge." It also requires Member States to ensure facilities "implement, if necessary, additional technical measures so that the risk to persons or the environment is maintained at an acceptable level."[174]

[172] In 2024, Contra Costa County adopted Ordinance No. 2024-14, amending the above referenced Contra Costa County, Cal., Ordinances ch. 450 § 8, and adding additional measures to improve industrial safety with terminal tanks. Ordinance No. 2024-14 was in response to a 2019 explosion of a 8.7-million-gallon tank terminal that caused multiple fires, the temporary closure of Interstate 80, a shelter-in-place alert for the nearby community, and concerns about the air quality of the surrounding area. The Ordinance thus amends multiple sections of Contra Costa County, Cal., Ordinance ch. 450 § 8 to expand their application to tank terminals. https://contra-costa.legistar.com/View.ashx?M=F&ID=13296644&GUID=EBA7665C-AD5F-40FC-940F-5D2651ED3CDC, EPA-HQ-OLEM-2025-0313-0050.

[173] Jefferson County KY rule applied IST to new processes in NAICS 322, 324, and 325 following zero RMP-reportable incidents in the county during the prior 20 years, but unreported incidents that had occurred at chemical facilities. This was finalized after the 2019 reconsideration rule, with compliance due by April 21, 2025.

[174] EC-MAH Report (2017, *supra*, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0018.

	Guidance issued to Member States from the Major Accident Hazard Bureau guidance to implement this directive, further discusses that the safety report requirements should ensure that: "inherent safety should be considered first, when feasible (i.e. hazards should always be removed or reduced at source."[175]
United Kingdom	The United Kingdom's Control of Major Accident Hazards ("COMAH") (2015) includes the goal "to avoid a hazard altogether," to prevent and mitigate the effects of major accidents involving dangerous substances that can cause harm to people and the environment. COMAH implements the EU's Seveso III Directive.[176]

In view of the evidence on the value of IST/ISD, EPA cannot justify its proposal to end the STAA practicability and implementation requirements for all currently covered facilities and to end the STAA evaluation except for new Program 3 processes, as further discussed below.

b. The statute requires EPA to assure prevention "to the greatest extent practicable" and to "minimize" accidental releases and the consequences of any release to health and the environment.

Prevention and minimization of hazardous chemical releases and minimization of their consequences, to protect health, are core objectives and regulatory criteria under the Act. EPA's proposal runs counter to these requirements.

The Clean Air Act defines the "objective of the regulations and programs authorized under this subsection" as: "to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to

[175] Major Accident Hazard Bureau (MAHB), Guidance on the preparation of a safety report to meet the requirements of Directive 96/82/EC as amended by Directive 2003/105/EC (Seveso II).
[176] Health and Safety Executive, Control of Major Accident Hazards Regulations 2015 (COMAH), https://www.hse.gov.uk/comah/comah15.htm.

paragraph (3) or any other extremely hazardous substance." 42 U.S.C. § 7412(r)(1) (purpose and general duty). The specific provisions governing EPA's rulemaking here further require EPA "to prevent accidental releases of regulatory substances," *id.* § 7412(r)(7)(A), and to ensure its regulations prevent, detect, and provide for response to hazardous chemical releases "to the greatest extent practicable," and "minimize accidental releases" to "protect health," 42 U.S.C. § 7412(r)(7)(B)(i); *see also* 7412(r)(7)(B)(ii) (providing further details).

The term "to the greatest" in section 112(r)(7)(B)(i) is a specific criterion. "Greatest" means the *largest* amount of "great." Great means:

- "Notably large in size: huge"
- "elaborate, ample"
- "large in number or measures"
- "remarkable in magnitude, degree, or effectiveness"[177]

Thus, read in full, the phrase "to the greatest extent practicable" means not just large, ample or remarkable, but to the *highest or maximum* degree and extent of practicable prevention. The term "practicable" has the plain meaning: "capable of being effected, done, or put into practice," capable of being "accomplished" or "feasible."[178] This term refers to the possibility of implementing or ability to fulfill a relevant requirement or measure. This term focuses on the achievability or ability to accomplish the objective at issue – here, prevention.

The term "minimize" similarly requires the greatest possible avoidance or reduction of releases and the consequences from a release. As defined, the term means: "to reduce to the smallest possible amount, extent, size or degree,"[179] or simply "keep to a minimum."[180] The Act makes clear that it is particularly

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[177] Great, Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/great (accessed Feb. 28, 2026); *see also* Great (adj. Greater/Greatest), American Heritage Dictionary (5th ed. 2022), https://ahdictionary.com/word/search.html?q=greatest ("Very large in size, extent, or intensity"; "Of a larger size than other, similar forms"; "Large in quantity or number"; "Extensive in time or distance.").

[178] Practicable, Am. Heritage Dictionary (5th ed. 2022), https://ahdictionary.com/word/search.html?q=practicable; Practicable, Merriam-Webster, https://www.merriam-webster.com/dictionary/practicable.

[179] Minimize, American Heritage Dictionary (5th ed. 2022), https://www.ahdictionary.com/word/search.html?q=minimize.

[180] Minimize, Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/minimize (accessed Mar. 23, 2026).

concerned with minimizing incidents and resulting harm to the health and safety of communities directly threatened by chemical releases and in the worst-case scenario zones.

Finally, although EPA must satisfy each of these core requirements, the statute makes clear that "prevention" of hazardous chemical releases is paramount, even before minimization of consequences. Sections 112(r)(1) and (r)(7)(A) and (B) emphasize prevention specifically as a required objective and part of the test that constrains EPA's regulatory authority. Legislative history further confirms that EPA regulations must advance prevention as directed by the text.[181] As the D.C. Circuit explained in finding the EPA's 2018 Delay Rule unlawful and arbitrary: "Reading the plain text makes clear that Congress is seeking meaningful, prompt *action* by EPA to promote accident prevention." *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1063, 1064 (D.C. Cir. 2018). This makes good sense because there will be no need to minimize consequences if no incident occurs in the first place.

c. EPA's STAA proposal is based on an interpretation contrary to the statute's requirements to prevent "to the greatest extent practicable" and to "minimize accidental releases" of hazardous chemical substances and the "consequences" of such releases.

EPA contends that its proposal satisfies the Act because it might potentially, or "could maintain protection of human health and the environment." 91 Fed. Reg. at 8972. But this disregards the statutory requirements. Even if EPA had shown that it has met the test it describes here (which it has not), that description of EPA's goal is different from the actual statutory tests of requiring prevention "to the greatest extent practicable," and ensuring that EPA "minimize[s]" chemical releases and their consequences. 42 U.S.C. § 7412(r)(1), (7). EPA further interprets its authority as allowing it to consider cost to industry.

EPA's interpretation contradicts and violates the plain words of the statute and does not represent the "best reading" of its authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The statute does not authorize EPA simply to "maintain" the status quo, at whatever level of protection the rules provide. It requires EPA to "minimize" accidental releases and their consequences, and to "prevent" such incidents "to the greatest extent practicable." EPA's attempt to

[181] *See, e.g.*, Sen. Rep. 101-228 at 115/3594 (making clear that prevention measures, including through the consideration and implementation of safer technology or alternatives, in particular, are "preferable to those which are intended to minimize the consequences of a release").

water down the statutory criteria that direct and constrain its rulemaking authority violates the Act.

Notably, although EPA admits it is relying on this authority, EPA fails to present or apply a statutory interpretation of section 112(r)(7)(B) that addresses the requirement for prevention of accidental releases "to the greatest extent practicable." Similarly, EPA fails to present and apply an interpretation of the Act that assures "prevention," as required by section 112(r)(1) and 112(r)(7)(A). The proposal also has no statutory interpretation of the "minimize accidental releases" and "minimize the consequences" requirements that are consistent with the Act. Instead, EPA appears to be interpreting these provisions to justify whatever its chosen level of regulatory burden or cost may be. Because the proposal and its reasoning are contrary to the Act's plain language, EPA has failed to demonstrate its interpretation is the "best reading of the statute," as required by the Supreme Court's decision in *Loper Bright*.

As a consequence, EPA's STAA proposal to end or weaken all STAA requirements fails to meet the Act's clear instruction to maximize prevention "to the greatest extent practicable." The term "to the greatest" is a directive which remains unaddressed in EPA's proposal. Congress enacted the test "to the greatest extent practicable" for a reason and those words cannot be written out. They are there to serve the Act's core goals of preventing a serious chemical catastrophe such as occurred at Bhopal, and preventing more frequent but still deadly or harmful chemical emergencies – like those that have caused deaths, injuries, toxic exposure threats and massive evacuation and shelter-in-place orders for years.[182]

Similarly, EPA does not explain how ending or weakening the STAA requirements will "minimize accidental releases" or "minimize the consequences" to health and safety of such releases. Again, Congress enacted that requirement to advance the core objectives of protecting health and safety. EPA must address, not ignore, the statutory requirement to "minimize" RMP releases and the harm they can cause.

Ignoring directive words of the statute is a clear violation of the Act, and is not "the best reading."

EPA may not choose the bare minimum level of prevention that it prefers. It must demonstrate that its regulations *actually meet* the statutory test. It cannot determine that some reduction in consequences is enough and that it can allow

[182] *See* Sen. Rep. 101-228 at 115, 130.

serious consequences to communities, first responders, workers, and families to continue. It must demonstrate it will achieve the "minimize" consequences directive of the statute. The proposal's framework to apply STAA evaluations only to new Program 3 processes, while eliminating all other STAA requirements, neither maximizes prevention nor minimizes consequences. EPA may not "substitut[e] [its] desires for the plain text" of the Act." *New Jersey v. EPA*, 517 F.3d 574, 582–83 (D.C. Cir. 2008).

Congress made clear in 1990 that prevention measures – including specifically the consideration and implementation of safer technology or alternatives – are "preferable to those which are intended to minimize the consequences of a release." 1990 CAA Amendments Senate Report 101-228 at 115 (1989). As the Senate Report explained: "Measures which entirely eliminate the presence of potential hazards (through substitution of less harmful substances or by minimizing the quantity of an extremely hazardous substance present at any one time), as opposed to those which merely provide additional containment, are *the most preferred*." *Id.* (emphasis added). The Senate Report referred specifically to an example of one facility's use of an inherently safer process modification of the same chemical released in Bhopal (methyl isocyanate) as a key prevention measure, and as preferable to simply pre-release protection or back-up systems. *Id.* at 130/3623. In citing this example of IST implementation, the Senate stated that "prevention technologies are to be generally preferred to protection technologies where prevention eliminates the possibility of a serious event." *Id.*

Thus, from the very beginning, when enacting the RMP requirements, and without subsequent departure, Congress recognized STAA is the best known way to assure such prevention. EPA has failed to recognize and prioritize prevention as paramount, much less present a statutory interpretation or rule proposal that could satisfy the tests for prevention and minimization of accidental releases and their consequences.

d. EPA's STAA proposal violates the Act because it fails to ensure prevention "to the greatest extent practicable" or that it "minimize[s] accidental releases" and their "consequences."

Even if EPA had appropriately interpreted the Act somewhere in the record here, it has violated and acted contrary to the statute by failing to meet the specific tests in 112(r)(1) and 112(r)(7)(B). EPA has failed to show how its proposal to end and roll back the STAA requirements satisfies the requirements of the Act. EPA has not shown and could not show the proposal represents "meaningful, prompt

action by EPA to promote accident prevention." *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1063, 1064 (D.C. Cir. 2018).

EPA provides no justification for how its proposal satisfies the "greatest extent practicable" or minimization tests. It could not do so, as eliminating the STAA evaluation requirements for most of the over 1,400 of the highest risk facilities and thousands of currently covered processes – and ending the STAA practicability and implementation requirements for all currently covered facilities – does not provide for prevention "to the greatest extent practicable." Reducing requirements for "inherently safer" measures are likely to increase, not "minimize," accidental releases and their consequences. EPA has failed to show otherwise. There is neither a clear determination nor the required showing to meet the statutory tests here.

EPA does not even attempt to demonstrate its proposal meets the statutory test. The agency states that its proposal might potentially, or "could maintain protection of human health and the environment," but does not show based on any facts that it would indeed do this, or how that could possibly be true. 91 Fed. Reg. at 8972. Its statement that its proposal might possibly "maintain protection" is not only conclusory but further demonstrates the agency's failure to meet the actual criteria that apply to its rulemaking. The test is not to maybe or possibly maintain prevention at the current rate, but to provide for prevention "to the greatest extent practicable" and to "minimize accidental releases" and the consequences they cause. Further, a finding that EPA's proposal might or "could" meet some level of protection would also be insufficient. As the court previously held, "hypotheticals" do not satisfy the Act. *Air Alliance Houston*, 906 F.3d at 1065. EPA cannot try to justify its action based on speculation about unsupported threats while ignoring real harm shown in the record.

There is no evidence in the record that EPA has made or supported a determination that its proposal would achieve prevention "to the greatest extent practicable" or will "minimize accidental releases" and "minimize [their] consequences." In particular, EPA cites no evidence or data showing how its proposal to rescind the STAA practicability assessment and implementation requirement *for all currently STAA-covered facilities* would advance the goal of prevention of releases or minimization of harm in any way.

EPA's 2026 RIA cost comparison for the existing STAA requirements versus 2026 proposal plainly shows that EPA is eliminating most of these requirements and proposing a far lower level of coverage for the STAA evaluation than the 2024 Rule. The RIA shows EPA's proposal is not just about lowering

cost, it is reducing protection by removing all requirements applicable from currently covered processes and facilities. For example, under EPA's proposal only 350 hypothetical new covered processes would be subject to the evaluation; none would be subject to practicability assessment or implementation requirements.[183] EPA does not provide evidence on how an existing covered process might ever turn into a "new" covered process that would trigger the proposed requirement. EPA does not provide any evidence at all that its proposal would ensure an STAA evaluation occurs at any existing facility. Its vague proposed regulatory text sheds no further light on this, as discussed later in these comments.

What is clear is the amount of prevention EPA proposes to require is lower than under the existing rules. It is certainly not the maximum STAA, i.e., not demonstrating prevention "to the greatest extent practicable," as required. Rather, it appears to be the littlest, lowest, most minimal measure that the agency thought it could propose, to try to look like it is still advancing prevention through STAA in at least some small way. But the bare minimum that EPA, under a given administration, wants to require is not the statutory test. Applying only an evaluation requirement for STAA (without practicability or implementation requirements) to new processes in one facility tier (Program 3) could not possibly be interpreted as "the greatest extent" of protection. EPA has not shown how its proposal could meet this test.

Although EPA is considering expanding the types of facilities subject to the STAA evaluation (by covering all Program 3 new processes, not only those in NAICS 324 and 325), this proposal will advance prevention far less than the existing requirements.

For example, the proposal would apply STAA only to new processes at types of facilities that are less likely to face incidents, and *remove* the requirement for existing processes at facilities that are at least *two to seven times more likely* to have incidents, according to the agency's own analysis.[184] Covering new processes in additional industry sectors is likely to advance prevention less than covering all

[183] 2026 RIA at 26. EPA states its proposal would retain protection by covering 350 new processes, but provides no information on the specific number of existing facilities that would have to comply (if any). EPA also does not explain how this was calculated or cite evidence supporting this.

[184] 87 Fed. Reg. at 53578-80 (discussing that of the facilities with two or more incidents, 60 percent were NAICS 324 and 325; finding STAA applicable to facilities in industries "with the most frequent and severe accidents with offsite consequences"; also finding greater off-site impacts in facility-dense areas with at least two 324/325 facilities within one mile of each other); SCCAP Rule, 89 Fed. Reg. at 17651 (facilities with "heightened risk to a community").

processes (existing and new) in the highest risk industry sectors, as the current rule does.

EPA also tries to contend that STAA implementation "does not ensure accident prevention," and suggests it might somehow increase risk. 91 Fed. Reg. at 8981. The agency points to industry commenters' prior comments claiming there is a "concern of risk shifting," or the shift from one hazard to another, and "potential adverse consequences." *Id.*; 2026 RIA at 62. But, even if there were any such potential offsetting concerns (which EPA has not shown here), EPA must satisfy the statute. Regardless of EPA's views on whether additional or different measures may be valuable to avoid risk-shifting, the question is whether EPA's proposal assures prevention "to the greatest extent practicable," and whether it will "minimize accidental releases" and their consequences. EPA has not met that test.

Regardless, EPA cites no examples where risk shifting has occurred and caused harm, or evidence that STAA implementation has maintained or increased a threat in any prior incident. 91 Fed. Reg. at 8981. EPA may not simply adopt industry comments as evidence. The industry comments EPA points to in the 2026 RIA also do not demonstrate that any concern about risk shifting is more than hypothetical or could not be avoided by the rule itself. The existing rules require evaluation of safer technologies and alternatives and, in some instances, their practicability. 40 C.F.R. § 68.67(c)(9). The rules allow the facility to choose among the safer measures to implement. *See* 40 C.F.R. § 68.68(h)(1) (requiring certain listed Program 3 NAICS 324 and 325 facility operators to implement "at least one" of a listed set of safer measures). Thus, EPA's contention that STAA implementation could somehow require a facility to increase incident risk or undermine safety is not supported. Notably, it also contradicts the agency's own recognition that there is value in STAA evaluation. As the D.C. Circuit previously held, unsupported "hypotheticals" do not show EPA has followed the requirements of reasoned decision-making under the Act. *Air Alliance Houston*, 906 F.3d at 1065.

Even if STAA were not, by definition, guaranteed to prevent certain harmful incidents, it is, at least, guaranteed to advance the minimization of consequences from the incidents that do occur. EPA does not engage in any way with this part of the statutory test or show its proposal is not likely to increase the consequences of incidents that do occur, rather than prevent, reduce, or minimize them. Its proposal is therefore both unlawful and arbitrary.

e. EPA's refusal to "minimize accidental releases" of hazardous substances and to "minimize the consequences" of such releases on human health, including children's health and safety, is unlawful and arbitrary.

Not only does EPA fail to demonstrate that its proposal would reduce, much less "minimize" chemical releases and their consequences to health and safety at all, it is also unlawful and arbitrary that EPA does not discuss or engage with the scientific evidence on adverse health threats and impacts for communities at all, including in particular, for children in harm's way. This provides additional evidence showing that EPA's proposal is contrary to and fails to meet the statutory directive to "minimize the consequences" of hazardous releases and to "prevent or minimize accidental releases of such substances from the statutory source . . . in order to protect human health and the environment," as provided in 112(r)(1) and 112(r)(7)(B)(i) and (ii), and further emphasized in related statutory provisions summarized in Part I, above.

Evidence shows serious health and safety impacts to communities from RMP chemical releases, that can include toxic chemical exposure and related acute and chronic illness and health risks, including cancer.[185] EPA's RIA briefly acknowledges some health impacts of chemical releases – i.e., death, injury, and immediate medical treatment, but fails to recognize its proposal would increase—not reduce or minimize—the likelihood of these impacts, as well as acute or chronic illnesses. EPA may not now lawfully roll back those protections without showing doing so would not increase, and would instead "minimize the consequences" of chemical releases, under section 112(r).

Considering adverse health effects to children and considering potential adverse health effects that can occur at any point in the life-cycle from early exposure are essential components of considering the "consequences" of chemical releases, including potential impacts to "human health," as required by statute. The section 112(r) statutory terms requiring EPA to: "minimize accidental releases . . . in order to protect human health" and to "minimize the consequences" of such releases require considering potentially adverse consequences to human health that may occur in childhood and that may begin from exposure in an early developmental stage – e.g., in utero to the developing fetus, or in childhood.

EPA admits that it must consider some impacts to children as a population. It even includes a conclusory statement in the record that it has done so and found

[185] *See e.g.*, Part III.A, above (summarizing health research).

that "EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children." 91 Fed. Reg. at 9008. The record and proposed rule belie this.

EPA fails to support that determination with the necessary evidence in the record. Contrary to EPA's proposed rule, *id.*, available evidence and science show EPA's proposed rule would do the opposite of what EPA says. It would weaken existing protection for human health, and increase specific and disproportionate "risk to children" due to the increased exposure and harm susceptibility during pregnancy (to the developing fetus) and for children in harm's way.

There is no evidence that EPA has considered impacts to children as a population or to affected populations based on exposure early in developmental stages (including childhood). For example, it ignores the particular exposure and harm inhalation of toxic chemicals can cause to children, ignores one of the most important periods of childhood exposure – during infancy – and completely ignores early developmental impacts. *Id.* EPA's regulatory impact analysis (2026 RIA) – which is both unlawful and arbitrary as discussed in Part III.B.1.i for other reasons – similarly includes no assessment at all of the health impacts to children, including infants, to the developing fetus, or impacts later in life related to exposure during those life stages. *See, e.g.*, 2026 RIA (not discussing health effects to children or related to early development exposure at all). There appears to be no consideration whatsoever in the record of potential neurodevelopmental or other developmental toxicity to children or in early developmental stages, or later-occurring health impacts from early exposure. EPA's proposed rule does not acknowledge or discuss any of the acute or chronic health impacts that toxic chemical exposure can cause to children, much less demonstrate that it has considered such impacts on children or on human development. 91 Fed. Reg. 9008.

Because EPA's proposal does not satisfy the required directives to "minimize the consequences" of chemical releases and to "minimize accidental releases . . . to protect human health," under section 112(r), EPA's proposal is unlawful and arbitrary. 42 U.S.C. §§ 7412(r)(1), (r)(7). Failing to assure the minimization of health (including safety) consequences, including for children and the developing fetus, is directly contrary to the statute. Failing to assess potential effects to children and to the developing fetus – because this stage is central to childhood and lifelong health and well-being – is equivalent to ignoring potential health effects that can occur or first begin during pregnancy and early human development and present as a child, young adult, during mid-life, or as a senior or elder. Ignoring these health effects is also particularly dangerous and arbitrary because exposure during infancy (under age 1) and developmental exposure to the

fetus during pregnancy can cause serious harm not just during childhood but later along the life cycle due to the intense susceptibility to toxic chemical exposure during early development.

For decades science has shown that harm can occur to children, including infants, and to the developing fetus at far lower levels of exposure than may register adverse health effects for healthy adults.[186] Even small levels of chemical exposure, measured in amount or duration, can cause particular harm or threats during pregnancy, in infancy, and in childhood, whether or not there are known adverse effects to healthy adults at those levels.

EPA's failure to assess much less "minimize" health effects to children and human development, and its failure to demonstrate protection for children's health and human developmental health in this rollback proposal is also arbitrary and capricious. EPA does not even attempt to engage with or address the science on particular harm and exposure during childhood, including infancy, or to fetal development. Even if the statute did not require EPA to "minimize" these consequences (which it does), these impacts are a relevant and important part of impacts to human health and to the question of whether EPA can or should exercise its section 112(r) authority to weaken the existing RMP rules, without causing adverse effects to children's health or to the developing fetus. EPA may not refuse to consider these impacts as an important part of the problem at issue in this rulemaking. *State Farm*, 463 U.S. at 43.

Finally, EPA's failure to assess impacts to children and to the developing fetus, much less to act to prevent and "minimize" such impacts, from this rollback proposal is also arbitrary because it conflicts with EPA's own Children's Health Policy. EPA admits that the policy "applies to this action." 91 Fed. Reg. at 9008. EPA recently reaffirmed its policy commitment to "protecting children's environmental health in support of Executive Order 13045: *Protection of Children*

[186] *See, e.g.*, Part III.A., *supra*; *see also* ACOG Comm. Op. 832, *Reducing Prenatal Exposure to Toxic Environmental Agents* (July 2021), Reducing Prenatal Exposure to Toxic Environmental Agents; EPA Policy on Children's Health (Oct. 5, 2021), https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf; EPA, Children's Health: Children Are Not Little Adults (July 15, 2025) available at https://www.epa.gov/children/children-are-not-little-adults ("the timing of exposure to chemicals or other insults is critical in determining the consequences to children's health" and indeed, "the same dose of a chemical during different periods of development can have very different consequences"); *see also, e.g.*, Nat'l Research Council, NASEM, Pesticides in the Diets of Infants and Children at 3 (1993) ("A fundamental maxim of pediatric medicine is that children are not 'little adults.'").

From Environmental Health Risks and Safety Risks."[187] That order directs agencies to evaluate whether covered regulations are sufficiently protective of children and to justify departures from the most protective alternative. EPA's new policy provides that:

> Ensuring the protection of children's environmental health is foundational to the U.S. Environmental Protection Agency's mission to protect human health and the environment. Therefore, it is EPA's policy to protect children from environmental exposures by consistently and explicitly considering early life exposures and potential lifelong health impacts in all human health decisions.[188]

The policy further directs that EPA "will identify, evaluate and use in decision-making environmental health data that can help characterize human health outcomes over the course of a lifetime," yet it has failed to do that here for children as a sub-population or early developmental exposure, contrary to its own policy.[189]

Administrator Zeldin has repeatedly promised to "make America healthy," and has specifically promised to "improve children's environmental health."[190] EPA has recognized that "[r]educing environmental exposures during childhood, including from the impacts of natural disasters and emergencies, will result in a healthier and more productive future for all Americans."[191] Yet, EPA has not followed its own policy here nor shown how this proposal to rescind and weaken the STAA requirements on the books now could satisfy the statutory directives that apply to children's health and the agency's own Children's Health Policy.

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[187] EPA, Children's Health Policy at 2 (Mar. 2026), https://www.epa.gov/system/files/documents/2026-03/children-s-health-policy-march-2026.pdf.
[188] *Id*. at 1.
[189] *Id.*
[190] *See, e.g.*, Zeldin Memo Accompanying Children's Health Policy Mar. 2026), https://www.epa.gov/system/files/documents/2026-03/children-s-health-policy-memo-march-2026.pdf; EPA, Administrator Zeldin Releases Statement on MAHA Commission Report (May 22, 2025) (https://www.epa.gov/newsreleases/administrator-zeldin-releases-statement-make-america-healthy-again-commission-report).
[191] EPA March 2026 Memo, https://www.epa.gov/system/files/documents/2026-03/children-s-health-policy-memo-march-2026.pdf.

f. *EPA's STAA proposal violates the requirement for section 112(r)(7)(B) rules to ensure that risk management plans "provide for compliance" with the General Duty Clause.*

Section 112(r)(7)(B)(ii) requires RMP rules to ensure risk management plans "shall provide for compliance with the requirements of this subsection." 42 U.S.C. § 7412(r)(7)(B)(ii). This "subsection" is section 112(r), which includes section 112(r)(1), providing the General Duty "to identify hazards which may result from [hazardous chemical] releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur." *Id.* § 7412(r)(1).

EPA has failed to address much less show that its proposed rule on STAA will assure compliance with the General Duty Clause in section 112(r)(1), for all of the reasons discussed above. Instead, EPA's proposal will weaken the plans and fail to ensure that RMP facilities "maintain a safe facility" and "identify hazards" or "steps . . . necessary" to prevent releases and minimize harm. *Id.* § 7412(r)(1).

g. *EPA's reliance on an alleged incident decline as the basis for removing STAA provisions is contrary to the Act and arbitrary and capricious.*

In justifying its decision to rescind STAA provisions for most of the currently covered facilities, EPA points to an alleged "decline" in Program 3 incidents over the last 10-year period. 91 Fed. Reg. at 8979. This turns the Act's objectives on its head and is arbitrary and capricious. EPA contends without support that the fact that a facility reported no incident within the 10-year period for which EPA assessed data means that the facility's prevention program is "successful" and no additional requirements are needed unless the facility decides "it is appropriate." *Id.* at 8976, 8979-80.

i. *EPA irrationally attempts to find an incident decline based on only partial and incomplete data.*

EPA cannot attempt to draw reliable conclusions about incident trends based solely on the data it has selected to assess this trend here. The data on which EPA is relying does not and cannot, alone, demonstrate how safe existing facilities are. EPA chooses to look solely at reported harm incidents in a narrow period of time to make its argument. Yet the incidents reported under the RMP rules are only *some* of the incidents that have actually occurred. The data EPA is using to assess

trends misses and underestimates chemical incidents, as the agency admits. 2026 RIA at 99 (stating that the data EPA uses "are an underestimate of total accident impacts"). These substantial underestimates demonstrate that EPA cannot rationally use any trend analysis from these data to justify weakening the rules, for the following five reasons.

(1) EPA irrationally reaches incident trend conclusions based solely on data self-reported by industry.

The scope of EPA's database is limited only to those incidents that facilities reported. EPA's analysis relies completely on industry-reported data. EPA does not appear to assess any data from *any* non-industry source – such as inspections, compliance investigations, worker anonymous reports, other federal or state data (including incidents reported to the NRC or the CSB), or news reports. Although the database shows a check for completeness, it is unclear what, if any, independent review or ground-truthing EPA did to verify that no incidents missing were added to an RMP submission.

There is no dispute that there is a significant amount of delayed or under-reporting incidents and even RMP submissions. 2026 RIA at 64.

Thus, the fact that the industry itself has not reported an incident to EPA cannot be relied on, alone, to find that any specific facility had no incident. In issuing SCCAP, EPA recognized underreporting and delayed reporting are significant enough issues that they can be measured, and they underestimate both the number and magnitude, as well as the total monetized cost, of RMP incidents. *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17632. EPA put in place additional employee reporting provisions in part to try to capture some of the missing incident and other compliance data.

News reports since 2021, compiled for RMP facilities as part of the Coalition to Prevent Chemical Incidents' Incident Tracker, have identified at least 296 incidents at RMP facilities that did not show up in EPA's database as of January 2026.[192]

Industry has had a higher incentive not to report incidents or harm since at least 2017, when EPA first tried to use an alleged incident "decline" to justify weakening the RMP rules. 2019 Recon Rule, 84 Fed. Reg. at 69852-53 (Dec. 19, 2019). This increases the unreliability of incident reports since at least 2018. EPA

[192] See Spreadsheet of Incidents at RMP Facilities in Incident Tracker Not In RMP Database (included in Appendix).

acknowledges that "regulatory uncertainty" during the last decade has affected industry behavior – in ways it admits it has not analyzed. 2026 RIA at 61. Some facilities might even have begun working to implement some improvements during the last decade, complying with stronger state or local standards or anticipating the need for compliance with stronger standards in the SCCAP Rule, which could potentially have contributed to some incident and harm reduction even before final deadlines for compliance have arrived. EPA cannot rationally ignore the impact of industry incentives and behavior as a factor in assessing any potential incident trends across that timeframe.

(2) EPA arbitrarily reaches incident trend conclusions based solely on reports of only a subset of harmful incidents.

EPA attempts to contend that there has been an overall incident "decline," but the data on which it relies for this assessment does not include a reliable number of *total* chemical incidents or releases at RMP facilities. The scope EPA has used to assess incident trends ignores the full set of incidents at RMP facilities, including those where the facility did not document one or more of the specific reportable impacts, or those at an RMP facility that involved a non-covered process. Perhaps most concerningly, EPA omits any data on "near misses" for chemical releases and catastrophes.

The rules do not require *all* incidents at chemical facilities to be reported. EPA again admits this but refuses to acknowledge the significance of this omission in the data it is using. 2026 RIA at 64.[193] Facilities are only required to report incidents that meet certain criteria – where the facility knows that a subset of certain kinds of harm have occurred.[194] Therefore, because all incidents are not required to be reported, EPA cannot reliably contend that it has the full number of incidents at different points in time for a trend assessment that could be used to justify weakening protection.

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[193] *See* 40 C.F.R. § 68.42(a) (requiring accident history reporting only of chemical releases from "covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage"); *see also id.* § 68.195(a) (requiring correction of the accident history information according to the same criteria, within 6 months of a release or by the time a plan is updated under 68.190, whichever is earlier).

[194] 40 C.F.R. § 68.168 (requiring report of five-year accident history in the Risk Management Plan, containing the information required in § 68.42(b) on each incident resulting in specific types of reportable harm, as provided in § 68.42(a)); § 68.195(a) (requiring correction of new accident history information "within six months of the release or by the time the RMP is updated under § 68.190, *whichever is earlier*") (emphasis added).

Similarly, because the rules require reporting only some types of harm that can occur, some harmful incidents have gone unreported.[195] Again, EPA admits this but refuses to recognize that it undermines the integrity of EPA's alleged "decline" determination. 2026 RIA at 64 ("Many accident impacts are not required to be reported and thus are not reflected in the data."). For example, in the 2026 RIA, as in the 2024 RIA, EPA acknowledges a broad range of harm that can occur from a chemical incident.[196] Yet, the rules do not require reporting some types or metrics of harm – such as the amount of toxic chemicals released into the air from a release, lost work or school days for students, or employees on and off-site who have fallen ill after an incident or any measure of health effects from one or more exposures to workers or community members following the incident, the reduction in nearby home value following an incident, the cost of local emergency responders' direct response and any cost from diversion of responders to the incident, the use of toxic chemicals (such as PFAS-containing firefighting material) to respond to a fire, the cost of environmental cleanup and remediation following the incident.

In EPA's data, as the agency even admits, incidents causing such harm are invisible and the harm they have caused is not counted. EPA cannot rationally contend that a decline can justify weakening protection, in view of those invisible incidents and harm. EPA's analysis ignores information and factors relevant to the issue it is evaluating. That is arbitrary. *See Motor Veh. Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

Importantly, incidents that came close to causing a release or reportable harm, including even a potential catastrophe, are not reflected at all in the data EPA has analyzed. The rules do not currently require reporting of such "near miss" incidents. EPA has recognized that there can be "near misses" for chemical incidents that are not reported under the RMP rule. SCCAP Proposed Rule, 87 Fed. Reg. at 53584. EPA's acknowledgment of this gap belies its decision to ignore the relevance of not just reported harm incidents, but near misses for chemical releases and catastrophe.

EPA's data also ignores or undercounts incidents at RMP facilities that did not involve a covered process or chemical, or where it is unclear why the incident was not reported. This may be because, as EPA states, it attempted to ensure that "only impacts attributable to the release of a regulated substance were included in the analysis of baseline damages." 2026 RIA at 64. It is unclear based on that

[195] *Id.* §§ 68.42(a), (b); SCCAP Rule, 89 Fed. Reg. at 17627.
[196] 2026 RIA at 61; *see also* 2024 RIA at 12, 78-94.

statement what incidents EPA removed from the evaluation. Notably, there have been serious examples of chemical incidents and even tragedies at RMP facilities that are only partially covered due to the chemicals or thresholds in giving processes. The fatal West, Texas fertilizer disaster in 2013 is one example that appears to never have been reported in EPA's database; the facility was partially covered, but the incident began in a non-covered process using ammonium nitrate.[197] The ITC fire in 2019 also appears not to be in EPA's database, and it is unclear why.[198]

That EPA's purported evaluation of trends could ignore even incidents at an RMP facility where one part of the facility could have a fire or explosion that could have caused or contributed to a release from a covered process, yet not be counted, shows again how irrational it is for EPA to contend that there is an alleged decline demonstrating something significant for safety.

The total number of near misses and the details on what occurred during them are relevant factors if the agency is attempting to evaluate meaningful trends in incidents and safety over time, not just those that, for any reason, resulted in the specific types of harm the rules require to be reported. Near misses for catastrophic incidents would be particularly important under this regulatory framework where preventing such incidents is at the heart of EPA's regulatory duty. Yet, EPA has not even attempted to consider either the frequency of such near miss incidents or the steps taken to prevent a near miss from turning into a harmful incident. Its failure to evaluate all incidents at RMP facilities, including near misses, fatally flaws EPA's incident trend analysis and proposed conclusions.

(3) EPA proposes incident trend conclusions based on data that undercounts reported harmful incidents for recent years.

Every version of EPA's database undercounts reported incidents within the most recent 5 years prior from when it was generated. That is because of well-documented delay between when an incident occurs and when it shows up in any version of EPA's RMP database, for a variety of reasons.

First, year after year, research has shown significant under-reporting or delayed reporting to EPA by facilities at or near the time of an incident. EPA has recognized this is a problem and assessed that as of the version of the database considered in the SCCAP Rule at least 6.7% of incidents were delayed in

[197] CSB, Final Report, West Fertilizer Final Investigation Report (Incident: April 17, 2013; Final Report Released Jan. 18, 2016) at 184-85, https://www.csb.gov/west-fertilizer-explosion-and-fire-/.
[198] CSB, ITC, Mar. 2019, https://www.csb.gov/intercontinental-terminals-company-itc-tank-fire/.

reporting.[199] The United Autoworkers International Union (UAW) has performed statistical analysis across multiple years of EPA RMP databases that demonstrates the delayed reporting results in significant undercounting of incidents.[200]

Although facilities are required to report harmful incidents within 6 months under EPA's rules, many incidents do not show up at all in the database until a facility's 5-year RMP update deadline.[201] Thus, the data cannot be considered relatively complete for comparison with prior years. The 2023 Database EPA used is not a reliable source for the actual numbers of reportable incidents after 2018 and cannot be cited as demonstrating whether or not or how much incidents have actually declined in recent years. Similarly, the 2020 Database EPA used to assess pre-2020 incidents did not reliably include data for the prior 5 years. EPA's Accident History document and 2026 RIA both undercount incidents and harm through 2023.

It is particularly arbitrary that EPA is well aware of this issue, but did not address it or add incidents that show up in the most current database from years 2023 and earlier. EPA proposed this rule in February 2026, yet used data from an August 2024 database and an earlier 2020 database. EPA at least should have reviewed and incorporated the most current full year of reported data which it had as of the proposal – through December 2025. EPA's analysis here stands in stark contrast with EPA's approach in its rulemaking for the 2024 rule, where it found late incident reporting was significant and recognized that meant any trends data was undercounting incidents and harm in recent years.[202]

Further, an analysis of the most recently available EPA RMP database shows that EPA's analysis is missing at least 408 incidents that occurred through 2023, but were not reported by facilities until a submission following that time.[203]

Second, as an additional issue that EPA does not account for and must address: It appears that as many as 380 incidents appear not to have been

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[199] SCCAP Proposed Rule, 87 Fed. Reg. at 53592; *see also* SCCAP Rule, 89 Fed. Reg. at 17633 & nn. 45, 46.

[200] *See, e.g.*, UAW 2022 Comments at 2-3, EPA-HQ-OLEM-2022-0174-0183; *see also* t.e.j.a.s., Earthjustice, et al. 2022 comments at 53, EPA-HQ-OLEM-2022-0174-0460.

[201] 40 C.F.R. § 68.168 (requiring report of 5-year accident history in the Risk Management Plan, containing the information required in § 68.42(b) on each incident resulting in specific types of reportable harm, as provided in § 68.42(a)); § 68.195(a) (requiring correction of new accident history information "within six months of the release or by the time the RMP is updated under § 68.190, *whichever is earlier*") (emphasis added).

[202] *See, e.g.*, 87 Fed. Reg. 53592; 89 Fed. Reg. 17633.

[203] *See* Table 3, Part III.A, *supra*.

confirmed or "checked for completeness" in the database for years after they occur, some not occurring within a 5-year window.[204] Comparing the incident date with the checked date shows a wide array in how long it took for some checks to occur. Assuming that the incident is not being made available in the public (non-OCA) FOIA version of the RMP database until it has gone through EPA's check process, this is likely to lead to additional reporting delay on what the public can see versus what EPA has access to, and whether any of the data EPA used here was missing incident information that had not yet been "checked for completeness." EPA must address what these dates mean and if delay on EPA's end in receiving, processing and checking incident data is not causing additional delay it should provide evidence of that.

(4) EPA is arbitrarily ignoring the most recent incident data that facilities reported, including incidents within its chosen timeframe that were reported later.

In view of the longstanding reporting delay, it is particularly irrational for EPA not to use the most current data it has on incidents. EPA does not explain why it does not at least use data it had before releasing the proposed rule – e.g., the most currently available RMP database. The agency cannot justify refusing to assess any incident data from the most recent data available – through the April 2026 database or at least through December 2025. EPA has released the full non-OCA database through April 2026, through FOIA, and it is publicly available online. Commenters reviewed that data and have provided more current incident data from that database in these comments.

As cited above, for the most recent 10 years for which data should have been reported (i.e., 12-31-2010 to 12-30-2020), incidents have continued to occur on average every 2 days. The total number of harmful incidents reported is 1,265, or an average of 126 per year.[205]

EPA's decision to restrict its analysis to an old version of the database ignores the most recent incident data completely, and also ignores incidents reported through the 2023 timeframe EPA purports to evaluate, that were reported after the database EPA selected. This arbitrarily misses some of the most recently available data on incidents. EPA is ignoring relevant information and factors

[204] *See* List of Active RMP Facilities (from Apr. 2026 RMP Non-OCA database) (showing some dates in the "Postmark Date" filed that are years earlier than the "CompletionCheckDate" field).
[205] See Tables 1-2, in Part III.A, *supra* and accompanying Spreadsheets.

contrary to the requirements of reasoned decision-making. *State Farm*, 463 U.S. at 43.

EPA's preference to compare cost and benefits information from the 2024 RIA using the same timeframe does not justify its decision to also restrict its review of the total number of incidents to that same timeframe. EPA has more data available than it has chosen to consider and that is arbitrary and capricious. It is particularly concerning in view of the fact that EPA's choice has led to significant under-counting of incidents, and due to the EPA's attempt to contend that there is a decline based on that under-counting.

(5) EPA arbitrarily ignores major harmful incidents that led to the decommissioning and deregistration of facilities that are missing from its database.

Serious incidents that caused injuries and other harm, such as the Philadelphia Energy Solutions fire and explosion in 2019 and the Arkema disaster following Hurricane Harvey in 2017, are not included in the RMP database even as of April 2026.[206] Thus, they are not counted in EPA's analysis at all individually *or in the baseline* for EPA's cost analysis.

EPA previously recognized the undercounting that resulted from decommissioning, 89 Fed. Reg. at 17631-32. Its RIA again admits that. 2026 RIA at 64. Yet, EPA fails to recognize the significance of this undercounting for its proposed findings on the data trend. EPA fails to admit that this undercounting undermines the ability to find a reliable trend that could be used to assess the strength of existing protection. Even after acknowledging the omission of the PES incident, EPA failed to add the significant monetized costs, which have been estimated to be at least $750 million in property damage alone, not counting the cost of lost jobs or other harm to the community,[207] from that incident into its baseline generally or for facilities using HF. That led to significant undercounting both of the incidents and the foregone benefits based on EPA's analysis.

It is irrational for EPA to try to rely on an alleged "decline" that misses some of the most harmful incidents – and to ignore what its own attempt to assess that decline shows about the flaws inherent in its underlying impact analysis.

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[206] *See* Table 2 Spreadsheet – RMP Incidents with Harm Reported to EPA 2004-25; *but see* CSB, Arkema Inc. Chemical Plant Fire, Aug. 29, 2017, 2017-08-I-TX (May 2018), https://www.csb.gov/arkema-inc-chemical-plant-fire-/.

[207] CSB, PES Final Report at 6.

ii. EPA has not accurately demonstrated a reliable and significant incident decline.

Even assuming *arguendo* that a potential incident "decline" might somehow factor into the analysis of whether certain types of prevention measures are still needed, EPA's incident "decline" analysis and conclusions are factually unsupported. First, EPA has failed to show that all of the above factors that define the scope and content of the data used have not infected its analysis and do not undermine any relevance of its findings.

Further, it has looked only at raw incident numbers, a blunt instrument that EPA has not shown can actually be compared across the timeframes it selected. EPA has not shown that the facility types, operating hours, operation, staffing, production, and other industry-related factors that may affect incidents were equivalent across all of the years evaluated. Even if there were a short-term drop in incidents during either of the periods evaluated by EPA in the RIA – 2016-2020 or 2019-2023, both periods included significant health, labor, and economic disruption related to the COVID-19 pandemic.[208] EPA fails to address that or any other factor that might have reduced or temporarily idled RMP facilities' operation or production, or otherwise contributed to a decline in chemical incidents or releases that cannot be considered as representative of usual operating conditions, including stronger rules in some jurisdictions or industry incentives and behavior, as discussed above.

EPA's analysis of years notably does not even compare an equivalent number of RMP facilities or NAICS 324 or 325 facilities. That is because not every facility reports every year. EPA has failed to account for the numbers or types of facilities across reporting year. Each 5-year reporting period should encompass an equal number of facilities. But only those following each 5-year period after 2004 should include, at least, the same facilities as the prior period of time if still active (i.e., 2004-08; 2009-13; 2014-18; 2019-23; 2024-28). EPA does not analyze these periods. EPA tries to compare 2016-2020 and 2019-2023. 2026 RIA at 29. Further, the most recent two five-year period that should have a full set of active facilities cannot be relied on as having complete data due to the reporting delay, and EPA's decision to use outdated versions of the database for its analysis is arbitrary and capricious.

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[208] *See, e.g.*, EIA, Record low demand and low crack spreads drive refinery run declines (April 29, 2020), https://www.eia.gov/petroleum/weekly/archive/2020/200429/includes/analysis_print.php (discussing reduced refinery production related to COVID-19).

iii. Even if there were a reliably demonstrated and statistically significant incident decline, EPA fails to show such a decline would support its conclusion that the pre-existing rules are sufficiently protective.

EPA contends that facilities that have not reported incidents have "successful" prevention programs in place and that this shows regulations can be rescinded or weakened. 91 Fed. Reg. 8976, 8979. But, the lack of an incident at a facility in an arbitrary 5-year timeframe, particularly in recent years, alone says nothing about how safe that facility is, or how close it is to having a catastrophic release. Instead, as EPA has previously recognized, what is important to focus on to evaluate safety is the incidents that *have* occurred, to try to understand where, why, and what lessons can be applied to prevent similar incidents and harm in the future. It is the very fact of serious, continuing incidents, especially in particular sectors and at repeat facilities, that "demonstrate[s] failures and difficulties in accident prevention, emergency response, and information availability despite the general effectiveness of Part 68" in partially preventing incidents.[209] EPA's attempt to suggest that an alleged recent incident decline can justify weakening protections runs directly counter to EPA's prior conclusions in both 2024 and in 2016 that what is important is to focus on continuing chemical incidents and the need to prevent a low-likelihood, high-impact chemical catastrophe, not assume that any potential short-term decline might continue.[210] EPA fails to explain this based on any data in the record. EPA's proposal shows no indication that the agency evaluated *why* incidents have declined, including whether prevention measures like those in the current regulations may have contributed to a decline. EPA cannot

[209] EPA 2017 CDR Amendments RTC at 246, EPA-HQ-OEM-2015-0725-0729; EPA Activities Under EO 13650, RMP Final Rule, Q&A at 1 (Aug. 2017) (summarizing why updates were "necessary."); *see also, e.g.*, 2017 CDR Amendments RTC at 138, 219, 247; 2017 CDR Amendments RIA at 17 (recent incidents "highlight the regulatory need that this final rule modernization is addressing"), EPA-HQ-OEM-2015-0725-0734; 2019 RMP Rollback RIA at 18 ("[L]ooking across the United States and universe of regulated facilities, these accidents occur with sufficient frequency to warrant regulation"), EPA-HQ-OEM-2015-0725-0907.

[210] *See, e.g.*, SCCAP RTC at 4-5, 333 (recognizing that the severity of impacts from incidents "remains high" including deaths, injuries, and $4.66 million damage per accident) (citing examples of recent serious incident like TPC explosion and fire in Port Neches with a 50,000 evacuation and $153 million property damage); *see also* SCCAP Rule, 89 Fed. Reg. 17634 ("when major concerning RMP accidents, including major accidents, continue to occur as they have, it is EPA's responsibility to further protect human health and the environment") ("[w]hile large events are rare, CAA section 112(r) was intended as a prevention program for large catastrophic releases as well as more common accidental releases"); SCCAP Proposed Rule, 87 Fed. Reg. 53565 (discussing why trends alone are not sufficient to rely on).

rationally rely on an alleged incident decline, alone, to justify removing the STAA provisions.

Even if there were a statistically significant decline shown in the incident data, EPA fails to support its assumptions about the reason for any alleged decline or what, if anything, it might suggest about the safety of existing facilities under the RMP rules. EPA is drawing unsupported conclusions about what alleged incident rates may show.

EPA has not discussed the number of incidents compared to facilities, level of employment, or other factors within facilities or industry sectors that may have affected whether a given incident occurred in the timeframe selected.

During part of the time period EPA is evaluating – e.g., 2020-2022 – there were significant industry activity, production, supply, and labor disruptions related to the COVID-19 pandemic.[211] EPA does not acknowledge or address this. In the event incidents declined during this period, the pandemic's dampening of production and RMP facility activity is at least a relevant factor that must be considered.

EPA appears not to have studied the prevention programs at all at the NAICS 325 and 325, or other RMP, facilities. EPA has cited no facts or evidence in the record to support the conclusion that the reason some facilities have had no reportable incidents is because of safety measures they have implemented as opposed to simply good luck or coincidence. Those facilities can be anticipated to be just as close to having a harmful incident as others. EPA has failed to show otherwise.

iv. *Every chemical incident matters and weakening measures based on an alleged decline is directly contrary to the statute's prevention and minimization requirements.*

Even if there were any reliably demonstrated incident "decline," this would not justify weakening protections put in place to prevent *any* deaths, injuries, toxic chemical exposure, and other harm from industrial chemical releases not only as much as any single administration prefers, but "to the greatest extent practicable," 42 U.S.C. § 7412(r)(7)(B). The Act specifically directs EPA to "minimize

[211] *See, e.g.*, Record low demand and low crack spreads drive refinery run declines (April 29, 2020), https://www.eia.gov/petroleum/weekly/archive/2020/200429/includes/analysis_print.php (discussing reduced refinery production related to COVID-19).

accidental releases" and "minimize [] consequences" to health and safety, *id*.; §§ 7412(r)(7)(B)(ii), (r)(1). EPA may not lawfully decide some level of decline is acceptable, no matter how many incidents per year are happening. Every single industrial chemical incident matters under the Act, and is important to try to prevent and minimize, in its own right. The serious threat of a Bhopal or Seveso-level catastrophe cannot be ignored even at facilities that have not had a chemical incident in recent years. Congress intended that as much as can possibly done to prevent this harm should be done and that EPA must ensure facilities minimize consequences from all incidents.

Section 112(r) is not a pollution control framework that sets allowable limits of toxic chemical releases. It is a risk management framework established in part to prevent any single future Bhopal-like chemical catastrophe on U.S. soil. In enacting this language, Congress was particularly concerned about ensuring regulations are in place that can do all that is possible to prevent a catastrophic release like that one, Seveso, and others discussed in legislative history. [212] As EPA explained in 2024, "EPA has recognized that a major purpose of the accidental release provisions of the CAA is to help mitigate and prevent large scale catastrophic incidents that are rare and therefore difficult to quantify." [213] Centering that goal favors prevention of every possible incident to the greatest extent possible.

EPA's focus on the incident trends, and its allegation of a decline, is based on an assumption that the ongoing serious incidents can be ignored or discounted in deciding what rules to set, and used to justify weakening protection. To the contrary. The Act requires EPA to "minimize" such releases. 42 U.S.C. § 7412(r)(7)(B). But EPA's own data from the last 10 years for which data should be complete (i.e., 2011-2020) show there was an extremely high number of such incidents – 182 reported per year on average, including 126 per year with reported harm.[214] The fact that chemical incidents continue at all shows the need for stronger prevention. Indeed, as EPA recognized in 2024: "The fact that accidents continue to occur shows that we still have reason to exercise statutory authority to

[212] EPA, SCCAP 2024 Response to Comments (SCCAP RTC) at 9 (citing CAA Amendments House Report at 155-57, Senate Report at 134-35, 143-44), EPA-HQ-OLEM-2022-0174-0583.
[213] *See, e.g.*, SCCAP RTC at 9; 89 Fed. Reg. 17624-25 (discussing benefit of preventing a single high-impact incident like Bhopal and finding: "Preventing a single high-cost accident annually would offset annual rule costs."); *see also, e.g.*, Risk Management Solutions, Catastrophe, Injury, and Insurance, The Impact of Catastrophes on Workers Compensation, Life, and Health Insurance at 56 (2004) (providing hypothetical scenario of an industrial catastrophe in a U.S. city that could lead to costs of $7 billion dollars from insurance claims alone).
[214] Earthjustice Tables 1 and 2, *supra*.

promulgate reasonable regulations to provide for the prevention and detection of those accidents to the greatest extent practicable when the opportunity exists to improve the performance of our regulatory program." SCCAP Response to Comments (SCCAP RTC) at 6, EPA-HQ-OLEM-2022-0174-0583. If there is an incident decline over time that should be studied to understand that trend, and regulatory action should ensure it continues. A decline does not justify *weakening* prevention through STAA. This is particularly true when incidents are occurring not as a random fluke but by 100 or more every year. As EPA said in denying the industry reconsideration petition on the SCCAP Rule in 2024:
"for over a decade, the need for [STAA] regulation has been clear." EPA Denial of Reconsideration at 19 (Dec. 2024), EPA-HQ-OLEM-2022-0174-0596.

Every single incident in the RMP database that causes or has the potential to cause such harm is one too many. Yet, EPA's proposed rule focuses on an alleged "decline" and acts as if only the trend or rate matters. *See, e.g.*, 91 Fed. Reg. 8979. EPA is applying the Act as if some prevention is enough. To the contrary, the Act treats the life, health, and safety of every worker, every first responder, every community member, every child with dignity and value. The Act does not allow EPA to justify weakening protection based on the idea that, even though fatal and other tragic incidents continue, the prior RMP rules have gotten these down to low enough numbers for the country to tolerate. The fact that chemical incidents continue is unacceptable.

EPA has provided no lawful or rational basis to justify a finding that the current level of incidents – which has consistently been above 100 per year across the last decade, even during the pandemic and in recent years where data are incomplete[215] – is acceptable. Instead, as the U.S. Chemical Safety Board, which operates to fulfill its duties and to make recommendations to which EPA must respond under section 112(r)(6), has said, the vision under the Act is "a nation free from chemical disasters."[216] EPA fails to advance this and its proposal to find some number of deadly incidents to be allowable, such that it can weaken the RMP rules, runs directly contrary to that goal.

h. An enforcement-only approach cannot lawfully or rationally substitute for regulatory prevention requirements.

EPA proposes that it can just use enforcement discretion alone to address continuing problems, rather than retaining the STAA requirements, but fails to

[215] *See supra*, Table 3 and Table 2.
[216] CSB, FY 2022-2026 Strategic Plan, https://www.csb.gov/assets/1/6/strategic_plan.pdf.

show how this approach sufficiently protects human health and the environment to satisfy the Act and serve its objectives. 91 Fed. Reg. 8981. This approach would rely on waiting until after an incident occurs, having EPA use its discretion to decide which incidents to investigate, whether to bring cases, and what relief to seek from those incidents. EPA's proposal includes no firm commitment or requirement to enforce, nor any specific remedy that it can assure would come out of such an effort. Industry has repeatedly made the type of argument EPA adopts here and in 2024 EPA directly and correctly rejected it, finding enforcement-only to be insufficient.[217]

As commenters explained in 2018 comments and as EPA itself recognized in 2016 and again in 2024, an enforcement-only approach happens only after the fact and so does nothing to advance prevention *before* an incident occurs.[218] Section 112(r) is a preventative statute requiring "regulations" designed to avoid chemical catastrophes and releases in the first instance.[219] Acting only after an incident has occurred, would play roulette with people's lives. An after-the-fact, deregulatory strategy fails to satisfy the Act's prevention objective, nor does it meet the requirements to "minimize" releases, and to assure prevention "to the greatest extent practicable," 42 U.S.C. § 7412(r)(1), (7)(B).

While enforcement is critically important, it is, as EPA recognized in the 2024 rule record, "too little, too late" for the workers, first responders, and families affected by the incident at issue in the case. SCCAP RTC at 4. It does nothing to help prevent those initial incidents – including potential catastrophes – from happening in the first place or preventing or reducing harm from such incidents. Enforcement can be valuable to deter future similar incidents, but cannot substitute for generally applicable preventative measures like the STAA evaluation *before* an incident starts. As EPA found in 2024, "our enforcement resources and posture are not capable of addressing accident-prone facilities without additional broad regulatory mandates." SCCAP RTC at 4. Enforcement activities are a "complement to strong accidental release prevention and response, but they are not a substitute for the stronger prevention measures and response provisions set forth in the final rule." SCCAP Proposed Rule, 89 Fed. Reg. at 17635.

An enforcement-only approach is particularly inconsistent with the statutory provision here, which was enacted to prevent *chemical catastrophes* like the

[217] *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17634; SCCAP RTC at 4; SCCAP Proposed Rule, 87 Fed. Reg. at 53565, 53573, 53584.
[218] *See*, *id.*; *see also* AAH *et al.* comments (2018), EPA-HQ-OEM-2015-0725.
[219] SCCAP RTC at 4; 2017 CDR Amendments RTC at 50, 52, 56, 246.

Bhopal tragedy. The point of section 112(r) is to prevent chemical releases altogether, so that no such catastrophes occur in the first place. By the time the incident has happened, no action of EPA can restore the health and safety of the workers, emergency responders, and community members who have suffered.

Where the enforcement-triggering incident has led to lives lost or to the destruction or closure of the facility, as occurred with the West Fertilizer explosion or the Philadelphia Energy Solutions fire, for example, the value of enforcement afterward to prevent future incidents is nonexistent.[220]

There may be nothing left of the facility itself. At West, an explosion occurred that was felt for miles, destroying the facility and destroying or damaging over 150 buildings offsite – including homes, schools, and a nursing home – and the site remained empty at least 10 years later. [221] In this tragedy, 15 people died – including 12 emergency responders and three members of the public – and more than 260 people were injured.[222] The proposed enforcement-only approach will not bring back the people killed, or undo the health harms faced by people injured. At PES, 5 workers were injured after personally preventing an offsite catastrophic release of the chemical hydrofluoric acid (HF) through activating a "Rapid Acid Deinventory (RAD)" system and manually turning on water pumps.[223] The facility is no longer listed as active in the database. The company went bankrupt, and the workers lost their jobs. EPA's enforcement case on PES, resolved six years after the incident, served no preventative value for anyone in the local community near the original facility.[224]

EPA does not provide any past examples where enforcement the agency has actually done has prevented a future incident. To the contrary, serious and

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[220] CSB, Final Investigation Report, West Fertilizer Co. Fire and Explosion, April 17, 2013, Report 2013-02-I-TX (Jan. 2016), https://www.csb.gov/west-fertilizer-explosion-and-fire-/; CSB, Final Investigation Report, Philadelphia Energy Solutions (PES) Refinery Fire and Explosions, June 21, 2021, Report 2019-04-I-PA (Oct. 11, 2022), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/

[221] CSB, West Report; *see also* https://www.wfaa.com/article/news/local/west-texas/10-years-later-west-texas-deadly-fertilizer-plant-explosion-resolve-sacrifice-healing/287-ecbc505b-4293-4678-8ee4-3779a9960552.

[222] *Id.*

[223] CSB, PES Report at 6, 20-21, 24.

[224] See, EPA, Civil Enforcement Case Report, No. 03-2025-7004, In rec: PES Administrative Services, LLC (case status as of 06/15/2025), https://echo.epa.gov/enforcement-case-report?activity_id=3604444146; L. Kaerney & J. Renshaw, Philadelphia Energy Solutions files for bankruptcy after refinery fire, Reuters.com (July 22, 2019), https://www.reuters.com/article/business/philadelphia-energy-solutions-files-for-bankruptcy-after-refinery-fire-idUSKCN1UH0O9/.

potentially catastrophic incidents, such as the TPC Group explosion in Port Neches, Texas, have occurred in recent years at facilities that had not had a chemical incident within the prior 5-year period. [225] The agency had not inspected at TPC recently because it was prioritizing facilities with recent incidents. SCCAP RTC at 4. Six years after the November 2019 explosions at TPC, EPA lodged a consent order in an enforcement case under section 112(r).[226]

Unfortunately, incidents at facilities, such as Arkema and Husky Energy, that had inspections or some kind of federal or state enforcement prior to those events show that the enforcement of the existing regulatory framework *alone* has not been sufficient. [227] The 2017 RMP Database included 2,686 accidents between 2004 and 2016 that occurred at facilities that had previously had safety inspections by regulators, so promises of compliance assistance offer little reassurance. RMP Database, EPA-HQ-OEM-2015-0725-0989 (querying accidents in given date range with a non-null last inspection date). Facilities must implement the prevention measures the CSB has recommended and that EPA found are needed.

There is a particularly strong need for STAA in the sectors EPA originally found should perform STAA, precisely for the reasons EPA itself found and the CSB outlined in its prior recommendation and investigation reports on refineries.[228] To repeal based on enforcement, EPA must rely on data demonstrating that its proposed enforcement-led approach of *weaker* rules is likely

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[225] CSB, Popcorn Polymer Accumulation, Pipe Rupture, Explosions, and Fires at TPC Group Chemical Unit Butadiene Unit, Nov. 27, 2019, Final Investigation Report, No. 2020-02-I-TX (Dec. 2022), https://www.csb.gov/tpc-port-neches-explosions-and-fire/, EPA-HQ-OLEM-2025-0313-0051.

[226] EPA, Civil Enforcement Case Report, No. 06-2021-3401, TPC Group-Port Neches_Houston,TX-RMP Consent Decree-FY2025, https://echo.epa.gov/enforcement-case-report?activity_id=3602851633; EPA, TPC Group LLC Settlement Information Sheet (last updated Apr. 20, 2026) (https://www.epa.gov/enforcement/tpc-group-llc-settlement-information-sheet.

[227] *See, id.* (listing EPA enforcement action at Arkema that was closed January 26, 2017); *see also e.g.*, Arkema ECHO report, https://echo.epa.gov/detailed-facility-report?fid=110000463258(detailing deviations and violations found during the 5-year period before the 2017 disaster, as well as, *e.g.*, an informal enforcement action under the CAA after the April 2014 inspection); Husky Energy – Superior Refinery ECHO report, https://echo.epa.gov/detailed-facility-report?fid=110000422962 (2017 penalty in an EPA case for $31,937 on Sept. 29, 2017, months before the April 26, 2018 disaster).

[228] SCCAP Rule, 89 Fed. Reg. 17645-53 (citing CSB Reports on Husky, PES); SCCAP RTC at 108 ("EPA agrees with CSB's recommendation, which reflects that solely relying on voluntary implementation of STAA measures may not be reasonable and may be inadequate to prevent accidents 'to the greatest extent practicable.'"); *see also* 2017 CDR Amendments RTC at 16 ("The record reflects that the likelihood of severe accidents is greater in the sectors that must conduct a STAA under the final rule … EPA is reasonably limiting STAA requirements to sectors that we view as most likely to have more frequent, severe releases and that are most likely to benefit from a STAA."); *id.* at 99-101 (discussing regulatory need to apply STAA to high-incident sectors); *id.* at 103-04 (discussing regulatory need to require STAA for petroleum refineries).

to prevent and reduce future harm. EPA has not provided any such analysis, and the record shows the contrary.

To advance prevention of repeated incidents at all, effective enforcement has to actually happen. Yet, EPA has never been able to do more than targeted enforcement at a few RMP facilities. In the most recent National Program Guidance providing priorities on Chemical Accident Risk Reduction, EPA set a target goal of inspections at only three percent of RMP facilities annually, with 36% to be conducted at high-risk facilities.[229] As EPA itself admitted, even when trying to advance a similar enforcement-alone approach in 2019, significant government oversight "can prevent serious accidents." 2019 Recon Rule, 84 Fed. Reg. 69880. But this level of oversight is very expensive, and not feasible at facilities regulated by the RMP rule on a national basis." *Id.*

Further, federal enforcement of the Clean Air Act has dropped dramatically in recent years, and under this administration.[230] Many years later, there are only a few enforcement milestones even for serious incidents listed in the 2018 report, *A Disaster In The Making*.[231] Under this administration, EPA has not released any new targeted inspection goals for the RMP program. In 2025, new enforcement cases filed by federal judicial enforcement of environmental laws dropped by 74%.[232] Only 12% of facilities with air pollution violations received enforcement action of any kind from EPA or state agencies.[233] A group of state attorneys

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[229] *See* EPA Nat'l Program Guidance FY 25-26 (July 2024), https://www.epa.gov/system/files/documents/2024-07/fy-2025-2026-oeca-npg.pdf.

[230] *See, e.g.*, L. Thoms, Earthjustice, Zeldin wants you to think his EPA is serious about environmental enforcement. The evidence tells a different story (Mar. 18, 2026), https://earthjustice.org/experts/laura-thoms/zeldin-wants-you-to-think-his-epa-is-serious-about-environmental-enforcement-the-evidence-tells-a-different-story.

[231] *See* https://echo.epa.gov/facilities/enforcement-case-search/results (using search criteria: Any; Case Lead: Federal EPA; Law Cited: Clean Air Act (CAA); Civil Section(s) cited: 112[R][7]; 112[R][1]; or 112R); *see* Civil Enforcement Case Report, No. 06-2018-3316, Premcor (Valero) Refining RMP CAFO, https://echo.epa.gov/enforcement-case-report?id=06-2018-3316; *see also* Earthjustice, A Disaster In The Making (Apr. 27, 2018) (listing incidents that occurred while EPA previously delayed implementation of the 2017 CDR Rule), https://earthjustice.org/feature/toxic-catastrophes-texas-national-chemical-disaster-rule.

[232] L. Thoms, Earthjustice, The Laws Still Exist, the Consequences Don't: America's Vanishing Environmental Enforcement (Dec. 15, 2025), https://earthjustice.org/experts/laura-thoms/the-laws-still-exist-the-consequences-dont-americas-vanishing-environmental-enforcement (providing data showing that the Trump administration brought 20 enforcement cases between January 20, 2025 and December 10, 2025, whereas the Biden administration brought 76 enforcement cases over the same calendar dates in 2024).

[233] EIP, Declining Environmental Enforcement in Trump's Second Term at 3 (Feb. 5, 2026), https://environmentalintegrity.org/wp-content/uploads/2026/02/EPA-Enforcement-Report-EMBARGOED-for-2.5.26.pdf.

general wrote a letter to EPA highlighting the need for EPA to strengthen instead of weaken enforcement, calling EPA's enforcement policy: "to prioritize the interests of favored industries while ignoring the effects of pollution on public health and the environment." [234]

EPA's enforcement-only proposal presents a false choice and is arbitrary. Communities and workers need *both* strong RMP rules *and* more regulatory enforcement. EPA can and should choose to strengthen enforcement and compliance. But the proposal does not even do that – there are no guarantees, requirements, proposed regulatory text on EPA's enforcement of the program, or any specifics on what EPA would actually do through an enforcement-focused approach. Without clear rules, there is no incentive to reduce incidents and no meaningful enforcement can happen.[235]

EPA cannot propose to replace protection with nothing and pretend that is an adequate substitute. *See Air Alliance*, 906 F.3d at 1067 ("to say that no policy is better than the old policy solely because a new policy *might* be put into place in the indefinite future is as silly as it sounds") (cleaned up). Even if there were, the benefits of any such effort could only be as strong as the rules EPA is seeking to enforce.

Even if it could point to some kind of specific enforcement program or policy, which it does not do here, EPA could not commit to ensure effective enforcement and remedial action after every chemical release. Applying an enforcement-only approach would mean many incidents would never result in *any* required preventative measures or remedy. EPA has reported only about 4,160 total section 112(r) enforcement matters since 2004 – including only 38 brought to court.[236] That number is approximately 1.3% of the total reported-harm incidents through 2025 (2835).

Although chemical accident risk reduction is a National Enforcement and Compliance Initiative, EPA reported only 472 compliance monitoring activities under this entire initiative in FY25 – including only 392 actual on-site

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[234] Letter to Adm'r Zeldin, EPA, from Attys Gen of NY, MA, WA, CA, CT, DE, HI, IL, MD, MN, OR, RI, VT, re: Dec. 5, 2025 Memorandum, "Reinforcing a 'Compliance First' Orientation for Compliance Assurance and Civil Enforcement Activities" (Mar. 18, 2026), https://oag.ca.gov/system/files/attachments/press-docs/3%2018%2026%20letter%20to%20EPA%20administrator.pdf

[235] *See, e.g.*, C. Giles, Next Generation Compliance, Environmental Regulation for the Modern Era (2023) https://www.nextgencompliance.org/

[236] See https://echo.epa.gov/facilities/enforcement-case-search/results (showing 471 EPA Enforcement Cases filed as CAA/112(r) by searching at EPA, ECHO, EPA Enforcement Cases, 1997 through 2025).

inspections.[237] The reported numbers show some slight increases in administrative penalties and compliance orders, but the total 237 concluded enforcement cases reflect only a tiny fraction of the total RMP facilities (over 11,000). That report also includes some efforts that did not enforce the RMP rules at all, but addressed other requirements.[238] EPA's enforcement database appears to include only one civil judicial case brought to enforce the RMP rules after the January 20, 2025 inauguration.[239]

EPA's authority and responsibility to regulate under section 112(r)(7)(A) and (B) include significant specific tools Congress authorized and intended the agency to put in place for all facilities to advance the objectives of this provision. EPA can only do so much through enforcement, after an incident has occurred. EPA does not show in the record how, even if it brings a successful enforcement case, the remedy for an individual facility's non-compliance is more than simply requiring compliance with the existing rules. EPA fails to show how such action would assure future prevention at least as strong as the regulatory measures that EPA is proposing to weaken and rescind in place of an enforcement-only approach.

Evidence is to the contrary. This administration at EPA has issued memoranda that belie the likelihood of any meaningful enforcement, much less enforcement activities that would add prevention-focused remedies beyond what rules already require. For example, EPA recently issued a memo calling "compliance first" the "guiding principle" of EPA's enforcement programs and undermining the ability of an enforcement team to add remedies not explicitly directed in a regulation that a facility had violated.[240] The same memo and a March 2025 memo also directed enforcement teams to "properly consider" Trump

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[237] EPA, Nat'l Enforcement & Compliance Initiative: Chemical Accident Risk Reduction (Mar. 9, 2026), https://www.epa.gov/enforcement/national-enforcement-and-compliance-initiative-chemical-accident-risk-reduction

[238] *Id.* (report includes general duty 112(r) requirements, the Emergency Planning and Community Right-to-Know Act or EPCRA, and the Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA).

[239] EPA, ECHO, Enforcement Case Search, https://echo.epa.gov/facilities/enforcement-case-search (last viewed May 11, 2026); EPA, Civil and Cleanup Enforcement Cases and Settlements (last updated Mar. 4, 2026) https://www.epa.gov/enforcement/civil-and-cleanup-enforcement-cases-and-settlements.

[240] EPA Memo from Acting Assistant Administrator of the Ofc. of Enforcement & Compliance Assurance (OECA), Reinforming a "Compliance First" Orientation for Compliance Assurance and Civil Enforcement Activities (Dec. 5, 2025) (stating that settlements "must reflect a clear nexus to the governing statute and implementing regulations," that injunctive relief outside of "clear regulatory or statutory requirements" is only appropriate in "limited, case-specific circumstances," that third-party audits and similar remedies in settlements must be approved in advance of negotiations by the OECA assistant administrator, and rescinding a 2021 EPA memo that encouraged the use of advanced monitoring, reporting, and third-party audits).

Executive Orders that focus on extra-statutory goals such as "restoring American energy dominance," further undermining the likelihood of meaningful enforcement against any company that is part of the energy sector and is subject to the RMP rules.[241]

EPA's prior record shows that a government enforcement case takes years and significant commitment across that time, to be successful. As examples of "successful enforcement cases," the proposal points to those cited in the 2024 Rule record. 91 Fed. Reg. 9003; 89 Fed. Reg. 17658. It appears that those involved a Hawaii refinery case involving violations from 2014, 2015, and 2016, where the administrative settlement occurred over 6 years later in 2022. The second, against Northern Pelagic Group, involved failure to file a risk management plan (date uncertain), and failure to file a report in 2015. The administrative settlement again occurred years later, this one in 2021.[242]

At the same time EPA is proposing to rely on an enforcement-only approach, it is also proposing to *repeal, delay, or reduce* reporting to EPA and worker and public access to important information that could be used to advance future enforcement and compliance. This proposal contains a long list of actions that, if finalized, would undermine the ability of EPA itself to engage in successful enforcement, for example:

- EPA is proposing to end RMP facility requirements for employee training and to ensure workers can report anonymously to EPA on safety and compliance issues.

- EPA is proposing either to repeal third-party compliance audit requirements altogether or delay these until after a *second* incident and weaken their value and reliability by deleting independence criteria and Board reporting requirements.

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[241] *Id.*; EPA, Memo from Acting Assistant Administrator of OECA, Implementing National Enforcement and Compliance Initiatives Consistently with Executive Orders and Agency Priorities (Mar. 12, 2025), https://www.epa.gov/system/files/documents/2025-03/necimemo-20250312.pdf.

[242] EPA Press Release, US EPA fines Par Hawaii Refining over Clean Air Act violations (Jan. 19, 2022), https://www.epa.gov/newsreleases/us-epa-fines-par-hawaii-refining-over-clean-air-act-violations; EPA Press Release, New Bedford Seafood Processor Pays Penalty for Violating Chemical Accident Prevention Regulations (Apr. 7, 2021), https://www.epa.gov/newsreleases/new-bedford-seafood-processor-pays-penalty-violating-chemical-accident-prevention.

- EPA is proposing to allow the destruction of hot work permits immediately after hot work is complete, whether or not an incident has occurred – rather than retaining for 3 years as the rules currently require.

- EPA is proposing to end the required reporting to EPA on STAA and on declined recommendations and justifications on issues critical to understanding a potential incident and considering potential remedies: natural hazard and power loss assessment, stationary source siting information, and RAGAGEP.

The fact that it is even considering those steps (which should not be finalized, as discussed elsewhere in these comments) while contending that enforcement alone might be sufficient to prevent incidents shows, at best, that EPA has either given no serious consideration to what would be needed to truly enforce the RMP. At worst, and what seems most accurate based on the record here, is that EPA is tying its own hands to avoid meaningful enforcement even while pointing to enforcement as the solution. To make matters even more dire, EPA's proposal would not only undermine its own ability to enforce the RMP rules, it would also undermine the ability of anyone else – including states, local governments, workers, or communities harmed by incidents – to do so. That runs contrary both to the important role that states and local governments play under the Clean Air Act, and to the citizen enforcement provision. 42 U.S.C. §§ 7401, 7402(a), 7416, 7604.

i. EPA's proposal to end the STAA for most existing facilities based on cost and regulatory burden is unlawful and arbitrary and capricious.

EPA's primary justification for weakening the STAA evaluation and for eliminating the practicability and implementation requirements completely is to reduce cost and regulatory burden for industry. 91 Fed. Reg. 8977. EPA even creates circular cost-based reasoning where its proposal relies on the cost to industry *based on* its own elimination of part of the STAA provisions. For example, EPA contends that "[c]onducting a practicability assessment alone, without implementing a practicable passive or other measure, would not provide benefits to owners or operators." *Id.* at 8982. EPA also contends, based on its RIA, that the STAA implementation provisions would have to reduce incident costs "by at least 60% of the historical monetized accident costs" in order for benefits to outweigh costs – or even higher, 75%, if the costs of all three STAA provisions are added together as EPA proposes. *Id.* at 8981. Its arguments on cost and regulatory burden are unlawful and arbitrary and capricious.

i. *EPA may not lawfully or rationally rescind or weaken prevention measures based on industry cost when its responsibility is to prevent incidents and minimize their consequences to human health and safety.*

EPA's proposal puts the interests of regulatory burden and industry cost above health and environmental protection by eliminating available prevention requirements for almost all existing facilities. EPA contends that it may use regulatory burden and cost to industry as its justification for rescinding STAA requirements for most existing facilities. *Id.* at 8977. EPA appears to read the statutory provision as allowing it to consider regulatory burden and cost – without citing what portion of section 112(r)(7) it is relying on for that authority.

The Act prioritizes prevention of chemical releases and minimization of consequences to human health and safety, not industry costs. 42 U.S.C. § 7412(r)(1), (r)(7)(A), (B). EPA has provided no basis in the statute or the record that would allow it to choose to weaken safety regulations based on cost. Even if the Act allowed consideration of cost in applying section 112(r)(1), (7)(A), or (7)(B), EPA could not ignore the other statutory requirements in service of reducing costs. EPA fails to show how its prioritization of cost above the statutory objectives and specific statutory factors could be lawful, much less "the best reading of the statute," *Loper Bright*.

Section 112(r)(1) and (r)(7)(A) and (B) do not refer in any way to industry burden or cost. Using those terms to define the test at all is contrary to the Act and unlawful. *See, e.g.*, *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (where Congress intended cost to be considered under the Clean Air Act, it said so specifically). Using industry burden and cost to justify weakening protection is unlawful under section 112(r).

Even if EPA were not weakening existing regulations, its justification for the STAA evaluation proposal based on industry cost and regulatory burden would be irrational and capricious in its own right in view of the statutory requirements to advance prevention and do so "to the greatest extent practicable" and to "minimize" releases and consequences to human health and the environment. Focusing on the regulatory burden of a few for-profit companies instead of assuring safety for the public – including first responders and community members who have no choice but to rely on EPA and nearby industry to protect them from chemical incidents – is itself arbitrary. EPA gives no rational justification for contending that regulatory burden for industry could justify removing the STAA evaluation and protection for the rest of society.

Finally, even assuming *arguendo* that the Act somehow authorized a consideration of economic factors, EPA would still have to ensure the "greatest" level of protection and to "minimize accidental releases" and their consequences. EPA could not justify its one-sided prioritization of industry burden and cost above the requirement to prevent adverse effects to human health and environment which are named as objectives in the Act. 42 U.S.C. § 7412(r)(1), (7). The Act does not authorize EPA to place regulatory burden and cost goals above the goals of health and safety, or try to ignore or sideline benefits because the agency itself has either failed or refused to quantify them. *See, e.g.*, *Michigan*, 576 U.S. 743 (requiring consideration of cost under a different statutory provision to include a consideration of corresponding benefits).

Whatever factors it considers, EPA must evaluate and demonstrate that its rule proposal will provide the *greatest extent* of practicability of prevention and that requirements would minimize, or reduce releases and consequences to the minimum. EPA has failed to do so. Instead, its proposal to *undo and eliminate* existing protection when harmful incidents continue to occur and millions of people remain in harm's way, as summarized in Part III.A, above, shows it is doing the opposite of what the statute requires.

EPA's placement of industry costs as the primary consideration above all others also contradicts the agency's findings that, even if costs could be considered in some way, health and safety must be prioritized. These objectives required the protections included in the 2024 Rule. As EPA explained in 2024, "the phrase 'greatest extent practicable' directs EPA to select the regulatory option that 'provide[s] the greatest level of practicable protection' from 'among those regulatory options that are reasonable.'"[243] EPA's interpretation here of placing industry costs above all else turns this reasoning on its head and cannot possibly satisfy that test.

Indeed, EPA has previously recognized that it must "ensure costs alone are not the sole factor in determining practicability." 89 Fed. Reg. 17653; 87 Fed. Reg. 53581 (stating that the evaluation of practicability must "be first based on technological, environmental, legal, and social factors, with economic considerations evaluated last"). The 2024 Rule's practicability definition for assessment of STAA capability included economics (though not cost per se) as one

[243] 89 Fed. Reg. 17632 (citing 84 Fed. Reg. 69849) (emphasis added, citing (Dec. 19, 2019); SCCAP Proposed Rule, 87 Fed. Reg. 53566 (Aug. 31, 2022).

among other factors, but its inclusion has not been subject to judicial review. [244] EPA is now proposing to rescind the practicability assessment requirement, while leaving in place the definition of "practicability." 91 Fed. Reg. 9008 (not proposing to amend this definition). Thus, even if EPA could consider or require consideration of economic factors, it may not ignore the need to ensure prevention "the greatest extent practicable" based on its own regulatory definition – considering, at least, environmental (including health), legal, social (including health), and technological factors. It has failed to assess much less demonstrate that here.

ii. *EPA prioritizes extra-statutory deregulatory goals of the administration to try to justify its lopsided focus on cost and burden.*

Instead of following the Act, to try to justify its use of cost to roll back the STAA and other provisions EPA appears to be relying on recent Trump Executive Orders 14148, 14154, and 14192 directing deregulation as the basis for its proposed rule. 91 Fed. Reg. 8975.[245] EPA states specifically that its objective here is the following: "To align the RMP regulations with the Administration priorities outlined in E.O. 14148 and [] 14154, the Agency . . . is proposing to take the actions set out in this preamble." *Id.* Yet those executive orders are contrary to Congress's statutory directives under the Clean Air Act, which apply here. The executive orders do not provide lawful or relevant factors that EPA may use to weaken protection under the Clean Air Act section 112(r). Nothing in the Clean Air Act allows for the rescission of rules like this one because the President has determined that there are too many regulations, or that agency heads must "identify at least 10 existing regulations to be repealed" for every new regulation promulgated, as directed by section 3 of EO 14192. 90 Fed. Reg. at 9065. In fact, each of these executive orders clearly limit their application "consistent with applicable law" or "to the extent permitted by law." *See* E.O. 14148, 90 Fed. Reg. at 8241; E.O. 14154, 90 Fed. Reg. at 8356; E.O. 14192, 90 Fed. Reg. at 9067.

[244] 40 C.F.R. § 68.3 (practicability definition: "the capability of being successfully accomplished within a reasonable time, accounting for environmental, legal, social, technological, and economic factors. Environmental factors would include consideration of potential transferred risks for new risk reduction measures").

[245] EO 14148, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 13037 (2025); EO 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (2025); Executive Order 14192: Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065 (2025). EPA placed these into the record as orders on which it is relying, at: EPA-HQ-OLEM-2025-0313-0047 and EPA-HQ-OLEM-2025-0313-0048.

By injecting cost and arbitrary deregulatory considerations into this rulemaking to follow those executive orders instead of the statute, EPA's proposal is unlawful and arbitrary. EPA may act "only pursuant to authority delegated to [it] by Congress."[246] Executive orders are the action of one branch only and cannot govern above duly enacted statutory requirements.[247]

EPA's reliance on executive orders to weaken and eliminate parts of the STAA provisions illustrates that its decision-making process in this rulemaking fails to satisfy the Clean Air Act's rulemaking provision, 42 U.S.C. § 7607(d), and violates the requirement for meaningful consideration of public comments and public participation. *Id*; § 7607(h). It also "violate[s] the Due Process Clause" of the Constitution and shows it has been compelled by the President to "act with an 'unalterably closed mind.'"[248]

Although EPA had denied reconsideration of the SCCAP Rule pursuant to the Clean Air Act in 2024, a few months later, in March 2025, EPA announced that it would "undertake a new [] rulemaking to reassess the requirements" of the SCCAP Rule "in light of the new Administration's [] priorities."[249] Specifically, EPA announced the RMP reconsideration as part of what it dubbed the "Biggest Deregulatory Action in U.S. History."[250] EPA stated in describing its deregulatory reconsideration in more detail that it would undertake 31 actions "to advance President Trump's Day One executive orders," including the RMP reconsideration.[251] In a separate announcement, EPA repeatedly used cost and deregulatory direction from the executive orders to explain its plan on the RMP rule which it called "costly":

- "the 2024 RMP rule makes America's oil and natural gas refineries and chemical facilities . . . less competitive";

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[246] *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (quoting *Verizon v. FCC*, 740 F.3d 623, 632 (D.C. Cir. 2014)); *see also Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001) ("EPA is a federal agency—a creature of statute" and "has no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress").
[247] *See, e.g.*, *In re: United Mine Workers of Am. Int'l Union*, 190 F.3d 545, 551 (D.C. Cir. 1999).
[248] *Air Transp. Ass'n of Am., Inc. v. Nat'l Mediation Bd.*, 663 F.3d. 476, 487 (D.C. Cir. 2001) (quoting *Ass'n of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1170, 1174 (D.C. Cir. 1979)).
[249] M. Duvall et al., RMP Rulemaking Redux, Natl. L. Rev. (Mar. 17, 2025), https://natlawreview.com/article/rmp-rulemaking-redux.
[250] EPA, Press Release, EPA Launches Biggest Deregulatory Action in U.S. History (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history.
[251] *Id.*

- this reconsideration announcement came as part of "the greatest and most consequential day of deregulation in the history of the United States"; and

- EPA is "fulfilling President Trump's promise to unleash American energy."[252]

The record thus shows that EPA was directed to deregulate by the White House to protect specific industry sectors' profits, and it is working to undo the STAA and other provisions for those reasons. EPA may not rescind vital safety measures in this rule in order to advance deregulatory goals generally or for the petrochemical industries in particular. EPA's single-minded focus on the extra-statutory objectives of the President shows that EPA's proposal violates and is inconsistent with section 112(r) of the Act, and that EPA was and is "unwilling or unable" to rationally consider comments with an open mind, in determining what course to take. *Air Transp. Ass'n of Am., Inc v. Nat'l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011).

iii. *EPA's proposal to rescind and weaken STAA based on its Regulatory Impact Analysis of cost and foregone benefits is lopsided and arbitrary.*

Assuming *arguendo* that EPA can consider cost in some way to determine what rules to set under section 112(r)(7) (but *see supra*), EPA's proposal is irrational because it relies on unsupported, incomplete, and distorted evaluations of costs and foregone benefits from its proposal. EPA's own RIA recognizes that its assessment of costs to industry is inflated and irrational, while it has undercounted foregone benefits.

(1) EPA's attempt to downplay the loss of protection from its proposal based on uncertainty is irrational and unsupported.

A central justification for trying to justify its proposal to weaken STAA even in the face of fatal and serious incidents in recent years is EPA's contention that there is "uncertainty about how this proposed rule would affect accident frequency and severity." 2026 RIA at 61. Relatedly, EPA cites "regulatory uncertainty over the past decade" and a lack of "causal evidence linking accident risk to the specific provision modifications." *Id.* EPA's reliance on uncertainty and a lack of evidence

[252] EPA, Press Release, EPA Announces Reconsideration of the RMP to Boost Safety, Competitiveness of American Businesses (Mar. 12, 2025), https://www.epa.gov/newsreleases/epa-announces-reconsideration-risk-management-plan-boost-safety-competitiveness (also citing the goal to "bolster economic growth").

due to its own regulatory failures and delays is contrary to the statute and irrational.

EPA may not sideline, discount, or avoid accounting for the loss of the prevention measures it proposes to roll back based on uncertainty – particularly uncertainty of the agency's own making. "[T]he mere invocation of 'substantial uncertainty' is not a justification for the agency's failure to fulfill its statutory mandate."[253] Here, EPA calls for more "causal evidence" that it simultaneously recognizes does not exist. 2026 RIA at 61. EPA acknowledges that "regulatory uncertainty over the past decade and the resulting changes in industry implementation make it difficult for the EPA to conduct original analysis of an individual provision's contribution" to rates of incidents and consequences. *Id*. EPA may not rationally point to a lack of evidence that its own actions have prevented from coming to reality to justify its proposal.

Over the last decade, it is EPA itself that has created extreme "regulatory uncertainty," and it cannot now use that to try to justify even more delay in protection and even more uncertainty. Although the facts and law have shown at least since 2016 that stronger protections were needed, under the direction of the current President, EPA has repeatedly undone and delayed that protection, as summarized in Part II, above:

- In 2017, first the White House stalled and then EPA formally delayed the CDR Amendments Rule's effective date in 2018.

- Although the D.C. Circuit held EPA's Delay Rule to be unlawful and arbitrary and vacated it in August 2018, in 2019, EPA finalized the RMP Reconsideration Rule that rolled back, weakened, and delayed protections before the CDR Amendments Rule's compliance dates had fully been triggered.

- From 2021 to 2024, EPA carefully worked to listen to public input, review, and again strengthen the RMP rules, finally issuing the Safer Communities Rule in 2024, and denying reconsideration of it later that year. EPA is now proposing to rescind, weaken and delay strengthened RMP protections for the third time.

EPA's attempt to rely on a lack of evidence that it admits could not possibly exist because EPA itself (under the same president now directing its policies) has

[253] *Murray Energy Corp. v. EPA*, 936 F.3d 597, 619 (D.C. Cir. 2019) (quoting *State Farm*, 463 U.S. at 52).

repeatedly stopped protections from taking effect, is a textbook example of caprice. The very lack of data here is a problem of its own making and EPA cannot undo the 2024 Rule due to a lack of data the agency itself has prevented from coming into existence.

EPA's attempt to cite uncertainty here also fails because the uncertainty itself is a great part of the need for preventative and minimization measures. As EPA has long recognized, chemical disasters like Bhopal can be hard to predict but have extremely high consequences. Congress directed EPA to act to prevent chemical catastrophes well understanding the uncertainty. The whole point of the RMP rules is to take action *in advance* to reduce such incidents and to do so "to the greatest extent practicable," in the face of that looming uncertainty. Congress enacted section 112(r) precisely because that uncertainty is part of the danger, and because this very uncertainty has long caused market failure in how the industry has approached safety and so EPA needs to step in and assure prevention and minimization across the board. EPA may not use uncertainty as a basis to rescind protection directed by a statute that is focused on preventing catastrophe that may be "low-probability, high consequence." 87 Fed. Reg. 53565; SCCAP RTC at 143.[254]

EPA's proposal is irrational because any uncertainty *disfavors* weakening the existing requirements. EPA cannot show that its proposal is not likely to cause more incidents and more harm to occur. Its proposal to weaken protections is not supported by evidence in the record. However EPA may prefer to try to distort the evidence and factual findings that grounded the 2024 STAA requirements, the fact is EPA has to justify its proposal to *take away* the STAA evaluation requirement and has failed to do so here.

EPA's attempt to ignore the harm of catastrophic incidents and downplay the risk as "uncertain" here is directly contrary to EPA's previous recognition that any uncertainty about the probability of an incident only favors safety improvements, not inaction. SCCAP Rule, 89 Fed. Reg. 17624 (recognizing the impact of future accidents to be "difficult to predict" but important to work to prevent); *id.* at 17653 (discussing "market failure" and finding "these incidents are low probability, high

[254] *See also FCC v. Fox*, 556 U.S. 502, 519 (2009) ("One cannot demand a multiyear controlled study, in which some children are intentionally exposed to indecent broadcasts (and insulated from all other indecency), and others are shielded from all indecency . . . Congress has made the determination that indecent material is harmful to children, and has left enforcement of the ban to the Commission. If enforcement had to be supported by empirical data, the ban would effectively be a nullity."); *Public Citizen v. FMCSA*, 374 F.3d 1209, 1221 (D.C. Cir. 2024) (uncertainty alone cannot be an "excuse to ignore a congressional command to 'deal[] with' a particular regulatory issue.").

consequence events that are difficult for owners and operators to assess" on their own). It is partly the inability to predict catastrophe that requires the STAA provisions that EPA is now proposing to rescind or weaken. Thus, EPA's attempt to discount or ignore the foregone benefits of its proposal fails. EPA may not use the long-acknowledged difficulty if not impossibility of knowing precisely what will prevent such incidents as a reason not to even try to do so, when it previously recognized that any such difficulty in the data shows the need for STAA. *See, e.g.*, *Ass'n of Oil Pipelines v. FERC*, 281 F.3d 239, 247 (D.C. Cir. 2002) ("having previously used changes in [data] for one purpose despite its imperfections" agency action was arbitrary where it "turned around and relied on those very imperfections to reject its use").

EPA's break-even analysis suggests it is not possible that the costs could be outweighed by preventing even one serious catastrophe – but it fails to demonstrate that is the case. 2026 RIA at 75-76. The quantifiable costs of the impacts of Bhopal – even aside from the fact that the value of human life is immeasurable – easily dwarf the industry cost from implementing measures to prevent that type of incident on U.S. soil. SCCAP Rule, 89 Fed. Reg. 17624. Because preventing such events is a core purpose of the Act, EPA cannot use the lower quantified cost of other tragic incidents to try to justify putting short-term cost savings above the long-term public interest value, including of human lives saved, from preventing even one chemical catastrophe. A rational break-even analysis would use the worst-case scenario costs, not just a random time period of such costs.

Indeed, as EPA recognized previously, preventing or mitigating the consequences from even one catastrophic incident like Bhopal would generate "dramatic" benefits, and preventing just one high-cost accident annually would "offset" the annual compliance costs. *Id.* at 17624-25. But EPA's RIA and break-even analysis is arbitrary and looks only at the last few years of data. As discussed earlier in Part III.A.3 and III.B.1.g, of these comments, that analysis is incomplete and underestimates both incidents and harm. EPA's cost estimate is also missing high-harm RMP incidents that were never reported to EPA – such as the Philadelphia Energy Solutions and ITC incidents investigated by the CSB. Adding those would dramatically increase the monetized cost of EPA's proposed rule.

EPA's RIA does not and could not justify reversing its longstanding and well-founded factual determinations that the 2024 Rule would indeed prevent and reduce incidents and the harm they cause, including catastrophe. *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17624 ("EPA anticipates that promulgation and implementation of this final rule will reduce the risk of [chemical] accidents and the severity of impacts when they occur"). For example, in 2024, EPA stated that

it "expects the [SCCAP] final rule to reduce accident risks across the spectrum of RMP facilities and accident categories," and to avoid and reduce harm to health, safety, and other damages from such incidents. 2024 RIA at 12-13 ("The rule requirements are targeted at reducing both the probability and the magnitude of the full range of accident types regulated by the RMP program including fires, explosions, and releases of toxic vapors"; finding SCCAP Rule would "reduce the likelihood of major catastrophes"). IST is, by definition, designed and likely to prevent and reduce harm from industrial releases – particularly for the most serious chemical catastrophes. There is no recognition of these facts in the RIA, and no attempt to quantify the reduction in harm that would occur under, for example, the best case scenario of the existing rules: if all facilities that are required to assess STAA implement one or more measures that would remove the hazard completely or prevent a facility's ability to cause death, injury and property damage. Yet, EPA does not perform that analysis. EPA has long recognized the value of STAA and again recognizes that here proposing this requirement for new Program 3 processes, but tries to downplay or avoid accounting for the true foregone benefits from STAA evaluation and implementation. 91 Fed. Reg. at 8978, 8982. This both belies its RIA conclusions, and shows how inherently contradictory its proposal is.

Finally, EPA tries to contend that weakening safety measures will somehow reduce incident risk by speculating that the existing rules might be "diverting facility resources from addressing higher-risk issues toward compliance." 2026 RIA at 62. EPA cites industry comments in support of that point. *Id.* n.45. EPA cites no independent evidence to support that theory. Following the STAA evaluation and practicability assessment, the existing rule still provides room for facilities to choose which safer measures to implement. 40 C.F.R. § 68.67(h). EPA's vague conclusion is the opposite of reasoned decision-making. EPA "abdicates its role as a rational decision-maker if it does not exercise its own judgment, and instead cedes near-total deference to private parties' estimates."[255]

EPA is grasping at straws with this argument. Even if any independent data – not provided by for-profit companies seeking to avoid compliance costs – might suggest that some individual facility made the wrong choice about how to apply planning resources, EPA has no evidence whatsoever that simply performing an STAA evaluation actually *reduces* safety. This evaluation happens not during an emergency but at some point during the facility's safety planning process, when it is also evaluating hazards and meeting all other requirements. How performing an STAA evaluation could somehow lead the facility to divert resources from

[255] *Tex. Ofc. of PUC v. FCC*, 265 F.3d 313, 328 (5th Cir. 2001).

"higher-risk" issues is puzzling. By definition, this ensures a facility has information on "inherently safer technology" and other measures. *See* 40 C.F.R.§ 68.3.

EPA cannot rationally conclude that assessing what is safer at a facility will make that facility *less* safe. The facility can still use the information it has to deploy its resources to the highest-risk safety issues at its own facility; and the STAA only supports its ability to do so and provides incentive and information to assist. *See, e.g.*, 2024 RIA at 81 ("EPA expects that, overall, the [STAA] requirement will result in facilities identifying more options to reduce risk and implementing a larger number of more effective risk-reduction measures than facilities would in the absence of the rule, particularly among facilities that in the baseline have infrequent voluntary implementation of risk-reduction measures.").

(2) EPA overstates costs to industry to try to justify its deregulatory proposal.

EPA is inflating the costs of STAA by ignoring and not even attempting to quantify potential benefits to the industry itself from evaluating and then having information it could use to operate more safely and thus prevent incidents that can cause serious economic and other harm to facilities, not to mention liability for deaths, injuries, and community impacts. 2026 RIA at 38 ("EPA has not estimated the loss of cost savings that facilities may have gained from implementing those STAA measures," which "would partially offset EPA's estimates of gross cost savings."). The 2026 RIA even recognizes data from facilities in Massachusetts show the achievement of "offsetting costs savings from implementing STAA-type measures." *Id.*

Contrary to this evidence, EPA has failed to explain how the regulatory burden of performing STAA at existing facilities is not offset at least in part by the benefit and value of the STAA itself both to prevent incidents and for the information the STAA produces for those very facilities. In 2024, EPA found that it was. SCCAP Rule, 89 Fed. Reg. 17650 (citing "the likelihood that most of the economic savings resulting from reduced accidents will be from reduced onsite property damage to the owner or operator's facility"). EPA appears to suggest there is only burden with no benefit to a facility – simply because it seems to conclude, without evidence, that facilities will not implement STAA at processes that are already designed and built. EPA states it "believes STAA initial evaluation will be most effective when facilities are developing new processes and have more latitude to adopt any identified safer alternatives." 2026 RIA at 62. But EPA cites no data showing that to be accurate. *Id.* If this is helpful to even some facilities,

that offsets the purported burden. Indeed, the record in some jurisdictions shows a number of *existing* facilities have actually used the information received from an IST or STAA-like analysis to make safety-oriented changes.[256] There is no indication that occurred only at new processes. Even if a facility does not immediately implement IST after finding it is available, the value of having that information cannot be discounted for the facility's planning purposes, for the company's planning purposes at other facilities, and for the benefit of other companies. *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17648 (discussing the benefits of STAA Technology Transfer for other facilities). Yet, EPA does not consider or address these values at all – even though they undermine its "regulatory burden" and costs argument.

(3) EPA has failed to adequately consider or account for foregone benefits.

EPA's assessment of foregone benefits is incomplete and inadequate to justify the rule proposal.

EPA's cost justification focuses narrowly on the financial cost saved by industry from not having to comply with the regulations, tries to discount or ignore completely certain categories foregone benefits, and fails to evaluate all factors relevant to the evaluation of such benefits. The record shows substantial costs from chemical incidents and EPA recognizes that "[c]hanges in accident risk . . . could result in . . . foregone benefits" for workers, first responders, and community members – as well as for industry itself. 2026 RIA at 61. The 2026 RIA, incident record, and prior data EPA has collected, as well as all of the new data cited in these comments, show that chemical incidents covered by the RMP program can, and indeed have, caused death, injury, increased health risks from exposure to toxic chemicals, and economic and property loss and damage. Such incidents can cause homes and other properties nearby to lose value. *Id.* at 61; SCCAP Rule at 17624 (citing data on property value loss). They can also cause harm to natural resources, ecosystems, and wildlife. EPA also acknowledges economic and health costs from having to evacuate or shelter in place, costs from emergency response and the diversion of personnel to chemical incidents instead of providing other health services, as well as facility liability costs. *Id.* at 61.

[256] *See, e.g.,* 2022 t.e.j.a.s., Earthjustice, *et al.* comments (citing sources), EPA-HQ-OLEM-2022-0174-0460; *see also* sources cited above in Part III.B.1; Research Memo on IST Measures.

Indeed, the most recent RMP data available show that from 2004 through the end of 2025, there were a total of 4,018 reported chemical incidents. Of those, 2,835 were incidents for which industry reported harm to EPA, including:

- 113 people who died, including workers and first responders
- 20,150 people injured or sought medical treatment
- 764,019 people who had to evacuate or shelter in place
- $6.74 billion in property damage.[257]

Other harms EPA has acknowledged are unquantified in the database – such as lost school and work days, the cost of emergency response, health and environmental impacts from exposure to toxic chemicals not measured in the immediate aftermath of an incident, the loss of nearby property value, and the cost of business interruption and other insurance. *See, e.g.*, 2024 RIA at 88-89 (finding losses to home values related to RMP incidents); *id.* at 92 (finding energy business interruption insurance claims alone can cost typically 2 to 3 times a facility's property loss value). EPA's RIA and database also do not recognize the additional harm from repeated incidents. Certain counties and states have far more incidents than others, exacerbating the harm and costs for the same communities, first responders over time, as summarized in Part III.A, above.

Yet EPA contends those costs – even to industry's own property – can be ignored because of "uncertainty about how this proposed rule would affect accident frequency and severity." 2026 RIA at 61. In 2024, however, EPA found that "the monetized costs of RMP accidents to society underestimate the number and magnitude of RMP chemical accidents," and that the SCCAP Rule would "improve the health and safety protection provided" and "result in a reduced frequency and magnitude of damages, both quantified and unquantified. SCCAP Rule, 89 Fed. Reg. at 17647. The fact that EPA does not have data showing a specific amount of harm, a specific amount of accident risk, or specific number of incidents that would result from its removal of the STAA evaluation does not allow EPA to treat the foregone benefits as zero – for industry or for the public. It is both concerning and arbitrary that EPA is proposing to remove protections based on a finding that "much uncertainty remains around potential foregone benefits related to accident prevention and mitigation." *Id.* EPA must justify its proposal based on evidence, and has failed to do so. *See Tripoli Rocketry Ass'n, Inc. v. ATF*, 437 F.3d

[257] Table 2, *supra*.

75, 83 (D.C. Cir. 2006) (agency decisionmaking cannot be based on "unsupported assertions or unstated inferences"); *see also Genuine Parts Co. v. EPA*, 890 F.3d 304, 346 (D.C. Cir. 2018).

To the contrary, in promulgating the existing STAA requirement, EPA reviewed substantial evidence of harm and found the weight of evidence supported requiring STAA – particularly due to the strong need to avoid lower probability, high impact catastrophes.[258] When the very point of that requirement is to ensure facilities assess ways that would be safer to operate, reason and economic interests would dictate that having that information is more likely than not to lead to at least some facilities implementing those safer measures. Indeed, that is why EPA is proposing this for new Program 3 processes – not just because the information is interesting, but because it believes facilities will implement safer measures if they are required to document the availability of such measures. EPA has long recognized this, going back to the 2017 CDR Amendments STAA evaluation requirement.

(4) EPA's consideration of the health and safety impact is unlawfully insufficient and arbitrary.

EPA does not explain how it can lawfully or rationally weaken the STAA requirements in view of the need to protect health and safety and in view of the significant, though not fully quantified, foregone benefits to health that its proposal will cause.

EPA acknowledges a number of types of health impacts from chemical accidents that cannot be ignored. 2026 RIA at 70. Yet, EPA does not assess the foregone benefits to human health beyond the specific deaths and injuries counted, and for those, only considers part of the impacts – the monetary cost of immediate medical treatment. *Id.*

Research has shown significant impacts can occur to human health from short-term exposure to toxic chemicals regulated by the RMP as summarized above, earlier in the STAA section and in Part III.A of these comments. Yet EPA fails to even attempt to consider these health impacts from this exposure. 2026 RIA at 70.

(5) EPA's failure to assesses and ensure protection for children in this proposal is unlawful and arbitrary.

[258] *See, e.g.*, SCCAP Rule, 89 Fed. Reg. 17634, 17653.

EPA's consideration of foregone benefits completely ignores particular health threats to children and is also unlawfully and arbitrary incomplete for that reason. EPA does not consider in its quantification of foregone benefits any of the particular harm that can occur from injury or exposure to children. EPA's attempt to find no particular risk or harm to children's health from this rule proposal is particularly irrational and unsupported by the record. 91 Fed. Reg. at 9008.

As summarized above, environmental exposures pose a disproportionate risk to children due to their developing physiological systems and their higher relative intake of food, water, and air compared to adults.[259] Children are not simply "little adults"; their unique activity patterns and heightened sensitivity during critical developmental stages increase their vulnerability to environmental harms.[260] EPA tries to ignore those facts here and fails to account for those at all in its Regulatory Impact Analysis of foregone benefits. This is a serious gap in EPA's RIA that shows its assessment of the harm from this proposal is incomplete and fatally flawed.

This omission in EPA's evaluation is made worse because, as discussed above, EPA also fails to show how its proposal will prevent those health impacts or comply with the requirements EPA has committed to apply here from Executive Order 13045 and its Children's Health Policy. The arbitrariness of EPA's position is further exposed by its acknowledgment that its own Policy on Children's Health applies. 91 Fed. Reg. at 9008. That policy directs EPA to evaluate health and safety risks for children. EPA invokes this Policy in the proposed rule, but performs none of what it requires. *See* Part III.A, B.1.e.

EPA appears to be trying to contend that it can ignore the foregone benefits for children's health and safety by stating that "this action does not directly address hazards assessments." 91 Fed. Reg. 9008. Yet, hazard assessment is a core part of the requirements of RMP rule and plan requirements. *See, e.g.*, 42 U.S.C. § 7412(r)(7)(B), 7412(r)(1). Regardless whether or not EPA must require facilities to perform such assessment, here EPA has *chosen* to perform an assessment of the costs and benefits of its proposed rule. Such an assessment necessarily includes and cannot ignore the hazards to human health – particularly where, as here, the statute requires EPA to "protect human health." The question under E.O. 13045 is not whether a rule is labeled as a "hazard assessment," but whether an action affects environmental health or safety standards in ways that may present disproportionate risks to children. EPA has failed to justify its refusal

[259] *See* Part III.A, III.B.1.e, *supra* (citing sources).
[260] *Id*. (citing sources).

to assess and account for impacts to children's health, and early developmental effects to the developing fetus.

j. EPA's proposal on STAA conflicts with independent expert recommendations of the U.S. Chemical Safety Board.

Expert evidence conflicts with EPA's proposal and yet it does not address those findings or show why EPA can justify acting contrary to them. The Act directs EPA to respond to CSB recommendations or provide a justification for not doing so. 42 U.S.C.§ 7412(r)(6). Legislative history of the enactment of this provision shows Congress intended EPA to carefully consider the CSB "as a source of expertise at the center of chemical accident prevention and response programs," and generally to do what the CSB recommended, stating that "the Board, through its investigations and reports, is to drive the regulatory agenda in this field."[261] If EPA intends not to do so, it must provide a strong justification for taking a different course.

As highlighted above, the CSB recommended repeatedly that EPA require STAA. *See* Part III.A.7, III.B.1.a.ii, *supra* (discussing the Chevron, Tesoro, and Husky investigation reports). The CSB also has repeatedly filed comments on RMP proposed rules to support stronger provisions, and it called for expansion of the STAA in the SCCAP rulemaking.[262]

EPA responded affirmatively to those recommendations and comments in promulgating the 2024 Rule but now is doing the opposite of what the CSB recommended by proposing to eliminate most of the STAA provisions in the existing rules.[263]

EPA's proposed action, if finalized, would in essence wipe away EPA's prior affirmative responses to the CSB, *sub silentio*. Taking such action without acknowledging and providing a lawful and reasoned justification for changing course, and deciding not to follow the CSB's recommendations could not stand. This would also violate the response requirement provision of § 7412(r)(6) by in essence nullifying EPA's prior response and would be arbitrary and capricious.

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[261] Sen. Rep. 101-228 at 115, 207; *id.* at 130 ("although the Administrator may decline to issue a recommended requirement for good cause, it is expected that in most instances the Board's recommendations will be implemented in a timely way").
[262] CSB Oct. 2022 Comments, https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0166.
[263] *See, e.g.,*, SCCAP RTC at 108 (explaining that EPA agreed with CSB on STAA).

EPA has failed to acknowledge much less explain how its decision to refuse to follow the CSB recommendations here could be rational. EPA's failure to explain why it is reversing course from following the CSB's expert recommendations and recognizing the value of information that the CSB deemed compelling to show the need for STAA does not meet the test for reasoned decisionmaking.[264] EPA also has failed to provide the required "detailed justification" to change course from its prior recognition of the need to respond affirmatively to implement the CSB recommendations. *See Air Alliance Houston*, 906 F.3d 1049, 1067 (D.C. Cir. 2018) (citing *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009) (agency must "display awareness that it is changing position" and offer "good reasons for the new policy").

Over a period of many years and across administrations, the CSB has provided evidence from multiple incident investigations and expert findings that EPA cannot lawfully or rationally ignore. Because of the heightened weight the statute gives the CSB's recommendations, EPA's failure to engage with or provide a reasoned explanation for not following the CSB's recommendations is unlawful, arbitrary and capricious. 42 U.S.C. § 7412(r)(6).

k. EPA's STAA proposal contradicts its own prior factual findings that the STAA requirements were needed and the agency has failed to provide a "more detailed justification" for changing course.

Even if it had attempted to state a determination and finding the test was met in the record, EPA would also have to justify reaching a directly contrary conclusion than what EPA determined in 2024 was "the greatest extent practicable." EPA would need to provide a "more detailed" justification for changing its factual findings, particularly in view of the record showing a strong need for the protections in the SCCAP Rule.[265] EPA has not done so.

[264] *See, e.g.*, *Murray Energy Corp. v. EPA*, 936 F.3d 597, 620 (D.C. Cir. 2019) (finding arbitrary the refusal to accept the scientific judgment of an expert clean air scientific advisory council that EPA was required to consider in rulemaking under a different provision of the Act).

[265] *See, e.g.*, *Air Alliance Houston*, 906 F.3d at 1065 ("EPA had found, and the record shows, that there was a need for improvements to protect worker and community safety, and to reduce facilities, injuries, life disruption, and other harm"); *Fox*, 556 U.S. at 515-16 (requiring "more detailed" justification when "its new policy rests upon factual findings that contradict those which underlay its prior policy").

In 2024, EPA found the 2024 STAA requirements to be "reasonable and necessary to meet the statutory objective 'to the greatest extent practicable.'" [266] EPA determined that the STAA requirements provide information and through the implementation provision "help reduce the prevalence of higher risk processes and thereby prevent accidents." SCCAP Rule, 89 Fed. Reg. 17645.[267] EPA has not demonstrated that rescinding those for all currently covered, existing processes and facilities satisfies the Act.

In 2024, EPA also rejected the very fact-based arguments the agency is making now to try to justify its reversal. *Compare, e.g.*, 2026 Proposed Rule, 91 Fed. Reg. 8976-77, 8979-82, *with, e.g.*, SCCAP Rule, 89 Fed. Reg. 17631-33, 17645-46; SCCAP RTC. Notably, many of these are arguments initially put forth by industry to try to oppose safety improvements that this administration is adopting as its own views, without citing or finding facts or evidence. *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17634-35, 17644-54; SCCAP RTC at 97.

In particular, EPA found a need for the STAA requirements put in place in 2024 to satisfy the Clean Air Act and protect the health and safety of the public.[268] EPA's proposal has failed to directly grapple with much less rebut the agency's finding that these are needed to prevent incidents or minimize consequences. This is particularly true for catastrophic incidents, which EPA has described as having a low probability but that can cause devastating harm.

EPA determined that the full suite of STAA requirements is needed at refineries that use, store or manage HF, including recent incidents that threatened

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[266] *See, e.g.*, SCCAP Rule, 89 Fed. Reg. 17633 ("EPA now believes the benefits of rule-based prevention for certain high-risk classes of facilities could help prevent high consequence accidents that affect communities and are therefore reasonable and necessary to meet the statutory objective 'to the greatest extent practicable.'"); *id.* at 17632 ("To the extent both the 2019 compliance-driven and the 2022 rule-based, prevention-focused approaches are reasonable, the approach of this final rule would be more protective and therefore be 'to the greatest extent practicable' among the reasonable approaches."); *see also id.* at 17634 (stating "when major concerning RMP accidents, including major accidents, continue to occur as they have, it is EPA's responsibility to further protect human health and the environment"; and finding the 2024 Rule requirements to be "necessary updates to the existing RMP rule to ensure chemical accident prevention and mitigation").

[267] Finding that STAA requirements advance prevention by either: "Eliminating the possibility of an accidental release entirely, by making a process more fault-tolerant, such that a minor process upset, or equipment malfunction does not result in a serious accidental release," or "reducing the severity of releases that do occur." SCCAP Rule, 89 Fed. Reg. 17645.

[268] *See, e.g.*, 89 Fed. Reg. 17633 ("[T]he approach taken in this action for the new prevention program provisions—STAA, root cause analysis incident investigation (RCA), and third-party compliance audits—… finalizes provisions to better identify risk facilities to prevent accidental releases before they can occur."); SCCAP RTC at 4-5, 104-05.

over one million people within a radius of 7 or more miles.[269] There is significant information showing that U.S. refineries have experienced property losses from chemical incidents at approximately 4 times the rate in the rest of the world.[270] Further, "[d]espite the fact that the nation's roughly 150 petroleum refineries represent only a small fraction of the thousands of industrial and chemical facilities that exist in the US, the CSB has seen a great number of serious and deadly incidents at refineries over the last decade."[271] A 2007 USW report after the 2005 BP Texas City Refinery disaster found that "highly hazardous conditions" were pervasive at U.S. refineries, as well as high rates of near misses showing an even greater danger for workers and community members.[272] That many refineries use dangerous chemicals like hydrofluoric acid, for which there are safer alternatives, shows a particular value in ensuring the STAA evaluation, practicability assessment, and implementation requirement occur at these facilities. EPA fails to explain how it can justify removing the STAA protections for communities near refineries using HF. EPA's contention that it can eliminate STAA practicability and implementation requirements for these facilities is particularly egregious due to the serious harm at issue from an HF release. EPA attempts to rely on incident numbers involving HF to suggest additional risk can be ignored, which contravenes core statutory requirements and is arbitrary for the same reasons that EPA's attempt to rely on any other incident trends fails, as discussed above. Further, EPA ignores the near catastrophes in recent years at the Husky Refinery in Wisconsin or PES in Philadelphia where multi-mile areas of cities were at risk of fatal and devastating exposure, and also ignores the CSB recommendations following those events, as cited above. EPA has failed to provide the necessary detailed explanation for weakening provisions that apply to such facilities.

EPA similarly found that all STAA requirements are needed for the RMP facilities in NAICS codes 324 and 325 that have had at least one reportable harm incident in the most recent 5-year period. SCCAP Rule, 89 Fed. Reg. at 17643. These are the types of facilities that the record shows have the greatest likelihood

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[269] SCCAP Proposed Rule, 87 Fed. Reg. 53576-77; EPA Recon. Denial at 6-7 & n.6 (citing CSB investigation reports from facilities using HF, including the Husky Refinery in Superior, Wisc., and Philadelphia Energy Solutions (PES) in Philadelphia, PA.).

[270] Testimony of Rafael Moure-Eraso, PhD Chairperson, U.S. Chemical Safety Board, Before the U.S. Senate Committee on Environment and Public Works at 10 (June 27, 2013), EPA-HQ-OEM-2015-0725-0272.

[271] CSB, Regulatory Report: Chevron Richmond Refinery, Richmond, California, August 6, 2012 at 14 (Jan. 2014), Report No. 2012-03-I-CA, EPA-HQ-OEM-2015-0725-0263.

[272] United Steel Workers, Beyond Texas City: The State of Process Safety in the Unionized U.S. Oil Refining Industry (Oct. 2007) at vi (90% of 51 refinery respondents reported the presence of at least one highly hazardous condition and 61% of respondents reported at least one incident or near miss involving a highly hazardous condition).

of causing additional harm through a future incident. EPA found that of the facilities experiencing two or more incidents, the vast majority – 60 percent – were in these two industry sectors. 89 Fed. Reg. 17649. EPA has failed to show that is not the case or to demonstrate why these high-incident facility sectors do not warrant the STAA protections after all.

EPA found that all three STAA components of protection are needed at the approximately 563 RMP facilities in the NAICS codes 324, 325 within one mile of each other, whether or not they have had an incident due to the higher threats to the public in these areas. SCCAP Rule, 89 Fed. Reg. 17643; *see* SCCAP Proposed Rule, 87 Fed. Reg. at 53578 (finding that "communities located near facilities in NAICS 324/325 that are located within 1 mile of another 324/325 facility are 1.5 times more likely to have been exposed to accidents" compared to those not in such a "facility-dense" area). EPA's contention that it can now eliminate STAA practicability and implementation requirements for these facilities is particularly egregious due to the greater risk to the public in nearby communities. SCCAP RTC at 119; EPA Recon. Denial at 6 (citing "greater number of accidents" in these sectors and finding "having two or more sources within one mile doubles the likelihood of a nearby accident"). EPA has failed to provide the necessary detailed explanation for weakening provisions that apply to such facilities, or removing the protection EPA found needed to "protect[] communities most at risk of having an accidental release from a facility in their midst," in the 2024 Rule. SCCAP Rule, 89 Fed. Reg. at 17634.s

EPA also rejected the argument that STAA should be limited only to the design or development phase of new processes, finding that "many IST options may still be practicable after the initial design phase," "major enhancements have been reported in some plants that have been operating for many years," and that "STAA involves more than just IST," just as the rule provides. *See, e.g.*, SCCAP RTC at 112-13; *see also* SCCAP Rule, 89 Fed. Reg. 17649. EPA also explained why arguments that RMP/PSM alignment were misplaced and incorrect. *See, e.g.*, SCCAP RTC at 10-11.

EPA is now attempting to reject, ignore, or treat each of those 2024 factual findings as irrelevant here, without meeting the necessary standard to justify such a change. Reasoned decision-making principles and binding precedent require EPA to provide a "more detailed justification" for its change here. *Fox,* 556 U.S. at 515.

EPA also may not try to wipe away the SCCAP protections by pointing to arguments or uncertainty about the precise number of incidents a given provision is likely to prevent or reduce, if fully implemented. *See, e.g.*, 2026 RIA at 64;

Proposed Rule at 8976. That is not the question here. For the agency to act lawfully and rationally now, EPA must justify its proposed decision *now* to weaken protections the agency recognized are stronger and more likely to reduce incidents and prevent harm, even if the precise amount of such harm is uncertain. *See, e.g.*, *Air Alliance Houston*, 906 F.3d at 1068 ("the baseline for measuring the impact of a change or rescission of a final rule is the requirements of the rule itself, not the world as it would have been had the rule never been promulgated"). Regardless, EPA found in 2024 that the SCCAP Rule would likely reduce incidents and harm and was necessary to achieve the statutory requirements for the RMP. *See, e.g.*, 89 Fed. Reg. 17624, 17633, 17634. EPA has not only failed to show otherwise here, it continues to recognize some "likelihood that accident trends would have change in the future under the SCCAP Rule in the baseline." 2026 RIA at 64.

EPA's attempt to rely on a decline also fails as unsupported and arbitrary. In the 2024 Final Rule, EPA recognized there is significant delay in reporting of incidents that makes the most current years of RMP data incomplete, because many facilities do not report incidents until their 5-year RMP update deadline. 87 Fed. Reg. 53592-93 (finding 6.7% late accident reporting rate in data reported from 2004 to 2020). Thus, it is not possible to reliably conclude the magnitude of any trend, at least without seeing the full incident data that is not yet available for the most recent 5 years (whether through the present or through the 2023 database EPA used here). EPA now admits the data it is using "are less than complete due both to omissions and errors in reporting," 2026 RIA at 64, but refuses to recognize as a factual matter what the agency found in 2024 and the data still show: that the incident history undercounts incidents through the present time. *Id.* EPA comes close, but will only admit that due to such omissions "the five-year accident history *may* under-represent the number and magnitude of RMP chemical accidents." *Id.* This attempt to contradict its prior fact-finding on a critical issue relied upon here fatally flaws EPA's conclusions on the incident trends, and its proposed rule based on these.

In 2024, EPA found that any incident decline that the data might show in the most recent calendar years could not be understood as demonstrating that the pre-2024 rules provided sufficient prevention or safety (without STAA requirements). 87 Fed. Reg. 53565.[273] EPA determined that the continued incidents individually, regardless of any trend, showed a need to prevent and reduce resulting consequences and to prevent a catastrophe. *Id.* (citing TPC Port Neches example).

[273] *See also* SCCAP RTC at 5 ("the more current accident data since the 2019 analyses shows that reliance on a declining trend in accidents and impacts to conduct selective, often post-incident oversight may prove insufficiently effective over time and make it difficult to stay ahead of reversals in trends").

EPA now tries to rely primarily on an alleged incident decline to justify the STAA removal, without explaining how it may do so in view of these facts the agencies previously found to be true – and while trying to ignore the facts its own RIA admits. The data on which EPA attempts to rely are significantly incomplete and cannot prove anything about recent year trends on incidents, much less prove anything on what those trends may mean for facilities that have not had such an incident. *See* Part III.A.3 and III.B.1.g, above.

In 2024, EPA found that an enforcement-only approach, after incidents occur, is "too little, too late" to prevent both serious incidents and catastrophes. SCCAP RTC at 4. EPA recognized various pitfalls with that approach that it now ignores, as further discussed in Part III.B.1.h, above.

EPA also found that the benefits of the STAA provisions overall – quantifiable and qualitative – outweighed the monetizable costs to industry. 89 Fed. Reg. 17645-46; EPA 2024 Recon. Denial at 7-11. EPA found that if the SCCAP provisions prevented or substantially mitigated one single serious disaster or a Bhopal-like catastrophe, SCCAP would achieve "dramatic" benefits. *See, e.g.*, 89 Fed. Reg. 17624-25. EPA has failed to account in any way for such benefits, much less demonstrate that finding was incorrect. EPA also has simply written off the unmonetized benefits, when the agency recognized in 2024 that those could even dwarf those monetized. 2024 RIA at 12 (discussing significant unquantified damages and finding that "[i]n some cases, these damages could be even more detrimental . . . than those damages that can be quantified"). EPA may not avoid directly addressing the factual findings EPA made in 2024 or the factual benefits from the STAA provisions and must provide a detailed explanation for how it has reached a contrary finding here, based on the record.

l. EPA's proposal to limit the STAA evaluation to only new Program 3 processes is unlawful and arbitrary and must be expanded.

For all of the reasons discussed above on its proposal to rescind most of the STAA requirements, EPA similarly has failed to justify how its proposal to require STAA for only a tiny subset of new processes and facilities satisfies the Act's statutory criteria in section 112(r)(1) and (7)(A)-(B). It is also arbitrary and capricious for additional reasons discussed here.

That EPA has long recognized the value of STAA, and again recognizes that here, only shows how inherently contradictory its proposal is to limit this only to new processes, and only Program 3 processes. 91 Fed. Reg. at 8978, 8982. EPA

has failed to recognize that existing facilities have indeed updated their operations to adapt to IST and other safer measures. EPA cannot justify limiting the STAA evaluation to only *new* processes when STAA is a practicable tool that can both achieve greater prevention and minimization of consequences, as the record shows.

The CSB has recommended broader STAA application than just new Program 3 processes.[274] EPA previously recognized the need to cover all NAICS 324 and 325 facilities – including both covered existing and new processes. 89 Fed. Reg. 17644-45. EPA correctly responded to industry arguments that only new processes should be covered. *Id.* at 17649. EPA now fails to demonstrate a reasoned basis to act contrary to its prior findings or those of the CSB.

Further, EPA has failed to even discuss, much less explain, why it is not proposing to require at least a STAA evaluation for new Program 2 and Program 1 processes. Facilities with such processes have had incidents and have caused serious harm, as EPA's own RMP database shows.[275] EPA provides no justification for limiting its new process proposal to only Program 3. Its failure to explain the limitation to Program 3 only is arbitrary. EPA's recognition that STAA is valuable for new processes must, at least, be applied to all facilities with new processes, across each tier.

EPA's proposal is also arbitrary and capricious because it is missing regulatory language that would be needed to fully implement the STAA requirement in the way EPA describes for the covered processes proposed (new Program 3 processes). If in fact EPA intends to finalize the STAA for new Program 3 processes, EPA must ensure the regulatory language will actually serve the stated goal.

There is no definition of "new" process in the proposed regulatory language. Without a clear definition, the proposal, if finalized, would do little or nothing to ensure that all existing and new facilities will actually follow the STAA evaluation requirements. What a "new Program 3 process" means will be up for interpretation on a case-by-case basis by owners, operators alike. Failing to include a specific definition that assures the provision will actually work is yet another example of how EPA's proposal will fail to advance the Act's objectives, and will undermine effective enforcement. Notably, an industry representative commenter during the

[274] Comment of CSB at 5, EPA-HQ-OLEM-0174-0166 (citing CSB recommendations, cited in Part III.A.7, above).
[275] *See* Table 1 Spreadsheet – RMP Incidents Reported to EPA 2004-25 (from EPA Apr. 2026 RMP Non-OCA Database).

public hearing urged EPA to make this definition "narrow," which would ensure STAA evaluation rarely, if ever, occurs.[276]

As a further fatal flaw in EPA's proposal, EPA appears to believe that this requirement would be triggered *before* a facility designs or builds a new process and contends that is why it is requiring this for only new processes. 91 Fed. Reg. at 8982 ("STAAs are likely best conducted during the design of new processes"). As EPA states, it is proposing that "during the design phase of new processes," facilities will have to consider and document IST and other safer measures. *Id.* But EPA has not proposed the necessary regulatory changes to actually ensure that an STAA occurs for all new potentially covered processes *before* they are designed and built.

Its proposal seems to mismatch how the RMP rules actually work. The RMP regulatory framework only applies to a "covered process," which is defined in 40 C.F.R. § 68.3 to mean: "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115." That is, only after a process "has" a chemical above a quantity, does it become "covered" by the RMP regulations at all. Similarly, EPA's proposed rule would apply the STAA requirement only to "new covered processes." 91 Fed. Reg. at 9010 (proposing to amend § 68.67(c)(9)). Thus, no new Program 3 process will ultimately be subject to the STAA until *after* it has a chemical already above the regulated threshold that it is using, storing, or managing. But part of the goal of STAA is to ensure that the facility fully considers all safer technologies and alternatives – which may include swapping out a more hazardous chemical (like HF for example), and setting up a process that would be less dangerous if an incident were to occur. Thus, if EPA seeks to ensure the full benefit of its new process requirement EPA should ensure that the requirement applies before a facility decides what chemicals to put into a process. Yet EPA proposes no regulatory language that would ensure that any facility (whether new or existing) would actually have to meet the STAA requirement during the design phase, i.e., *before* it has a "covered process" with a regulated substance already above the threshold. To do so, EPA would have to modify the applicability to make clear that facilities must satisfy this requirement when designing or building a process that might potentially be covered, and before it becomes covered. Otherwise, facilities with new Program 3 processes will be on the precise same footing as those with existing processes: when they get ready to satisfy the RMP regulations, they will realize that they have to perform an STAA and document that. Facilities who are aware of the likelihood of becoming

[276] *See, e.g.*, 2026 RMP Public Hearing Transcript at 91 (comments of Am. Petroleum Institute representative), EPA-HQ-OLEM-2025-0313-0096.

regulated by the RMP based on new process might possibly perform the STAA before designing or building a covered process and that might lead to using a less hazardous chemical or process in the first place, but EPA's assumption that will happen before they are actually covered by the RMP regulations is not supported with any evidence in the record.

EPA has provided an inherently contradictory justification for its proposal and has not designed the STAA requirement for new processes to ensure that it maximizes the likelihood of STAA implementation, under EPA's own reasoning. By failing to ensure its proposal would actually ensure consideration of IST at the time EPA contends is most important for design, EPA undermines the value of its own proposal even for the approximate 350 new Program 3 processes it expects will be covered.

Rather than finalize a new Program 3 covered process only proposal, if anything, EPA should have proposed and should be working to expand the STAA evaluation, practicability, and implementation requirements to more existing and new processes and facilities, as communities and workers have contended for years.[277]

m. Request for comments on alternative options for STAA

EPA also requests comments on "alternative" STAA options that have no accompanying regulatory text at all in the proposed rule. EPA is taking comment on "alternative" STAA options that include: (a) rescinding the STAA evaluation requirement completely and instead requiring consideration of passive, active, and procedural measures as part of the PHA; (b) requiring STAA evaluation, practicability assessment, and implementation based on some alternative criteria of "heightened risk"; (c) creating an "exemption" process from the STAA implementation requirements; and (d) requiring STAA practicability analysis for all new Program 3 processes (regardless of NAICS code). 91 Fed. Reg. 8982-83. These are also unlawful and arbitrary for all of the reasons discussed above and for the following reasons.

EPA has provided no proposed regulatory text or analysis that could meaningfully inform public comment on these alternatives. It is unclear how EPA would implement this or why it has offered any of these potential alternatives. There is no justification provided in the proposed rule and this set of alternatives

[277] *See, e.g.*, Comments of t.e.j.a.s. et al., EPA-HQ-OLEM-2022-0174-0460 (Oct. 31, 2022).

fails to satisfy the Act's regulatory requirements and requirements for reasoned decision-making. 42 U.S.C. § 7607(d).

On (a): EPA must not rescind the STAA evaluation requirement as discussed above. Doing so would be unlawful and arbitrary. Considering the listed measures as part of the process hazard analysis would be less protective than evaluating "inherently safer" technology and design measures. EPA has not shown how such action would satisfy the regulatory criteria to exercise its authority under section 112(r)(1) and (7)(A)-(B). EPA also cannot justify weakening protection in this way, based on the record and need for more than just additional consideration of "passive, active, and procedural measures" as part of the PHA.

On (b): EPA's list of alternative "heightened risk" factors include some of the same kinds of criteria that EPA already used to set the STAA provisions that are in place. EPA has failed to show why the listed alternatives for "heightened risk" are more appropriate than the criteria already included in the rules, put in place in 2024 following a careful incident and factual analysis. EPA does not provide any information on why it might change these, or provide any evidence contradicting EPA's own prior findings that the heightened risk factors grounding the 2024 Rule required the improvements.

On (c): EPA's proposal to create a potential "exemption" process is unlawful and arbitrary. EPA has no statutory authority to exempt any RMP facilities from the STAA requirements, for any purpose. Notably, it neither cites any such authority or explains how this could possibly satisfy the agency's legal responsibilities. Such an exemption would violate both section 112(r) and the requirements for public notice-and-comment that apply to the RMP rules, 42 U.S.C. § 7607(d). EPA may not issue a rule and then turn around and give an individual exemption from that rule, without satisfying all of the statutory, regulatory, substantive, and procedural requirements. As the STAA requirements are required to meet the statutory criteria, removing these from any individual facility currently covered would violate the Act. Creating a facility-by-facility exemption would not advance health and safety, and instead could allow specific giveaways to certain companies without any lawful or rational grounds.

On (d): For the same reasons as discussed above on the STAA evaluation proposal, EPA may not lawfully weaken the existing practicability assessment requirement to apply this only to some new covered processes. Doing so would violate the Act and conflict with the record, including EPA's own prior findings. EPA has recognized the value of STAA for existing as well as new processes, and its proposal is arbitrary.

#2 - Information Availability

First, EPA should immediately restore access to the original version of the RMP Public Data Tool that EPA took down without public notice on April 18, 2025. [278] EPA unlawfully and arbitrarily removed access to that tool and should not use this rulemaking as an excuse to continue delaying public access to the vital safety information that tool provided.

Second, as discussed in this proposed rule, EPA should codify a regulatory requirement for the agency to provide continuous online access to all non-OCA RMP information directly via the RMP Public Data Tool (i.e., or an updated future version of such a Public Data Sharing tool) and to ensure the tool is regularly updated with data from RMP facility submissions to EPA. EPA should make clear that the public data tool will add RMP data not previously included in the tool, will include mapping, other originally available search functions, and will include non-English language translations.

Finally, EPA should not finalize the proposal to end direct information availability. Instead, EPA should retain the requirement for facilities to provide certain RMP information directly to the public to maximize avenues through which the public can access information about the chemical hazards present in their community. This would be a minimal burden for facilities; EPA may also make clear in the final rule that, once the RMP Public Data Tool is fully restored online by the agency, a facility may fully comply with this requirement by simply sharing a link to the tool, e.g., on the facility's website, or giving the link directly to any requesters and documenting that it has done so.

a. Current requirements and EPA's proposal

Currently, owners and operators of RMP facilities must provide certain chemical hazard and emergency response information for requesters who verifiably reside, work, or spend significant time within six miles of a facility. 40 C.F.R.

[278] EPA, *How to Access Risk Management Plan Information*, https://cdxapps.epa.gov/olem-rmp-pds/ (last updated Apr. 29, 2026) (tool not available as of the date of comment filing; stating that "This tool is offline while the Agency evaluates and makes enhancements to reflect changes to the information of the Risk Management Program"; "This webpage will be updated as the status of the tool and final rule becomes available.").

§ 68.210(d).[279] Facilities must provide this information in 45 days and, if requested, in up to two non-English languages commonly spoken by the potentially affected local population. *Id.* § 68.210(e), (g). They must also provide ongoing notice of the availability of the information and maintain a record of public requesters for five years. *Id.* § 68.210(f), (h).

With the 2024 Safer Communities Rule, EPA also created and published the Public Data Tool, which made certain RMP non-offsite consequence analysis (non-OCA) available to the public. However, in early 2025, EPA took down the Public Data Tool.

EPA proposes to amend 40 C.F.R. § 68.210(d) to remove the requirement for owners and operators to provide information to requesters within the 6-mile radius and to replace it with a requirement that EPA will provide most of that information through an "online Public Data Sharing tool." 91 Fed. Reg. at 8983-84, 9011. EPA proposes to remove the mapping feature for the public data tool, to only provide information in English, and to restrict the search criteria to county or facility name. *Id.* at 8984. EPA is also proposing to remove access to information on declined recommendations and justifications, because it is separately proposing to eliminate facilities' duties to document such analysis at all. *Id*.

In addition to EPA's primary proposal, EPA requests comment on two alternatives: rescinding the current information availability provisions and (1) retaining the RMP Public Data Tool but not codifying it, or (2) taking the RMP Public Data Tool offline permanently. *Id.* at 8985-86.

b. The CAA and FOIA require EPA to provide broad public access to RMP information via a Public Data Sharing tool.

EPA must immediately restore access to the RMP Public Data Tool and codify requirements for the agency to maintain this, at minimum, and regularly review, seek public input, and update this to assure the Public Data Sharing tool is online and provides access to the most current version of all RMP data that is required to be made publicly available.

[279] Facilities must share with requesters information including, if applicable: the facility's declined recommendations from natural hazard, power loss, and siting hazard evaluations; IST/ISD implemented since the last PHA; and recommendations declined related to potential safety gaps between codes, standards, and practices to which the process was designed and constructed and the most current version of applicable codes, standards, and practices. 40 C.F.R. § 68.210(d).

i. The CAA and FOIA require EPA to immediately restore access to the RMP Public Data Tool.

EPA correctly recognizes the need to restore online access to the RMP data, but, without any explanation or justification, the agency does not propose a date for republishing the RMP Public Data Tool.[280] EPA proposes to delay restoration of online RMP data access until, at least, the finalization of the rule. EPA's failure to provide a clear date for access and its related proposal to delay public access to the most current version of the RMP database by waiting for an indefinite period of time after the finalization of this rule, is unlawful and arbitrary. EPA must both immediately restore the Tool and in the final rule set a clear and prompt compliance deadline for ensuring the most recent RMP data are included in the online Tool. Failing to do so would violate the Clean Air Act and Freedom of Information Act (FOIA) and be arbitrary and capricious.

EPA may not lawfully delay access to the RMP public data online. FOIA and the CAA require EPA to immediately republish the RMP Public Data Tool, complete with mapping and other search features, without waiting for this proposal to be finalized. Waiting to republish the RMP Public Data Tool would not meet the CAA's requirements to advance prevention or satisfy the Act's specific requirements to "provide, to the greatest extent practicable," for the prevention, detection, and response of such releases, and "minimize the consequences" of chemical releases. 42 U.S.C. § 7412(r)(7)(B)(i), (r)(1).

Failing to provide this information online also violates the public access to information provision. In section 112(r)(7)(H), the statute makes clear that only access to "off-site consequence analysis information" shall be restricted in any way. 42 U.S.C. 7412(r)(7)(H). The statute does not restrict or allow EPA to restrict any of the non-OCA information; rather, it states that risk management plans "shall be available to the public under section 7414(c) of this title." *Id.* § 7412(r)(7)(B)(iii).

Restoring this RMP data online is also required to satisfy the core objectives of section 112(r)(1) and (r)(7). This would remove significant barriers to information that workers, community members, first-responders and local safety experts need to help prevent, detect, respond to, and minimize harm from chemical disasters. Making this information accessible online again would also advance the important objective of assuring compliance and accountability with EPA's RMP

[280] EPA's removal of the RMP Public Data Tool was itself unlawful and arbitrary, as EPA took this action without public notice and comment and without providing any lawful or reasoned explanation.

rule. People – including workers, community members, health professionals and first responders, teachers, school staff and other caregivers – with an interest in safety at particular facilities, or across specific companies, industry sectors, or geographic areas, could more easily track compliance with these requirements by accessing RMP plans and submissions of incident reports.

Providing access to this information will increase the incentive for facilities to comply promptly. It will also help assure compliance by making it easier for people with an interest in compliance to tell if a facility is not complying. The non-compliance record in incident reporting delay that EPA has recognized as a problem within the Risk Management Program also strongly supports making the RMP data fully publicly available online. 87 Fed. Reg. 53592-93. The 2024 Rule record includes significant information showing the need for public online access to RMP data.[281] New guidance from EPA in March 2026 further underlines the importance of public access to information both in advance of and following chemical releases.[282]

In addition, EPA must promptly restore online information access because the CSB has recommended this to advance health and safety. Its recommendations on this issue carry particular weight and EPA must respond to incorporate them or fulfill its statutory obligation to justify not doing so. 42 U.S.C. § 7412(r)(6)(I); *see also* Part I, above.[283] That provision sets a binding requirement for EPA to "respond . . . formally and within writing" within 180 days after receipt of a Board recommendation. That response must meet specific requirements – including to

[281] *See, e.g.*, SCCAP RTC at 246 ("EPA continues to believe that providing chemical hazard information to the general public will allow people that live or work near a regulated facility to improve their awareness of risks to the community and to be prepared to protect themselves in the event of an accidental release. The public's ability to participate in emergency planning and readiness is enhanced by being better informed about accident history, types of chemicals present, and how to interact with the stationary source."); *id.* at 248 (EPA's 2000 assessment of the benefits of public disclosure of RMP information found that public disclosure "would likely lead to a reduction in the number and severity of accidents"); *see also* Comments of t.e.j.a.s. et al., EPA-HQ-OLEM-2022-0174-0460 Attachment 1 at 69-75 (Oct. 31, 2022).

[282] *See* EPA, RMP Guidance, Ch. 11, Communication with the Public at 11-1, 11-2, 11-5 (revised Mar. 2026), https://www.epa.gov/system/files/documents/2026-03/chap-11_revised_3_13_2026.pdf ("dialogue [with the public] is an important step in preventing chemical accidents and should be encouraged"; "Effective communication with the public can be an opportunity to develop robust emergency response efforts at your facility, in coordination with local responders and the community"; "The public has substantial interest in knowing what happened in an accident that had off-site impacts, why the accident happened, and what steps the facility is taking to prevent a future occurrence."; "public exchange of information may also improve the quality of your incident investigations as the public may provide new information such as impacts of which you may not be aware").

[283] *See* Comments of CSB at 11, EPA-HQ-OLEM-2022-0174-0166 (Oct. 26, 2022).

indicate whether EPA will initiate a rulemaking to implement the recommendation or period and provide an explanation if not. EPA includes no statement acknowledging the CSB recommendations much less explaining what reasons it might have not to implement these recommendations. EPA previously responded affirmatively to this recommendation by creating the RMP Public Data Tool and it must continue providing this information.

As EPA and the CSB have found, online public access to the RMP data strengthens health and safety.[284] Ensuring this access is restored and continues is vital to advance the chemical release prevention requirements of sections 112(r)(1) and (r)(7)(A) and (B) and to "minimize consequences" to health and safety from any incidents that may still occur. Failing to restore this promptly would violate these provisions and would be arbitrary. EPA could provide no reasoned explanation for not restoring this access, and has given no justification in the proposed rule for delaying the restoration. EPA has also failed to demonstrate any "awareness that it is changing position" on the urgency of the public's need for RMP data or provide "good reasons for the new policy" to delay providing that data. *See Fox*, 556 U.S. at 515.

Failing to commit to a date certain to republish the tool is also arbitrary and capricious. EPA has recognized that the information provided must be made available to the public under Section 112(r) and FOIA and has made factual findings that it is important to public safety. *See, e.g.*, SCCAP Proposed Rule, 87 Fed. Reg. 53602.

Finally, the Act requires EPA rules with effective dates that "assur[e] compliance as expeditiously as practicable." 42 U.S.C. § 7412(r)(7)(A). By providing no firm date in the proposed rule upon which EPA will comply with the proposed requirement to restore the online RMP data tool, including to update it with the most current RMP data, EPA's proposal is incomplete. If EPA has not restored the tool before that time (as it should do, as discussed above), EPA must ensure that the final rule on EPA's provision of the data includes an immediate and firm date both for EPA to restore the Public RMP Data Tool and a commitment to automatically update that tool with the most recently available RMP submissions from facilities.

[284] *See, e.g.*, EPA 2016 Proposed Rule, 81 Fed. Reg. at 13677-68 ("Ensuring that communities, local planners, local first responders, and the public have appropriate chemical facility hazard-related information is critical to the health and safety of the responders and the local community") (citing evidence going back to the 2014 Request for Information, including the CSB Bayer CropScience investigation report).

FOIA also requires EPA to immediately republish the data tool with access to all RMP data to the greatest extent allowed under law. As EPA has correctly recognized, the non-OCA RMP data is public information as a matter of law under the Freedom of Information Act. SCCAP Proposed Rule, 87 Fed. Reg. 53602. EPA recognized this acknowledgement and does not dispute it in this proposal. *See* 91 Fed. Reg. at 8986. And public demand for this information is significant; as of 2022, EPA provided RMP data at least 242 times since 2015, averaging 35 times per year. 87 Fed. Reg. at 53602. FOIA directs that after three or more requests for public information, the agency must make the information "available for public inspection in an electronic format." 5 U.S.C. § 552(a)(2)(D)(ii)(II). There have been more than 3 such requests and releases in 2025 and 2026 so far.[285] Based on the law, the public interest in this information, the value of the information to community members, and the multiple regular requests for the data it receives, EPA must make the entire non-OCA public RMP database available online immediately.

ii. *Codifying EPA's commitment to provide an online public RMP data tool is necessary to satisfy the Clean Air Act requirements under Section 112(r)(1) and (7).*

To meet the agency's obligations under the CAA, as discussed in Part I, and III.B.1, above, EPA must codify a regulatory requirement for the agency to maintain public access to all non-OCA data, as directed by law, via an online Public Data Sharing tool.

EPA must make the RMP data available online to satisfy its rulemaking obligations under section 112(r). Specifically, given EPA's findings on the importance of public information access in improving and maintaining public health and safety, broad public access to RMP information via an online public data sharing tool is necessary for EPA to realize the requirements laid out in section 112(r)(1) to "prevent the accidental release and to minimize the consequences of" accidental releases and in section 112(r)(7)(A) (authorizing EPA to regulate "to prevent accidental releases of regulated substances"). 42 U.S.C. §§ 7412(r)(1), (r)(7)(A). For the same reasons, requiring an online public data tool is also necessary for EPA to meet its obligations to provide for the prevention, detection, and response to accidental releases "to the greatest extent practicable,"

[285] *See* EPA FOIA Logs Fourth Quarter 2025, First Quarter 2026; Second Quarter 2026, Fourth Quarter 2025 https://www.epa.gov/system/files/documents/2025-11/2025-4th-quarter-foia-log.pdf; https://www.epa.gov/system/files/documents/2026-04/2026-1st-quarter-foia-log.pdf; https://www.epa.gov/system/files/documents/2026-04/2026-2nd-quarter-foia-log.pdf; *see also* Part II.C.

and to "minimize accidental releases . . . in order to protect human health and the environment." *Id.* § 7412(r)(7)(B)(i), (ii).

EPA, the CSB, and other safety experts have long recognized the importance of community access to information about RMP facilities and hazards.[286] In the 2024 Safer Communities Rule, EPA found that providing chemical hazard information to the public allows people to "improve their awareness of risks to the community and to be prepared to protect themselves in the event of an accidental release."[287] EPA stated: "The public's ability to participate in emergency planning and readiness is enhanced by being better informed about accident history, types of chemicals present, and how to interact with the stationary source."[288] EPA acknowledged that when it conducted the statutorily required study on the benefits of providing public access to RMP information in 2000, EPA found that "public disclosure of risk management plan information would likely lead to a reduction in the number and severity of accidents," and that "comparisons between facilities, processes, and industries would likely lead industry to make changes and would stimulate dialogue among facilities, the public, and local officials to reduce chemical accident risks."[289] EPA also found that EPA should aggregate RMP information in a central location rather than expect communities with multiple facilities to separately request information from each facility.[290]

New guidance from EPA in March 2026 further underlines the importance of public access to information and highlights that "dialogue is an important step in preventing chemical accidents and should be encouraged."[291]

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[286] *See, e.g.*, EPA 2000 OCA information rule, 65 Fed. Reg. 48108 (noting that in the 1994 and 1996 rules, "EPA recognized that regulatory requirements by themselves will not guarantee safety, and that providing the public with information about hazards in a community can and should lead government officials and the public to work with industry to prevent accidents. EPA thus relied on the public availability of RMPs to stimulate further chemical risk reductions efforts, which occur primarily at the local level where the risk is found.").

[287] SCCAP Rule, 89 Fed. Reg. 17670; EPA, Assessment of the Incentives Created by Public Disclosure of Off-site Consequence Analysis Information for Reduction in the Risk of Accidental Releases at 2 (April 18, 2000) ("Public disclosure of RMPs including OCA information would likely lead to significant reduction in the number and severity of accidental chemical releases.").

[288] SCCAP Rule, 89 Fed. Reg. 17670 ("Having the source provide the information set out in 40 CFR 68.210 directly to the public within the confines of the final rule promotes accident prevention and response by facilitating public participation at the local level.").

[289] *Id.* at 17670-71; 2024 RTC at 248; *see also* SCCAP Proposed Rule, 87 Fed. Reg. 53602.

[290] SCCAP Proposed Rule, 87 Fed. Reg. 53602.

[291] *See* EPA, RMP Guidance, Ch. 11, Communication with the Public at 11-1 (revised Mar. 2026), https://www.epa.gov/system/files/documents/2026-03/chap-11_revised_3_13_2026.pdf.

In its previous rulemaking, EPA increased access to information because of evidence that well-informed communities were better prepared for accidents, and thus in a better position to mitigate their consequences. SCCAP Rule, 89 Fed. Reg. at 17670-74. As EPA recognizes here, since then, new scientific research shows "that any pre-incident education improved knowledge and intention to act, with more intensive training leading to greater engagement and response to emergency or disaster situations." 91 Fed. Reg. at 8985 & n.57 (citing Boyce et al. (2025)). Based on the record, EPA here "has determined that providing chemical hazard information to the general public allows people that live or work near a regulated facility to improve their awareness of risks to the community and be prepared to protect themselves in the event of an accidental release." *Id.*

During the last rulemaking, EPA recognized that requiring the public to access information through FOIA or federal reading rooms was "insufficient for informing communities about RMP-regulated facilities," and that "barriers [to accessing the RMP data] do not appropriately facilitate community right-to-know or equitable distribution of knowledge on fenceline community risks to those most affected by potential releases." 87 Fed. Reg. at 53601-02. Further, EPA found that relying on Local Emergency Planning Committees (LEPCs) to distribute RMP information "would not be sufficient or improve safety as effectively as additionally requiring that information be provided directly to the affected public."[292]

The 2024 Rule record includes significant information showing the need for public online access to RMP data, beyond existing reading rooms and beyond the direct informational provision included in the 2024 Rule (e.g., people beyond 6-mile radius need access to chemical hazard information; some community members or caregivers may be wary to contact a facility directly to request information, as opposed to being able to simply access information online; and some community members do not have an active LEPC, *see, e.g.*, 91 Fed. Reg. at 8984).[293] As EPA recognizes, there were approximately 1,236 inactive LEPCs reported in 2023—almost one-third of all LEPCs reported in the survey of state emergency response commissions. 91 Fed. Reg. at 8984. In that survey, EPA found

[292] SCCAP Rule, 89 Fed. Reg. 17671 (also noting from an analysis of active RMP submissions that "10 percent of active facilities have not provided the names or information about their LEPCs," indicating that either those LEPCs did not exist, are inactive, or were not in communication with these facilities. Further, "EPA routinely receives Freedom of Information Act (FOIA) requests for OCA and non-OCA versions of the risk management plan database from local and State emergency response entities, which may indicate that local emergency response entities also have difficulty in obtaining this information from facilities.").
[293] *See, e.g.*, Comments of t.e.j.a.s. et al., EPA-HQ-OLEM-2022-0174-0460 Attachment 1 at 69-75 (filed Oct. 31, 2022).

that 8.6% of LEPCs, representing 327 communities, "do not have any type of emergency response plan."[294]

Broad information access is necessary for communities to plan for emergencies before a lock-down occurs. This is critically important for families and caregivers who need to be able to plan and prepare ways to try to protect loved ones before there is a toxic plume or explosion, and before there is a shelter-in-place or evacuation order. It is also valuable for communities to be able to participate in oversight and dialogue with facilities and emergency responders and agencies following an incident and to reduce harm, engage in emergency planning, and improve safety. *See, e.g.*, SCCAP Rule, 89 Fed. Reg. at 17642. The RMP rules require RMP facilities to hold a public meeting soon after a reportable incident, but unless community members have access to information they cannot meaningfully engage in such a meeting. *See* 40 C.F.R. § 68.210(b). Public transparency also ensures communities, workers, first-responders, as well as other health and safety experts, can understand, discuss and engage with local RMP facilities and relevant agencies at the state and local levels in supporting more effective prevention and response plans.

Public access to information improves public health and safety, and EPA recognizes that increased information availability has not led to increased criminal activity or intentional releases. 91 Fed. Reg. at 8985. Maximizing the public's access to RMP information is necessary for EPA to advance prevention and "minimize" incident consequences, as required by section 112(r)(1) and (7)(A), and to meet its obligations under Section 112(r)(7)(B) "to provide, to the greatest extent practicable" for accident prevention and response by the owners or operators of the sources of such release and to "minimize" chemical releases altogether. See Sections I, and III.B.1.b above (discussing plain meaning of "greatest extent practicable" and "minimize" requirements).

iii. EPA must make all non-OCA data available, and this would not compromise safety or national security.

EPA requests comment on whether its proposal would "satisfy the need for access to RMP information while addressing security concerns." 91 Fed. Reg. at 8984. Publishing RMP information in an online public data tool is a critical step toward meeting the need for access to RMP information, and EPA should also do more. EPA must publish all RMP information to the maximum extent allowed and

[294] EPA, *National Survey of State Emergency Response Commissions (SERCs)* at 23 (Apr. 2023, revised Mar. 2025), EPA-HQ-OLEM-2025-0313-0009.

required by law in order to satisfy its mandate under the Act. There is no evidence that expanding public access to RMP information would undermine safety, rather, it would strengthen protections for health and safety. There is also no evidence that expanded access would compromise national security.

Although EPA proposes only to include certain data in the public data sharing tool, the CAA requires **all** non-OCA RMP information to be publicly available. In section 7412(r)(7)(H), the statute makes clear that only access to "off-site consequence analysis information" shall be restricted in any way.[295] The statute does not restrict or allow EPA to restrict any of the non-OCA information; rather, it states that risk management plans "shall be available to the public under section 7414(c) of this title." 42 U.S.C. § 7412(r)(7)(B)(iii). Section 112(r) requires EPA to prevent accidental releases and to minimize their consequences, and EPA must provide for prevention, detection, and response "to the greatest extent practicable," and ensure its regulations "minimize accidental releases" to protect health and the environment. *Id.* § 7412(r)(1), (r)(7)(A), (r)(7)(B)(i), (r)(7)(B)(ii). Based on each of these requirements individually and all of them together, and in light of the extensive record evidence and EPA's findings that publicizing chemical hazard information improves awareness of risks and preparedness to act in the event of an incident, EPA must include all non-OCA RMP information in the public data sharing tool and make its commitment to provide access to all such RMP data clear in the regulatory text. *See*, *e.g.*, 91 Fed. Reg. at 8985.[296]

FOIA also requires EPA to provide online public access to all RMP information required to be made publicly available. As EPA has correctly recognized, the non-OCA RMP data is public information as a matter of law under the Freedom of Information Act. 87 Fed. Reg. at 53602. Public demand for this information is significant; as of 2022, EPA provided RMP data at least 242 times since 2015, averaging 35 times per year. 87 Fed. Reg. at 53602. As discussed above, as shown in comments in the 2024 rule record and in the public hearing for this proposal, the public interest in the RMP data continues. There have been at least three requests for this information in 2025-26.[297] FOIA directs that after three

[295] 42 U.S.C. § 7412(r)(7)(H)(i)(III) (defining OCA analysis information as "those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions").

[296] This would require adding a commitment to include all non-OCA information in the restored 2024 RMP Public Data Tool – such as the RMP executive summary, reasons for deregistration of any facility, date of last inspection, whether the facility held a public meeting following an incident, and other data that facilities must report that is non-OCA RMP information.

[297] *See* Part II.C, *supra*.

or more requests for public information, the agency must make the information "available for public inspection in an electronic format." 5 U.S.C. § 552(a)(2)(D)(ii)(II). Requesters have requested the entire RMP database numerous times since 2022.[298] Based on the law, the public interest in this information and the value of the information to community members, and the multiple regular requests for the data it receives, EPA must make the entire non-OCA public RMP database available.

EPA has recognized that information availability did not contribute to intentional criminal acts and that no industries now regulated under RMP had been subject to any intentional events since the 1970s. 89 Fed. Reg. at 17675. For the SCCAP Rule, EPA has consulted with agencies within the federal government with national security expertise to inform that rule.[299] Across the last 10 years in which EPA has evaluated potential improvements to the RMP rules, it has thoroughly considered potential national security as an interest and there has been no evidence of any concerns from public information access.[300] And as EPA points out, the Toxics Release Inventory and other EPA programs demonstrate that the availability of facility and chemical information does not increase security risks. 91 Fed. Reg. at 8984.

iv. *Failing to codify a requirement for EPA to publish and regularly update RMP information via a Public Data Sharing tool would be arbitrary and capricious.*

Any final action short of EPA codifying an obligation to provide full publication of RMP information via a Public Data Sharing tool with full mapping capabilities and non-English options would be arbitrary and capricious. Given EPA's findings that increased public information improves safety without increasing security risks, described above, such a decision would lack a "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43.

EPA's alternatives would be even more arbitrary and capricious.

In the alternative, the agency is proposing to rescind facilities' requirements to provide information and to either not codify the Public Data Sharing tool or to take it down permanently. In both scenarios, community members are put in a situation with no reliable access to RMP information except through FOIA for

[298] *Id.*
[299] *See*, *e.g.*, SCCAP RTC at 103, 225, 381 (App. B).
[300] *See*, *e.g.*, SCCAP Proposed Rule, 87 Fed. Reg. 53574, 53600-02; 2017 CDR, 82 Fed. Reg. 4668-69.

non-OCA information and reading rooms for OCA information. Such a severe restriction on information access would be contrary to EPA's duties under Sections 112(r)(1) and 112(r)(7) for the same reasons described above. It would also be arbitrary and capricious, lacking a rational connection with the facts, because EPA acknowledges the existing burdens of accessing RMP data.

The only justification offered for these alternatives is to mitigate the risks of criminal activity. 91 Fed. Reg. at 8985-86. This vague goal would be an unlawful and arbitrary justification for the limitations because EPA has found that information availability did not contribute to intentional criminal acts and that no industries now regulated under RMP had been subject to any intentional events since the 1970s. *Id.* at 8985; 89 Fed. Reg. at 17675. EPA also acknowledges in this proposal that the Toxics Release Inventory and other EPA programs demonstrate that the availability of facility and chemical information does not increase security risks. 91 Fed. Reg. at 8984. And EPA has not explained and cannot explain why it would need to restrict information that Congress has already decided should be public. Adopting one of the alternatives EPA proposed would fail to be "reasonable and reasonably explained" and thus would be arbitrary and capricious. *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021) ("*Prometheus Radio*").

The best way to shore up a facility against a security risk, or an accident, is the same: EPA should focus on eliminating hazards by ensuring implementation of the STAA provisions, as discussed in Part III.B.1, above. Removing a facility as an attractive target for terror would be an appropriate way of addressing security—not denying information to members of the public seeking to advance safety and protect their families from harm.

v. *Removing the mapping feature to "balance[e] security concerns" would be arbitrary.*

EPA provides no evidence that there are concrete security concerns that would be remedied by removing the mapping feature. EPA's reasoning also contradicts the record evidence showing that there are no material security concerns posed by the mapping feature.

EPA claims that removing the mapping tool would "balance information transparency and better protect sensitive chemical information," 91 Fed. Reg. 8984, but arbitrarily provides no explanation of how it would do so and provides no evidence to support this argument. Further, removing mapping on the basis of security contradicts EPA's findings that "no industries now regulated under RMP

had been subject to any intentional events since the 1970s" and that "well-informed communities [are] better prepared for accidents." 91 Fed. Reg. at 8985; *id.* at 8983 (citing 89 Fed. Reg. at 17675).

Removing the mapping feature is also arbitrary because EPA "entirely failed to consider an important aspect of the problem," *see State Farm*, 463 U.S. at 43: the impact of removing the mapping tool on the public's access to this information. Eliminating the mapping feature previously available with the RMP Public Data Tool would undercut the usefulness of the tool by adding additional search and time burdens for the public, thereby undermining information access. Removing the mapping tool is a barrier for the public to access information about where facilities are clustered within their county. Mapping eliminates barriers to this information by providing access for members of the community who do not have the technological skills to create their own or try to take information on RMP facilities and use pre-existing mapping tools to otherwise understand the location and distribution of local chemical hazards around their homes, schools, and neighborhoods.

Counties can be geographically large and mapping enables members of the public to quickly and intuitively access information on how close facilities are to their home, workplace, school, place of worship, and other places they spend time in their community. For people who live in places like Harris County that have hundreds of RMP facilities,[301] the mapping tool is especially important to provide meaningful access for the public to information on the RMP facilities of most relevance to their own neighborhoods. Showing RMP facilities on a map also allows community members and emergency response agencies to easily communicate and distribute information on local chemical hazards in a single image, rather than a list of addresses. Removing the mapping tool would be contrary to EPA's goal to "allow residents to search for facilities nearby that they may be unaware of." 91 Fed. Reg. at 8984.

Mapping is also helpful regionally beyond the county-level scale. Because users would only be able to look up individual counties, it will be harder to discern areas where risk is concentrated across multiple counties in the same region. Members of the public who spend significant time in different counties, or who live or spend a significant amount of time near a county border, would be impacted

[301] *See* List of Active RMP Facilities (April 2026); *see also* t.e.j.a.s. et al. Comments at 20, EPA-HQ-OLEM-2022-0174-0460 (Oc. 31, 2022).

by being forced to conduct extra searches and synthesize that data themselves if they seek to learn about how their risks are geographically distributed.

Many RMP facilities are clustered in and around areas that span multiple counties.[302] Community members living or spending time in these broader metro areas would have an additional burden of searching across multiple counties and attempting to compile their own maps from the data in order to fully understand the hazards they face from local facilities. Maps can offer not only more complete information, but more intuitive information allowing community members to quickly assess areas of greater or lesser risk of being impacted by a chemical incident. EPA does not appear to account for these issues caused by removal of the mapping feature, and therefore this proposal is also arbitrary because it has failed to account for an important aspect of the problem.

EPA cites "balancing security concerns" as the reason for removing the mapping feature, 91 Fed. Reg. 8984, but offers no explanation or evidence as to why the mapping tool itself poses security concerns or how removing the tool would improve security. Removing the mapping feature would require users to take extra steps of separately identifying the names of counties or facilities they seek information about, and then to input those search parameters into the RMP Public Data Tool. EPA provides no evidence that for the year that the RMP Public Data Tool was published with the mapping feature online, there were any increased security incidents or threats that could be avoided by removing the mapping feature.

EPA's proposal to remove the RMP Public Data Tool's mapping feature is thus arbitrary and EPA's unexplained and unsupported rationale of "balancing security concerns" cannot support its proposal where, as here, EPA has provided no evidence that the information and search features provided in the RMP Public Data Tool posed any security concerns. *See*, *e.g.*, *Air Alliance Houston*, 906 F.3d at 1068; *Encino Motorcars v. Navarro,* 579 U.S. 211, 212 (2016) ("[A]n agency must give adequate reasons for its decisions.").

[302] For example, there are several dozen facilities in the Dallas-Fort Worth metro area, which spans almost a dozen counties. There are over two dozen counties in the St. Louis metro area, which spans at least 5 counties. *See* List of Active RMP Facilities (April 2026) (allowing searches by each city and showing counties).

c. EPA must provide access to RMP data in all languages spoken in communities near RMP facilities.

Failing to provide access to RMP data in all languages would be arbitrary and capricious for the reasons below.

i. EPA failed to consider an important aspect of the problem—the impact on community members with limited English proficiency.

EPA has long recognized that ensuring public access to RMP information "is critical to the health and safety of the responders and the local community."[303] It follows that ensuring all members of the public, including people with limited English proficiency, can understand information about the chemical hazards facing their families and can fully access to RMP information is equally as important for protecting public safety and disaster preparedness as ensuring that English-proficient people have access to such information. If information is provided to the public but some members of the public cannot understand it due to a language barrier, they are not able to meaningfully access the information. People with limited English proficiency often face disproportionate risks from emergency incidents.[304] For example, language barriers may hinder individuals' ability to understand evacuation or shelter-in-place orders, and lack of RMP information in a language they understand hinders individuals' ability to understand the potential harms they face and how to prepare for them.

Given EPA's proposed rescission directly and materially affects—in some cases, eliminates—the ability for people with limited English proficiency to access RMP information, the impact of this rescission on these members of the community is critically relevant to EPA's decision. EPA previously acknowledged the importance of ensuring the public can actually understand the RMP data.[305] Even new EPA guidance on public communication under the RMP program recognizes the need for translation to ensure meaningful public access to

[303] EPA 2016 Proposed Rule, 81 Fed. Reg. at 13,677-68.
[304] *See generally*, *e.g.*, *FEMA Assistance: Limited English Proficiency and Equity*, Congressional Research Service (updated June 7, 2023), https://www.congress.gov/crs_external_products/IF/PDF/IF12263/IF12263.6.pdf.
[305] *See*, *e.g.*, SCCAP Rule, 89 Fed. Reg. 17671 ("Requiring translation in up to two of the major non-English languages of the community reflects a balance of the right-to-know purposes of CAA section 112(r)(7)(B)(iii) with the time and financial burden of providing such translations.").

information.[306] EPA's proposal does not acknowledge these findings and facts. EPA attempts to ignore the need for translated RMP information, without actually engaging with the safety benefits from ensuring this access. EPA's proposal includes only a conclusory assertion that the translation costs may not "add[] commensurate benefit." 91 Fed. Reg. at 8984. EPA has failed to provide any support for its argument. But many people living or otherwise spending time near RMP facilities speak another language as their primary language.[307] For example, in EPA's public hearing for this rule, at least two commenters testified in Spanish. *See* EPA-HQ-OLEM-2025-0313-0096 (testimony of Carmen Ivonne and Claudia Rios).

ii. EPA's reliance and arguments on translation costs are unlawful and arbitrary.

EPA attempts to justify its removal of the language access requirements based on costs of translation. 91 Fed. Reg. 8984. But, as discussed in Part III.B.1.i, above, EPA may not lawfully use cost as a factor at all or as the primary factor in setting RMP rules. Thus, its use of cost is both unlawful and arbitrary. Further, EPA's justification on cost is unsupported by the evidence and contradicted by EPA's previous findings on cost, and EPA failed to consider the alternative of providing translations itself.

EPA states that translation costs for facilities "could be significant without adding commensurate benefit." 91 Fed. Reg. at 8984. But EPA's own cost analysis shows that under the 2024 requirements to provide non-English translations upon request, a facility is only expected to perform two translations once during each five-year RMP period.[308] At the assumed rate of $0.10 per word, the estimated cost of each translation is extremely modest: for simple facilities, $700, and for small and large complex facilities, $4,500.[309] These are the same cost figures EPA

[306] *See* EPA, RMP Guidance, Ch. 11, Communication with the Public at 11-1, 11-2, 11-5 (revised Mar. 2026), https://www.epa.gov/system/files/documents/2026-03/chap-11_revised_3_13_2026.pdf ("dialogue [with the public] is an important step in preventing chemical accidents and should be encouraged"; "Effective communication with the public can be an opportunity to develop robust emergency response efforts at your facility, in coordination with local responders and the community"; "The public has substantial interest in knowing what happened in an accident that had off-site impacts, why the accident happened, and what steps the facility is taking to prevent a future occurrence."; "public exchange of information may also improve the quality of your incident investigations as the public may provide new information such as impacts of which you may not be aware").
[307] *See, e.g.*, U.S. Census Data showing limited English proficiency, https://www.census.gov/library/visualizations/interactive/people-that-speak-english-less-than-very-well.html; *see also* https://languagemap.us (allowing search by language and percentage spoken at home).
[308] 2026 RIA at 43, EPA-HQ-OLEM-2025-0313-0058.
[309] *Id.* at 43.

estimated in 2024,[310] when EPA determined this cost was adequately balanced by the advancement of the right-to-know purposes of the Act. SCCAP Rule, 89 Fed. Reg. at 17671. EPA has arbitrarily failed to explain its change in position. *See Fox*, 556 U.S. at 515.

As EPA recognized in 2024: "Requiring translation … reflects a balance of the right-to-know purposes of CAA section 112(r)(7)(B)(iii) with the time and financial burden of providing such translations."[311] EPA does not address this finding at all in this proposal, and it is arbitrary to do a heel-turn on its prior balancing analysis without providing a "more detailed justification." *See Fox*, 556 U.S. at 515.

EPA also arbitrarily does not address the possibility of EPA itself providing translated documents, even though doing so would be a "responsible alternative" that is "significant and viable." *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 242 (D.C. Cir. 2008) (quotations omitted). EPA currently requires facilities to provide translations, and in many other programs, EPA has provided translated documents or translation services.[312]

iii. EPA has unlawfully and arbitrarily relied on an EO to justify this rescission rather than acting on its own reasoned judgment.

EPA attempts to rely on a recent "English only" Executive Order to justify its proposed rescission of translated information access requirements. 91 Fed. Reg. at 8984-85. Executive Order 14224 is irrelevant and relying on it to justify this proposal is unlawful and arbitrary.[313]

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[310] 2024 RIA at 64, EPA-HQ-OLEM-2022-0174-0587.
[311] SCCAP Rule, 89 Fed. Reg. 17671.
[312] *See* EPA, *EPA Order 1000.32 Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency* at 13-15 (updated Nov. 3, 2023), https://www.epa.gov/system/files/documents/2023-12/epa-order-1000.32-compliance-with-executive-order-13166_11_023_-508-accessible.pdf) (examples of documents where translation is appropriate include brochures, fact, sheets, question and answer documents, press releases, environmental reports, environmental risk/concern advisories, settlement agreements, final agency decisions, and information pertaining to natural disasters and emergency response efforts); ("The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the individuals with LEP, the more likely language services are needed."). Pursuant to EO 14224, EPA has stated that it is reviewing its language access policies and procedures. But this has no bearing on EPA's capacity to provide language access or its history of doing so in numerous EPA programs.
[313] D. Trump, EO 14224, Designating English as the Official Language of the United States, 90 Fed. Reg. 11363 (Mar. 6, 2025), placed into the record by EPA at EPA-HQ-OLEM-2025-0313-0052.

First, executive orders provide no independent basis for rulemaking authority, nor can they compel EPA to act contrary to statute or arbitrarily.[314] EPA's action "cannot be sustained … where it is based not on the agency's own judgment but on an erroneous view of the law." *Prill v. NLRB*, 755 F.2d 941, 947 (D.C. Cir. 1985). EPA's reliance on the EO also illustrates the proposed rule violates the Due Process Clause as the agency is compelled to "act with an 'unalterably closed mind'" and "'unwilling or unable' to rationally consider arguments." *Air Transp. Ass'n of Am., Inc v. Nat'l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011) (citations omitted).

Second, by its own terms, the EO does not require agencies to cease providing non-English documents or services. Section 3(b) of EO 14224 states "nothing in this order … requires or directs any change in the services provided by any agency … Agency heads are not required to amend, remove, or otherwise stop production of documents … or other services prepared or offered in languages other than English." EPA's reliance on the EO lacks a "rational connection" to its proposal given that the EO expressly states it is not requiring EPA to do what the agency is proposing.

iv. *EPA's proposed alternatives are also arbitrary and fail to meet EPA's statutory mandates.*

EPA requests comment on alternatives including limiting the information that would be shared in multiple languages to immediate emergency situations or limiting the requirement to only share information in languages other than English if there is a different single language predominantly in the area. 91 Fed. Reg. at 8986. EPA cannot lawfully finalize these alternatives only, for similar reasons that it cannot justify its proposed rescission of the requirement to provide RMP information in languages requested. Providing broad access to RMP information, for all reasons discussed above, is vital and required, and EPA should not rescind the existing requirements.

Limiting access in the ways EPA describes would be insufficient and arbitrary. Members of the public need access to RMP information before an incident occurs, and outside of emergency situations so that they can know the dangers they may face and to plan for emergencies before they happen. Some RMP information, such as information in emergency response plans, may communicate how a community should expect to receive emergency information. Also, EPA

[314] *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (it is "axiomatic" that "administrative agencies may act only pursuant to authority delegated to them by Congress.").

should not limit translations to situations where there is a single non-English language predominantly in the area, because this limits access to information in multi-lingual communities where there are different languages used by significant portions of the public. EPA has not explained why it can lawfully or rationally decide not to provide information to any members of the public based on their level of English proficiency.

d. To ensure maximum availability of information, EPA must retain the requirements for owners and operators to provide information directly to the public upon request.

In light of the proposal to transition individual facilities' information sharing duties to EPA for sharing via the Public Data Tool, EPA is also proposing to delete associated requirements in 40 C.F.R. § 68.210(f)-(h) pertaining to facilities' obligations to provide notice of the public's right to request information, the 45-deadline for facilities to provide the information, and the requirement to keep a record of public requesters. EPA is also proposing to delete the requirement at 40 C.F.R. § 68.160(b)(22) requiring owners and operators to document in the RMP the method and location for notifying the public within a 6-mile radius that information is available. 91 Fed. Reg. at 8984-85.

While commenters strongly urge EPA to finalize a regulatory requirement codifying the agency's commitment to publish RMP information via a Public Data Sharing tool, EPA's statutory duties described above require the maximum availability of RMP information. *See, e.g.*, 42 U.S.C. §§ 7412(r)(1), (7)(A)-(B), (H). Facilities should already have systems in place to deliver this information, as they regularly document and report to EPA. For some members of the public, particularly laypersons who are not familiar with the RMP program, accessing RMP information by contacting a facility in their community may be the only way they know about to seek information on chemical hazards at that facility. Unless and until EPA has restored and broadly publicized the Public RMP Data Tool, many members of the public may not know of that tool as a resource. As EPA found in 2024 in support of the ongoing notification requirement, "information availability requirements are most impactful if the public is aware of the availability of the information." SCCAP Rule, 89 Fed. Reg. at 17671. Therefore, EPA should keep existing requirements for facilities to share RMP information with the public, if the public contacts the facility directly. EPA's March 2026 RMP Guidance discusses the importance and value both to the public and to a facility itself in responding to public requests for information made to the

facility.[315] Given EPA's current and historical recognition of the importance of public data information, as discussed in this section, rescinding the requirements for facilities to share RMP data directly would lack a "rational connection" to the facts found, *see State Farm*, 463 U.S. at 43, and would be an unexplained and unjustified change in position. *See Fox*, 556 U.S. at 515.

Restoring the Public RMP Data Tool while maintaining the requirement to provide information directly would also provide an efficient way for facilities to respond to public inquiries. For example, facilities could simply point the public to or even provide a link to the RMP Public Data Sharing tool on their own website, as a way of complying with little or no time or burden on the facility.

#3 - Third-Party Compliance Audits

Third-party compliance audits strengthen accountability and will help prevent incidents and future harm. Commenters urge EPA to preserve the requirements for Program 2 and Program 3 facilities to obtain a third-party compliance audit when an accidental release from a covered release occurs, when an implementing agency requires one, or when a previous third-party audit failed to meet competency or independence criteria. 40 C.F.R. §§ 68.58(f), 68.79(f). EPA must also not sunset the third-party audit requirements in 10 years, must not rescind the two-year cooling off period for auditors, must not allow extensions to the 90-day deadline for audit responses, and must not rescind the Board reporting requirement.

a. EPA's proposal

Under current regulations, Program 2 and Program 3 facilities must obtain a third-party audit when an accidental release meeting the criteria at 40 C.F.R. § 68.42(a)[316] from a covered process has occurred, when an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet competency or independence criteria.[317]

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[315] *See* EPA, RMP Guidance, Ch. 11, Communication with the Public at 11-1, 11-2, 11-5 (revised Mar. 2026), https://www.epa.gov/system/files/documents/2026-03/chap-11_revised_3_13_2026.pdf.

[316] 40 C.F.R. § 68.42(a) (requiring reporting of "accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.").

[317] Requirements for Program 2 facilities are at 40 C.F.R. § 68.58(f) and 68.59; requirements for Program 3 facilities are at 40 C.F.R. § 68.79(f) and 68.80.

EPA is proposing and seeks comment on two co-proposals. In Proposal #1, EPA is proposing to rescind all third-party audit requirements. In Proposal #2, the proposal as reflected in the proposed CFR changes, EPA is proposing to require a third-party audit after two accidental releases have occurred within a rolling five-year period. EPA is proposing to remove the requirement that facilities perform a third-party audit if an implementing agency requires one due to conditions at the source that could lead to an accidental release, or when a previous third-party audit failed to meet competency or independent criteria. 91 Fed. Reg. at 8987-88. EPA is also proposing to remove the prohibition on third-party auditors accepting future employment with the owner or operator of the source they are auditing for at least two years following submission of the final audit report. 91 Fed. Reg. at 8988. Under Proposal #2, all third-party compliance audit provisions would automatically sunset in ten years after the initial compliance date of third-party audit provisions. 91 Fed. Reg. at 8988.

b. Finalizing either third-party audit proposal would contravene Section 112(r) and arbitrarily run counter to the record evidence of the need for third-party audits.

Sections 112(r)(1) and 112(r)(7) require EPA to assure "prevention" and "prevent" accidental releases, "minimize" chemical releases and their consequences, and provide for prevention, detection, and response "to the greatest extent practicable." 42 U.S.C. §§ 7412(r)(1), 7412(r)(7)(B). Third-party audits are evaluations of facilities' compliance with requirements geared toward prevention, mitigation, detection, and response to chemical incidents. EPA's audit proposals are contrary to these provisions in the Act because they would severely restrict or eliminate the circumstances where third-party audits would be required.

EPA's audit proposals are also beyond EPA's authority to promulgate "release prevention, detection, and correction requirements" "[i]n order to prevent accidental releases," *id.* § 7412(r)(7)(A). That provision only authorizes EPA to promulgate regulations that effectuate prevention of accidental releases. EPA's proposals (#1 and #2) do the opposite by removing a requirement that requires facilities to obtain an unbiased assessment of compliance, safety gaps, and recommendations after an incident occurs.

EPA fails to show that either proposal satisfies the statutory requirements on prevention, minimization of releases and minimization of harm to health and safety.

EPA's proposals are also arbitrary and capricious given the significant record evidence on the need and value of third-party audits in improving safety by providing valuable information on the cause of an incident that the facility can then use immediately to improve prevention, mitigation, detection, and emergency response. EPA fails to make a rational connection between the facts found and its proposed rescission. *See State Farm*, 463 U.S. at 43.

i. Significant record evidence supports the need for a third-party audit after one incident.

EPA fails to adequately explain its decision and fails to articulate a rational connection between the facts found and the choice made given EPA's recognition of the compliance value of third-party audits.

With respect to Proposal #2, waiting to require a third-party audit until after two incidents have occurred means that EPA, the community, and the facility itself do not have the benefit of an independent safety review until after two dangerous and even lethal events have occurred. This is like delaying medical care until after the second heart attack. For people harmed by the second incident, this is "too little, too late." SCCAP RTC at 4.

The evidence in the record only supports the need for third-party audits after one incident. EPA has previously found that sources "that have had one accident are substantially more likely to have another accident than the general population of RMP-regulated sources," and "those facilities may not have been able to identify measures on their own (through incident investigations, hazard evaluations, and compliance self-audits) to properly evaluate and apply appropriate prevention program measures to stop accidental releases from occurring." SCCAP RTC, EPA-HQ-OLEM-2022-0174-0583 at 186.

Between 2004 and 2020, there were 954 chemical incidents at Program 2 and 3 facilities that had previously had at least one accident within the last five years.[318] These incidents caused significant damage: 38 worker deaths, 1,245 worker injuries, 3 public responder injuries, 45 injuries to members of the public, and 426 cases of off-site medical treatment, including hospitalization. Over 11,000 people were forced to evacuate, and almost 300,000 people were forced to shelter

[318] See Comments of UAW at 5 (2026), providing analysis of RMP data as of January 2026, EPA RMP Database, EPA-HQ-OLEM-2025-0313 (citing spreadsheet of damage potentially preventable by third party audits).

in place. The incidents caused over $2.17 billion in on-site property damage and over $11.6 million in off-site property damage.[319]

In promulgating the SCCAP rule, EPA explained the importance of requiring a third-party audit after one incident. EPA noted that between 2016-2020, 3 percent of all RMP facilities had at least 1 RMP-reportable incident and 0.5% had 2 or more such incidents. 87 Fed. Reg. at 53584. EPA estimated property damage from the incidents from 2016-2020 to be $2.273 billion. *See* 2024 SCCAP RIA, EPA-HQ-OLEM-2022-0174-0587, Ex. 3-11: Onsite Impacts by Year.

EPA in the 2024 SCCAP rulemaking stated:

> "Considering most RMP facilities have never had any accidents, it is arguable that having even one accident should be a cause for concern. EPA does not believe affected communities should have to experience the adverse consequences of a second reportable accident before an objective party comes in to evaluate the facility for compliance."

SCCAP Response to Comments (SCCAP RTC), EPA-HQ-OLEM-2022-0174-0583 at 185.

EPA provides no explanation for its departure from its previous conclusions on the importance of requiring a third-party audit after one incident, especially for the most incident-prone industries, and its proposals would be arbitrary if finalized. *See Air Alliance Houston*, 906 F.3d at 1067; *Fox*, 556 U.S. at 515 (agency must "display awareness that it is changing position" and offer "good reasons for the new policy").

Even in this proposal, EPA recognizes that from 2016-2020, 70 facilities had multiple incidents, from 2019-2023, 57 facilities had multiple incidents, and from 2014-2023, 177 facilities had more than one reportable incident. 91 Fed. Reg. at 8987-88. In this proposal, EPA states that among the 801 facilities with an RMP-reportable incident from 2004-2013, 65% did not experience another RMP-reportable incident within 10 years—meaning 35% of those facilities, or 280 facilities, had another RMP-reportable accident within the next 10 years. *Id.* at 8988. EPA argues that "only a subset of facilities" that have had an accident will have another—but the number of facilities that have another incident is not the point. *Id.* at 8987. The fact that *any* have a second incident shows that EPA has not rationally justified its proposal to rescind or significantly weaken third-party

[319] *Id.*

audit requirements. A significant portion of facilities that have one incident are likely to have another and third-party compliance audits have strong value in preventing a future incident.

EPA's Proposal #2 would only require a third-party audit after two incidents occur in a five-year period, and would reset the record once five years have passed without another incident. Under Proposal #2, a facility could therefore have incidents every six years and never be required to obtain a third-party audit. EPA's own data show at least 605 RMP facilities reported two or more incidents occurring more than 5 years apart.[320] Under EPA's Proposal #2, these facilities would not have triggered a third-party audit after having a repeat incident more than 5 years after the previous incident, even though the recurrent incident or incidents reflect the existence of safety gaps that could have been identified after the first incident in a third-party audit. A third-party audit after the first incident at a facility would have resulted in recommendations for safer operations, and would also identify and provide recommendations to close any gaps in the facility's incident detection and response methods. As further discussed in Part III.B.3.b.iii, third-party audits improve safety by providing an independent evaluation of a facility's safety gaps, thereby avoiding the bias and blind spots that can occur and have occurred by relying solely on internal audits.

EPA's proposals go backward on safety, contradicting the Act under section 112(r)(1) and EPA's mandates under sections 112(r)(7)(A) and 112(r)(7)(B)(i) as described above. EPA provides no evidence or explanation for how rescinding or weakening third-party audit requirements would satisfy its statutory requirements. Nor could it, given the evidence of their effectiveness in preventing disasters and minimizing their impacts.

In addition to running contrary to the record evidence of repeated disasters, EPA arbitrarily fails to establish a "rational connection" between its proposals and its own acknowledgements of the value of third-party audits. *See State Farm*, 463 U.S. at 43.

EPA in this proposed rule "maintains that there could be value in requiring third-party audits where 'independent third-party auditing can assist the owners and operators, the EPA (or the implementing agency), and the public to better determine whether the procedures and practices developed by the owner and/or operator under [the prevention program] are adequate and being followed.'" 91

[320] Spreadsheet Showing Facilities with Repeat Incidents Across 5-Year Reporting Periods, based on EPA RMP data as of January 2026 (included in Appendix).

Fed. Reg. at 8986. EPA acknowledges the "clear direct benefit" of third-party audits in enforcement cases, and that it "continues to believe that in some cases, RMP facilities are not conducting adequate compliance audits." *Id.*

EPA states that it "still holds [the] view" that just one accident meeting the criteria in 40 C.F.R. § 68.42(a) "was a serious matter, with real consequences both on and off-site as well as significant costs." 91 Fed. Reg. at 8987. EPA also continues to agree with its 2024 statement that "affected communities should [not] have to experience the adverse consequences of a second reportable accident before an objective party comes in to evaluate the facility for compliance. The pattern of repeated accidents at RMP facilities provides a reasoned basis for EPA's focus on these facilities to apply a greater level of risk reduction measures." *Id.* EPA's findings support retaining the existing third-party audit requirements and not rescinding, weakening or sunsetting them.

EPA does not dispute the value of or the need for third-party audits after one incident, yet proposes to rescind or significantly weaken their application on the basis that it purportedly lacks data "to provide a clear direction" for implementation. *Id.* at 8987. This vague and unsupported assertion is plainly belied by the significant record evidence and EPA's own recognition of such.

By proposing to rescind or weaken the third-party audit requirements, EPA's proposal also contradicts CSB recommendations without acknowledgement or justification.[321] For the same reasons discussed above in Part III.B.1, *supra*, and in III.B.17, *infra*, EPA may not lawfully ignore or change course from a decision to accept and respond to a CSB recommendation without providing a reasoned and lawful explanation for doing so. The CSB recommendations carry particular weight because of the CSB's role as an independent expert investigative agency. *See* 42 U.S.C. § 7412(r)(6).

In its 2022 comments on the SCCAP Rule, the CSB noted that poor compliance audits were contributing factors to the severity of past chemical incidents, including those at the First Chemical Corp Reactive Chemical Explosion, the BP America (Texas City) Refinery Explosion, and the Valero (McKee) Refinery Propane Fire.[322]

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[321] *See* Part III.A (summarizing and citing CSB recommendations, including on third-party compliance audits).

[322] Comment submitted by Chemical Safety and Hazard Investigation Board, EPA-HQ-OLEM-2022-0174-0166 at 8.

CSB investigations of accidents in recent years have continued to confirm the continuing importance of third-party audits. For example, after its investigation of the 2024 ammonia release at Cuisine Solutions, CSB recommended the facility to contract a third party to audit the pressure relief systems and ensure their safe operation.[323] CSB found that if a process upset similar to the one that caused this incident occurred again, it could lead to another overpressure and "a similar incident could happen again"—underscoring the need for a third-party audit after one incident.[324]

In another example, CSB's investigation of the Kuraray Pasadena Release and Fire resulted in a recommendation to obtain an independent third-party assessment of the facility's compliance with minimum federal process safety regulatory requirements.[325] The CSB concluded that "using an independent third party to audit the entirety of Kuraray's process safety management systems is likely to generate important safety benefits that will help the company prevent future safety incidents that could harm workers or members of the public, the benefits of which should substantially outweigh the assessment's cost."[326]

EPA acknowledges that such audits have "provided clear direct benefit" in enforcement settlement contexts, but EPA "has limited data demonstrating the extent to which those benefits would be realized specifically through RMP requirements." 91 Fed. Reg. at 8986.

EPA provides no reasoning or evidence that these benefits would not be realized in a regulatory context under the RMP. If anything, the regulatory context would provide greater benefits because the occurrence of third-party audits does not rely on EPA's discretionary and resource-limited enforcement powers. EPA only pursues enforcement after there is a violation and even then, EPA only pursues enforcement in a limited number of cases. *See* Part III.B.1.h, above (summarizing the minimal historic enforcement data and the limited record of EPA enforcement under the current administration). For all of the reasons discussed in Part III.B.1 above, and as EPA recognized in 2024, relying on enforcement only is "too little, too late." SCCAP RTC at 4. While important, EPA's discretionary

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[323] CSB, Investigation Report: Hazardous Ammonia Release at Cuisine Solutions, Inc. Facility at 69, Report No. 2024-03-I-VA, CSB (Sept. 2025), available at https://www.csb.gov/cuisine-solutions-ammonia-release-/.
[324] *Id.*
[325] CSB, Investigation Report: Ethylene Release and Fire at Kuraray America, Inc. EVAL Plant at 17, Report No. 2018-03-I-TX, CSB (Dec. 16, 2022), available at https://www.csb.gov/kuraray-pasadena-release-and-fire/.
[326] *Id.* at 121-22.

enforcement alone of weak rules, years after an incident has occurred, does nothing to help people harmed by that first incident and can never substitute for stronger safety measures like automatic third-party audit requirements that must occur quickly to inform and strengthen safety.

Additionally, EPA's justification for rescinding implementing agencies' authority to trigger third-party audits contradicts EPA's rationale for improving uncertainty for regulated entities. Enforcement is discretionary, limited, and often subject to the unpredictability of litigation, as the sole lever to apply third-party audits also runs directly counter to EPA's rationale for rescinding the audit requirements due to uncertainty for regulated entities.

Proposal #1 to rescind all third-party audit requirements is likewise contrary to section 112(r) and arbitrary and capricious given the significant record evidence on the importance of independent audits following an incident.

ii. *EPA arbitrarily fails to draw reasonable inferences from the evidence.*

In addition to arbitrarily ignoring the substantial record evidence, EPA attempts to justify its proposed rescission by claiming that it "lack[s] direct data on the need for third-party audits." 91 Fed. Reg. at 8987. EPA does not explain what it means by "direct data" and why this is the threshold for whether EPA should maintain existing regulatory requirements. Thus, EPA has failed to provide an "adequate reason[] for its decisions," *Encino Motorcars*, 579 U.S. at 212, and its proposals are not "reasonably explained," *Prometheus Radio*, 592 U.S. at 423. EPA arbitrarily does not explain why the ample record evidence of repeat incidents and of third-party audits revealing preventable and redressable safety issues does not constitute "direct data."

EPA tries to erect a false evidentiary standard to justify rescission of basic compliance tools contending that there must be an extraordinary, and virtually impossible to meet level of "quantitative data" demonstrating the value of third-party audits before they can be required. 91 Fed. Reg. at 8986. That is not the test for reasoned decision-making, which requires "substantial evidence"—an threshold that is more than met here. *See*, *e.g.*, *Wisconsin Power & Light v. FERC*, 363 F.3d 453, 464 (D.C. Cir. 2004) (the arbitrary and capricious standard "does not demand perfect information, but only requires substantial evidence, which may include findings made in light of uncertainty" (citations omitted)).

EPA points to no principle or authority forbidding the agency from making reasonable, rational inferences from existing data, which support a finding that third-party audits contribute to prevention and mitigation of RMP incidents. *See supra* Part III.B.3.b.i. Section 112 does not require "quantitative data" before EPA can act; it directs EPA to "prevent" disasters before they happen. 42 U.S.C. 7412(r)(1), 7412(r)(7)(A), 7412(r)(7)(B). EPA's evidentiary standard is an improper reading of the Act and arbitrary and capricious.[327]

EPA's justification that it lacks data on the effectiveness of audits is also self-contradictory because EPA's action will further limit the data available.

RMP requirements for third-party compliance audits have never gone into effect, so to the extent that EPA's position is that it needs evidence on the value of third-party audits in the RMP regulatory program specifically, EPA's proposal to reduce the frequency of audits and to sunset them in 10 years or to remove them completely, rather than to let them come into effect, is only exacerbating the problem. The requirements were first codified in the 2017 CDR Amendments, 82 Fed. Reg. at 4594, and then rescinded in 2019 by the first Trump Administration's EPA before those compliance dates came to pass. 84 Fed. Reg. at 69834. Then, they were reinstated in the 2024 Safer Communities Rule, but the compliance dates of the requirements are not until 2027. 40 C.F.R. § 68.10(g). With its proposal, EPA arbitrarily stands in its own way. If EPA maintains that it needs more evidence about the effectiveness of third-party audits, then EPA should retain the requirements in order to gather that evidence, not rescind them now or in 10 years.

EPA's other points about lack of data cannot justify its proposals.

EPA states it lacks the "necessary predictive data to identify which facilities are likely to have second accidents." 91 Fed. Reg. at 8987. This statement supports requiring a third-party audit after a single incident, without waiting for a second incident to harm the community or cause injuries or significant property damage onsite.

EPA claims that it did "not have data to show whether there is an adequate pool of third-party auditors available to implement the regulations," 91 Fed. Reg.

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[327] *See*, *e.g.*, *Massachusetts v. EPA*, 549 U.S. 497, 534 (2007) ("That EPA would prefer not to regulate … because of some residual uncertainty … is irrelevant. The statutory question is whether sufficient information exists to [do so]"); *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 121 (D.C. Cir. 2012) ("If a statute is precautionary in nature and designed to protect the public health, and the relevant evidence is difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge, EPA need not provide rigorous step-by-step proof of cause and effect to support" its action (cleaned up)), *rev'd in part on other grounds UARG v. EPA*, 573 U.S. 302 (2014).

at 8987, but EPA offers no evidence that there is a shortage of qualified third-party auditors, and even if this was the case, it is not reason to remove the third-party audit requirements.

EPA claims it "does not have data showing what auditor independence criteria would result in producing the most effective compliance audits." Such granular data is unlikely to be available, especially if EPA does not allow the current third-party audit requirements to come into effect, and EPA cannot rely on this to rescind the cooling-off period at 40 C.F.R. § 68.80(c)(2)(iv) as proposed.

EPA claims "there is no data supporting that elevation of this information would result in increased compliance" to support its proposed rescission of the Board reporting requirement. 91 Fed. Reg. 8989. But this lacks a rational connection to EPA's own statement that there is a "benefit" to "elevating time-sensitive safety information to the highest levels in the corporate structure." *Id.* It is reasonable to infer that compliance transparency with high-level decision-makers is important for improvements to occur, and EPA has offered no argument or evidence to the contrary.

iii. EPA's proposals fail to consider an important part of the problem—internal audits are vulnerable to bias.

EPA's proposals to rescind or weaken third-party audit requirements arbitrarily ignore an "important aspect of the problem": Third-party compliance audit requirements are critical for producing substantively accurate and unbiased assessments of compliance, particularly where the compliance audit is occurring after a release that caused harm. The point of a third-party audit is that it is conducted by an independent party that is not biased in favor of the company the way an internal auditor may be.

EPA has failed to explain its departure from its previous conclusions regarding the importance of third-party audits. *See Fox*, 556 U.S. at 515. In its 2024 rulemaking, EPA concluded that independence matters, rejecting commenters' argument that any type of audit is sufficient. EPA found that "the state of the science, evidence, and data on the effectiveness of third-party auditing programs supports requiring independent third-party audits for RMP facilities with accidental releases or conditions that could lead to an accidental release of a regulated substance," and that third-party auditing in contexts similar to RMP auditing "reflect industry recognition that third-party auditing does, in fact,

produce better outcomes relative to self-auditing in a variety of settings." SCCAP RTC at 166-67.

EPA's proposals lack a "rational connection" to these acknowledgements. *See State Farm*, 463 U.S. at 43 (internal citation omitted). As EPA notes in this proposal, "the third-party audit requirements were intended to address poor compliance audits as a contributing factor to the severity of past chemical accidents." 91 Fed. Reg. at 8986. EPA even concedes that some "RMP facilities are not conducting adequate compliance audits." *Id.* EPA does not state that its position has changed since the SCCAP Rule, when EPA disagreed with some commenters' contention that all compliance audits are sufficient, and concluded that "it is appropriate to require a subset of RMP-regulated facilities to conduct third-party audits." SCCAP RTC at 185. This departure from EPA's previous findings, without rational explanation, is arbitrary and capricious.

EPA's proposals also run counter to the evidence on internal audits being insufficient due to lack of independence. *See State Farm*, 463 U.S. at 43. EPA noted that research has shown that "without sufficient safeguards to ensure auditor independence, auditors are more likely to provide lenient or biased audit reports that can fail to accurately identify problems and violations by the regulated entity." 2024 SCCAP RIA at 84 (citing several studies where authors concluded that third-party inspections reduced risks). And the CSB "generally supports the use of third-party audits" because "CSB investigations [have] found that internal audits often fail to identify systemic process safety deficiencies."[328] EPA's proposal arbitrarily runs counter to the record evidence on the importance of independent audits. *See State Farm*, 463 U.S. at 43.

EPA's proposals to rescind the corporate Board reporting requirement and two-year cooling off period are also arbitrary for these reasons. *See* 91 Fed. Reg. 8988. EPA arbitrarily fails to articulate a "satisfactory explanation" for this proposal given the fact that third-party audits provide less biased assessments because of the independence of their auditors. *See State Farm*, 463 U.S. at 43. Rescinding the cooling off period introduces a potential source of bias for auditors—in this case, those who may consider employment with the company they are auditing. EPA provides no evidentiary support for its speculative "high-level, potential problem" that the cooling off period would not contribute to facility

[328] Comments of Vanessa Allen Sutherland, EPA-HQ-OEM-2015-0725-0428 at 3; *see also* CDR Proposed Rule, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 81 Fed. Reg. 13638, 13654-55 (Mar. 14, 2016) (listing examples of CSB investigations that have "cited poor compliance audits as a contributing factor to the severity of past chemical accidents").

compliance, while completely ignoring the record on the importance of independence in third-party audits. It is vital for a company's lead corporate decisionmakers to see independent audit material and EPA gives no rational basis for not ensuring a facility reports this information.

c. EPA fails to provide substantial evidence to support other proposed rescissions.

i. EPA gives no justification for proposing to rescind the audit requirement after a prior non-independent audit.

EPA arbitrarily provides no reasoning or evidence in support of its proposal to rescind the requirement for a third-party audit when a previous third-party audit failed to meet competency or independence criteria. *See* 91 Fed. Reg. 8987. These requirements address circumstances where a third-party audit may be especially needed. *See* SCCAP RTC at 174 (finding that, when a previous third-party audit failed to meet the competence or independence criteria, "EPA believes [it is] a potential indicator for noncompliance with program prevention requirements and therefore warrant[s] an evaluation by a third-party"). Where a prior audit did not meet basic competency or independence criteria, it cannot be relied on by EPA, the facility, or the public to ensure that relevant safety factors were not missed. EPA cannot rationally justify refusing to ensure that any previously unreliable audits are redone if necessary to meet basic competency or independence standards.

ii. EPA's contention that third-party audit requirements have caused "confusion" does not provide a rational basis for its proposals.

EPA's contentions about "regulatory uncertainty" and "confusion" are not statutorily sufficient to support its third-party audit proposals. The D.C. Circuit has previously rejected this exact argument in *Air Alliance Houston* when EPA sought to unlawfully delay the effectiveness of the 2017 CDR Amendments on the grounds that it would cause confusion by requiring compliance with provisions the agency imminently sought to roll back. The court there wrote:

> [T]his "confusion" stems solely from the confusion EPA has caused by the almost two-years' reconsideration it desires in order to decide what it wants to do, not compliance concerns relevant to regulated facilities' implementation of the Chemical Disaster Rule. That is not a basis for delaying protections . . . . In promulgating the Chemical Disaster Rule, EPA had found, and the record shows, that there was a need for improvements to

> protect worker and community safety, and to reduce facilities, injuries, life disruption, and other harm.

906 F.3d at 1065. The same applies here. EPA has failed to show that its proposals satisfy CAA sections 112(r)(1) and 112(r)(7) in light of its previous findings, supported by significant record evidence, that there was a "pattern of repeated accidents at RMP facilities" and that RMP facilities that have had an incident "will benefit from an independent objective audit of their compliance." 89 Fed. Reg. at 17660; *see also* 82 Fed. Reg. at 4599.

Claims of "regulatory uncertainty" and "confusion" cannot excuse EPA from its statutory duty and its duty to meet the arbitrary and capricious standard, which requires EPA's action to be "reasonable and reasonably explained." *Prometheus Radio*, 592 U.S. at 423. EPA provides no evidence or explanation of how the existing requirements lack "certainty" or cause "confusion." This does not meet the arbitrary and capricious standard, which "requires that agency action be reasonable and reasonably explained." *Id.*

Further, EPA speculates that "requiring third-party audits broadly and without targeting the facilities and circumstances that would benefit from an external audit could be counterproductive—if the quality of the third-party audit is poor, it could result in confusing, inconsequential, or possibly even detrimental recommendations—diverting facility resources away from actual safety concerns." 91 Fed. Reg. at 8988. EPA also speculates: "Some facilities that are required to conduct a third-party audit may not experience tangible benefits." *Id.* EPA provides no evidence to support these speculations, and thus they cannot justify EPA's decision—particularly in light of strong evidence on the benefit of third-party audits. The D.C. Circuit has "said many times before, 'an agency's unsupported assertion does not amount to substantial evidence.'" *Safe Extensions v. FAA*, 509 F.3d 593, 605 (D.C. Cir. 2007) (cleaned up). EPA's proposals regarding third-party audits are arbitrary for lack of supporting evidence and for lacking a rational connection to the record evidence.

With respect to Proposal #2's proposed rescission of 40 C.F.R. § 68.79(f)(2) allowing implementing agencies to require third-party audits where "conditions at the stationary source [] could lead to an accidental release of a regulated substance," EPA concedes that it "continues to agree conceptually with this provision," but "without having parameters on what those 'conditions' could be, it could create significant confusion and uncertainty for regulated entities and implementing agencies." 91 Fed. Reg. at 8987. EPA's concerns are entirely

speculative and do not provide a "satisfactory explanation" for its proposal. *See State Farm*, 463 U.S. at 43.

EPA provides no evidence that the lack of parameters defining "conditions" that could lead to third-party audits "could create significant confusion" for implementing agencies or regulated entities as it claims. 91 Fed. Reg. at 8987. The regulatory language specifies that "conditions" are those "that could lead to an accidental release of a regulated substance."[329] The regulatory language is appropriately broad to account for the myriad hazards that arise in chemical process settings and for the professional judgment of implementing agencies, and provides a standard for implementing agencies to act upon. Further, as governmental actors, the implementing agencies themselves would be subject to all applicable legal requirements, including requirements for reasoned decision-making that would both constrain their actions to ensure they are consistent with the Act and ensure explanation to justify, inform, and avoid confusion for regulated entities.

EPA even says it "continues to agree conceptually with" the provision allowing implementing agencies to require a third-party audit. 91 Fed. Reg. at 8987. EPA's position does not support a proposal to rescind all third-party audit requirements; rather, it supports EPA providing guidance or otherwise clarifying the nature of such "conditions" if necessary. EPA has thus also acted arbitrarily by failing to consider this reasonable alternative.

iii. EPA offers no evidence or explanation that third-party audits are unduly burdensome. Third-party audits are a "reasonable regulation" with significant benefits that far outweigh their modest costs.

EPA offers no evidence that third-party audits are unduly burdensome or wasteful for facilities to obtain, nor does it factor in the value to facilities themselves that would offset any such burden. Third-party audits are only triggered when a covered accidental release has already occurred and resulted in significant consequences: onsite deaths, injuries, or significant property damage; or offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. 40 C.F.R. §§ 68.58(f), 68.79(f); *see also* §68.42(a). Thus, the incidents that trigger third-party audits are serious examples of chemical release consequences that Clean Air Act section 112 requires EPA to address and prevent. *See supra* Part III.B.3.b. For the vast majority of RMP facilities, the costs

[329] 40 C.F.R. § 68.58(f)(2), 68.79(f)(2).

of third-party audits is $0. For facilities that do have incidents, EPA concluded in the 2024 SCCAP rule that the costs were justified "[c]onsidering the goal of the RMP regulations is to prevent accidental releases." 89 Fed. Reg. at 17660.

The costs of third-party audits are extremely minor compared to the costs of accidents, and EPA must retain the existing requirements as "reasonable regulations" that provide prevention of, detection of, and response to accidental releases as required by section 112(r)(7)(B)(i). EPA estimates that the costs for hiring third-party auditors would be up to $52,640 for simple non-government facilities, and up to $118,246 for complex non-government facilities.[330] As explained above, since 2004, repeat incidents at facilities that have already previously had an incident have caused dozens of deaths, hundreds of injuries, and property damage upwards of $2.18 billion.[331] If the 3% of approximately 12,000 RMP facilities that had a reportable incident between 2016-2020[332] all were required to obtain a third-party audit at the highest cost estimated by EPA ($121,480 for large government facilities),[333] the costs would still constitute less than 2% of the $2.273 billion in property damage caused by RMP incidents over that same period, not to mention the incalculable loss reflected by the harm of 18 deaths and 575 injuries.[334]

#4 - Employee Participation

Worker participation provisions protect workers, communities, and first responders. Workers work directly with regulated processes, and their participation in chemical safety planning and authority to take action to prevent chemical incidents is foundational to minimizing incidence and impacts of chemical releases. EPA should retain all worker participation requirements currently in place.

a. EPA's proposal

EPA is proposing to claw back multiple employee participation requirements. For Program 2 and 3 facilities, EPA is proposing to rescind the requirements to conduct training on employee participation plans and to develop an anonymous reporting process for reporting unaddressed hazards, unreported

[330] 2026 RIA, EPA-HQ-OLEM-2025-0313-0075 at 39, Exh. 4-7.
[331] *See* UAW 2026 Comments and analysis, cited *supra*.
[332] 87 Fed. Reg. 53584.
[333] 2026 RIA, EPA-HQ-OLEM-2025-0313-0075 at 39, Exh. 4-7.
[334] 2024 SCCAP RIA at 42 Exh. 3-11: Onsite Impacts by Year, EPA-HQ-OLEM-2022-0174-0587.

accidents, and noncompliance, and to retain a record of the report for three years. 91 Fed. Reg. at 8991-92.

For Program 3 facilities, EPA is proposing to rescind requirements for facilities to consult employees on addressing recommendations and findings of PHAs, compliance audits, and incident investigations. *Id.* at 8992. EPA is also proposing to rescind stop-work authority requirements. *Id.*

b. EPA's proposed worker participation rescissions contravene EPA rulemaking requirements under Section 112(r) and arbitrarily ignore the record evidence on the importance of worker participation to protect public health and safety.

Because employees are the first line of defense in preventing and responding to chemical disasters, the Act requires EPA to ensure robust employee participation in EPA's regulations "to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases." 42 U.S.C. § 7412(r)(7)(B). Rescinding these requirements would run counter to that directive, to the mandatory requirement for these regulations "to prevent the accidental release and to minimize the consequences of any such release," *id.* § 7412(r)(1), and to "minimize accidental releases," *id.* § 7412(r)(7)(B).

EPA's proposal is also beyond EPA's authority to promulgate "release prevention, detection, and correction requirements" "[i]n order to prevent accidental releases." *Id.* § 7412(r)(7)(A). That provision only authorizes EPA to promulgate regulations that effectuate prevention of accidental releases, and EPA's proposal does the opposite by reducing employees' rights to participate in prevention activities. EPA has failed to demonstrate that removing these requirements would serve its mandate.

EPA has ample evidence that these worker participation protections are necessary to maximize prevention, detection, correction, and response to chemical incidents as discussed in the SCCAP Rule, SCCAP Response to Comments, and SCCAP Regulatory Impact Analysis. Finalizing its proposal to weaken these protections would contravene its statutory duties and authority and would run counter to the record evidence.

Workers' unique experience, expertise, vulnerability, and presence in a position to act generate clear, direct benefits of worker participation requirements, including requirements to consult workers in implementation of recommendations,

to provide anonymous reporting directly to owners and operators, and to provide stop work authority. Employee participation is particularly critical with respect to EPA's duty to maximize detection because employees are working directly with regulated chemicals and processes, and therefore are most likely to be the first to detect releases or the danger of a release.

The value and effectiveness of these types of provisions are well demonstrated by the CSB recommendations calling for them, and by state rules like those in California that include similar provisions that have improved safety. 87 Fed. Reg. at 53587-93 (citing evidence).[335] For example, the CSB's 2019 publication, Safety Digest: The Importance of Worker Participation, examines four incidents where ineffective worker participation contributed to a major chemical incident or supported the need for improved practices.[336]

Non-governmental groups have also called for strong worker participation protections. As the industry-supported Center for Chemical Process Safety has explained,

> [W]orkers directly involved in operating and maintaining the process are most exposed to the hazards of the process. . . . Furthermore, these workers are potentially the most knowledgeable with respect to the day-to-day details of operating the process and maintaining the equipment and facilities, and may be the sole source for some types of knowledge gained through their unique experiences. Workforce involvement provides management a formalized mechanism for tapping into this valuable expertise.[337]

Whether a worker has the knowledge, training, and ability to stop a process can make the difference between a mishap and a broad community catastrophe. The recent Philadelphia Energy Solutions (PES) fire and explosion well illustrates this. In that instance, it was a worker manually turning on a water pump that allowed the HF mitigation system cannons to start spraying water to suppress the

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[335] *See also* 2026 UAW Comments and Analysis, cited *supra*; Steve Sallman and Rick Engler, Bargaining for Stop Work Authority to Prevent Injuries and Save Lives, United Steelworkers Health, Safety, and Environment Department (July 1, 2022), https://www.usw.org/get-involved/hsande/resources/publications/StopWorkAuthority_July2022.pdf.

[336] *Safety Digest: The Importance of Worker Participation*, CSB (Sept. 4, 2019), available at http://csb.gov/assets/1/6/worker_participation_safety_digest_-_9.4.2019.pdf.

[337] Center for Chemical Process Safety, American Institute of Chemical Engineers, *Guidelines for Risk Based Process Safety* at 124 (March 2007).

released HF.[338] That was a unionized facility where workers were represented by the United Steelworkers – a union that has long prioritized employee participation in industrial safety at the core of its goals and collective bargaining agreements. Many RMP facilities do not have any union representation. Most workers rely on RMP rules alone to protect employee participation rights – and these are also the only protections ensuring that workers can help prevent chemical releases and the harm they cause. Even at unionized facilities, these provisions are critically important to protect community safety and ensure workers are not forced to bargain away key safety protections in exchange for pay or other terms of employment.

EPA does not deny the value of worker participation. Indeed, EPA states that it "upholds that employees directly involved in operating and maintaining a process are the most knowledgeable about the daily requirements for operating and maintaining equipment safely." 91 Fed. Reg. at 8992. Yet its proposal runs directly counter to this statement and the record evidence. *See, e.g.*, 87 Fed. Reg. at 53587 (citing CSB findings). EPA has failed to show its proposal is rational and failed to "supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored." *Lone Mountain Processing, Inc. v. Sec'y of Lab.*, 709 F.3d 1161, 1164 (D.C. Cir. 2013).

In view of its decision to contradict its own prior findings on the need for employee participation requirements, EPA must provide a "more detailed justification" for its course change. *Fox*, 556 U.S. at 515. EPA fails to engage with each of its own prior findings on why each employee participation requirement is necessary to meet the statute's requirements and protect safety. 91 Fed. Reg. at 8990-93. The agency's failure to justify removing employee participation requirements that EPA itself found important to advance safety and compliance with the RMP rules, 89 Fed. Reg. at 17663-65, is arbitrary and capricious. *See Air Alliance Houston*, 906 F.3d at 1066.

[338] CSB, *Investigation Report: Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit* at 6, Report No. 2019-04-I-PA, CSB (Oct. 11, 2022), https://www.csb.gov/csb-releases-final-report-into-2019-pes-fire-and-explosion-in-philadelphia/.

c. EPA cannot rely on the principle of "alignment" with the OSHA standard to justify its proposal. Doing so violates the CAA and is arbitrary and capricious.

EPA's primary justification for rescission of employee participation requirements is that the rescissions are necessary to "align" Section 112(r) requirements with the OSHA PSM standard. 91 Fed. Reg. at 8991-93.

EPA's rationale contravenes the agency's duty under the CAA. Congress spoke clearly and explicitly about what EPA's regulations must accomplish in Sections 112(r); it did not authorize, let alone direct, EPA to simply promulgate regulations that are identical to OSHA's PSM requirements. EPA has an independent, standalone duty to promulgate rules that minimize accidental releases and their consequences, and to assure compliance "expeditiously." 42 U.S.C. § 7412(r)(7)(A); *see also id.* § 7412(r)(1). EPA cannot point to another agency's regulations to justify acting against its statutory mandate. EPA does not and cannot point to any statutory requirement or authority to treat the OSHA PSM standard as a ceiling for its Section 112(r) regulations. *See Del. Dept. of Nat. Res. v. EPA*, 785 F.3d 1, 16 (D.C. Cir. 2015) ("EPA seeks to excuse its inadequate responses by passing the entire issue off onto a different agency. Administrative law does not permit such a dodge.").

Congress would not have required EPA to promulgate its own regulations under Section 112(r)(7) or to "coordinate" its Section 112(r)(7) regulations "with any requirements established for *comparable* purposes by" OSHA if it only intended one set of substantive standards. 42 U.S.C. § 7412(r)(7)(D) (emphasis added). Indeed, the Senate Committee Report accompanying the 1990 CAA Amendments stated: "This requirement for coordination in no way diminishes [EPA's] authority to act and does not imply that requirements under this section must be set aside or delayed where OSHA is acting with respect to the same hazard. Quite often protection technologies . . . which may be required by OSHA would not be effective to prevent death or injury among the general public residing or working near a facility."[339] EPA has long recognized this, stating in the 1996 RMP rulemaking that "EPA and OSHA have separate legal authority to regulate chemical process safety to prevent accidental releases." 1996 Rule, Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31668, 31687 (June 20, 1996).[340]

[339] S. Rep. No. 101-228 at 244.
[340] *See also* SCCAP RTC at 10-11.

EPA and OSHA have overlapping and complementary mandates: "The focus of OSHA's regulations in the PSM standard is on workplace safety, while EPA's focus in the RMP regulations has been primarily on minimizing the public impacts of accidental releases through prevention and response."[341] For example, the 1990 CAA Amendments directed EPA to promulgate regulations for the prevention and detection of "accidental releases of regulated substances" into the ambient air.[342] By contrast, the 1990 Amendments directed OSHA to "promulgate, pursuant to the Occupational Safety and Health Act, a chemical process safety standard designed *to protect employees* from hazards associated with accidental releases of highly hazardous chemicals in the workplace."[343] The Secretary of Labor must regulate "occupational safety or health standard[s]"[344] that expressly apply "to employment performed in a workplace,"[345] not to the environment of the surrounding community. Following Congress's direction, OSHA issued its PSM standard "to reduce the number of *employee* fatalities and injuries associated with catastrophic releases of hazardous substances."[346]

EPA's and OSHA's duties overlap, but OSHA's duty under the PSM program does not require it to evaluate or consider impacts to first-responders to a chemical incident, much less community members outside the fenceline of facilities who are not employees in the workplace.[347] EPA, on the other hand, was directed to protect "public health and the environment," 42 U.S.C. §§ 7412(r)(3), (7)(B) and to promulgate regulations that "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases," and "minimize accidental releases," *id.* § 7412(r)(7)(B). The "objective" of EPA's regulations and programs under § 7412(r) is "to prevent the accidental release and to minimize the consequences of any such release" of hazardous substances. *Id*. § 7412(r)(1). The law authorizes and requires "both EPA

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[341] *Id.* at 10; *see also* EPA, *General Guidance on Risk Management Programs* Ch. 7, at 7-1 (Apr. 2004), https://www.epa.gov/sites/production/files/2013-11/documents/chap-07-final.pdf ("OSHA regulates to protect workers; EPA's responsibility is to protect public health and safety and the environment").
[342] 42 U.S.C. § 7412 (r)(7)(A); *see also* § 7412(r)(2)(a) (defining "accidental release" as meaning "…into the ambient air…").
[343] Pub. L. 101–549, title III, §304(a), 104 Stat. 2576 (1990) (emphasis added), *codified* at 29 U.S.C. § 655 *but subsequently amended.*
[344] 29 U.S.C. § 655.
[345] *Id.* § 653(a).
[346] OSHA, Final Rule, Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents, 57 Fed. Reg. 6356, 6401 (1992) (emphasis added). The OSHA and PSM purpose of protecting "employees" is repeated throughout the rulemaking notice. *See, e.g., id.* at 6372.
[347] OSHA has separate responsibilities to some first responders, where it is responsible for them as employees. This is separate from OSHA's accident prevention duties, however.

and OSHA to proceed with provisions to prevent chemical accidents." SCCAP RTC at 11. Neither agency's authority holds primacy on chemical process safety or preempts the other's authority. *Id.*

Thus, EPA's justification of duplicating the OSHA PSM standard in the RMP program cannot support rescission of critical health and safety requirements because Congress intended and designed the RMP program to protect first responders and the public, in addition to workers. As EPA previously found, the SCCAP "rule maintains EPA's focus on minimizing the public impacts of accidental releases even as it also reduces impacts on facilities and workers." SCCAP RTC at 10.

EPA's new rationale of weakening the RMP rules to advance alignment with the OSHA standard is also arbitrary and capricious. EPA contends that it has more authority than it would be exercising by simply aligning with the OSHA standards, but proposes to stop using that authority to protect the public without a reasoned explanation. EPA fails to provide "satisfactory explanation" for its proposal.[348] EPA never claims that the PSM standard and OSHA standards conflict, nor does it explain why rendering the standards identical would provide for better prevention, detection, or response to chemical incidents. EPA's proposal contradicts its stated goal of reducing redundancy. 91 Fed. Reg. at 8991. With identical standards, EPA's proposal would increase redundancy. EPA contends only hypothetically that non-identical standards cause confusion; it provides no concrete explanation of how confusion could arise or any evidence that confusion has happened in fact. Indeed, once again changing the RMP rules will only cause further confusion.[349]

OSHA itself previously coordinated with EPA on the very rules that it is now attempting to rescind. EPA consulted with OSHA in developing the SCCAP Rule "to ensure that the rules are compatible and do not conflict." SCCAP RTC at 9-11 & App. A (documenting EPA-OSHA meetings on development of the SCCAP Rule). EPA's previous satisfactory consultation with OSHA belies EPA's proposal now to rescind the 2024 protections. Notably, EPA is attempting to do so here without consultation with OSHA and without the requisite explanation from both agencies to contradict their prior findings. As discussed later in these

[348] *State Farm*, 463 U.S. at 43.
[349] *Air Alliance Houston*, 906 F.3d at 1065 (finding that "'confusion' stems solely from the confusion EPA has caused by the almost two-years' reconsideration it desires in order to decide what it wants to do, not compliance concerns relevant to regulated facilities' implementation of the Chemical Disaster Rule. That is not a basis for delaying protections.").

comments, EPA has not shown that it has fulfilled the requirement to consult with OSHA on this proposed rule. 42 U.S.C. § 7412(r)(7)(D); *see* Part III.B.17.c, *infra*.

Finally, even assuming *arguendo* that there is value in aligning RMP standards with the OSHA PSM standard, EPA never acknowledges the possibility that OSHA could or should change its standard, to the extent it has authority to do so, to align with RMP standards—undercutting its contention that creating an identical standard purportedly to avoid confusion and redundancy is, in and of itself, sufficient justification for the proposed rescissions.

d. EPA's proposal runs counter to the record evidence supporting the specific aspects of worker participation it is proposing to rescind.

i. Employee participation plan training

EPA proposes to rescind the employee participation plan training requirement "to realign the employee participation provisions with the OSHA PSM standard, thereby making it less burdensome on facilities," because its proposal to rescind employee reporting requirements will obviate the need for training, and because "there is not enough information demonstrating that training on the employee participation plan is necessary to justify this requirement." 91 Fed. Reg. at 8991.

These reasons are arbitrary. As explained in Part III.B.4.c, realignment with the OSHA PSM standard is not a lawful justification for EPA's proposed rescission. And employee participation plan training is not only for the purpose of reducing unvalidated noncompliance reports, so eliminating employees' ability to make those reports does not justify eliminating the training. Training enables employee participation provisions to be fully effective by giving employees specific information on how to interpret and exercise the authorities and procedures included in an employee participation plan, including rights to provide input on safety planning, implementation, and emergency response.

In the SCCAP Rule, EPA explained that "workers without required information and training may be unaware of their opportunities and authorities to participate in hazard prevention, and that the lack of worker understanding will inevitably lead to less participation." 89 Fed. Reg. at 17665. EPA also found that "management, employees, and their representatives involved in the process could benefit from training on employee participation plans to ensure these facility stakeholders are aware of the information included in the plans or otherwise

available." *Id.* EPA said it "expects training on employee participation plans will help employees identify, and owners and operators correct, issues that may prevent and mitigate accidents." *Id.* EPA's proposal runs counter to these findings and also arbitrarily fails to address backtracking on its previous conclusions. *See Fox*, 556 U.S. at 515.

Finally, EPA's rationale on lack of information to justify the training requirement is irrational because the requirement was only added in 2024 and its compliance date has yet to pass. EPA provides no attempt to describe or quantify any burden on facilities that could require any justification for this requirement, but any such burden is minimal because of the nature of training and because facilities are only required to provide trainings "as often as necessary." 89 Fed. Reg. at 17668, 17690. In the Regulatory Impact Analysis for the Safer Communities Rule, EPA estimated that training would require 1 hour for a manager and 30 minutes for each production-level staff member, costing $138 and $33, respectively. SCCAP RIA at 61 Exh. 4-11, EPA-HQ-OLEM-2022-0174-0587.

EPA states that it "encourages owners and operators to provide training on the plan should they receive any requests." 91 Fed. Reg. at 8991. This recommendation is not an adequate substitute for a binding requirement.

ii. Rescission of anonymous reporting system requirement

EPA proposes to rescind the employee accident and noncompliance reporting requirements at 40 C.F.R. §§ 68.62(b) and 68.83(e), contending: they are redundant with methods to report noncompliance; the RMP rule's requirement to correct RMPs within six months resolves the issue of late incident reporting; and facilities' efforts to "create a welcoming atmosphere" will "allow employees to express their concerns about unaddressed hazards and noncompliance without fear of repercussions." 91 Fed. Reg. at 8991-92.

EPA's rationales for rescinding the employee reporting system requirement are arbitrary. As discussed above, EPA fails to provide the necessary explanation for removing anonymous reporting that the agency itself found important to require to advance safety and compliance with the RMP rules. 89 Fed. Reg. at 17622-65. There is substantial evidence showing that having an anonymous reporting channel has improved safety in other industry sectors.[350]

[350] *See, e.g.*, 2022 Comments of t.e.j.a.s., Earthjustice, *et al*. at 64-66 & n.224 (citing other agency examples), EPA-HQ-OLEM-2022-0174-0460.

EPA's point that workers have other channels for reporting to EPA does not support EPA's proposal to rescind requirements for a reporting channel directly to the owner and operator of a facility. Chemical hazards are inherently time-sensitive matters and harms could accelerate or compound if not addressed as soon as possible. Reporting to EPA requires EPA to process the complaint and to itself communicate with the facility; it is plainly apparent that having the option to report anonymously, directly to an owner or operator of the facility, could save valuable time necessary to act quickly in response to a hazard or noncompliance. EPA's reference to the National Response Center and OSHA's Whistleblower Protection Program are inapposite; the National Response Center is a program for reporting *after* there has been a chemical or oil spill, and the Whistleblower Protection Program is to report retaliatory action against workers.

Late reporting and potential other non-compliance is a serious issue. EPA notes that the employee reporting provisions were promulgated in 2024 in part to address the issue that 6.7% of accidents were reported late. 91 Fed. Reg. at 8992. As summarized in Part III.A and Part III.B.1 above, there are many other indicators of significant non-compliance or late-reporting, far later than 6 months following the incident.[351] The fact that the RMP rule includes a requirement to correct RMPs within six months of a reportable release supports keeping the reporting requirement, not rescinding it, because it demonstrates that the reporting requirement on its own was insufficient to close the compliance gap. And the whole point of an employee reporting system is to address situations where there is *non*compliance.

EPA's "expect[ation]" that there will be continued "efforts by owners and operators to create a welcoming atmosphere for employees to internally discuss safety concerns" is completely speculative. 91 Fed. Reg. at 8992. EPA ignores the inherent power imbalance between an employer and employee that chills employee reporting without the protection of anonymity, and unlawfully abdicates its duty to protect health and safety. Further, EPA's speculation is belied and undercut by the agency's proposals to rescind consultation and stop work authority requirements, which will reduce trust between workers and employers.

Finally, EPA arbitrarily fails to explain departing from its previous finding that this requirement "is necessary to establish a minimum standard for conduct." 89 Fed. Reg. at 17665. EPA in the SCCAP rule recognized that reporting to EPA would be a second step after reporting to management fails to resolve an issue. *Id.* EPA's new conclusory statements that this requirement is "unnecessary" and that

[351] *See, e.g.*, Table 3, *supra*.

rescission is required to realign with the OSHA PSM standard fail to address EPA's previous position and are arbitrary. 91 Fed. Reg. at 8991-92.

iii. Consultation on recommendations from process hazard analyses, compliance audits, and incident investigations

EPA is proposing to rescind the requirement at 40 C.F.R. § 68.83(c) for Program 3 facilities to "consult employees on addressing recommendations and findings of PHAs, compliance audits, and incident investigations." 91 Fed. Reg. at 8992.

EPA proposes the rescission to realign the requirement with the OSHA PSM standard and because "employee participation in recommendation decisions [is] unnecessary" in light of the fact that at least one person knowledgeable in the process must be involved in PHAs, compliance audits, and incident investigations. *Id.* But the compliance audit requirement does not require worker participation; it only requires the audit to be conducted by a "person knowledgeable in the process." 40 C.F.R. § 68.79(b).

As explained above, realignment with the OSHA PSM standard is not a lawful or rational justification for EPA's proposed rescission.

EPA also cannot justify the proposed rescission by pointing to other requirements to involve workers in PHAs, compliance audits, and incident investigations. Involving workers in *conducting* PHAs, audits, and incident investigations is important but incomplete. PHAs, audits, and incident investigations are only the first diagnostic stage of preventing and redressing chemical incidents. Recommendations and findings from these evaluations must still be addressed, corrected, resolved, documented, and implemented—a process that can take years and involve many decisions that benefit from worker input. As described above, employees are typically the most knowledgeable about process safety and have specialized expertise given their everyday work with processes.

The need for employee participation in implementing recommendations and findings is evident in several examples of preventable disaster impacts. For example, the CSB's 2019 *Safety Digest: The Importance of Worker Participation* highlights four examples where barriers to worker participation, including failure to consult, contributed to chemical incidents and their effects. In the Sierra Chemical Company Explosives Accident on January 7, 1998, that killed 4 workers and injured 6 others, the CSB found that the plant made "no provision for employees to be involved in the development of safety programs and policies," "no

operators helped develop any of the safety programs," and issues that workers raised "were not acted upon, as the supervisor considered them to be production issues, even though they presented safety hazard implications." *Safety Digest* at 3.

In another example, Clearon Corporation still has five outstanding recommendations identified in the 2023 CSB investigation report on the 2021 explosion at the Optima Belle facility which killed one worker.[352]Among these recommendations are to ensure there is an adequate process knowledge management program that includes assignment of specific responsibilities for compiling content and maintaining process technology and safety information for all hazardous processes and substances and to ensure that key process personnel are aware of critical reactive chemistry information. Implementation of these recommendations, focused on robust management of process safety information, would plainly be improved by consulting workers, who tend to be the most knowledgeable in processes.

Further, the worker involvement requirements for PHAs, compliance audits, and incident investigations only require involvement of a single worker, rather than requiring facilities to consult with knowledgeable workers as a group. They also do not include participation by worker representatives, whose participation in the recommendation implementation stage may be particularly important where workers need to bargain for implementation of a specific solution over other options.

Finally, the consultation requirement at 40 C.F.R. § 68.83(c) adds clarity and specificity to the requirement at § 68.83(b) to consult with employees and their representatives on "the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this part." Section 68.83(c) provides specific elements of process safety management that facilities must consult workers on, which enhances safety and compliance with § 68.83(b).

EPA has also arbitrarily failed to explain its departure from its previous conclusion that "involving directly affected employees and their representatives in recommendation discussions and decisions will help ensure that the most effective recommendations for reducing hazards and mitigating risks to employees and the public are given the proper consideration." 89 Fed. Reg. at 17663. EPA now claims that this requirement is "redundant" because employee experiences will already be

[352] CSB, *Recommendations*, at https://www.csb.gov/recommendations/?F_InvestigationId=3615 (last visited May 7, 2026).

reflected in PHAs, compliance audits, and incident investigations. 91 Fed. Reg. at 8992. This rationale does not address EPA's previous conclusions on the importance of employee participation in *implementation*, and is arbitrary. *See Fox*, 556 U.S. at 515.

iv. Rescission of stop work authority

EPA is proposing to rescind the stop work authority provision at 40 C.F.R. § 68.83(d), which requires Program 3 facilities to provide knowledgeable employees and their representatives the authority to recommend or conduct (if they are a qualified operator in charge of a unit) a partial or complete shutdown based on the potential for catastrophic release. EPA proposes the change to align with the OSHA PSM standard and claims that because other RMP provisions, taken together, already "address many aspects of a stop work authority," the requirement is "unnecessary and may inadvertently cause confusion." 91 Fed. Reg. at 8992-93. This proposal is arbitrary and capricious and contrary to the CAA.

As explained in Part III.B.4.c, realignment with the OSHA PSM standard is not a lawful justification for EPA's proposed rescission.

As for EPA's other rationale, EPA ignores a key purpose of the provision, which is to require documentation of the stop work authority in the employee participation plan so employees are aware of the authority. 89 Fed. Reg. at 17663-64. Such documentation serves the purpose of making it clear to employees the nature and scope of the stop work authority, instead of unreasonably expecting employees to infer their stop work authority from disparate parts of the RMP rule. EPA even acknowledges the employee awareness rationale behind the requirement, but does not explain or justify proposing to reverse those benefits. 91 Fed. Reg. at 8992. EPA provides no concrete explanation or evidence of how employers may be confused about whether the provision requires additional components of stop work authority.

EPA's proposal is also arbitrary because it fails to contend with its key findings from the SCCAP rulemaking that employees must know about and feel supported and secure in using stop work authority in order to actually exercise that authority. Including express stop-work authority in employee participation plans improves knowledge and assurance in exercising that authority if needed, which is especially critical in situations where workers must make a time-sensitive decision. In its 2022 proposed rule, EPA identified an article stating that "safety professionals insist on" the use of stop-work authority and that "key elements of a successful stop work authority policy include employee recognition, empowering

employees in the stop work authority process, ensuring leadership supports the program, identifying expectations, promoting positive outcomes and correct application, and publishing effective stop work authority efforts as examples for employees."[353]

EPA also identified a 2018 study on the use of stop work authority that supports taking a comprehensive, multi-layered approach with multiple tactics that reinforce workers' comfort with exercising stop-work authority:

> The study found that having a stop work policy supports stopping work for safety and that support from management positively affects its use. It also found that the training, experience, and seniority of employees were factors in employees choosing whether to use the stop work authority. The study concluded that a stop work authority is a starting point. To encourage, promote, and alleviate drawbacks to stopping work, a stop work authority has to be embedded in and supported by a work environment that provides the necessary conditions for people to discontinue work. The authors believe this can only be achieved when company leadership collaborates with its workforce to identify hazards and help resolve the challenges of everyday work.[354]

From these findings, EPA concluded that it would be valuable "to ensure facilities' employees are aware of authorities to manage unsafe work, one of the last lines of defense to protect human health and the environment from a catastrophic release," 87 Fed. Reg. at 53591, and promulgated the current requirement at 40 C.F.R. § 68.83(d).

The importance of clear training and understanding on the use of stop-work authority by employees is demonstrated by the 2022 tragedy at the BP refinery in Toledo, Ohio, in which two people were killed. Following their investigation, the CSB recommended the facility develop a policy "that clearly provides employees with the authority to stop work that is perceived to be unsafe," including "detailed procedures and regular training on how employees would exercise their stop work

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[353] 87 Fed. Reg. 53591 (citing Bush, J., "Stop-Work Authority," last modified July 26, 2018, https://www.safetyandhealthmagazine.com/articles/17242-stop-work-authority#:~:text=Stop%2Dwork%20authority%20permits%20any,Health%20insist%20on%20its%20us).

[354] *Id.* (citing David E. Weber et al., "'We Can Stop Work, but then Nothing Gets Done.' Factors that Support and Hinder a Workforce to Discontinue Work for Safety," *Safety Science* 108 (2018): 149-160, doi: 10.1016/j.ssci.2018.04.032).

authority."[355] The CSB found that "Stop Work Authority would have been not only appropriate, but absolutely necessary in light of the unsafe conditions that existed at the time and would continue to worsen thereafter," but that employees did not have sufficient training or understanding of the importance of exercising this under certain circumstances. *Id.* at 64. The CSB's key lesson was that "[c]ompanies must ensure (through training, clearly written procedures, and other means) that employees not only are clearly empowered to exercise Stop Work Authority, but that employees also clearly understand they are expected to do so." *Id.* at 63.

EPA's attempts to justify its proposed rescission based on duplicating the OSHA PSM standard and on the basis that the substantive foundation of stop-work authority is provided for in other CFR provisions. However, finalizing the proposal would be arbitrary because EPA has entirely failed to address an important part of the problem: that substantive stop-work authority alone is not enough to realize the full benefits of the authority, and that safety benefits require, at the very least, "ensur[ing] facilities' employees are aware of authorities to manage unsafe work." 87 Fed. Reg. at 53591. Even in this proposal, EPA acknowledges that the pre-2024 requirements lacked "explicit requirements for stop work." 91 Fed. Reg. at 8992.

Given the evidence before the agency, EPA cannot rationally rely on the undisturbed provisions at 40 C.F.R. §§ 68.69, 68.73(e), 68.71, and 68.73(c) as a replacement for the requirement proposed for rescission. None of these provisions make employees' stop-work authority explicit or otherwise contribute to employee familiarity, comfort, and trust in exercising stop-work authority. These provisions leave it ambiguous as to whether workers—and whether any specific worker—can exercise stop-work authority. As such, workers will likely err on the side of caution against using stop-work authority. In tense situations where there is potential for a catastrophic release, maximal prevention and response require quick judgment, and quick judgment requires workers to have certainty in their authority to conduct or recommend a shutdown without risks to their job security.

Workers should not have to become regulatory experts in multiple other provisions of the RMP rule in order to infer that they possess stop-work authority. Given the importance of this authority in promoting safety, and the minimal burden of documenting the authority explicitly in the employee participation plan, EPA has provided no legitimate reason to support this proposed rescission.

[355] CSB, *Fatal Naphtha Release and Fire at BP-Husky Toledo Refinery* at 15, Report no. 2022-01-I-OH, (June 2024), https://www.csb.gov/assets/1/6/final_report_-_20241.pdf.

EPA's proposed rescission of stop work authority language is especially arbitrary given the agency's proposals to rescind requirements to conduct trainings on the employee participation plan and to consult with employees in implementing recommendations and findings from PHAs, audits, and investigation incidents. These rescissions further erode communication and trust between workers and management, which introduces increased safety risks in all aspects of operation and can lead to chemical incidents.

For example, lack of trust and communication between staff and management was identified as a high-priority issue following the Tosco Avon Refinery fire in 1999, which killed four workers and seriously injured a fifth worker. In a safety audit following the tragedy, an auditor identified high-priority issues including inadequate safety communication and an "adversarial relationship between managers and workers."[356]

The evidence before the agency shows that employee awareness and understanding of stop-work authority, training, and collaboration between workers and management on problem-solving are necessary strategies for encouraging workers to appropriately use stop-work authority.

EPA's rationale for its proposal is also arbitrary because EPA provides no evidence that the requirement created "confusion and burden for regulated entities." 91 Fed. Reg. at 8993. EPA explains plainly in the 2024 rule, and quotes again in this proposed rule, that the stop work provision "is not intended to create new authorities or require additional components to those already developed." 89 Fed. Reg. at 17663; 91 Fed. Reg. at 8992. Regulated entities performing minimal due diligence would have the capacity to find these clarifications if any confusion does arise.

Finally, EPA arbitrarily fails to explain its departure from its previous findings that "ensur[ing] facilities' employees are aware of authorities to manage unsafe work" is a key part to improving prevention of RMP incidents even if aspects of a stop work authority are reflected in other parts of the RMP regulations. 87 Fed. Reg. at 53591. EPA explained in the final rule, "[t]he basis for including stop work authorities in the employee participation plan is to *enhance* authorities already provided to employees under the rule." 89 Fed. Reg. at 17664 (emphasis added). EPA now backtracks on that judgment by saying the stop work authority is

[356] A. Little, *Safety Evaluation of the Tosco Avon Refinery in Martinez, California* at ES-3 (May 10, 1999), available at https://www.documentcloud.org/documents/28039611-arthur-d-little-tosco-safety-audit-report-pdf/.

"unnecessary and may inadvertently cause confusion." 91 Fed. Reg. at 8993. EPA must explain its change in judgment and show "good reasons for the new policy," which it has failed to do here. *Fox*, 556 U.S. at 515.

#5 - Community and Emergency Responder Notification

EPA's proposed amendments to the community and emergency responder notification requirements are contrary to the CAA and are arbitrary and capricious.

a. Existing requirements and EPA's proposal

Currently, owners and operators of responding Program 2 and Program 3 facilities must develop an emergency response plan that includes "[p]rocedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases, including partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release." 40 C.F.R. § 68.95(a)(1)(i) (emphasis added). The owner or operator must document the partnership according to 40 C.F.R. § 68.93(c), which requires documenting "coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organization affiliations); dates of coordination activities; and nature of coordination activities."

For non-responding Program 2 and Program 3 facilities, an owner or operator need not comply with the requirement in § 68.95 if, among other requirements, it "maintains and implements, as necessary, procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases and partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release." *Id.* § 68.90(b)(6) (emphasis added). The owner or operator must also document the partnership in accordance with 40 C.F.R. § 68.93(c). *Id.*

EPA proposes to rescind these requirements to partner with agencies to ensure a notification system is in place, and instead to require owners and operators to partner with response agencies "to ensure that responders have the necessary information to relay through a community system that is in place to warn the public within the area potentially threatened by the accidental release." 91 Fed. Reg. 8994.

EPA is also proposing to rescind the requirements to document the partnership and to instead require facilities to submit data with their RMPs on (1)

the type of community notification system (if one is in place); and (2) whether the local responder or owner or operator will send notification to the community. 91 Fed. Reg. 8994. To implement the data collection proposal, EPA specifically proposes to amend 40 C.F.R. § 68.180(b)(2) to add a requirement for responding stationary sources to identify "What mechanisms are in place to notify the public and emergency responders when there is a need for emergency response." 91 Fed. Reg. 9011. EPA requests comment on whether this proposed language needs to specify a notification mechanism for the public and emergency responders, or solely the public. *Id.* at 8994.

b. EPA's proposed amendment to the response agency partnership requirements contravenes its duties under the CAA and is arbitrary and capricious.

The CAA has several provisions requiring EPA to ensure that RMP facilities bear responsibility for notifying the public of accidental releases. EPA must require RMPs to include a response program with "procedures for informing the public and local agencies responsible for responding to accidental releases." 42 U.S.C. § 7412(r)(7)(B)(ii)(III). EPA must require facility RMPs to "provide a prompt emergency response," *id.* § 7412(r)(7)(B)(ii).

EPA has a duty under Section 112(r)(7)(B)(i) to promulgate reasonable regulations that provide, "to the greatest extent practicable … for response to such releases by the owners or operators of the sources of such releases." 42 U.S.C. § 7412(r)(7)(B)(i). EPA's regulations "shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment." *Id.* Further, owners and operators have a duty to "minimize the consequences of accidental releases which do occur," *id.* § 7412(r)(1). EPA must retain the existing requirements to satisfy the Act.

EPA's proposal fails to meet its mandate to ensure facilities have a "procedure for informing the public," 42 U.S.C. § 7412(r)(7)(B)(ii)(III) because it will remove any responsibility for facilities to **ensure** a notification system is in place if there is not one already. Under EPA's proposal, facilities will no longer need to work with response agencies to ensure a community notification system is in place; they will only need to ensure responders have information to relay through a notification system **if** a notification system is already in place.

When incidents occur, rapid and reliable notification to the public and to response agencies is critical to mitigating their consequences. The existing language requires a notification system to be in place and makes clear that

"regulated facilities which have accidental releases are responsible for ensuring a prompt emergency response … in order to protect human health and the environment." 89 Fed. Reg. 17668. EPA's proposal unlawfully enables facilities to completely abandon this responsibility, and will lead to more communities without a system for being notified of accidental releases. This is a violation of the requirements for EPA regulations to require facilities to "provide a prompt emergency response," 42 U.S.C. § 7412(r)(7)(B)(ii), to respond to releases "to the greatest extent practicable," *id.* § 7412(r)(7)(B)(i), and to "minimize the consequences of accidental releases which do occur," *id.* § 7412(r)(1).

c. EPA's proposal is arbitrary and capricious.

EPA's proposal runs counter to the evidence that there is a significant need for facilities to ensure there is a robust community notification system in place to minimize harm when incidents occur.

The CSB and first responders have long highlighted the need for alerts for the public, in investigation reports. *See*, *e.g.*, 87 Fed. Reg. at 53594-95 (citing Title III Program Officials' comments and CSB findings).

For example, there was no community-wide emergency alert system in place when in 2004, the MFG Chemical facility in Dalton GA released a cloud of toxic allyl alcohol gas that caused the evacuation of over 200 families and caused 154 people, including 15 police and ambulance personnel, to require decontamination and treatment for chemical exposure.[357] The CSB found that responding police officers were forced to enter contaminated neighborhoods to alert residents to evacuate, without training or safety equipment, because "there was no other available notification method."[358] The CSB found that the local county lacked an established LEPC,[359] and failed to provide prompt notification to the public.[360] And when notification was provided, it was in English only despite the fact that many residents primarily spoke Spanish, forcing them to rely on young bilingual children to translate the information.[361]

[357] CSB, *Investigation Report: Toxic Chemical Vapor Cloud Release, MFG Chemical* at 34, Report No. 2004-09-I-GA (Apr. 2006), Report No. 2004-09-I-GA, https://www.csb.gov/mfg-chemical-inc-toxic-gas-release/.
[358] *Id.* at 30.
[359] *Id.* at 54.
[360] *Id.* at 7.
[361] *Id.* at 57.

Another example is the 2002 chlorine release at DPC Enterprises in Festus, MO that led 63 residents to seek medical treatment.[362] The facility had no community-wide alert systems,[363] and the CSB found that the inadequacies of the community notification system "resulted in additional exposure to neighboring residents and businesses."[364] Deficiencies including "[l]ack of … mechanisms for community notification (e.g., community sirens, alert network)" "resulted in… DPC's inadequate preparation for a large uncontrolled release."[365] The same facility had a chlorine release only 3 years prior; DPC had committed to implementing a notification system as a result, but never followed through.[366] The CSB concluded, "In both incidents, the lack of an adequate community notification system and clear guidelines for its implementation contributed to impact or injury to the public."[367]

Yet another example is the 2002 explosion and fire at First Chemical Corporation in Pascagoula, MS.[368] The CSB concluded that the "consequences of this incident were [] exacerbated by … poor community notification,"[369] and the "community notification system did not adequately warn residents that an incident was ongoing, explain how to shelter-in-place, or let them know when the emergency had subsided."[370]

These incidents demonstrate that requiring facilities to work with local agencies to ensure a community notification system is in place is critical to protecting health and safety of the public and of first responders.

Further, many communities completely lack an active local emergency response authority that can provide community notification. As EPA recognizes, there were approximately 1,236 inactive LEPCs reported in 2023—almost one-third of all LEPCs reported in the survey. 91 Fed. Reg. 8983. And, 8.6% of LEPCs, representing 327 communities, "do not have any type of emergency response

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[362] CSB, *Investigation Report: Chlorine Release*, *DPC Enterprises*, Report No. 2002-04-I-MO at 14 (May 2003), https://www.csb.gov/dpc-enterprises-festus-chlorine-release/..
[363] *Id.* at 32.
[364] *Id.* at 12.
[365] *Id.* at 56-57.
[366] *Id.* at 58.
[367] *Id.* at 59.
[368] CSB, *Investigation Report: Explosion and Fire, First Chemical Corporation*, Report No. 2003-01-I-MS (Oct. 2003).
[369] *Id.* at 35.
[370] *Id.* at 63.

plan."[371] Where community members cannot depend on an LEPC to provide emergency information in the case of a chemical incident, it is especially critical for facilities to ensure a community notification system is in place for if or when such incidents occur.

EPA arbitrarily provides no valid justification for its proposal. EPA states that "a specific notification 'system' may not necessarily be appropriate in all circumstances." 91 Fed. Reg. 8994. But EPA does not explain further or provide any examples of what those circumstances are. EPA also claims that this language change is to "clarify who is responsible for notifying the community." 91 Fed. Reg. 8993-94. EPA's proposal does not include any language clarifying that, and it substantively removes facilities' responsibility to work with agencies to ensure a community notification system is in place where one does not yet exist.

EPA states that if no community notification system is in place, "the facility personnel should partner with local officials to determine how to relay information in a timely manner to protect the community from harm." 91 Fed. Reg. 8994. But this non-binding and vague suggestion does not and cannot provide for emergency response "to the greatest extent practicable" and EPA has failed to show how this satisfies the requirements to "minimize the consequences" of chemical releases and to "protect human health and the environment" as EPA is mandated to do. 42 U.S.C. § 7412(r)(1), (7)(B).

EPA's proposal is also arbitrary because it contradicts its own goal "to ensure that all communities have an adequate notification system in place," 91 Fed. Reg. 8994, and therefore there is no "rational connection" between EPA"s goal and the proposed change. *See State Farm*, 463 U.S. at 43.

Further, EPA has arbitrarily failed to acknowledge, address, or explain its change in position from the SCCAP Rule, when EPA found a need for facilities to ensure this, and explained that "EPA's intention for this provision has always been for facility owners and operators to work with the local responders to **ensure** that, during a release, a notification system is in place that will notify the public of the impending situation." 89 Fed. Reg. 17668 (emphasis added); *see Fox*, 556 U.S. at 515 (requiring more detailed explanation for contradicting prior agency fact finding). EPA recognized that regulated facilities "are responsible for **ensuring** a prompt emergency response" to protect health and the environment, especially in situations where local public responders are unable to provide such a response. 89

[371] EPA, *National Survey of State Emergency Response Commissions (SERCs)* at 23 (Apr. 2023, revised Mar. 2025), EPA-HQ-OLEM-2025-0313-009.

Fed. Reg. 17668 (emphasis added). EPA concluded that the requirement to "**ensure** that, during a release, all necessary resources are **in place** for a community notification system to function and operate as expected will help protect the public from accidental releases." *Id.* (emphasis added). Thus, EPA took a clear position that owners and operators have a direct and independent responsibility to ensure a community notification system is in place—where there is not one in place, facilities must ensure one is put in place. EPA's failure to address why it has departed from this position is arbitrary. EPA's statement that typically local response agencies will be providing notice, 91 Fed. Reg. 8993-94, does not explain why EPA is departing from its previous conclusion that facilities should be required to **ensure** a system is in place and that this binding requirement would improve health and safety.

Finally, EPA's proposal to eliminate the documentation requirements in 40 C.F.R. §§ 68.90(b)(6) and 68.95(a)(1)(i) to document the coordination between the facility and the emergency response agency with respect to a community notification system arbitrarily lacks explanation or support. Such documentation is important to provide a record for EPA to assure compliance with the coordination requirements.

EPA should finalize additional reporting requirements for community notification, but reporting is insufficient to satisfy the Act and does not substitute for assurance that effective alerts are actually occurring. Although requiring facilities to collect and report more information on community notification systems would advance public transparency, EPA does not commit to do anything if a facility reports no such system. EPA should retain the existing requirement to ensure a community notification system is in place and not delay protections for additional information collection that the agency could have done before proposing this rule under 42 U.S.C. § 7414(c) if it believed additional information would be useful in reviewing the rules. EPA has ample evidence before it to support keeping the current language.

#6 - Stationary Source Siting

a. Factual Background

In the 2024 SCCAP Rule, EPA made much-needed clarifications that stationary source siting includes "placement of processes, equipment, buildings within the facility, and hazards posed by proximate facilities, and accident release consequences posed by proximity to the public and public receptors" for Program 2 and Program 3 hazard reviews, and required RMP facilities to include threats

from stationary source siting in their hazard reviews. 89 Fed. Reg. at 17686, 40 CFR § 68.50(a)(6). This revision was "for facility owners and operators to be aware of and consider the apparent presence of facilities within release impact zones that could occur from their facility, and how those releases would be affected because of the presence of nearby facilities"—including public locations such as schools, hospitals, or nursing homes. *Id.* at 17641. As EPA recognized at the time, this revision "help[s] ensure the protection of human health and the environment." *Id.*

Numerous chemical incidents, including those to which EPA cited under the 2024 Rule, show that stationary source siting can exacerbate chemical releases and the harm they cause. *See* 87 Fed. Reg. at 53571-72. Lack of sufficient distance between a source boundary and residential areas or infrastructure is a "significant factor" in the severity of chemical disasters. *Id.* at 53571. Additionally, as EPA recognized in 2024, an initial release from a source can trigger a subsequent release from nearby processes. *See* 89 Fed. Reg. at 17641.

A number of incidents—many of which narrowly missed causing significantly more devastation—demonstrate the threats amplified by siting stationary sources near other hazardous facilities or near the public. For example, at RMP facilities:

- Philadelphia Energy Solutions, Philadelphia, PA, 6/21/19 – This refinery explosion released potentially deadly hydrofluoric acid and threw a 19-ton, bus-sized piece of metal shrapnel 2,100 feet across the nearby Schuylkill River and caused $740 million estimated property damage.[372]

- ExxonMobil, Torrance, CA, 2/18/15 – A large piece of debris from an explosion narrowly missed hitting tanks containing modified hydrofluoric acid.[373]

- West Fertilizer, West, TX, 4/17/13 – A massive ammonium nitrate explosion killed 15 people, injured over 260 people, and damaged or destroyed more than 150 buildings off-site—including schools, an

[372] CSB, Investigation Report: Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit at 6 (Oct. 2022), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.
[373] CSB, ExxonMobil Torrance Refinery: Electrostatic Precipitator Explosion, at 6 (May 2017), https://www.csb.gov/exxonmobil-torrance-refinery-explosion-/.

apartment complex, and a nursing home.[374] Following the explosion, the company filed for bankruptcy. *Id.*

- Bayer CropScience, Institute, WV, 8/28/08 – An explosion started a fire and caused debris to strike a storage tank holding methyl isocyanate (the chemical in a prior deadly release in Bhopal, India). Two employees died, eight people were treated for possible toxic chemical exposure, and more than 40,000 residents sheltered in place for several hours.[375]

- BP, Texas City, TX, 3/23/05 – 15 workers were killed and 180 others injured during a series of explosions at a refinery. Financial losses exceeded $1.5 billion, homes as far as three-quarters of a mile away from the refinery were damaged, and the explosion damaged several tanks that were holding hazardous substances such as benzene, leading to benzene vapors escaping from the tanks.[376]

Disasters have also occurred at non-RMP facilities, further demonstrating the risks of siting facilities with hazardous materials near other facilities or the public:

- Qualco Inc., Passaic, NJ, 01/14/2022 – A fire at a nearby furniture warehouse spread to the Qualco chemical plant that was located in the same industrial lot. The fire came dangerously close to igniting a warehouse where 3 million pounds of chemicals were stored, including chlorine pellets. It forced residents to shelter in place, caused property damage of $15 million, and took 200 firefighters three days to contain.[377]

- Optima Chemical, Belle, WV, 12/8/20 – An explosion at Optima Chemical killed an employee and threw metal debris nearly a half

[374] CSB, Investigation Report: West Fertilizer Company Fire and Explosion, U.S. Chemical Safety and Hazard Investigation Board at 13 (Jan. 2016), https://www.csb.gov/assets/1/6/west_fertilizer_final_report_for_website_021216.pdf?15620.
[375] CSB, Investigation Report: Pesticide Chemical Runaway Reaction Pressure Vessel Explosion at 1 (Jan. 2011), https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/.
[376] CSB, Investigation Report: Refinery Explosion and Fire, at 17 (Mar. 2007), https://www.csb.gov/assets/1/20/csbfinalreportbp.pdf?13841.
[377] Coming Clean and Environmental Justice Health Alliance for Chemical Policy Reform, *Preventing Disaster: Three chemical incidents within two weeks show need for stronger federal safety requirements* at 15 (Sep. 2022), https://comingcleaninc.org/assets/media/images/Reports/Preventing%20Disaster%20final.pdf.

mile off-site, prompting a shelter-in-place order for the two mile area surrounding the site for over four hours.[378]

- Loy Lange Box Company, St. Louis, MO, 4/3/17 – The catastrophic failure of a pressure vessel launched the storage tank through the roof and into another business more than 500 feet away, where it killed three members of the public. One employee was also killed at Loy Lange Box Co. Various pieces of debris from the explosion damaged other businesses and vehicles in the area.[379]

- First Chemical Corporation, Pascagoula, MS, 10/13/02 – An explosion propelled large fragments of debris offsite, several of which landed near crude oil storage tanks. One piece of debris that landed in an adjacent facility weighed more than six tons.[380]

- In Mexico City, an on-site leak at an oil company's storage facility created a fireball, which generated explosions, and shot cylinders out as projectiles which partly landed in a nearby residential area.[381] Roughly 650 people were killed.[382]

- In Iran in 2010, explosions and fires at a hydrocarbon processing plant killed four workers, severely injured many more, and caused the plant to shut down for 80 days.[383]

In recognition of the threats posed from siting decisions, several regulatory programs acknowledge the value and effectiveness of requiring evaluation of

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[378] CSB, Investigation Report: Fatal Chemical Decomposition Reaction and Explosion at Optima Belle LLC, at 7 (July 6, 2023), https://www.csb.gov/optima-belle-explosion-and-fire/.
[379] CSB, Investigation Report: Pressure Vessel Explosion at Loy-Lange Box Company, at 22-24 (July 2022), https://www.csb.gov/loy-lange-box-company-pressure-vessel-explosion-/.
[380] CSB, Investigation Report: Explosion and Fire at 11 (Oct. 13, 2022), https://www.csb.gov/assets/1/20/first_report.pdf?13794.
[381] Paul Swuste et. al., *Domino effects in chemical factories and clusters, risk in the eye of the beholder: an historical perspective and discussion*, Delfft University of Technology, 124 Process Safety and Environmental Protection 18 (2019), https://pure.tudelft.nl/ws/portalfiles/portal/51492406/Chemical_clusters_and_domino_effects_Manuscript_19_dec_2018.pdf.
[382] *Id.*
[383] *See* Bahman Abdolhamidzadeh et. al., *Anatomy of a domino accident: Roots, triggers and lessons learnt*, 90 Process Safety and Environmental Protection 5 (Sep. 2012), https://www.sciencedirect.com/science/article/abs/pii/S0957582012000444.

siting, including the OSHA PSM standard and RMP rule.[384] Industry guidance on siting shows an acknowledgment that industry can and should consider siting.[385] Enforcement actions by EPA and OSHA involving siting issues show that "issues of siting continue to threaten process safety" and that guidance alone is insufficient.[386] These enforcement actions, however, can do no more than attempt to address safety threats due to siting after the fact—on their own, they are insufficient to address the threat.

Now, EPA proposes to rescind specific regulatory requirements for evaluating stationary source siting included in the 2024 SCCAP rule for Program 2 and 3 facilities. It must not do so.

b. EPA's Proposal to Rescind Key Provisions of the Stationary Source Siting Requirements Violates the Clean Air Act

Despite the plethora of evidence that stationary source siting review and planning can help prevent or reduce chemical incidents and the harm they cause, and that specific reference to facts like the siting of hazards and locations of schools, homes, and other receptors are essential to effective siting reviews, EPA proposes to abandon the improvements of the 2024 Rule, to rescind the amplifying regulatory text for Program 2 and Program 3 facilities under 40 C.F.R. § 68.50(a)(6) and 40 C.F.R. § 68.87(c)(5), respectively—which required RMP facilities to include "the placement of processes, equipment, buildings, and hazards posed by proximate facilities, and accident release consequences posed by proximity to the public," 89 Fed. Reg. 17641, in the PHAs. Finalizing these rescissions would violate the Act's requirements for prevention "to the greatest extent practicable," and to "minimize accidental releases" and their consequences, 42 U.S.C. §§ 7412(r)(1), (7), given strong evidence that how a facility and equipment are sited can exacerbate the severity of chemical disasters, as demonstrated by the frighteningly numerous examples discussed above, including instances of shooting heavy debris offsite and into nearby businesses or residences, fires nearly igniting nearby warehouses, and explosions causing people living, working, or going to school nearby to have to shelter in place. *See supra*.

[384] Process Hazard Analysis (29 C.F.R. § 1910.119(e)(3)(v), and 40 C.F.R. § 68.67(c)(5)); OSHA, Final Rule on Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents, 29 CFR part 1910 (1992), https://www.osha.gov/laws-regs/federalregister/1992-02-24.
[385] SCCAP Proposed Rule, 87 Fed. Reg. 53,572 (citing several examples of industry guidance on siting considerations).
[386] *Id.* at 53573; SCCAP Rule, 89 Fed. Reg. 17635.

c. EPA's Proposal is Arbitrary and Capricious

This proposal is also arbitrary and capricious for multiple reasons. EPA declines to consider important factors, makes inherently contradictory claims that the 2024 SCCAP rule stationary source siting requirements are not consistent with OSHA standards and redundant of pre-existing RMP regulations, and provides alleged justifications for the change that are not reasonable, such as contending the requirements "may have inadvertently created an additional burden" for regulated facilities who might misread the clarifying language. 91 Fed. Reg. at 8995. EPA's justifications are unsupported and inconsistent with applicable legal requirements.

First, the agency declines to consider important factors. Throughout its explanation for this proposed regulatory change, EPA fails to acknowledge or demonstrate it has met the regulatory criteria under the Clean Air Act's Risk Management Program provisions: to promulgate regulations that prevent – and in particular that "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances," and that "minimize accidental releases" and "minimize the consequences" of such releases. *See* 42 U.S.C. § 7412(r)(1), (7)(A), (B). Nowhere in EPA's explanation of this proposed change does the agency explain how rescinding this regulatory language supports the prevention of accidental releases. *See* 91 Fed. Reg. at 8995-96. The agency's only mention of protecting human health or the environment in this section of the proposal comes from a citation to a comment on the 2022 SCCAP proposed rule, which "expressed support" for amplifying the siting requirements as it "would ensure the protection of human health and the environment." *Id.* at 8995. EPA fails to consider human health, environmental protection, or prevention of hazardous releases at all in this proposal, and offers no commentary on how any of those aspects of the Act's requirements would be served by this reversal.

As minimization of "consequences" to health and safety is a required statutory factor, it is particularly problematic that EPA is proposing to remove "public receptor" language put in place to strengthen protection and reduce harm to community members who live nearby and regularly visit locations like schools, hospitals, day care facilities located near RMP facilities. As shown on maps accompanying these comments and in Part III.A, above, there are many "public receptors" near RMP facilities – including schools, day care centers, and hospitals. Children and families, including during pregnancy, are particularly vulnerable and exposed to harm from toxic chemical releases. *See, e.g.*, Part III.A, Part III.B.1.e, *supra*. EPA's proposal to cut the public receptor-focused language from the siting provision is also arbitrary because EPA has not assessed or shown this would

minimize harm to health, including the health of children and families nearby. *See* Part III.A, III.B.1.e, above.

Second, the Clean Air Act provides distinct legal responsibilities and authorities to EPA and OSHA. EPA has no statutory basis to defer its responsibility to OSHA's standards as sufficient, or to delay promulgating regulatory requirements based on OSHA's actions. *See supra*, Part III.B.4.c. EPA must protect communities' safety by "minimiz[ing] accidental releases" and their "consequences." For issues like stationary source siting review of public receptors, it is particularly important for EPA to exercise its independent legal responsibility. OSHA has jurisdiction over workers' safety but it is unclear how it could regulate to protect nearby homes, schools, day care centers, hospitals, and other facilities outside of the facility gate or fenceline. EPA fails to show how it can defer to OSHA on an issue of such importance for public safety.

The justifications that EPA does offer for the proposal are stated without evidence and the record does not reasonably support this proposed change. EPA argues that the regulatory text "may" have created an additional burden for regulated entities—offering no support from the record for this claim. In fact, the record shows it does the contrary. EPA itself admits that the 2024 SCCAP rule's language intended to "clarify the longstanding regulatory requirement without imposing any additional regulatory burden." 91 Fed. Reg. at 8995.

EPA likewise provides no evidence to support its claim that the stationary source siting provision could "divert[] facility staff from evaluating the hazards present at their own facilities and focusing on hazards posed by proximate facilities." 91 Fed. Reg. at 8996. EPA cannot rest decisionmaking on unsupported conjecture.[387] And to the extent these issues arise, the agency can rectify them via guidance documents or compliance assistance, while maintaining this vital regulatory requirement. EPA's "justifications" are thus not reasonable, rendering the proposal arbitrary and capricious. *State Farm*, 463 U.S. at 43.

EPA further claims that "hazards from proximate facilities were already taken into account" during the hazard review evaluations prior to the 2024 SCCAP rule. 91 Fed. Reg. at 8995. But the agency ignores its own prior rationale for including this requirement—which demonstrates the need to include both proximate facilities and public receptors in siting evaluations. In 2024, EPA stated

[387] *See Genuine Parts Co. v. EPA*, 890 F.3d 304, 346 (D.C. Cir. 2018) (rationale is invalid if "it rests upon a factual premise that is unsupported by substantial evidence"); *Delaware Dep't of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1, 11 (D.C. Cir. 2015) (agency cannot rely on "speculation").

that it was "only choosing to make more explicit what is required to be addressed in a stationary source siting evaluation"—not create additional requirements. 89 Fed. Reg. 17641. While the language did not create a new requirement, EPA decided to add it because the agency found that including "the placement of processes, equipment, buildings, and hazards posed by proximate facilities, and accident release consequences posed by proximity to the public, will help ensure the protection of human health and the environment." *Id.* at 17641. In the proposal now at hand, EPA offers no evidence to show that this conclusion in 2024 was incorrect. And, as the harms detailed above demonstrate, gaps in RMP facility stationary source siting reviews and proximity to public receptors continue to pose a serious threat to the environment and the health, well-being and lives of people working in, living near, or responding to disasters at RMP facilities. *See supra*, Part III.A.

Along with failing to account for important considerations under the Act of preventing hazardous releases and minimizing their consequences, and providing rationales for this change that do not hold water, EPA's proposal contradicts the agency's own prior factual findings. When an agency changes course, it is required to both acknowledge the change and offer a "more detailed justification" for why it now believes the new approach is better than its prior. *Fox*, 556 U.S. at 515. EPA fails to justify its reversal here. When the agency evaluated the evidence on stationary source siting for the 2024 SCCAP rule, it found that "amending the regulatory text to make more explicit" stationary source siting hazards in the process hazard evaluation "will help ensure the protection of human health and the environment." 89 Fed. Reg. at 17641. The agency found that "siting of processes and equipment within a stationary source can impact the surrounding community, not only through the proximity of the accidental release to offsite receptors adjacent to the facility boundary (*e.g.,* people, infrastructure, environmental resources), but also through increasing the likelihood of a secondary "knock-on" release by compromising nearby processes." *Id.*

EPA also found in the 2024 rule that the stationary source siting requirements do not conflict with the PSM and would not create inconsistent enforcement between EPA and OSHA. EPA rejected the justification EPA now proposes here, which originally came from an industry commenter. SCCAP RTC at 16 ("facility siting regulatory text changes finalized today are compatible and do not conflict with the prevention provisions of OSHA's PSM regulations"). "The OSHA PSM standard and RMP rule both require that facility siting be addressed as one element of a PHA (29 CFR 1910.119(e)(3)(v) and 40 CFR 68.67(c)(5))." *Id.* Thus, while both the OSHA and EPA requirements require facilities to address

siting within their PHAs, it is important that the specific requirements added in 2024, which provide particular protection for nearby communities' safety, be preserved in EPA's regulations. While OSHA focuses primarily on worker safety, the siting review requirements put in place in the 2024 SCCAP rule help ensure that both offsite proximate facility and public receptor locations factor into threat assessment and planning, not only for workers, but also for the public and the surrounding environment.

Now, while EPA runs through its former rationale for the approach it took two years ago, *see* 91 Fed. Reg. at 8995, it fails to address why its former, evidence-backed rationale no longer carries the day. EPA's only attempt to do so lies in claiming that the 2024 SCCAP rule "caused confusion and unnecessarily added a redundant requirement," and "may have created an unintended consequence of diverting facility staff from evaluating the hazards present at their own facilities." *Id.* at 8995-96. As discussed above, these statements lack evidentiary support. Because EPA must address contradictions and support any changes with "reasoned analysis," *Lone Mountain Processing, Inc. v. Sec. of Lab.*, 709 F.3d 1161, 1164 (D.C. Cir. 2013) (citation omitted), its failure to do so here is arbitrary and capricious. *See also Fox*, 556 U.S. at 515.

Finally, despite all of the above, the agency still claims that it "continues to emphasize the significance of evaluating all external hazards." 91 Fed. Reg. at 8996. But nothing in this proposed rule's approach actually does so. "Stating that a factor was considered . . . [i]s not a substitute for considering it." *Getty v. Fed. Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986). If EPA is serious about the "significance of evaluating all external hazards"—as it must be to comply with the Act—it should reverse course and preserve the 2024 SCCAP rule language on stationary source siting. Removing this language would greenlight facilities that deal with hazardous chemicals to downplay or outright ignore the additional threats created from proximate facilities. EPA can achieve its stated goals without removing this important regulatory text. EPA must preserve the requirement to consider stationary source siting for Program 2 and Program 3 facilities as included in the 2024 SCCAP rule at 40 C.F.R. § 68.50(a)(6) and 40 C.F.R. § 68.87(c)(5), respectively.

d. Comments on Alternative Options for Stationary Source Siting

EPA requests comment on either retaining only some the 2024 SCCAP rule language (except for "and hazards posed by proximate stationary sources"), and on

addressing key stationary source siting in "guidance, outreach or compliance assistance," instead of the regulation. 91 Fed. Reg. at 8996.

First, EPA should retain all of the language in the 2024 SCCAP rule for the reasons explained above. If EPA decides to eliminate the language on hazards posed by proximate stationary sources, which it should not do as discussed above, these provisions are severable parts of the siting review regulations and EPA's proposal implicitly recognizes it would be especially dangerous to undo the public receptor-focused requirement. The agency could have no lawful or rational basis not to retain the part of the 2024 SCCAP rule siting review language focused on public receptors and commenters. This is a critically important component of the rules for public health and safety, as shown by the research and proximity of RMP facilities to schools, homes, and other places where community members, including families and children, can be exposed to RMP facilities locations, as summarized above. EPA could not possibly remove this language and still contend that it is satisfying the statutory criteria in section 7412(r)(1), and (7), including the requirement to "minimize consequences" to public health and safety. Assessing where families and children are located and would be affected in an RMP incident is particularly important to protect children's health. *See* Part III.A., B.1.e, *supra*.

The details included in the regulatory text are essential for ensuring thorough hazard reviews that actually recognize and consider the impact to the people most in harm's way from potential RMP incidents. As is often said, what is not assessed or named, is not counted. Facilities must be required to review, plan for, and report on stationary source siting based on the real-world impacts they could have on people and the environment nearby, in the event of a release. EPA should not finalize its proposal to allow facilities to avoid thinking about and planning to prevent harm to people in their homes, schools, and other nearby locations.

Second, EPA guidance, outreach or compliance assistance would be insufficient. An enforcement-only approach cannot substitute for regulatory prevention requirements, as discussed in Part III.B.1.h, above. While commenters do not oppose EPA issuing guidance or providing outreach or compliance assistance, any such efforts must be in addition to retention of the statutory text in the 2024 SCCAP Rule. As stated above, EPA's recognition that it can address any confusion regarding 40 C.F.R. §§ 68.50(a)(6) and 68.87(c)(5) by providing guidance and compliance assistance to regulated entities further shows that overhaul of the regulatory text for stationary source siting is harmful and capricious.

#7 - Natural Hazards

As natural hazards become more frequent and more extreme, EPA proposes a dangerous and unacceptable step backwards. If finalized, this proposed rule would leave RMP facilities unprepared for natural hazards, and the communities around them under an increased and avoidable threat of chemical disaster related to extreme weather. The 2024 SCCAP rule's requirement that RMP facilities evaluate risks from natural hazards must remain in place.

a. Factual Background

In 2024, EPA finalized the requirement that the PHA must include evaluation of natural hazards that "could cause or exacerbate an accidental release." 40 C.F.R. § 68.50(a)(5), *see also* 40 C.F.R. § 68.67(c)(8). In doing so, EPA provided data that "some RMP accidents are being reported as having a natural cause as the initiating event and include unusual weather conditions as a contributing factor." 89 Fed. Reg. at 17636. EPA found that explicitly requiring evaluation of natural hazards, including taking climate change into account, for Program 2 and Program 3 processes, "will ensure that the threats of natural hazards are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities" and will "better protect surrounding communities from these types of incidents." *Id.*

EPA had good reason for these findings two years ago, which still apply today. The basic problem shown in science, various governmental findings and reports, and past examples is that when severe natural hazards or disasters – like hurricanes or extreme temperatures – hit an industrial facility,
they may release hazardous chemicals, catch fire, explode, or have other problems that threaten health and safety.[388] Such incidents can kill or injure workers, first-responders, and community members, and have led to shelter-in-place and evacuation orders to try to address threats to health and safety due to toxic exposure.[389]

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[388] *See, e.g.*, CSB, Safety Alert, 2020 Hurricane Season: Guidance for Chemical Plants During Extreme Weather Events, https://www.csb.gov/assets/1/6/extreme_weather_-_final_w_links.pdf; CSB. Safety Alert, After Harvey: Precautions Needed During Oil and Chemical Facility Startup (2017), https://www.csb.gov/assets/1/6/csb_harvey2017_05_(1).pdf; U.S. Government Accountability Office (GAO). Chemical accident prevention: EPA should ensure regulated facilities consider risks from climate change, GAO-22-104494 (Feb. 2022), https://www.gao.gov/assets/gao-22-104494.pdf.
[389] Air Alliance Houston et al., Comments at 21-29, Section I.F (Aug. 23, 2018),

For example, in the wake of Hurricane Harvey, many chemical releases, explosions, and fires occurred at industrial facilities, including at a widely known incident at Arkema as investigated by the U.S. Chemical Safety & Hazard Investigation Board (CSB).[390] During and following Hurricane Harvey, communities near various industrial chemical facilities suffered spikes in unhealthy levels of ozone; releases of toxic air pollutants that can cause cancer, neurological harm, and trouble breathing; and releases of contaminants, including hundreds of thousands to millions of pounds of air pollutants.[391]

Substantial evidence supports that the RMP rule must address the impact of climate change and "NaTech" risks— "disasters that arise from the coincident effects of a natural hazard, like a storm or earthquake, and the failure or disruption of technological infrastructure, such as chemical plant spills, releases, and explosions."[392] The EPA's Office of Inspector General and Office of Enforcement and Compliance Assurance,[393] the U.S. Chemical Safety and Hazard Investigation Board,[394] and the Center for Chemical Process Safety,[395] have all acknowledged the need to assess, prevent, and mitigate NaTech risks. The 2022 International

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https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-1969 ("Harms to Public Health and Safety
Caused by Chemical Disasters"); *see also* R. White, EJHA, Coming Clean et al., Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities at 2-5 (Sept. 2018), Environmental Justice Health Alliance, Coming Clean, Campaign for Healthier Solutions, https://new.comingcleaninc.org/assets/media/documents/Life%20at%20the%20Fenceline%20-%20English%20-%20Public.pdf.

[390] CSB, Investigation Rep. No. 2017-08-I-TX, Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby, Following Hurricane Harvey Flooding (Aug. 29, 2017), Report No. 2017-08-I-TX (May 2018), https://www.csb.gov/arkema-inc-chemical-plant-fire-/.

[391] Comments of Air Alliance Houston et al. at 14-17 (Aug. 23, 2018), https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-1969.

[392] UCS et al., Preventing "Double Disasters at 3.

[393] EPA, Enforcement Alert: Risk of Chemical Accidents During Process Startup (Feb. 2021), https://www.epa.gov/sites/production/files/2021-02/documents/ncistartupsafety-enforcementalert.pdf; EPA Office of Inspector General, EPA Needs to Improve Its Emergency Planning to Better Address Air Quality Concerns During Future Disasters, Report No. 20-P-0062 (Dec. 16, 2019), https://www.epa.gov/office-inspector-general/report-epa-needs-improve-its-emergency-planning-betteraddress-air-quality.

[394] *See* CSB, Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby Following Hurricane Harvey Flooding 13 (2018); CSB, Chemical Reaction, Decomposition, and Toxic Gas Release at Bio-Lab, Inc. (Aug. 27, 2020), No. 2020-05-I-LA (Apr. 24, 2023), https://www.csb.gov/bio-lab-lake-charles-chemical-fire-and-release-/; https://www.csb.gov/file.aspx?DocumentId=6272; CSB, Safety Alert, 2020 Hurricane Season: Guidance for Chemical Plants During Extreme Weather Events (2020),https://www.csb.gov/assets/1/6/extreme weather - final w links.pdf .

[395] *See* Ctr. for Chem. Process Safety (CCPS), Am. Inst. of Chem. Engrs, CCPS Monograph: Assessment of and planning for natural hazards (2019),https://www.aiche.org/sites/default/files/html/536181/NaturalDisaster-CCPSmonograph.html .

Panel on Climate Change report, Climate Change 2022: Impacts, Adaptation and Vulnerability explicitly references infrastructure failures caused by flooding and the need to account for NaTech disasters and the risks posed to urban communities.[396]

With so many RMP facilities facing the extra risk of a chemical release, fire, or explosion that natural disasters or severe weather can create directly or due to loss of electrical power, it is essential for EPA to ensure that facilities are required to assess and address NaTech incidents. The CSB Chair has highlighted the need for action to address extreme weather.[397] Data show that NaTech disasters are a frequent and serious threat. When industrial facilities fail to adequately prepare for natural disasters, they can release hazardous chemicals, catch fire, or explode. Furthermore, extreme weather conditions often lead to more frequent shutdowns and startups. Accidents can happen during start-ups if caution is not taken.

Evidence shows that as climate change worsens severe weather and natural disasters, a growing NaTech threat requires action to address this problem. 87 Fed. Reg. at 53,567-69 (citing evidence).[398] As the National Center for Environmental Economics found, over 90% of counties with RMP facilities experienced flooding in the last two decades and 25% faced hurricanes.[399] Further, "RMP facilities tend to be in regions that experience statistically significantly more floods, extreme winter weather events, extreme heat, and tornadoes than counties without RMP facilities."[400] Data shows that, as climate change intensifies, RMP and other chemical facilities are in areas that are increasingly at risk of natural disasters and NaTech incidents. About one third of the chemical facilities that the RMP regulates (or 3,856) are in areas exposed to an increased risk of natural disasters, including wildfire, storm surge, flooding, and sea level rise, as found in Preventing "Double Disasters," a policy brief prepared by UCS, CPR, and Earthjustice.[401] The Climate Mapping for Resilience and Adaptation portal from NOAA also provides robust scientific evidence showing climate-related hazards happening in real-time in the United States, and climate-related risks demonstrating how critical the NaTech

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[396] Pörtner, Hans-Otto, et al., Climate change 2022: Impacts, adaptation and vulnerability, IPCC Sixth Assessment Report at 936 (2022), https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf.
[397] Statement from CSB Chairman Katherine Lemos, *supra*.
[398] GAO Chem. Accident Prevention, EPA Should Ensure Regulated Facilities Consider Risks from Climate Change, GAO-22-104494 (Feb. 2022), https://www.regulations.gov/document/EPA-HQ-OLEM2022-0174-0072.
[399] Nat'l Center for Env'tl Econ., Natural Hazards and Technological Disasters at 5 (Dec. 2021), EPA Tech. Background Document App. B, EPA-HQ-OLEM-2022-0174-0066.
[400] *Id.*
[401] UCS et al., Preventing "Double Disasters" at 7.

provisions in this proposed rule are.[402] One report identified 872 highly hazardous chemical facilities within 50 miles of the hurricane-prone U.S. Gulf Coast, with over 4.3 million people, 1,717 schools, and 98 medical facilities in near proximity (within 1.5 miles).[403] These numbers are underestimates because the available data is outdated.

Ignoring the science, expert governmental findings from EPA itself, the CSB and other agencies, and industry reported data would be contrary to the Act's requirements for reasoned decision-making. EPA has not justified and could not lawfully or rationally justify repealing this rule when that would conflict with EPA's recognition of the need to address NaTech incidents or double disasters. EPA has not provided and could not give a reasoned explanation based on facts in the record for ignoring the problem of NaTech or double disaster incidents as a danger to public health and welfare.

Part III.A, above, along with all of the information EPA gathered in the 2024 Record show significant natural hazard threats and links with chemical incidents. The **Earthjustice Technical Review of EPA Natural Hazard Risk and RMP Facilities**, included as part of the Appendix, provides a new analysis showing natural hazard risks above EPA-identified levels of concern at nearly all RMP facilities. The threats are particularly concentrated in certain counties with both high numbers of RMP facilities and high natural hazard risks. *See* Tables in Part III.A.6, above.

b. EPA's Natural Hazard Proposal Violates the Clean Air Act

Despite the abundance of evidence on the threats of natural hazards and climate change for RMP facilities and the 177 million people who live within the worst-case scenario zone in the case of an accidental release, EPA now proposes abandoning the basic requirement that RMP facilities evaluate the threat of natural hazards for Program 2 and Program 3 processes. If EPA rescinds NaTech requirements, communities living near RMP facilities and in climate and natural disaster risk areas will suffer more harm from preventable NaTech disasters. *See*

[402] Climate Mapping for Resilience and Adaptation, https://resilience.climate.gov/.; Press Release, NOAA, Biden Administration Launches Portal to Help Communities Assess Exposure to Climate Hazards (Sept. 8, 2022), https://www.noaa.gov/news-release/biden-administration-launchesportal-to-help-communities-assess-exposure-to-climate-hazards.

[403] S. Anenberg & C. Kalman (Milken Inst. of Pub. Health, Geo. Wash. Univ.), Extreme Weather, Chemical Facilities, and Vulnerable Communities in the U.S. Gulf Coast: A Disastrous Combination (Apr. 16, 2019), https://agupubs.onlinelibrary.wiley.com/doi/full/10.1029/2019GH000197.

supra.[404] Because EPA is required to promulgate regulations that prevent chemical releases to the greatest extent practicable, and to minimize such releases and their consequences, this proposal violates the Clean Air Act. *See* Part I, III.B.1.b. EPA's attempt to ignore natural hazard-related incidents based on an alleged low number of such incidents also fails because it contravenes the statutory requirements for prevention and release and consequence minimization for the same reasons as discussed above.

c. *EPA's Natural Hazard Proposal is Arbitrary and Capricious*

This proposed reversal from the 2024 SCCAP is arbitrary and capricious in view of strong evidence[405] that: (1) natural hazards are becoming increasingly intense, frequent, and harmful due to climate change;[406] (2) a significant number of RMP facilities are located in known high-climate risk areas;[407] and (3) NaTech incidents can cause cumulative and compounding damage to the health and safety of facility workers and the public. In proposing this change, EPA neglects to consider important pieces of the problem, provides arbitrary justifications that do not justify the change, and abandons its own prior factual findings regarding the threats of natural hazards without adequately explaining why it is reversing course.

First, EPA contends that NaTech incidents and natural hazards can be ignored because only 3-4% of reported incidents recognized a link with natural hazards. 91 Fed. Reg. at 8996. This is arbitrary and conflicts with facts in the record. It is not possible to have confidence that the data EPA is using are complete or fully accurate, and thus EPA cannot assume that the reports it has show the extent of the problem. *See* Part III.A.3 and III.B.1.g, above. Rather, the record shows EPA data are likely to significantly undercount incidents linked with natural hazards. Although EPA tries to write off the incidents it recognizes have been reported, these caused a substantial human toll that cannot be ignored under

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[404] Comments of Air Alliance Houston et al. at 21-29, Section I.F (Aug. 23, 2018), https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-1969 ("Harms to Public Health and Safety Caused by Chemical Disasters"); *see also* R. White, EJHA, Coming Clean et al., Life at the Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities at 2-5 (Sept. 2018), Environmental Justice Health Alliance, Coming Clean, Campaign for Healthier Solutions, https://new.comingcleaninc.org/assets/media/documents/Life%20at%20the%20Fenceline%20-%20English%20- %20Public.pdf.

[405] *See* above in this section; *see also* Part III.A; t.e.j.a.s *et al.*, 2022 Comments on SCCAP Proposed Rule; SCCAP Rule Record, EPA-HQ-OLEM-2022-0174.

[406] *See, e.g.,* Preventing "Double Disasters" at 6; Statement from CSB Chairman Katherine Lemos, *supra*.

[407] *See, e.g.,* Preventing "Double Disasters" at 6; *see also* NHRA Technical Review, cited *supra*, and included in the Appendix.

section 112(r) – including people who faced injuries, hospitalization, and medical treatment, thousands of people evacuated or sheltered-in-place, and $280 million in property damage. *See* Part III.A, above. For example, review of incidents during Hurricane Ida and Harvey, and review of data on facilities located in storm surge areas shows that there is substantial under-reporting and insufficient planning for natural hazards.[408] Previously, EPA rules have not explicitly required review of or reporting on natural hazards, which is precisely why EPA finalized the rules at issue in 2024. When EPA rules did not assure review or reporting, it makes sense that the database would have incomplete reports on natural hazards.

EPA's argument also fails to recognize or disprove the recognition of the agency itself in 2024 that natural hazard-related threats are "a growing threat." SCCAP RTC at 83. Thus, even if this was not as significant an issue in 2004, it is vital to take a forward-looking approach under this prevention-focused statutory provision to ensure facilities plan for and address natural hazards today. *See* SCCAP Proposed Rule, 87 Fed. Reg. at 53567-68; SCCAP Rule, 89 Fed. Reg. at 17636-38. EPA fails to address that finding or demonstrate it is incorrect or can be reversed.

EPA neglects to consider important aspects of the issue when proposing this rollback and fails to provide an adequate rationale for the proposal. EPA lists prevention and mitigation of RMP accidents and "major catastrophes" as potential disbenefits for the Proposed Rule as a whole. 2026 RIA at 63 (Exh. 6-1). But it states that there is "uncertainty about how this proposed rule would affect accident frequency and severity," and claims it is "unlikely to result in a significant change in risk." *Id.* at 61. Nowhere does EPA seriously consider the benefits that the 2024 SCCAP rule's natural hazard provisions have for safety—of workers, community members, and for the environment. Nor does it acknowledge the financial harms of chemical releases caused by natural hazards for the RMP facilities themselves. In fact, while the agency "maintains that extreme weather and natural hazards can increase the likelihood of an accidental release and should be examined in order to prevent or mitigate releases of RMP-regulated substances at covered facilities," 91 Fed. Reg. at 8997, EPA analyzes the 2024 SCCAP rule's natural hazard provisions by claiming that the language "requires facilities to spend resources on a carve-out for natural hazards," "divert[ing] resources from work the facility deems a priority for chemical accident prevention." 2026 RIA at 62.

[408] See Lake Charles Spreadsheet, Hurricane Ida Spreadsheet, Hurricane Harvey Spreadsheet; *see also* Part III.A.6.

EPA does nothing to incorporate the benefits of the 2024 rule's natural hazard provision into its decision-making. Nowhere does it thoroughly weigh the safety benefits against its speculative risks—limiting its analysis to the quick dismissal of benefits described above. 2026 RIA at 62. Agencies cannot claim to consider aspects of a problem without actually incorporating them—doing so is arbitrary and capricious. *See Getty*, 805 F.2d at 1055 ("Stating that a factor was considered . . . is not a substitute for considering it.").

Second, the arguments EPA does raise are not reasonable defenses of the proposed change. Continuing its pattern of raising unsupported and speculative justifications for this proposal, EPA muses—without offering any evidence to support its claims—that the 2024 SCCAP rule requirements on natural hazard assessment "may present a more than negligible cost" to RMP facilities, 91 Fed. Reg. at 8997, and claims that this regulatory text "could inadvertently require a source to divert resources and focus from other, more prevalent hazards." 91 Fed. Reg. at 8996. EPA may not use cost to justify weakening protection under section 112(r), for reasons discussed in Part III.B.1, above: that is an unlawful and arbitrary under the binding provisions in sections 112(r)(1) and (r)(7).

Regardless, if EPA wants to use these rationales to support rolling back this commonsense protection, it must provide data to support its claims. Failing to do so is arbitrary and capricious. *See Genuine Parts Co. v. EPA*, 890 F.3d 304, 346 (D.C. Cir. 2018) (finding rationale to be invalid if "it rests upon a factual premise that is unsupported by substantial evidence"); *see also Delaware Dep't of Nat. Res. & Env't Control*, 785 F.3d at 11 (rationale cannot be mere "speculation"). Here, it will be difficult, if not impossible, for EPA to summon evidentiary support for its rationale, as the agency itself acknowledges in its proposal that the hazard evaluation provisions of the 2024 SCCAP rule "would impose no new requirements or costs on facilities that are in compliance with the RMP rule." 91 Fed. Reg. at 8997.

EPA also states that it can defer to RMP facility owners and operators on matters of public and environmental safety. *Cf.* 91 Fed. Reg. at 8996-97. But, as discussed above, this is not lawful or reasonable given the Act's language, which requires the agency to promulgate regulations that "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases." *Id*. § 7412(r)(7)(B)(i). Regulated entities do not carry this burden—EPA does. And it cannot dispense with it by shrugging its shoulders and assuming that RMP facilities will do everything in their power to prevent, detect, and response to accidental releases. EPA itself must regulate.

EPA additionally claims both that the 2024 SCCAP rule is redundant with pre-existing requirements and that it may have created additional burden for RMP facilities. 91 Fed. Reg. at 8996. These two stances are hard to square, as creating an additional burden seems to contradict EPA's claim that the 2024 SCCAP rule provision merely replicated what RMP facilities were already required to do. But this rationale is arbitrary and capricious for an additional reason: EPA explicitly considered and rejected these criticisms in 2024. *See* 89 Fed. Reg. at 17637 (disagreeing that the natural hazard assessment provisions are redundant and stating that EPA coordinated with OSHA "throughout the rulemaking process to ensure the intent of adding explicit natural hazard regulatory text does not create conflicting requirements between the two regulatory programs"); *see also* Part III.B.4.c, above (explaining why EPA may not point to OSHA to avoid fulfilling its own responsibilities). EPA also found that the provisions "reflect existing industry practice," and thus impose "no new requirements or costs on facilities that are in compliance with the RMP rule and common industry practice." 89 Fed. Reg. at 17637. The agency even acknowledges that, "[s]ince the 1996 RMP rule, the EPA has said that events such as floods and high winds should be considered as potential release-initiating events when conducting a PHA." 91 Fed. Reg. at 8997. With this proposal, EPA fails to address or rebut its prior findings that a natural hazard threat assessment was necessary, rendering this proposal arbitrary and capricious. *See Fox*, 556 U.S. at 515 (agency may not "depart from a prior policy sub silentio").

EPA also must preserve the NaTech provisions because the CSB's recommendations carry particular weight and EPA must respond to incorporate them or fulfill its statutory obligation to justify not doing so. 42 U.S.C. § 7412(r)(6)(I).[409] In this proposal, EPA has failed to even acknowledge the CSB's recommendations regarding natural hazard evaluation, much less justify its proposed rescission of its implementation of those recommendations.

The 2024 SCCAP rule requirements are vital to ensure that RMP facilities take seriously the ever-increasing threats of natural hazards to their operations, and plan accordingly. As EPA said in 2024, this text plays an important clarifying role: "By amplifying and making more explicit the need to evaluate natural hazards as potential causes of releases, EPA expects those facilities that are currently not

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[409] *See* CSB recommendation on natural hazards, CSB, Recommendations to EPA, https://www.csb.gov/recommendations/?F_RecipientId=4846&F_All=y.

[409] CSB, Bio-Lab Lake Charles Chemical Fire and Release (Aug. 27, 2020), https://www.csb.gov/bio-lab-lake-charles-chemical-fire-and-release-/; *see also* CSB, Comments on EPA RMP Proposed Rule (Oct. 26, 2022), https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0166.

performing such evaluations will better understand what the rule requires." SCCAP Rule, 89 Fed. Reg. 17637. The agency should retain the 2024 SCCAP rule natural hazard language and continue to require RMP facilities to evaluate the threats that natural hazards pose to their operations and to the workers and communities whose safety depends on them.

EPA seeks comment on alternative text and on using "compliance assistance" or data tools instead of maintaining the current regulatory requirements. 91 Fed. Reg. at 8997. None satisfies the Act or justifies rescinding the existing requirements.

First, EPA states it is considering whether to modify 40 CFR 68.50(a)(1) and 68.67(c)(1) to state: "The hazards, *including natural hazards*, . . .". 91 Fed. Reg. at 8997 (emphasis added). That would limit the hazard review to those "associated with the process and regulated substances," but the whole point of the natural hazards is that they are *external* to those processes. EPA's alternative makes no sense. The natural hazards act on top of and in addition to the hazards that are inherently part of the covered process and chemicals. EPA fails to show how that would work or demonstrate why it would be sufficient to meet the needs identified by the agency itself, other expert agencies, and commenters in the 2024 rulemaking.

On the other alternative, outreach or compliance assistance, while useful, cannot ensure prevention of chemical releases, or ensure RMP facilities have a sufficient incentive to perform this hazard evaluation in the way that the regulatory text can. For similar reasons as discussed in Part III.B.1 above, an enforcement-only, compliance assurance approach is insufficient to satisfy the Act and EPA's attempt to suggest it can rely only on that to roll back actual rule requirements is unlawful and arbitrary. Commenters oppose all versions of removing a regulatory requirement to evaluate natural hazards, regardless of any compliance assistance EPA may put in place.

Of course EPA should provide data tools and compliance assistance to RMP facilities so long as the natural hazard evaluation provisions from the 2024 SCCAP rule are preserved. Restoring the RMP Public Data Tool would help to advance this goal as facilities could review and learn from one another's submissions. EPA should also increase facility and public access to information on natural hazards – including the RMP Natural Hazard Assessment Tool that is not currently working on EPA's website, but that EPA has been preparing to fully launch as discussed in

the redlined Technical Background Document.[410] That tool and the useful information would assist facilities in meeting the existing requirements, as well as ensuring that EPA, other agencies, workers, and communities have this information to understand the potential for NaTech incidents at particular facilities. There are no compliance tools or techniques that could substitute for actual regulatory requirements.

8 - Power Loss

a. Factual Background

EPA's proposal to remove the requirements for RMP facilities related to power loss threatens the wellbeing of millions of people across the country. EPA has long recognized this problem, even issuing a safety alert as early as 2001 to highlight the importance of preparing for power loss to prevent chemical incidents and protect health and safety.[411] Power loss has caused or contributed to thousands of NRC reported incidents,[412] including chemical disasters, and EPA has recognized that many RMP facilities have reported power loss links with many reportable harm incidents. As EPA explained in its 2024 SCCAP rule proposal, power loss can cause chemical leaks, explosions, fires, and spills. Power loss can also damage the "integrity of equipment during subsequent operations," including safeguards that prevent chemical disasters.[413]

The 2017 Arkema disaster in Texas well illustrates the importance of preparing for power loss: after heavy rainfall from Hurricane Harvey caused the Arkema facility to lose power, and thus lose its refrigeration systems, hazardous products stored inside the refrigerators decomposed, causing fires.[414] Over 350,000 pounds of organic peroxide combusted, preventing over 200 nearby residents from returning to their homes for a week. *Id.* And even brief power loss can cause

[410] EPA, RMP Natural Hazard Risk Assessment Tool, https://cdxappstest.epacdx.net/olem-rmp-pds/nhra/ (last updated Dec. 5, 2024); TBD Redline, EPA-HQ-OLEM-2025-0313-0071 (discussing the RMP NHRA Tool, methodology, and indicators).
[411] *See* EPA, OSWER, Chemical Safety Alert: Chemical Accidents from Electric Power Outages (Sept. 2001), EPA-HQ-OLEM-2025-0313-0005.
[412] 87 Fed. Reg. at 53569 (citing the National Response Center data on 3,077 reported accidents from 2004–2020 that were associated with power loss).
[413] *Id.*
[414] CSB, Investigation Report: Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby Following Hurricane Harvey Flooding at 8 (Aug. 31, 2017), https://www.csb.gov/assets/1/20/final_arkema_draft_report_2018-05-23.pdf?16272.

significant damage because some equipment may need to be manually reset, while others may automatically restart.[415]

b. EPA's Proposals Both Violate the Clean Air Act and Are Arbitrary and Capricious

Requiring evaluation of the risks of power loss in hazard reviews and PHAs, standby or backup power for RMP facilities, and documentation of when monitoring equipment is disabled are each necessary to fulfill EPA's statutory duty to promulgate rules that provide, "to the greatest extent practicable, for the prevention and detection of accidental releases." 42 U.S.C. § 7412(r)(7)(B). These are also required to ensure EPA minimizes such releases and their consequences, *id.*; *id.* § 7412(r)(1), and to provide for compliance with the General Duty Clause, *id.* § 7412(r)(1). EPA's proposed rule is also textbook arbitrary and capricious given that (1) power outages are a known factor in chemical releases; (2) weather events—the largest source of disruptions to the U.S. electricity grid—are increasing in frequency, severity, and duration;[416] and (3) guidance and guidance alerts failed to abate power loss-induced disasters prior to the 2024 SCCAP rule.

Commenters strongly oppose each of EPA's three proposed changes.

i. <u>EPA must not rescind the 2024 SCCAP rule's requirement that Program 2 and 3 processes evaluate the risks of power loss in their hazard reviews and PHAs.</u>

EPA should retain the 2024 SCCAP rule's provisions requiring Program 2 and Program 3 processes to evaluate the risks of power loss. In 2024, EPA implemented this requirement because making the power loss evaluation requirement "more explicit . . . will ensure that threats of power loss are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities." 89 Fed. Reg. at 17639. EPA should not reverse course.

(1) Removing this provision would violate the Clean Air Act.

Evaluation of hazards helps facilities better prevent and prepare for disasters. As discussed above, public availability of information related to threats from RMP

[415] *Id.*; CSB, Investigation Report: Decomposition, and Toxic Gas Release at Bio-Lab, Inc., No. 2020-05-I-LA (Apr. 24, 2023),https://www.csb.gov/file.aspx?DocumentId=6272; *see also* CSB, Bio-Lab Lake Charles Chemical Fire and Release (Aug. 27, 2020), https://www.csb.gov/bio-lab-lake-charles-chemical-fire-and-release-/

[416] 87 Fed. Reg. at 53570.

facilities likewise helps to ensure that the facilities are incentivized to implement thorough safety protections. *See supra*. Thus, EPA has failed to show how its rescission of the 2024 SCCAP rule's requirement that RMP facilities evaluate the risks of power loss in their hazard reviews and PHAs "minimize accidental releases" and their consequences, or prevents such releases "to the greatest extent practicable," as the Act requires. 42 U.S.C. § 7412(r)(7)(A), (B), (r)(1). EPA also has failed to show how this provides for compliance with the General Duty Clause. *Id.* 7412(r)(7)(B)(ii), (r)(1).

(2) EPA's proposal is arbitrary and capricious.

This proposal is arbitrary and capricious because EPA fails to provide a reasonable justification, fails to consider important parts of the problem, and ignores its own prior findings regarding the benefits of this provision.

Much like with the agency's proposal to rescind the 2024 SCCAP rule provisions on natural hazard evaluation, here too EPA fails to provide any evidence to demonstrate that requiring RMP facilities to evaluate threats to safety from power loss does not support safer operations. *See* 91 Fed. Reg. at 8997-99. EPA does not consider the impacts on health, safety, or the environment with this proposed reversal.

EPA's rationale for proposing to rescind these provisions is not reasonable and does not reckon with why the agency promulgated them in the first instance. EPA now claims that the provisions are redundant and unnecessary, 91 Fed. Reg. at 8998, but fails to acknowledge the rationale quoted above—that emphasizing these power loss hazard requirements will help ensure proper evaluation, prevention, and mitigation at RMP facilities. 89 Fed. Reg. at 17639. EPA again raises potential negatives without providing support, such as that the regulatory text has the "potential to cause confusion." 91 Fed. Reg. at 8998. EPA does not provide any data or examples to demonstrate why the agency has this concern, nor does it even show that it has found actual confusion. *See id.* To the extent such confusion might occur, EPA can use outreach, compliance assistance, and guidance to assist RMP facilities with addressing power loss in their hazard reviews. EPA may not rely on hyperbolic and unsupported "hypotheticals" to meet its reasoned decision-making responsibility. *Air Alliance Houston*, 906 F.3d at 1065.

Finally, EPA's claim that the 2024 SCCAP rule changes took Program 3 out of alignment with the OSHA PSM PHA language, 91 Fed. Reg. at 8998, also ignores the agency's thorough justification for the 2024 rule. *See* 89 Fed. Reg. at

17639 ("EPA seeks only to better reflect its longstanding regulatory requirement that loss of power is among the hazards that must be addressed within hazard evaluations, rather than impose additional regulatory requirements (and thus potential additional costs) that conflict with the OSHA PSM regulatory requirements."). It also is contrary to the Act's clear directive for EPA to exercise its regulatory authority and meet its responsibilities without deferring to OSHA, in view of EPA's additional responsibility to protect public health and safety and the environment. *See* Part III.B.4.c, above.

ii. EPA must not rescind the requirement that RMP facilities maintain standby or backup power for monitors.

(1) Removing this requirement would violate the Clean Air Act.

Removing the requirement that RMP facilities maintain standby or backup power for monitoring equipment would create unnecessary additional danger for millions of people living near these hazardous facilities and facing natural hazard and power loss threats. *See supra*; 87 Fed. Reg. at 53569. Rescinding this requirement would weaken the ability to detect and respond to problems quickly during power loss incidents and would reintroduce the issue of air monitoring and control equipment being "removed from service before natural disasters to potentially prevent damage to equipment or, conceivably in some cases, evade monitoring requirements." *Id*. at 53571.

When EPA promulgated the 2024 SCCAP rule, it found that "power loss can threaten RMP-regulated processes and cause accidental releases if not properly managed." 89 Fed. Reg. at 17639. It decided to require backup power for monitors in order to "ensure compliance with the intent of the rule and ensure that the RMP-regulated substances at covered processes are continually being monitored so that potential exposure to chemical substances can be measured during and following a natural disaster." *Id.* If EPA moves forward with rescinding this requirement, it will weaken incident detection and have a cascade effect on emergency response and safety. This runs directly counter to the Act's requirement that EPA create regulations that prevent chemical releases to the greatest extent practicable and that minimize such releases and their consequences to human health. 42 U.S.C. § 7412(r)(1), (7)(A), (B).

Further, the Act requires these rules to provide for compliance with the "general duty" for RMP facilities to "design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur." 42 U.S.C. § 7412(r)(1), 7412(r)(7)(B)(ii).

Maintaining backup power for monitors is a necessary step to minimize consequences of releases by enabling RMP facilities to understand the impact of the release and learn from it in the future. Proposing to rescind the requirement for backup power for monitors thus also violates section 112(r)(7)(B)'s implementation of the General Duty Clause under the Clean Air Act.

(2) Removing this requirement would be arbitrary and capricious.

As with prior proposals, EPA's explanations for the proposed change do not withstand scrutiny. First, it is inappropriate, as EPA proposes, to defer to RMP facility owners and operators to make decisions about basic safety and protection—that is squarely the role of EPA. And history provides countless examples that failure to regulate can result in disaster—for communities, regulated entities, and the environment, such as the Arkema disaster in Texas, as well as many safety problems and near misses for chemical disasters during recent hurricanes.[417] While EPA points to the "performance-based structure" of the RMP program, that structure is within the context of the Act's mandate that EPA—not RMP facilities—promulgate regulations that prevent chemical disasters to the greatest extent practicable. 42 U.S.C. § 7412(r)(7)(B). Congress did not grant EPA the authority to defer to owners and operators when it comes to achieving its Congressionally-mandated objective. The onus is on the agency itself.

EPA also must maintain the power loss provision because the CSB's recommendations carry particular weight and EPA must respond to incorporate them or fulfill its statutory obligation to justify not doing so—which EPA does not address in its proposed rule. 42 U.S.C. § 7412(r)(6)(I).[418]

EPA raises a straw man argument that, because standby or backup power may not be necessary to prevent disasters in all situations, they should be required in none. 91 Fed. Reg. at 8998. This is nonsensical, arbitrary and capricious. *See Prometheus Radio Project*, 592 U.S. at 43 (requiring that agency decisions be "reasonable and reasonably explained"). If our federal agencies were to decline to regulate because the regulation was not necessary "in all situations," we would be left with few, if any, protections from our federal government. EPA must follow the Act and promulgate regulations that protect public health and safety from industrial chemical releases. In situations like this, where Congress has given a

[417] *See supra*; *see also* Part III.A.; *see also e.g.*, CSB Arkema Report, cited *supra*.
[418] *See* CSB, Comments on EPA RMP Proposed Rule (Oct. 26, 2022), https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0166.

clear direction to the agency, doing otherwise is arbitrary and capricious. *See* 42 U.S.C. § 7412(r)(7)(B).

EPA raises the unsupported specter of "unintended consequences" from requiring standby or backup power at RMP facilities. EPA provides no data or citations to support its claim that this requirement could create "additional hazards," nor that the documentation requirements might dissuade use of monitors. 91 Fed. Reg. at 8998. EPA may not rely on speculation or unsupported claims when promulgating regulations. Doing so is arbitrary and capricious. *See Tripoli Rocketry Ass'n, Inc. v. ATF*, 437 F.3d 75, 83 (D.C. Cir. 2006); *Delaware Dep't of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1, 11 (D.C. Cir. 2015).

Finally, EPA mixes apples and oranges by arguing that this prescriptive requirement in unnecessary because RMP facilities were already required to "conduct continuous monitoring . . . during and following a natural disaster" and to address hazards from monitoring through the PHA at 40 CFR 68.67(c)(3). 91 Fed. Reg. at 8998. Monitoring alone, while vital, cannot prevent the release of hazardous substances due to power loss—standby or backup power can minimize the consequences of such a release, however, by strengthening and speeding up on-site emergency response and community notification. EPA's justification is thus arbitrary and capricious, as it is unrelated to the reasoning behind this 2024 SCCAP rule requirement.

c. EPA must not rescind the 2024 SCCAP rule's requirements of documenting when "monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards." 91 Fed. Reg. at 8998.

i. <u>Removing this requirement would violate the Clean Air Act.</u>

EPA must preserve the requirement that RMP facilities document when they remove monitoring equipment used to detect accidental releases of hazardous substances due to natural hazards. The 2024 SCCAP rule implemented this long overdue requirement to "address[] the concern that the threat of extreme weather events has, and will continue to be, used by some owners or operators to justify disabling equipment designed to monitor and detect chemical releases of RMP-regulated substances at their facility." 89 Fed. Reg. at 17640. EPA now proposes rescinding this requirement, without considering how doing so conflicts with its duty to protect human health under the Act. Similar to declined recommendations,

see infra, requiring documentation from facilities when they remove monitoring equipment can help incentivize the facilities to make the safer decision—leaving the equipment in place when possible, and being accountable to the surrounding community, workers, and first responders for lack of data when monitoring equipment is removed. Without this documentation requirement, facilities are free to remove monitoring equipment without transparency or accountability, which increases the threat to those dependent upon the facility to do what it can do to track and communicate when accidental releases do occur.

ii. Removing this requirement would be arbitrary and capricious.

EPA's rationale for this proposed change does not withstand scrutiny. First, EPA claims "unintended consequences" that outweigh the benefits of this regulation. 91 Fed. Reg. at 8998. The agency fails to provide any support to demonstrate that such consequences exist. *See Id.* Second, EPA argues that, because this requirement lacks data demonstrating that it "benefits [] accident prevention or emergency response," it is not worthwhile. 91 Fed. Reg. at 8998. But EPA discounts those benefits and ignores the fact that reporting provides an incentive to ensure compliance, and strengthen emergency response. Still, the reporting requirement alone was not meant to prevent accidents that have already occurred, but rather to discourage RMP facilities from taking advantage of extreme weather events to justify disabling monitoring and allowing releases and related consequences to go unaddressed for a longer period of time. *See* 89 Fed. Reg. at 17640. Finally, EPA claims that the requirement might distract RMP facility personnel from recovery efforts. 91 Fed. Reg. at 8998. But the agency itself undermines this argument, immediately recognizing that "after the hazardous situation has passed, the facility staff could provide documentation on when the monitoring equipment is removed." *Id.* The regulatory text does not and ought not to require that personnel attend to documentation in the midst of a natural hazard. Again, EPA's purported rationale for rescinding these provisions is arbitrary and capricious, and contrary to the Act's requirements.

EPA should retain the provisions in 40 CFR 68.50(a)(3), 68.52(b)(9), 68.67(c)(3), and 68.69(a)(4), as these simple requirements can carry important benefits by dissuading the unnecessary dismantling of monitoring equipment and allowing for untracked releases during natural hazards.

EPA requests comment on data and compliance information. For similar reasons as discussed above, more information will generally always strengthen safety and compliance. But the record shows the regulations themselves are vital to

assure protection and meet the statutory requirements. Discretionary compliance assistance or safety alerts that EPA might someday create cannot substitute for maintaining the regulatory safeguards from power loss that EPA should not rescind or weaken now.

9 - Declined Recommendations

a. Factual Background

The 2024 SCCAP rule added requirements that Program 2 and Program 3 facilities "report justifications for declining hazard analysis and PHA recommendations from natural hazards, power loss, and siting under 40 CFR 68.170(e)(7) and 68.175(e)(8)." 91 Fed. Reg. at 8999. The 2024 SCCAP rule also required Program 3 facility owners and operators to "report recommendations declined from safety gaps between codes, standards, or practices under the PHA in 40 CFR 68.175(e)(9)." *Id.* Removing these reporting requirements will also deny public access to this information as part of the non-OCA portions of the risk management plans that the CAA and FOIA require EPA to make publicly available. *See* 42 U.S.C. § 7412(r)(7)(B)(ii); 5 U.S.C. § 552; *see also* Part II.B.2, above (discussing legal requirements and need for public access to RMP data).

These provisions are vital and EPA has a responsibility to maintain them because whether facilities report this information will determine, in part, whether facilities carefully consider the underlying recommendations. Reporting the recommendations to EPA, and thus making them public information, helps incentivize facilities to implement recommendations that increase safety. Facilities know that if they do not do so they may get questions from EPA or the public on why they did not take recommended steps to decrease threats from their facilities. In the event a facility has a future incident that could have been prevented from implementing the declined recommendations, it is likely to face additional reputational, economic, or other impacts. Thus, transparency increases the likelihood that a facility will make the decision to implement useful recommendations. In many instances, transparency will also advance facilities' own economic interests: RMP facilities benefit from preventing incidents, saving lives, preventing harm to their own workers and nearby community residents, and providing information to the public demonstrating they are taking safety seriously.

Therefore, requiring owners to report declined recommendations from hazard evaluations and safety gaps promotes effective prevention, detection, response, and minimization of releases and consequences from chemical

releases.[419] Ensuring "that communities, local planners, local first responders, and the public have appropriate chemical facility hazard related information is critical to the health and safety of responders and the local community" and can motivate owners and operators to "further improve their safety in response to community pressure and oversight," as EPA previously recognized.[420] Workers and the public need to know what prevention and other safety measures facilities implement or decline and why, in order to engage effectively in planning for incidents, community emergency response planning, public meetings on incidents, and dialogue with facilities and local government officials on ways to further strengthen safety locally. *See* 89 Fed. Reg. at 17642.

b. EPA's Proposal on Declined Recommendations Violates the Clean Air Act

Rescinding the declined recommendations requirement goes against assuring prevention of chemical releases and minimization of their consequences, core objectives and requirements applicable to this rulemaking. *See* 42 U.S.C. § 7412(r)(1), (r)(7)(A). Doing so also runs contrary to the statutory requirements to assure prevention "to the greatest extent practicable" under section 7412(r)(7).

The evidence demonstrates that public awareness of safety hazards motivates owners and operators to implement prevention and generally increase safety measures, as summarized in the section above this one. EPA's proposal runs directly counter to this evidence, showing it would not advance prevention or minimization of consequences. It undoes requirements that would have advanced these objectives. The proposal certainly would not assure prevention "to the greatest extent practicable." The proposal thus violates the Clean Air Act.

c. EPA's Proposal is Arbitrary and Capricious

EPA's proposal to reverse course on the 2024 SCCAP rule requirements is arbitrary and capricious for four different reasons: EPA 1) fails to articulate a reasonable explanation for its action; 2) provides unreasonable rationales to support the change that are not backed by evidence; 3) fails to consider an important aspect of the problem—the benefits from the 2024 SCCAP rule, including public awareness of dangers from RMP facilities; and 4) fails to provide a detailed explanation for why the agency has decided to go against its former findings on this exact issue.

[419] 42 U.S.C. § 7412(r)(7)(A), (B).
[420] SCCAP Proposed Rule, 87 Fed. Reg. 53556, 53572.

EPA does not provide a "satisfactory explanation" for reversing course on declined recommendations and provides rationales that are unsupported by the evidence. *See State Farm*, 463 U.S. at 43; *Genuine Parts Co. v. EPA*, 890 F.3d 304, 346 (D.C. Cir. 2018). To attempt to justify this reversal, EPA claims that the rollback will "reduce confusion for communities, better align the EPA and OSHA's PHA provisions, eliminate unnecessary burden for regulated entities, and alleviate unintended consequences from public pressure on RMP-regulated facilities." 91 Fed. Reg. at 8999. These rationales do not hold water.

Similar to many provisions discussed above, EPA does not need to align this proposal with OSHA and, for many reasons, cannot legally defer to OSHA when it comes to meeting its requirements under the Clean Air Act. *See supra*, Part III.B.4.c. And, while EPA claims that these requirements are adequately covered by other requirements such as the PHA or hazard review, the agency offers no evidence to support this claim. *See* 91 Fed. Reg. at 8999-9000.

EPA also raises an entirely unreasonable argument that because EPA lacks data that declined recommendations from natural hazards, power loss, siting, and RAGAGEP gap analysis are "more important than declined recommendations from other hazards evaluated," this provision should be rescinded. *Id.* at 8999. The statute requires EPA to minimize accidental releases and their consequences and to prevent chemical disasters to the "greatest extent practicable." 42 U.S.C. § 7412(r)(1), (7)(A), (B). If the agency believes that declined recommendations from other hazard evaluations are equally relevant, the agency could require RMP facilities to provide justifications for declining those recommendations as well. But the fact that more information about declined recommendations could be relevant beyond those required in the 2024 SCCAP rule does not justify EPA's declined recommendations proposal. Courts have consistently found that more is required for agencies to reverse course. *See Fox*, 556 U.S. at 515; *F.D.A. v. Wages & White Lion Invs.*, 604 U.S. 542, 570 (2025). And if selectively asking for declined recommendations "could create unnecessary confusion for regulated entities," 91 Fed. Reg. 8999, EPA can rectify any such confusion with the appropriate guidance and compliance assistance.

Third, EPA fails to seriously engage with important aspects of the problem. *State Farm*, 463 U.S. at 43. Despite the many benefits of the 2024 SCCAP rule, EPA simply states that removing the declined recommendations requirements "may result in disbenefits from decreased information availability," but immediately rebuts the concern but saying that the change "might result in security benefits." 2026 RIA at 9. And while EPA lists prevention and mitigation of future RMP accidents and "major catastrophes" as "potential foregone benefits" of the

Proposed Rule, 2026 RIA at 63 (Exh. 6-1), the agency does not address how the 2024 Rule's declined recommendations provisions help with crucial prevention. For example, EPA does not acknowledge that, without a requirement that declined recommendations be reported to EPA and potentially available to the public, owners and operators can ignore recommendations from hazard evaluations with no justification, even if the recommendations are feasible and effective. And while the agency states that "when local citizens have adequate information and knowledge about the risks associated with facility hazards, facility owners and operators may be motivated to further improve their safety performance in response to community oversight," 91 Fed. Reg. at 8999, the agency does not actually weigh these benefits in its decision-making.[421]

Fourth, EPA entirely departs from (without reckoning with) its own prior findings on the effects that public information can have on safety.[422] Contrary to EPA's unsupported claim that community oversight could lead to RMP facilities prioritizing "issues raised by community members rather than [the highest risk] hazards," 91 Fed. Reg. at 9000, history demonstrates that community oversight is vital to achieving adequate protections at RMP facilities. In fact, since 1994, EPA has recognized that "providing the public with information about hazards in a community can and should lead government officials and the public to work with industry to prevent accidents," and has "relied on the public availability of RMPs to stimulate further chemical risk reductions efforts." *See* EPA 2000 OCA information rule, 65 Fed. Reg. at 48108 (describing 1994 and 1996 rules). EPA reiterated this in 2016: "Ensuring that communities, local planners, local first responders, and the public have appropriate chemical facility hazard-related information is critical to the health and safety of the responders and the local community." EPA 2016 Proposed Rule, 81 Fed. Reg. at 13,677-682 (citing evidence going back to the 2014 Request for Information, including the CSB Bayer CropScience investigation report). Further, EPA does not provide even a single example of an RMP facility making an update to appease community concerns, much less one that was made at the expense of other, high priority changes.

Contrary to EPA's condescending questioning of communities' competency in reviewing safety information, the public, including communities near RMP facilities, are capable of reviewing and analyzing declined recommendations, even

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[421] *But see Getty v. Fed. Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986) ("Stating that a factor was considered . . . [i]s not a substitute for considering it.").

[422] *See, e.g.*, EPA findings cited in Part III.B.2, above; *see also Fox*, 556 U.S. at 515 (requiring a "more detailed justification" for an agency's change in position where the new policy "rests upon factual findings that contradict those which underlay its prior policy").

if lengthy, *see* 91 Fed. Reg. 9000, and should have access to this information in order to be able to understand hazards, make decisions about, and engage in safety planning locally. To the extent sharing this information creates a "risk of the public misunderstanding the reasons why a facility might take another path," *id.*, RMP facilities and/or EPA can remedy that with proper public outreach and information. *See* SCCAP RTC at 249 (recognizing the value of "a more informed and involved public"). RMP facilities' desire to keep safety information private and avoid disclosing when or why they decline to invest in recommended safety measures is not a valid reason to keep information from the people most likely to be harmed if something goes wrong. Information about declined recommendations can be used to save lives and prevent future harm. EPA's proposal caters to industry at the expense of community safety and health.

For these reasons, EPA must maintain the regulatory text at 40 CFR 68.170(e)(7), 68.175(e)(8), and 68.175(e)(9).

In the alternative, EPA requests comment on retaining the 2024 SCCAP rule requirements "for documenting declined recommendations and on how documentation submitted to the EPA on PHA recommendations and resolution of recommendations could be used by the EPA to identify and target issues in the RMP." 91 Fed. Reg. at 9000. As detailed above, EPA should fully retain the 2024 SCCAP rule's requirements regarding documentation of declined recommendations by RMP facilities.

#10 - Emergency Response Exercises

EPA should fully retain all existing requirements, including the requirement to regularly conduct emergency response exercises in coordination with local emergency response officials. 91 Fed. Reg. at 9000; *see* 40 C.F.R. § 68.96(b).

Emergency response field exercises are necessary to plan for and prevent death, injuries, and other harm in the event of an incident. As EPA has recognized, "[p]oor communication between facility personnel and first responders, as well as poor communication between facility personnel and communities, has been shown to contribute to the severity of chemical accidents." 81 Fed. Reg. at 13678. For example, CSB's investigation of the 2008 Bayer CropScience explosion in Institute, WV found: "Bayer management withheld information from the county emergency response agencies that were desperate for information about what happened, what chemicals were possibly involved … The Bayer incident commander, inside the plant, recommended a shelter in place; but this was never communicated to 911 operators. After a few hours of being refused critical

information, local authorities ordered a shelter in place, as a precaution."[423] EPA found that "[i]mproper communication between the facility and the first responders during the accident led to a delay in implementing a public shelter-in-place order for the local community, and may have resulted in toxic exposure to on-scene public emergency responders." 81 Fed. Reg. at 13678.

In another example, the 2009 release of hydrogen fluoride from the Citgo Refinery in Corpus Christi, TX caused community members headaches, nausea, and respiratory issues despite Citgo's claims that the toxic cloud stopped at the fenceline. Community members could see flames and smoke from the refinery but were unable to get information on the accident and potential risks to their community. 81 Fed. Reg. at 13678.

Conducting field exercises together with local emergency response officials would improve planning, communication, and trust between facilities and local emergency response officials, improving coordination and response in the case of an incident. This would better protect the public health and safety of communities and first responders. First responders are likely to participate in exercises and exercise planning, and LEPCs generally support the emergency response coordination requirement to assure they can request information they need, and that facilities engage in emergency planning, for similar reasons that EPA and the CSB have found these are likely to help reduce and prevent harm.[424]

In addition to retaining current requirements, EPA should codify a requirement for owners and operators to document an inability to coordinate with LEPCs despite a good faith effort to do so. *See* 91 Fed. Reg. at 9000. EPA should require owners and operators to include this documentation in their risk management plans; current plan requirements only require facilities to provide the date of the most recent coordination, which does not reflect failed attempts to coordinate. 40 C.F.R. § 68.180.

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[423] 81 Fed. Reg. at 13678 (quoting CSB, CSB Issues Report on 2008 Bayer CropScience Explosion (Jan. 20, 2011), https://www.csb.gov/csb-issues-report-on-2008-bayer-cropscience-explosion-finds-multiple-deficiencies-led-to-runaway-chemical-reaction-recommends-state-create-chemical-plant-oversight-regulation/.)

[424] *See, e.g.*, Gablehouse Testimony, 2018 Public Hearing Tr. at 23-27 (June 14, 2018), EPA-HQ-OEM-2015-0725-0985; Gablehouse Testimony, 2017 Delay Rule Hearing (Apr. 19, 2017), EPA-HQ-OEM-2015-0725- 0798; Comment submitted by Harold A. Schaitberger, General President, International Association of Fire Fighters (IAFF) (May 19, 2017), EPA-HQ-OEM-2015-0725-0834; *see also supra* Pt. III.B.2 (citing CSB recommendations); *supra* Pt. III.C.2 (citing EPA findings that SCCAP provisions are necessary).

EPA has long recognized the value of facilities documenting unsuccessful attempts to coordinate.[425] This documentation is not only in the best interests of facilities, but also will help EPA determine where it could assist facilities and local emergency planning agencies to improve coordinated planning and response for incidents. This information would also inform communities about whether their local agencies are fulfilling their duties to work with local facilities to plan for chemical incidents, *see* 40 C.F.R. § 68.93, and enable communities to engage in dialogue and safety planning with LEPCs, including to participate in emergency response exercises if they are not already doing so.

However, documentation of failed attempts is not an adequate or lawful substitute for facilities taking steps to ensure they provide effective emergency response, including ensuring a community notification system is in place, where an LEPC is not actively fulfilling its responsibilities. *See* commenters' response to issue #5 – Community and Emergency Responder Notification.

11 - Safety Information and RAGAGEP

EPA should not finalize its proposal to revise or rescind language regarding "recognized and generally accepted good engineering practices" (RAGAGEP) as to Process Safety Information (PSI) and Process Hazard Analysis (PHA). 91 Fed. Reg. at 9001. The proposed changes would weaken the duty of regulated facilities to safely manage chemical processes by altering the relationship between PSI, PHA, and the RMP requirements. The proposal would violate section 112(r)(7)(C) and is arbitrary and capricious.

a. Background on RAGAGEP

OSHA first introduced RAGAGEP as a term of art in its original PSM regulations.[426] The term was used to encompass codes and standards published by accredited organizations because it was impractical to enumerate these codes and

[425] *See* Response to Comments on 2018 Proposed Rule, EPA–HQ–OEM–2015–0725–2086 at 194 (Nov. 19, 2019) (owners and operators should document coordination efforts if local emergency planning and response organizations decline to participate in coordination activities); 84 Fed. Reg. at 69904 (the "owner or operator should document its attempts to consult with local responders"); 89 Fed. Reg. 17669 ("EPA believes it will be in the owner or operator's best interest" to "document unsuccessful coordination attempts.").

[426] Process Safety Management of Highly Hazardous Chemicals, 57 Fed. Reg. 6356, 6389 (Feb. 24, 1992) (codified at 29 C.F.R. § 1910.119), https://www.osha.gov/laws-regs/federalregister/1992-02-24; *see also* Tom LaTourrette, Defining Recognized and Generally Accepted Good Engineering Practices, RAND Corp., RRA1866-1 at 1 (2022), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA1800/RRA1866-1/RAND_RRA1866-1.pdf.

standards individually, and inflexible to require compliance with practices that could become outdated.[427] Although OSHA invited public comment on clarifying RAGAGEP in its 2013 proposed rulemaking, the phrase remains undefined.[428]

EPA similarly has not defined RAGAGEP but adopted the term in its 1996 RMP Rule, which was the first set of regulations under 42 U.S.C. § 7412(r)(7).[429] Under section 7412(r)(7)(A), in pursuit of this prevention directive, EPA may require "monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements" from regulated facilities. EPA is mandated to promulgate these regulations providing for compliance with the General Duty Clause, minimizing accidental releases and their consequences, and providing "to the greatest extent practicable, for the prevention and detection of accidental releases and for response to such releases," including requiring owners and operators "to prepare and implement a risk management plan." § 7412(r)(7)(B), (r)(1).

Under section 7412(r)(7)(C), Congress also required these prevention regulations to "be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM)." ANSI does not itself develop standards; it accredits standards-developing organizations such as ASME and ASTM to establish the American National Standards (ANS).[430] The ANS are actual practices incorporated by the term RAGAGEP. Thus, by promulgating RAGAGEP as part of the compliance standard in the RMP Rule, EPA gave regulatory effect to Congress's directive under section 7412(r)(7)(C). This also advances the goal of "providing for

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[427] 57 Fed. Reg. 6356; *see, e.g.*, OSHA Memo on RAGAGEP in Process Safety Management Enforcement (May 11, 2016) (providing examples of RAGAGEP under PSM Standard 29 C.F.R. 1910.119 as including: (1) widely adopted codes; consensus documents of organizations like ASME, ANSI, (3) non-consensus engineering documents that include widely accepted good practices, and (4) internal standards), https://www.osha.gov/laws-regs/standardinterpretations/2016-05-11.

[428] Process Safety Management and Prevention of Major Chemical Accidents, 78 Fed. Reg. 73,756, 73,763 (Dec. 9, 2013).

[429] Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31,668 (June 20, 1996).

[430] Frequently Asked Questions, Am. Nat'l Standards Inst., https://www.ansi.org/standards-faqs (last visited May 7, 2026) (ASME and ATSM are accredited-standards developing organizations"); Standards & Certification FAQ, Am. Soc'y of Mech. Eng'rs, https://www.asme.org/codes-standards/publications-information/faq (last visited May 7, 2026); *see* ASTM International, Am. Nat'l Standards Inst. Webstore, https://webstore.ansi.org/sdo/astm?msclkid=b4e66f6713381c3f12bc06d3508980fc&utm_source=bing&utm_medium=cpc&utm_campaign=Standards-US&utm_term=ASTM%20Standards%20list&utm_content=ASTM (ASTM International was founded as the American Society for Testing and Materials).

compliance" with the General Duty Clause, in section 112(r)(1), as section 112(r)(7)(B)(ii) requires EPA to do.

The Philadelphia Energy Solutions (PES) incident illustrates precisely what RAGAGEP requirements are designed to prevent.[431] When the pipe elbow was initially installed at the facility in 1973, ASTM had not set limits on nickel or copper content in carbon steel piping; by 1995, the standard had been revised to address the hazard, but a comprehensive evaluation of unit piping never occurred at the facility.[432] The only barrier between the surrounding community, including 117,000 people living within a mile of the refinery, and a catastrophic offsite HF release was five workers who manually activated emergency systems.[433] As another example, EPA identified various RAGAGEP gaps in an inspection report at the St. Croix Refinery that included examples like blocked storm drains, corroded containment structures, piping, and supports for tanks, deteriorated or damaged electrical conduits, cracks in fireproofing and piping supports, and a lack of proper documentation for inspection and maintenance of fire extinguishers.[434]

Because the Proposed Rule would weaken the RAGAGEP requirements across 40 C.F.R. §§ 68.48(b), 68.65(d)(2), 68.67(c)(10), and 68.175(e)(9), and departs from the floor Congress created, this proposed rollback is not in accordance with the statutory mandates under section 7412(r). 91 Fed. Reg. at 9001.

b. EPA's proposal to dismantle Process Safety Information is unlawful and arbitrary.

EPA's proposal to rescind the 2024 SCCAP rule's amendments to 40 C.F.R. §§ 68.48(b) and 68.65(d)(2) should be rejected because it weakens accident prevention, violates the agency's statutory requirements to assure prevention "to the greatest extent practicable," and to "minimize accidental releases" and their "consequences," to provide for compliance with the General Duty Clause, and is arbitrary and capricious.

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[431] CSB, Fire and Explosions at Philadelphia Energy Solutions Refinery Hydrofluoric Acid Alkylation Unit at 80 (June 21, 2019), Final Investigation Report, No. 2019-04-I-PA (published Oct. 11, 2022) (CSB PES Report), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.
[432] CSB, PES Report at 7, 32 45-46.
[433] CSB, PES Report at 6, 31.
[434] *See* EPA, Port Hamilton Refinery and Transportation LLLP 112(r) CAA General Duty Clause Inspection at 13-14 (Sept. 25-29, 2023), https://www.epa.gov/system/files/documents/2024-04/phrt-gdc-inspection-report-12.19.-23.redacted.pdf.

PSI is the documented factual foundation for a facility's process, capturing chemical hazards, equipment specifications, and safe operating limits. PHA depends entirely on a PSI's availability and completeness. Thus, this rollback is contrary to section 7412(r) and fails against the reasoned decision-making standard required when an agency reverses course from a prior regulatory determination. *See Fox*, 556 U.S. at 515.

In the 2024 SCCAP Rule, EPA made two interrelated changes to the RAGAGEP requirements applicable to Program 2 and Program 3 processes. First, EPA clarified that the obligation to keep PSI applies explicitly to Program 3, 68.65(a); second, EPA revised 40 C.F.R. §§ 68.48(b) and 68.65(d)(2) to harmonize and strengthen RAGAGEP compliance obligations across both program levels. 89 Fed. Reg. at 17676. Specifically, the 2024 SCCAP rule replaced the prior language requiring owners and operators to merely document equipment compliance with RAGAGEP, substituting a requirement that they "ensure and document" that the process is designed—and for Program 3, designed *and* maintained—in compliance with RAGAGEP.[435]

i. *OSHA PSM alignment is not a legal or rational basis for rescission of the RAGAGEP requirements.*

The 2026 Proposed Rule's primary justification for rescinding RAGAGEP language from section 68.48(b) and section 68.65(d)(2) is "re-alignment" with OSHA PSM. But Congress directed EPA to be consistent, to the maximum extent practicable, with current ANS standards—not with OSHA's 1992 regulatory text. 42 U.S.C. § 7412(r)(7)(C).

The 2024 SCCAP Rule's language clarified the meaning of its congressional directive to prevent accidental releases by imposing an affirmative, ongoing duty as to ANS standards. The shift from "document" to "ensure and document" foreclosed passive reliance on historical design records and imposes an affirmative, ongoing obligation to evaluate whether the process as currently operated conforms to current RAGAGEP. This is critical to advance the statutory goal of ensuring

[435] In 2024, EPA also removed the sentence stating that compliance with Federal or State regulations or industry-specific design codes "may be used to demonstrate compliance with this paragraph." The Proposed Rule correctly recognizes that deletion must be maintained with no change. That sentence functioned as an unlawful and arbitrary safe harbor: its presence allowed a facility to point to minimum code compliance as a complete defense to a RAGAGEP finding, even where the relevant code had been superseded or where process-specific hazards required more protective practices. Its absence is consistent with section 112(r) generally and with 112(r)(7)(C) specifically, and the purpose of RAGAGEP itself, which was adopted precisely because compliance with any single static code or regulation is insufficient to ensure that a process meets evolving standards.

protection over time, including the ongoing General Duty "to maintain a safe facility" in section 112(r)(1).

Reverting the language as EPA proposes to do here re-introduces the asymmetry between Program 2 and Program 3, rolls back Program 3 requirements to passive documentation of historical equipment records and, because PHA depends entirely on the availability and completeness of PSI, degrades the factual foundation of every subsequent stage of RMP compliance. Section 7412(r)(7)(C)'s requirement that regulations "shall to the maximum extent practicable be consistent with" ANS standards is inconsistent with a PSI provision that requires facilities to document equipment against outdated editions of those very standards. The rollback's reversion creates conflict with sections 7412(r)(1), (7)(A), (B), and (C): where Congress imposed affirmative obligations, EPA cannot revert to a framework that dismantles those obligations.

Moreover, harmonization of PSI language between Program 2 and 3 strengthens RAGAGEP compliance to advance proactive prevention and advance EPA's statutory mandate over time, to protect the safety of the public, and minimize consequences, including communities, children, and first responders in harm's way near more RMP facilities. 42 U.S.C. § 7412(r)(1), (r)(7)(A), (r)(7)(B); *see* 2024 Rule, 89 Fed. Reg. at 17664-65, 17676.

Contrary to EPA's attempt to treat this as a restriction on its authority, section 112(r)(7)(D) of the CAA requires EPA only to consult and coordinate with OSHA where responsibilities are the same. See Part III.B.4.c, above. It does not restrict EPA's authority to regulate to protect the health and safety of the public. EPA's statutory mandate is the prevention of accidental releases on behalf of the public and environment, not only for workers. Congress plainly sought to ensure both EPA and OSHA would use their full authority to advance their related but also separate authorities and statutory objectives. EPA has authority and a responsibility to go beyond the protections provided by OSHA, to ensure protection for the public. It may not abdicate that authority to OSHA – which focuses solely on occupational health and safety. EPA's attempt to do so here is unlawful and arbitrary.

Furthermore, a 32-year-old standard which OSHA has never substantively updated cannot be read as consistent with the Act, including section 7412(r)(7)(C) and the GDC. EPA recognized and responded to both points in the 2024 SCCAP Rule:

> [w]hile EPA favors consistency with OSHA's PSM standard, EPA must also ensure compliance with the CAA. CAA section 112(r)(1), 42 U.S.C. 7412(r)(1), Purpose and general duty, states that, "It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance.

SCCAP Rule, 89 Fed. Reg. at 17680. The whole point of section 112(r)(7)(C) and the requirements of section 112(r)(1) and (7)(B), is to ensure that facilities keep up with recognized and generally accepted good engineering practices over time. This provision aims to ensure that safety measures will not be frozen in time as of the design of a facility.

ii. *The proposed rescission of RAGAGEP is arbitrary and capricious.*

EPA has further failed to provide the reasoned explanation required to justify its proposal to weaken safety protections in view of the statutory directive to advance prevention and minimize chemical releases and their consequences, or to depart from a prior regulatory determination. *See State Farm*, 463 U.S. at 43; *Air Alliance Houston*, 906 F.3d at 1063-64 (D.C. Cir. 2018) ("[r]eading the plain text makes clear that Congress is seeking meaningful, prompt action by EPA to promote accident prevention.").

A PSI obligation that requires only documentation of historical equipment records cannot serve its function as the prerequisite for all downstream RMP compliance. EPA should retain the SCCAP Rule requirements in sections 68.48(b) and 68.65(d)(2), including the "ensure and document" standard and the explicit obligation to maintain processes in conformance with current RAGAGEP. Rescission of those provisions is contrary to sections 7412(r)(1), (7)(A)-(B), and (C) and EPA has failed to provide a rational explanation for this change.

c. EPA's proposal to weaken the process hazard analysis, 68.68(c)(10) and 68.175(e)(9), is unlawful and arbitrary.

EPA should also not finalize its proposed removal of 40 C.F.R. sections 68.67(c)(10) and 68.175(e)(9) because doing so would eliminate both the duty to generate RAGAGEP gap findings and the duty to disclose them.

The rollback of RAGAGEP PSI requirements does not operate in isolation. Section 7412(r)(7) requires that EPA promulgate regulations for the prevention and

detection of accidental releases and that risk management plans include a prevention program that meets specific criteria, including section 112(r)(1). Congress did not treat the internal safety process and the public-facing plan as substitutes for one another, and the Proposed Rule's simultaneous removal of sections 68.67(c)(10) and 68.175(e)(9) compounds the agency's statutory violation by degrading the RAGAGEP requirements directed by the Act.

Section 68.67(c)(10) requires that the PHA address "[a]ny gaps in safety between the codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices." This requirement ensures that RAGAGEP gap analysis is not discretionary. Without an affirmative obligation to evaluate that gap, a facility may operate indefinitely under outdated safety standards while remaining in technical compliance with the RMP program.

Once the PHA has identified RAGAGEP gaps pursuant to section 68.67(c)(10), and once the facility has considered and, if it has declined any recommendations to address those gaps, section 68.175(e)(9) requires that those declined recommendations be reported in the RMP submission. This requirement serves a distinct function in creating a reported and publicly available record of known, identified safety shortfalls that the facility had chosen not to remediate. As EPA itself acknowledged in 2024, the prospect of regulator and public community oversight motivates improved safety performance. SCCAP Rule, 89 Fed. Reg. at 17642.

EPA's simultaneous proposed removal of both sections 68.67(c)(10) and 68.175(e)(9) degrades the entire RAGAGEP gap analysis: the generation of RAGAGEP gap findings in the PHA, and the obligation to disclose declined recommendations from those findings in the RMP. The result is a regulatory structure in which a facility may operate against outdated safety standards with no duty to evaluate the gap, no duty to document the gap as a PHA finding, no duty to consider recommendations for remediation, and no duty to disclose that any of this has occurred.

EPA's proposal to allow this is irreconcilable with the Act, particularly section 7412(r)(7)(B)'s requirement that RMP plans include "a prevention program" with "steps to prevent accidental releases," and that assures a safe facility over time, that EPA "minimize" releases and consequences, and with § 7412(r)(C)'s instruction that regulations "shall to the maximum extent practicable be consistent with" ANS standards. A regulatory framework that permits facilities

to operate indefinitely against outdated versions of RAGAGEP is irreconcilable with the statute.

This action is also arbitrary and capricious. EPA's primary justification for removing section 68.175(e)(9) is that RAGAGEP gap information is already captured in the PHA and that requiring its appearance in the RMP constitutes unnecessary double documentation. This is simply unsupported and likely inaccurate, for the reasons stated above regarding the distinct accessibility and function of internally kept PHA records versus RMP submissions to EPA, that can be made available to the public. Moreover, in the context of the simultaneous removal of section 68.67(c)(10), the rationale becomes logically incoherent.

If section 68.67(c)(10) is removed, there is no longer any regulatory requirement that RAGAGEP gaps appear visible in the PHA at all. EPA cannot simultaneously argue that section 68.175(e)(9) is unnecessary because the underlying information already exists in the PHA, while proposing to eliminate the very provision that requires that information to be generated in the PHA in the first place. The "double documentation" justification for removing (e)(9) presupposes the continued existence of (c)(10). EPA's proposal to remove both provisions simultaneously destroys the factual predicate of its own stated rationale and cannot stand.

#12 - Deregistration Form Information Collection

EPA proposes to expand the deregistration form to attempt to collect additional information voluntarily from facilities that deregister from the Risk Management Program. 91 Fed. Reg. at 9004. EPA should not just add this to the form but should make clear that this information is required to be submitted.

If it were to collect this information at deregistration that could shed light on additional potential future improvements to the RMP rules that could advance the statutory objective. It could also help to evaluate the effectiveness of some of the provisions in the existing rules. Collecting additional data on process changes (including IST updates), as well as accident and safety data from deregistering facilities would provide valuable information to EPA and the public.[436]

[436] As discussed in Part III.B.1, above, the lack of such information undermines EPA's own proposal to weaken the rules here – in part because EPA tries to cite an incident decline when some of the worst incidents were not reported because facilities deregistered before submitting another RMP update. EPA contends that updating an existing process is not appropriate, but it has not even attempted to evaluate the

It is arbitrary and capricious that EPA proposes to make the information collection components of the form voluntary instead of simply part of the already required final reporting requirement for facilities covered by the RMP. EPA should not just make this voluntary, but should *require* facilities to report the additional information proposed.[437] This is needed to assure compliance with the RMP rules and ensure no facilities improperly deregister. It is also important to inform EPA's, facilities', workers', and the public's understanding of why facilities appropriately deregister, to advance the prevention objective of the Act.

EPA proposes to make the new information collection voluntary because facilities are no longer subject to the RMP rule when deregistering. But that is not a good reason for not *requiring* the reporting of all relevant information at the time of deregistration. As EPA recognizes, the information to be reported would be "based on information facilities likely already have and can easily provide." 91 Fed. Reg. at 9004.

It is also not accurate to suggest that facilities can simply disappear without providing information upon decommissioning or some other change leading to their removal as a covered RMP facility. Although facilities become subject to the rules based on their use, storage, or management of listed hazardous substances above regulated quantities, once subject to the rules they must comply with all of them, through and including the deregistration requirements. EPA's proposal to make this reporting purely voluntary conflicts with the existing rule that is already mandatory for deregistering facilities. Facilities are already required to report deregistration and to do so within a specific period of time. The final deregistration reporting step is required for all facilities that have been covered by the RMP rule. The rules specifically require: "If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six months indicating that the stationary source is no longer covered." 40 C.F.R. § 68.190(c).

Finally, the general duty clause provides additional authority for EPA to require reporting upon deregistration. Even if the facility is no longer covered by

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facilities that have deregistered in whole or in part because of completely eliminating or reducing the relevant hazard that would have required registration. As EPA admits, it does not even have complete data on some of the most harmful incidents – i.e., those that have caused the destruction or deregistration of facilities, like the Philadelphia Energy Solutions fire and explosion. If at some point EPA were to demonstrate that it has complete data on incidents, including from deregistering facilities, that could inform a more rational and reliable incident trends analysis. Its recognition with the deregistration form proposal that it has inadequate data on this issue only further illustrates why it should not finalize other portions of this proposal.

[437] Technical Background Document (providing proposed additional form options).

the RMP rules, it will still have to comply with the general duty clause in section 112(r)(1). Ensuring that EPA has the necessary information to understand why a facility is no longer covered by the RMP rules is important to EPA's ability to enforce the GDC effectively at that facility. Including this final step provides additional incentive to facilities to ensure they follow both the RMP rules and the GDC.

#13 - Retention of Hot Work Permits

EPA proposes to remove the requirement for facilities performing hot work to retain permits for 3 years. 91 Fed. Reg. 9004 (proposing the elimination of 40 C.F.R. § 68.85(c)). EPA bases this proposal on its goal of reducing regulatory burden and aligning with the OSHA PSM requirements, and contends this provision does not advance safety goals.

EPA may not use cost as a basis to weaken protection. For similar reasons as discussed in Part III.B.1, above, that is unlawful and arbitrary. Regardless, the cost of retaining hot work permits is either minimal or nonexistent. *See* 2026 RIA at 57-58 (no cost given for this requirement).

EPA also fails to show why retaining work permits "provides no added safety benefits." 91 Fed. Reg. at 9004-05. EPA put this 3-year retention requirement in place in 2024 to inform a compliance review following completion of hot work. SCCAP Rule, 89 Fed. Reg. at 17678. Serious incidents during hot work have occurred that show the value of understanding what happened, and assuring compliance with the hot work requirements in the future. 91 Fed. Reg. at 9005. EPA fails to show how having the actual hot work permits used would not inform a compliance review with hot work requirements.

The weakening of record retention will undermine the ability to assure compliance and to enforce the hot work requirements. EPA's proposal to weaken the permit retention requirements at the same time as attempting to rely on an enforcement-only approach for prevention (as discussed in Part III.B.1.h, above), only provides further evidence that EPA's goal is neither prevention of incidents nor meaningful enforcement.

EPA's OSHA-based justification is also unlawful and irrational for the same reasons discussed above. *See* Part III.B.4.c, *supra*. EPA has an independent legal responsibility and authority to regulate under section 112(r)(7) in ways that are in addition to and different from OSHA requirements. The statute's consultation requirement does not direct identical standards. Indeed, that would be contrary to

the Clean Air Act as, in contrast to OSHA's worker-focused mission which governs its PSM standards, EPA must regulate to protect public health and the environment, not only worker safety. As EPA admits, the agency consulted with OSHA throughout the process to finalize the 2024 SCCAP Rule and there is no concern from OSHA with the three-year retention requirement. 91 Fed. Reg. at 9005; SCCAP RTC at 279. The fact that the PSM does not require retention of hot work permits already, if anything, shows value in the RMP doing so. EPA does not demonstrate otherwise, or show why having a simple 3-year retention requirement causes confusion or conflict with the PSM requirements.

#14 - Retail Facility Definition

EPA's proposal to broaden the definition of "retail facility" to include alternate timeframes for calculating a facility's income from direct fuel sales, rather than limiting it to the prior calendar or fiscal year—thus widening the scope of facilities that are exempt from the RMP despite holding dangerous flammable substances—should not be finalized. Flammable substances have been shown to cause vapor cloud fires, boiling liquid expanding vapor explosions, pool fires, and jet fires when involved in accidents, and can have "significant offsite impacts." EPA, Amendments to the List of Regulated Substances and Thresholds for Accidental Release Prevention; Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities, 65 Fed. Reg. 13243, 13244-45 (Mar. 13, 2000).

Nowhere in its proposal does EPA address the consequence of broadening the definition of "retail facility"—that a greater number of facilities housing flammable substances would be exempt from regulation under the RMP Rule. EPA thus fails to acknowledge the most important aspect of this regulation under the Act—its impact on preventing accidental releases and protecting human health and the environment. 42 U.S.C. §§ 7412(r)(1), (7)(A), (B). The proposal thus both violates the Act by failing to prevent releases to the greatest extent practicable, 42 U.S.C. § 7412(r)(7)(A), and to minimize such releases and their consequences, and is arbitrary and capricious, *State Farm*, 463 U.S. at 43.

EPA's proposal is also arbitrary and capricious because, as with many of the provisions discussed previously, EPA claims negative consequences from the 2024 SCCAP rule revision without providing an iota of evidence that the agency's concerns exist in the real world. *See* 91 Fed. Reg. at 9006. This is arbitrary and

capricious rulemaking.[438] EPA raises a variety of claims that the 2024 SCCAP rule is cumbersome for RMP facilities, such as that it could "force facilities to register and deregister from the program as sales shift," "leads to unnecessary changes in status and recordkeeping requirements," and does not adequately account for new facilities which do not yet have a full year of operations to base their sales for the retail facility assessment on. 91 Fed. Reg. at 9006. EPA provides not a single citation to support any of these possible eventualities. The agency may not base regulations upon speculative harms, while ignoring real-world ones.

Further, this proposal is a change from the approach the agency took just two years ago. *See* 89 Fed. Reg. at 17679. As such, EPA is required to justify the new approach, and demonstrate why it is better than the decision made prior.[439] By failing to provide any evidence to support its rationale, EPA fails to meet this standard, again rendering the rule arbitrary and capricious.

#15 - Compliance Dates

EPA proposes to delay compliance deadlines of provisions it is proposing to modify here (i.e., STAA and third-party compliance audits), so they would not go into effect until three years from the effective date of the future final rule. 91 Fed. Reg. at 9007.[440]

Each day that the protections of the 2024 SCCAP rule are delayed is another day that fenceline communities, workers at RMP facilities, and the 177 million people in the country who live within a worst-case scenario zone,[441] and the 1 in 3 children attending schools in chemical danger zones, are unnecessarily and avoidably threatened, and in some incidents, harmed by accidental releases from RMP facilities.[442] The public has been waiting far too long to receive basic

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[438] *See Genuine Parts Co.*, 890 F.3d at 346 (rulemaking invalid when "it rests upon a factual premise that is unsupported by substantial evidence") (citation omitted); *see also Delaware Dep't of Nat. Res. & Environmental Control*, 785 F.3d at 11 (rulemaking cannot be based on nothing more than "speculation") (citation omitted).

[439] *Fox*, 556 U.S. at 514-15; *see also Lone Mountain Processing, Inc. v. Sec'y of Labor*, 709 F.3d 1161, 1164 (D.C. Cir. 2013) ("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.") (citation omitted).

[440] EPA correctly recognizes it may not extend compliance dates for other parts of the existing rules. It also proposes to remove the compliance dates for provisions it is proposing to repeal, which is unlawful and arbitrary for similar reasons as discussed in the sections on those specific provisions, above.

[441] *See* 2016 RIA at 94, EPA-HQ-OEM-2015-0725-0734.

[442] Center for Effective Government, *Kids in Danger Zones: One in Three U.S. Schoolchildren at Risk from Chemical Catastrophes*, Project on Government Oversight (last accessed Apr. 7, 2025), https://www.foreffectivegov.org/kids-in-danger-zones; https://www.foreffectivegov.org/sites/default/files/kids-in-danger-zones-report.pdf.

protections required by the Act. EPA must fully implement the 2024 SCCAP rule, maintaining its original compliance dates, without further delay.

EPA's proposal to restart the clock and delay compliance deadlines here, 91 Fed. Reg. at 9007, violates the Act. This fails to "minimize" and prevent accidental releases "to the greatest extent practicable," 42 U.S.C. § 7412(r)(7)(A), to "minimize consequences," *id.* § 7412(r)(1), and advance prevention, *id.* § 7412(r)(7)(A). It also fails to comply with the Act's specific requirement that regulations promulgated under it "shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable," and setting a maximum 3-year period for preparation for compliance. 42 U.S.C. § 112(r)(7)(A), (7)(B). These requirements already have a date – i.e., May 2027 for most requirements.

Delaying compliance dates in this way purely based on EPA's preference to reconsider also runs directly counter to the Act's limitation on extensions based on reconsideration. The Act requires that even while reconsideration is occurring, CAA rules remain in effect. 42 U.S.C. § 7607(d)(7)(B) ("reconsideration shall not postpone the effectiveness of the rule"). EPA's proposal to delay compliance, and thus the existing rule's effectiveness, through extending compliance dates by an additional three years runs contrary to the Act and binding precedent in *Air Alliance Houston*.

Thus, EPA cannot extend the compliance dates for the provisions that took effect in 2024. That is particularly true because the proposal here, if finalized, would narrow, remove, and weaken requirements but not modify them in a way that might require additional 3 years to comply. EPA has failed to show why, if it were to finalize its weakened STAA and audit proposals, facilities would need any additional time to comply. Extending those deadlines beyond 2027 thus violates the Act and is arbitrary.

The proposal is also arbitrary and capricious because EPA does not acknowledge the most important considerations of health, safety, and the environment in its proposal, provides no evidence to demonstrate that further delay of the RMP compliance deadlines is lawful or justified under the Act, and the proposal is not "reasonably explained."[443]

[443] *Prometheus Radio Project v. F.C.C.*, 652 F.3d, 431, 423 (3rd Cir. 2011).

#17 - OTHER

a. EPA's proposed rule violates public notice-and-comment and participation requirements.

The Clean Air Act includes important procedural and informational protections for public participation in rulemaking. 42 U.S.C. § 7607(d).[444] The Act requires EPA to publish a notice of proposed rulemaking accompanied by a "statement of its basis and purpose" that "shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule."

42 U.S.C. § 7607(d)(3). "All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule." 42 U.S.C. § 7607(d)(3)(C). These protections also are required to assure meaningful judicial review. *Id.* § 7607(d)(7)(A). The Act further provides that "the Administrator in promulgating any regulation under this chapter, shall ensure a reasonable period for public participation of at least 30 days." *Id.* 7607(h). Given that EPA's proposal has failed to satisfy these requirements, finalization of the rule on the current record would violate the Clean Air Act.

EPA has failed to make all data and information on which its proposal relies available in the public rulemaking docket. In particular, and relevant to the comments provided above on substantive parts of EPA's proposal:

1. EPA has not provided the underlying methodology or spreadsheets for each of the analyses in the Accident History Document, EPA-HQ-OLEM-2025-0313-0060 on which it relies for various findings, including its findings on the impact of an alleged incident decline.

[444] These rulemaking requirements are in addition to and in some instances supplement the APA requirements. These requirements apply to RMP rules and other section 112(r) requirements which are "treated" as section 112(d) standards for various purposes including the purposes of section 7607. 42 U.S.C. § 7412(r)(7)(E).

2. EPA has not provided the full RMP Public Data Tool that it is proposing to restore with changes. As discussed above, EPA abruptly removed the tool from its website in April 2025 without public notice and comment. As of the date of these comments, the tool is still absent from EPA's website. EPA has provided only minimal screenshots in the docket that do not allow the public to meaningfully compare the original RMP Public Data Tool to the modified version of the tool that EPA is proposing.

3. EPA has failed to provide any list, methodology, or evidence to support its analysis on how many "new" Program 3 covered processes its proposal on STAA would cover. 2026 RIA.

4. EPA has failed to provide the RMP NHRA Tool and data that its own Technical Background Document originally referred to, that EPA clearly considered and was relying on for the proposed rule, but that was redlined out of that document, or explain why EPA is ignoring the data it shows. EPA-HQ-OLEM-2025-0313-0071.

5. EPA has failed to provide in the docket any evidence demonstrating "risk-shifting," an issue it alleges exists but fails to demonstrate, in connection with: the STAA and other provisions. 91 Fed. Reg. 8981.

6. EPA has failed to provide any evidence of any potential national security concerns for its suggestion that there might be such concerns. 91 Fed. Reg. 8984.

7. EPA has not shown that it has provided the full docket of information which the agency has considered or is relying on. For example, the January 2025 letter industry groups submitted to EPA asking the agency to meet with industry and "correct" core provisions of the SCCAP Rule and asking for the removal of the Public RMP Data Tool, along with any follow-up communication industry groups may have given EPA that informed the proposed rule, are not provided in the docket.[445]

Without these data, information, and documents, Commenters are not able to meaningfully comment on key aspects of EPA's proposed rule.

[445] *See* Jan. 2025 Letter to EPA from Agric. Retailers Ass'n *et al.*, https://www.americanchemistry.com/content/download/18315/file/ACC-RMP-Coalition-Letter-to-Lee-Zeldin.pdf.

Further, as discussed in Part III.B, above, EPA is taking comment on some topics where it has not provided any proposed regulatory text or where it has proposed such minimal text that it is difficult if not impossible to understand what, exactly, EPA is proposing to change, and how the proposal might actually work in practice, if at all. EPA did not even provide a redline, as it usually does, to illustrate the changes it is proposing here to the existing rules. The language at the end of the notice of proposed rulemaking is difficult to understand alone, without seeing the current and proposed new regulatory text in context.

Absent this information, EPA's comment period (though extended beyond 30 days), did not satisfy the Act's requirement, in 42 U.S.C. § 7607(h), to provide "a reasonable period for public participation." The public cannot meaningfully comment on core components of the proposed rule without the underlying data, information, documents, legal interpretations, and policy considerations on which EPA is relying.

Thus, EPA has violated core public notice-and-comment, informational, and public participation requirements that are vital to the Act. EPA may not lawfully finalize the proposal without correcting these problems. It must provide the missing information and reopen the comment period for at least a minimum of an additional 30 days to satisfy the Act's rulemaking requirements.

Failing to do so would also be arbitrary and capricious. EPA has long recognized the importance of broad public participation including stakeholders from labor, communities, health and safety professionals, first responders, states, industry, and more in the RMP program. In prior years when EPA was considering whether to issue a rule proposal, it held listening sessions, took public comment to inform the proposed rule, and later held multiple public hearings on its proposed rule – including in 2014, 2016, 2021, and 2022. Here, EPA held no listening sessions and did not seek any written comment in advance of this rulemaking to inform the proposed rule. EPA held only one public hearing, even though multiple groups contested the minimal advance notice, short time period, and lack of flexibility for working people across time zones.[446] EPA's minimal attempt to seek public comment here, combined with its failure to provide transparency on information it is using in this rulemaking, fails to satisfy core principles and requirements of reasoned decision-making.

[446] *See* Comment and Request for Second Public Hearing Submitted by members of the Coalition to Prevent Chemical Disasters (Feb. 26, 2026), https://www.regulations.gov/comment/EPA-HQ-OLEM-2025-0313-0076.

b. EPA's proposal violates the requirement in CAA section 112(r)(6) to respond to the CSB's expert recommendations or justify its refusal to do so

The CSB has particular expertise and knowledge on what is needed to prevent and minimize the consequences of chemical incidents, from its longstanding work investigating and reporting on some of the most harmful chemical incidents in recent decades. Section 7412(r)(6) requires EPA to "respond … formally and in writing not later than 180 days after receipt" of any recommendations from the Chemical Safety Board regarding accidental release prevention. 42 U.S.C. § 7412(r)(6)(I). EPA's repeated failures in this proposal to acknowledge, address, and explain how its proposal responds, or disagrees with, the CSB recommendations is unlawful and arbitrary. As summarized in Part II.A and Part III.B, above, the CSB has recommended repeatedly that EPA improve its disaster prevention regulations under the Risk Management Program including on IST assessment and safer measure implementation; preventing risks from HF at refineries; natural hazard and power loss assessment and planning; stationary source siting; third-party compliance audits; employee participation; and the need for community information availability.[447] The CSB is the expert independent investigative agency whose recommendations Congress directed EPA to give particular weight, and the expert that should "drive" EPA regulations.[448]

In the 2024 SCCAP Rule, EPA responded affirmatively to implement vital CSB recommendations – in some instances restoring prior provisions that had originally, in 2016, so responded, and that had later been removed by the first Trump EPA in 2019.[449]

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[447] CSB Oct. 2022 Comments, https://www.regulations.gov/comment/EPA-HQ-OLEM-2022-0174-0166; *see also See, e.g.*, CSB Comment Letter to EPA at 6 (July 20, 2018), https://www.csb.gov/assets/1/6/csb_comments_epa_rmp_20180720.pdf; CSB Comment Letter to EPA at 4-5 (May 10, 2016), https://www.regulations.gov/comment/EPA-HQ-OEM-2015-0725-0428; CSB Comment Letter to EPA at 13-17 (Nov. 5, 2014), https://www.regulations.gov/comment/EPA-HQ-OEM-2014-0328-0689; CSB Bio-Lab Lake Charles Chemical Fire and Release (Aug. 27, 2020), 2020-05-I-LA-6, (Apr. 24, 2023), https://www.csb.gov/bio-lab-lake-charles-chemical-fire-and-release-/; PES, 2019-04-I-PA-1 (Oct. 2022), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/; Tesoro, 2020-08-I-WA-1 (May 1, 2014), https://www.csb.gov/tesoro-anacortes-refinery-fatal-explosion-and-fire-/.

[448] Sen. Rep. 101-228 at 115, 207; *id.* at 130.

[449] *See* CSB recommendations summarized in Part III.A.7, above; *see, e.g.,* 2017 CDR Amendments RTC at 246 ("Several of the amendments respond to CSB's suggested rule changes based on their review of specific incidents, which is consistent with the structure of CAA 112(r)(6)(C)(ii) and EPA's rulemaking authority in CAA 112(r)(7).").

EPA cannot now lawfully or rationally rescind regulations that responded to these recommendations. The CSB recommendations demonstrate that the 2024 STAA requirements are needed to advance prevention and minimize accidental releases and their consequences as section 112(r) requires. EPA has failed to specifically address the CSB recommendations and reports on which they were based or provide the required explanation of why it is now rejecting the recommendations and refusing to respond with regulations that implement the recommendations. For example, EPA cannot rescind STAA without addressing the CSB's recommendation 2010-08-I-WA-R1 advising EPA to "[r]evise the Chemical Accident Prevention Provisions under 40 CFR Part 68 to require the documented use of inherently safer systems analysis and the hierarchy of controls to the greatest extent feasible when facilities are establishing safeguards for identified process hazards."[450] EPA has failed to justify the STAA proposal when it conflicts with and fails to acknowledge or explain why it is contradicting the CSB's recommendations on inherently safer technology – including to: "require new and existing petroleum refineries with HF alkylation units to conduct a safer technology and alternatives analysis (STAA) and to evaluate the practicability of any inherently safer technology (IST) identified," and do so every 5 years.[451]

Similarly, EPA may not rescind the 2024 requirements for natural hazard and extreme weather assessment and planning without appropriately responding to and explaining how it can justify this in view of the CSB recommendation to: "[c]larify requirements and provide direction for RMP facilities on how to incorporate risks from natural hazards and climate change into their risk management programs."[452] The same is true for each of the other issues where the CSB has recommended improvements EPA implemented in 2024.

EPA's failure to even acknowledge that it is rescinding provisions that directly responded to CSB recommendations also renders the agency's proposed rule arbitrary and capricious. EPA must acknowledge these recommendations and explain how its newly proposed regulation will respond to them. EPA also would need to provide a "more detailed justification," *Fox*, 556 U.S. at 515, due to the change in course from the 2024 SCCAP Rule's implementation of the CSB recommendations to a reversal of its decision to respond affirmatively.

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[450] CSB, *Investigation Report: Catastrophic Rupture Of Heat Exchanger, Tesoro Anacortes Refinery*, at 114 (May 2014), https://www.csb.gov/file.aspx?DocumentId=5851.
[451] PES, 2019-04-I-PA-1 (Oct. 2022), https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.
[452] CSB Bio-Lab Lake Charles Chemical Fire and Release (Aug. 27, 2020), 2020-05-I-LA-6, (Apr. 24, 2023), https://www.csb.gov/bio-lab-lake-charles-chemical-fire-and-release-/.

c. EPA has failed to fulfill the requirement to consult with the Secretaries of Labor and Transportation

The Clean Air Act requires the EPA Administrator to consult with both the Secretary of Labor and the Secretary of Transportation when promulgating regulations to prevent the accidental releases of regulated substances. 42 U.S.C. § 7412(r)(7)(D). The Act further directs that EPA "shall utilize the expertise" of DOL and DOT in promulgating RMP rules. *Id.* § 7412(r)(7)(B)(i). Nowhere in the proposed rule does EPA demonstrate that it has fulfilled these requirements.

To evaluate and develop the record for improvements included in the 2024 Rule and the 2016 Rule, EPA applied expertise from sister agencies that is incorporated into the SCCAP Rule. EPA documented that it consulted repeatedly with DOL and OSHA over time to strengthen safety protections and, specifically, to develop the improvements that EPA is now proposing to end, weaken, or delay.[453] EPA also consulted with DOT, as well as other agencies, including the Department of Homeland Security on the rule.[454] This was shown separate and apart from the EO 12866 interagency review process both in the record and in the final regulatory improvements contained in the 2024 Rule. By contrast, EPA has failed to show here that it has met its statutory obligation to consult or apply these agencies' expertise.

Because EPA is contending that it need align the RMP rules with – and thus, weaken existing requirements here or remove requirements that are not duplicated in – the OSHA PSM, EPA's failure to consult with OSHA directly is particularly egregious. The 2024 Rule utilized OSHA's expertise. OSHA had consulted on the stronger requirements and there is no evidence showing how or why OSHA might now take a different view or how it could do so in view of the *Fox* test to contradict prior facts found. EPA's failure to consult with OSHA here, when proposing to roll back protections on which OSHA had consulted and shared expertise with EPA, provides another reason why EPA's proposal to rescind or weaken various RMP requirements based on the need for OSHA alignment is both unlawful and arbitrary.

d. EPA has failed to satisfy Tribal consultation requirements

EPA must consult with Tribes and Tribal communities when promulgating new rules with Tribal implications. EPA Policy on Consultation and Coordination

[453] *See, e.g.*, SCCAP RTC at 9, 11, 16 & App. A, EPA-HQ-OLEM-2022-0174-0583.
[454] *Id.* at 281 & App. B.

with Indian Tribes; 65 Fed. Reg. 67249, Executive Order 13175: Consultation and Coordination with Tribal Governments (Nov. 9, 2000). EPA provides no evidence that it has yet adhered to this requirement. 91 Fed. Reg. at 9008.

There are about 260 RMP facilities located on Tribal land. *Id.* Other RMP facilities also affect Tribal interests. Commenters have added a list and maps into the Appendix that show RMP facilities on or near Tribal lands.[455] The agency states that it plans to consult with Tribal officials as it develops this regulation. *Id.* The record contains no evidence of consultation. EPA must provide documentation that it has fulfilled this promise and met the requirements of Executive Order 13175 in the Final Rule.

By contrast, in promulgating the SCCAP Rule, EPA sent a notification letter to Tribal leaders of all 574 federally recognized Tribes. EPA held a Tribal consultation meeting in September 2022 and took comment from participants. It would be unlawful and arbitrary for EPA not to provide for Tribal consultation and consider Tribal input on this proposed rule.

e. The proposal is contrary to section 112(r) constraints authorizing EPA to regulate only to prevent releases and minimize their consequences.

The rollbacks and weakening provisions contained in EPA's proposed rule, and EPA's packaging of these provisions together in the proposed rule, are unlawful because they are outside of the agency's statutory authority. EPA may only regulate under Section 112(r)(7)(A) and under section 112(r)(7)(B) if doing so will advance the required two-part "objective" in section 112(r)(1): "to prevent the accidental release and to minimize the consequences of any such release of" hazardous substances. 42 U.S.C. § 7412(r)(1). Section 112(r)(7)(A) explicitly incorporates that objective by authorizing EPA to regulate under 112(r)(7)(A) only "[i]n order to prevent accidental releases of regulated substances." *Id.* § 7412(r)(7)(A). Section 112(r)(7)(B)(i) similarly incorporates the objective as a condition by requiring regulations "shall . . . provide, to the greatest extent practicable, for the prevention and detection . . . and for response" to chemical releases. Section 112(r)(7)(B)(ii) further directs that EPA's rules shall ensure that risk management plans detect and prevent, minimize, and provide a prompt emergency response to chemical releases "in order to protect human health and the

[455] *See* the following sources included in the Appendix to these comments: List of RMP Facilities on Tribal Lands; Maps of RMP Facilities and Tribal Lands: USA Main Map, Alaska Hawaii PR, East Coast, Central Coast, West Coast (based on April 2026 Non-OCA RMP Database).

environment," consistent with the objective to "prevent" and "minimize" consequences. *Id.* § 7412(r)(7)(B)(ii). Each of these statutory terms is not just an authorization but a condition of exercising EPA's regulatory authority.

EPA may not finalize any of the components of its proposal that would rescind or weaken existing rules because, as discussed throughout Part III.B.1-15 above, EPA has failed to show either individually or collectively that these rollbacks would do anything at all to advance prevention or minimization of consequences, much less satisfy the statutory tests in section 112(r). Although EPA says its proposal aims to "improve safety . . . by avoiding duplicative requirements" and removing industry burdens, there is no evidence that its proposal would improve safety in any way. 91 Fed. Reg. 8972. In fact, EPA does not even make a finding that its proposal would improve safety; it says only that it has "preliminarily concluded that revisions *could* maintain protection of human health and the environment." *Id.* (emphasis added). That is not the statutory standard, and EPA has failed to show that its proposal would do anything at all to "protect human health and the environment" as Section 112(r) requires. But EPA is only authorized to regulate if it advances the statutory objective in section 112(r)(1) and meets the conditions in section 112(r)(7)(A) and (B). Thus, EPA's proposal is outside of its statutory authority and *ultra vires*.

Even if EPA had found or shown that any component of its rollback could meet the statutory conditions for regulating, e.g., that it would "prevent" accidental releases, "minimize" such releases and their consequences, or protect human health (which it has not done, as discussed in Part III.B.1-15, above), EPA is not acting on a blank slate. EPA's proposed rule would rescind and weaken an entire set of regulatory improvements that EPA put in place and found were needed to prevent industrial chemical releases and catastrophes and to satisfy the requirements of section 112(r)(7).[456] The CAA requires EPA to show that its proposal will prevent releases, minimize consequences, and protect human health more so than existing regulations. *Air Alliance Houston*, 906 F.3d 1068 ("[T]he baseline for measuring the impact of a change or rescission of a final rule is the requirements of the rule itself, not the world as it would have been had the rule never been promulgated."). EPA cannot show its proposal is lawful or authorized because of the record the agency itself has created, including in the SCCAP Rule. It certainly cannot do so by attempting to change course without the requisite fact-finding or explanation required by law, as discussed throughout Part III.B, *supra*.

[456] *See, e.g.*, 2024 SCCAP Rule, 89 Fed. Reg. 17633; SCCAP RIA at 12-13, 81.

EPA's proposal does not hide the fact that it is not actually intended to advance the statutory objectives, much less meet them. *See*, *e.g.*, 91 Fed. Reg. at 8977 ("EPA's main objectives through this proposed rulemaking are to avoid duplicative requirements, realign RMP requirements with OSHA PSM requirements, and eliminate unnecessary burdens placed on facilities…").[457] EPA's proposal is a direct response to an industry request made in January 2025 and to President Trump's directives in executive orders to advance deregulation no matter the harm to health and safety. *See* Part II.D, III.B.1.i. No provision authorizes the agency to regulate in order to lessen regulatory burdens or costs for industry, nor to eliminate requirements to ease the burden on RMP facilities at the expense of public safety. EPA's ability to *undo* preventative, detection, minimization, and emergency response measures is simply unauthorized by the statutory text.

In order to regulate, EPA needs to show each part of its proposed rule would advance prevention and release and consequence minimization, and it has not done so. It could not do so because the whole point of its proposed rescissions is plainly to ensure industry will not have to take certain steps to evaluate or plan for ways to prevent chemical releases, not have to let employees stop production or take time for training, not have to consider independent assessments or find ways to learn from past problems after disaster strikes, not have to plan for hurricanes, flooding, wildfire, or earthquake, and not even have to report on whether safety measures have been implemented. Because EPA's proposal would end and undo vital protections the agency found and the evidence shows are needed, as discussed in Parts II.B, III.A., and III.B, above, its proposal would neither improve or even maintain protection. It would deny and take away protections from communities that they have been relying on to finally come into full force as facilities comply next year. It would remove provisions the agency itself found needed to prevent a Bhopal-like chemical catastrophe on U.S. soil.

EPA's proposal is thus the opposite of what Congress intended in enacting section 112(r) as part of the 1990 Clean Air Act Amendments. As sections 112(r)(1), (7)(A), and (7)(B) restrict EPA's authority so the agency may only regulate to prevent and minimize incidents and harm, EPA's proposed set of safety rollbacks and recissions, is an unlawful exercise of authority. There is a robust record showing the need for the 2024 improvements that EPA is proposing to undo

[457] *See also* EPA Website, Common Sense Approach to Chemical Accident Prevention Proposed Rule https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule (last updated Apr. 2, 2026) ("These proposed changes would: reduce regulatory burden by ensuring regulatory consistency, avoid duplicative requirements, and eliminate unnecessary burdens placed on facilities."); EPA Fact Sheet (Mar. 25, 2026), https://www.epa.gov/rmp/fact-sheet-common-sense-approach-chemical-accident-prevention-risk-management-program-proposed.

or weaken here. EPA may not lawfully finalize its proposal to backslide and rescind and weaken the SCCAP rule in all of the ways discussed above because it has no authority to regulate simply to reduce regulatory cost to industry.

f. EPA should fully implement the 2024 SCCAP Rule and commit in the future to evaluate and take public comment on ways to further strengthen the prevention measures.

In this proposal, EPA demonstrates a shocking disregard for health and safety, for the core objectives of the law, for the factual findings and rules the agency itself previously issued, and for expert safety recommendations. Instead of eliminating, weakening, or delaying any safety measures in the existing Risk Management Program, EPA should be fully implementing the SCCAP Rule. EPA's proposal here does not even attempt to consider the full consequences of its action for the public and the most-affected communities. By making its decision based on purported deregulatory goals and short-sighted cost savings for industry, this proposed rule, if implemented, will increase threats and harm to the public from the loss of essential safety measures put in place in 2024 – including harm both to industry itself and health threats to the most vulnerable children and families in harm's way.

It is particularly unfortunate that EPA came to this rulemaking with a closed mind, dead set on deregulation. Contrary to many of its prior RMP rulemaking efforts – including before issuing the 2016 and 2024 rules – EPA did not even hold public listening sessions or seek public input on whether to reconsider the RMP rules in the first place, much less what changes (if any) to propose. EPA did not allow the existing rules' compliance dates to kick in to allow them time to work to prevent and minimize RMP incidents. Instead, it issued a "deregulation" proposal to try to satisfy industry's preferences and follow the President's deregulatory directives, no matter the harm to the public, including workers, families, children, and first responders.

In this rulemaking so far, EPA has shown no willingness even to *consider* ways to strengthen the existing regulatory framework that would require *additional* regulations for incident prevention, detection, emergency response, or employee participation. If, at this time, the agency wanted at least to show concern for workers, emergency responders and communities in harm's way, EPA could have chosen simply to implement the 2024 Rule and perform a review and determine after a full cycle of RMP implementation if any changes were needed. Or, it could have proposed or taken comment on potential ways to consider further advancing prevention of chemical releases and catastrophes under section 112(r), along with

considering industry's deregulatory preferences. Instead, it has jumped, just as industry requested, to undo nearly all of the safety measures that the agency itself previously found are necessary and valuable to advance the goals of the Act based on a robust factual and scientific record, without demonstrating any reasoned basis for backsliding on safety.

Commenters and other nonprofit groups – including workers and labor organizations, environmental, scientist, justice, and health organizations, along with expert advisors like the CSB – have previously urged EPA to further expand the scope and impact of the program's protections, across additional facilities, additional chemicals, and communities, and to strengthen core regulatory provisions that EPA does not even address here.[458] Commenters will continue to urge EPA to do so at a future time when the agency proposes or takes comment on ways to further strengthen and expand the RMP rules to satisfy the Act's requirements and work to achieve the CSB's vision of a "nation free from chemical disasters."

APPENDIX LIST ATTACHED

[458] *See, e.g.*, t.e.j.a.s., Earthjustice, et al. 2022 comments at 53, EPA-HQ-OLEM-2022-0174-0460.