

October 22, 2026

Lee Zeldin
Administrator
Environmental Protection Agency
1101A EPA Headquarters
1200 Pennsylvania Avenue, NW
Washington D.C. 20460
zeldin.lee@epa.gov

By certified mail and email

Re: Notice of Intent to File Clean Air Act Citizen Suit Regarding EPA's Risk Management Program List of Regulated Substances and Thresholds

Dear Administrator Zeldin,

This is a notice of “a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” under section 304 of the Clean Air Act (“the Act”). 42 U.S.C. § 7604(a)(2). This notice is provided to you in your official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”), pursuant to section 304, 42 U.S.C. § 7604(a)(2), and 40 C.F.R. Part 54, as a prerequisite to bringing a civil action. EPA has failed and continues to fail to conduct a long overdue rulemaking under section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), to review and either revise the List of Regulated Substances and Thresholds for Release Prevention (the “List”) under the Risk Management Program (“RMP”) or issue a determination that no revisions are needed to satisfy section 112(r).¹

As illustrated by the recent chemical leak in Institute, West Virginia, that caused two deaths and injured dozens more, including first responders,² and the chemical tank leak in Garden Grove, California, which forced nearly 50,000 people to evacuate for several days,³ EPA's ongoing failure to conduct the required rulemaking endangers the lives and wellbeing of millions of Americans, including children, and deprives them of vital information.

¹ The current List is available at 40 C.F.R. § 68.130, Tables 1-4, and is reproduced on EPA's website at the following link: <https://www.epa.gov/rmp/list-regulated-substances-under-risk-management-program> (last visited Oct. 22, 2026).

² See, e.g., Tony, M., *EPA targeting chemical safety protections, investigators post-fatal Nitro blast*, Charleston Gazette-Mail (Apr. 25, 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.

³ See, e.g., Hernandez, S. *et al.*, *Garden Grove chemical leak: Evacuations, closures, shelters*, Los Angeles Times (May 22, 2026), <https://www.latimes.com/california/story/2026-05-22/orange-county-chemical-leak-evacuations-closures-shelters>.

Accordingly, the following organizations hereby provide notice of their intent to sue to compel EPA to review and either revise the List or determine no revisions are needed under section 112(r):

PEOPLE CONCERNED ABOUT CHEMICAL SAFETY
P.O. Box 8163
South Charleston, WV 25303

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES
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Houston, TX 77023

AIR ALLIANCE HOUSTON
2520 Caroline St #100
Houston, TX 77004

CALIFORNIA COMMUNITIES AGAINST TOXICS
P.O. Box 2050
Rosamond, CA 93560

KENTUCKY RESOURCES COUNCIL
P.O. Box 1070
Frankfort, KY 40602

SIERRA CLUB
2101 Webster St., Suite 1300
Oakland, CA 94612

I. EPA is in ongoing violation of the Clean Air Act's requirement that EPA review and either revise the List or issue a determination that no revision is needed under section 112(r) at least every five years.

The Clean Air Act tasks EPA with establishing a Risk Management Program for the "prevention of accidental releases" of chemical substances that are extremely hazardous to human health and safety. 42 U.S.C. § 7412(r)(1). Paragraph (1) of section 112(r) identifies the "objective" of EPA's required RMP rules, "to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3)." *Id.*

Paragraph (3) of section 112(r) directs EPA to list chemical substances for regulation under the RMP, providing as follows:

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, 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. ... The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or

serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. ... The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

42 U.S.C. § 7412(r)(3).

In listing substances, paragraph (4) of the Act provides that EPA “shall consider—(i) the severity of any acute adverse health effects associated with accidental releases of the substance; (ii) the likelihood of accidental releases of the substance; and (iii) the potential magnitude of human exposure to accidental releases of the substance.” 42 U.S.C. § 7412(r)(4)(A).

Paragraph (5) of section 112(r) directs EPA to set a threshold quantity for each listed substance, providing as follows:

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. ...

42 U.S.C. § 7412(r)(5).

Additionally, paragraph (3) of section 112(r) requires EPA to regularly review and revise the List or determine no revisions are needed, providing as follows:

The list may be revised from time to time by the Administrator on the Administrator’s own motion or by petition and shall be reviewed at least every 5 years. ...

42 U.S.C. § 7412(r)(3).

EPA promulgated the initial List of Regulated Substances and Thresholds for Release Prevention by notice and comment rulemaking in 1994.⁴ More than 32 years have passed since the List was first promulgated, but EPA has not performed the required rulemaking to review and either revise the List or issue a determination that no revisions are needed under the statute.

⁴ EPA, List of Regulated Substances and Thresholds for Accidental Release Prevention, 59 Fed. Reg. 4478 (Jan. 31, 1994) (listing 77 toxic chemicals, 63 flammable substances, and a category of mass hazard explosives). EPA has revised the List via notice and comment rulemaking twice in response to litigation and once in response to new legislation. *See* 62 Fed. Reg. 45130 (Aug. 25, 1997) (removing certain hydrochloric acid solutions); 63 Fed. Reg. 640 (Jan. 6, 1998) (removing explosives); 65 Fed. Reg. 13243 (Mar. 13, 2000) (excluding flammable substances used or held as fuel at retail facilities).

EPA has thus failed to perform nondiscretionary acts and duties within the meaning of Clean Air Act section 304(a)(2) regarding the List. 42 U.S.C. § 7604(a)(2). Specifically, EPA has failed to meet its statutory obligation by the initial statutory deadline or within the last 5 years. *See* 42 U.S.C. § 7412(r)(3). EPA’s violation of the Act is ongoing and continues each day that EPA fails to complete the required regulatory action. EPA’s ongoing violation harms workers, first responders, neighboring community members and children, as well as other members of the public, by allowing fires, explosions, and other hazardous releases to continue and by depriving them of vital information. EPA must therefore meet the Clean Air Act’s directive by undertaking and completing a rulemaking to review and either revise the List or issue a determination that no revisions are needed under section 112(r).

II. EPA must revise the List to protect the public from fires, explosions, and other releases of unlisted or under-listed substances.

The recent incidents in Institute, West Virginia, and Garden Grove, California, tragically demonstrate the critical need for EPA to review and revise the List. Yet, fires, explosions, and other releases of unlisted or under-listed substances—i.e., substances that are listed at an inappropriately high threshold—are a longstanding problem.

Tasked by Congress with investigating major chemical incidents, the Chemical Safety and Hazard Investigation Board (“CSB”) in 2002 published a report identifying more than 80 serious incidents between January 1980 and June 2001 involving unlisted reactive substances.⁵ The CSB concluded that the Risk Management Program regulations had “significant gaps in coverage of reactive hazards,”⁶ and issued formal Recommendation 2001-01-H-R3 for EPA to:

Revise the [RMP] Requirements to explicitly cover catastrophic reactive hazards that have the potential to seriously impact the public, including those resulting from self-reactive chemicals and combinations of chemicals and process-specific conditions.⁷

EPA did not, however, revise the List, and fires, explosions, and other releases involving unlisted substances or under-listed substances continued. In 2013, 30 tons of ammonium nitrate—a reactive substance—caught fire and exploded at a facility in West, Texas, killing 15 people, including 12 firefighters, and injuring another 260 people.⁸ The CSB investigated, and issued formal Recommendation 2013-02-I-TX3 for EPA to:

⁵ *See* CSB, Improving Reactive Hazard Management, Report No. 2001-01-H at 5 (Oct. 2002), available at <https://www.csb.gov/improving-reactive-hazard-management/> [hereinafter, “2002 CSB Report”]; *see also* EPA, Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention (April 19, 2022), <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0066>.

⁶ 2002 CSB Report at 61.

⁷ *Id.* at 91 (internal citation omitted).

⁸ CSB, Investigation Report: West Fertilizer Company Fire and Explosion, Report No. 2013-02-I-TX at 13-14 (Jan. 2016), available at <https://www.csb.gov/west-fertilizer-explosion-and-fire-/>.

Revise the Risk Management Program rule to include fertilizer grade ammonium nitrate (FGAN) at an appropriate threshold quantity on the List of Regulated Substances.⁹

EPA again did not revise the List, and fires, explosions, and other releases involving unlisted substances or under-listed substances continued. For example, in 2016, a nitrous oxide trailer truck exploded at an Airgas facility in Cantonment, Florida, killing one worker.¹⁰ In 2017, organic peroxides decomposed and caught fire at an Arkema facility in Crosby, Texas.¹¹ Twenty-one people sought medical attention, and more than 200 neighboring residents could not return home for a week.¹² Also in 2017, a mill in Deridder, Louisiana, using methyl mercaptan and hydrogen sulfide in amounts below the threshold quantity exploded, killing three workers and injuring seven others.¹³

Then, in 2019, a massive tank fire at the Intercontinental Terminal Company forced the entire city of Deer Park, Texas, to shelter-in-place, and closed local schools and business.¹⁴ The CSB investigated, and issued formal Recommendation 2019-01-I-TX-R8 for EPA to:

... expand coverage of the RMP rule to include all flammable liquids, including mixtures, with a flammability rating of NFPA-3 or higher.¹⁵

Still without action from EPA, fires, explosions, and other releases involving unlisted chemicals or under-listed chemicals continue.¹⁶ In 2021, explosive hydroxyethyl acrylate leaked from a Dow Chemical facility in La Porte, Texas, resulting in an evacuation order.¹⁷ In 2022, nearly 600 tons of ammonium nitrate caught fire at the Weaver Fertilizer plant in Winston-

⁹ *Id.* at 243.

¹⁰ CSB, Investigation Report: Nitrous Oxide Explosion, Report No. 2016-04-I-FL at 9-10, 92 (Feb. 2017), *available at* <https://www.csb.gov/airgas-facility-fatal-explosion/>.

¹¹ CSB, Investigation Report: Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby Following Hurricane Harvey Flooding, Report No. 2017-08-I-TX at 13 (May 2018), *available at* <https://www.csb.gov/arkema-inc-chemical-plant-fire/>.

¹² *Id.* at 8.

¹³ CSB, Investigation Report: Non-Condensable Gas System Explosion at PCA DeRidder Paper Mill, Report No. 2017-03-I-LA at 8, 72 (Apr. 2018), *available at* <https://www.csb.gov/packaging-corporation-of-america-hot-work-explosion/>.

¹⁴ CSB, Investigation Report: Storage Tank Fire at Intercontinental Terminals Company, LLC (ITC) Terminal, Report No. 2019-01-I-TX at 6 (July 6, 2023), *available at* <https://www.csb.gov/intercontinental-terminals-company-itc-tank-fire/>.

¹⁵ *Id.* at 10.

¹⁶ *See, e.g.*, Coalition to Prevent Chemical Disasters, Chemical Incident Tracker, *available at* <https://preventchemicaldisasters.org/chemical-incident-tracker/tracker> (filtering by “incident at facility not covered by RMP”).

¹⁷ Ponder, E., *Evacuation Order in La Porte Lifted Following Chemical Leak at Dow Facility*, Click2Houston (July 21, 2021), <https://www.click2houston.com/news/local/2021/07/21/shelter-in-place-issued-for-la-porte-following-process-upset-at-dow-chemical-facility-office-of-emergency-management-says/>.

Salem, North Carolina.¹⁸ The fire burned for four days and approximately 6,500 people were evacuated from the surrounding area.¹⁹ In September 2024, a warehouse fire and toxic gas release in Conyers, Georgia led to the evacuation of 17,000 people and shelter-in-place of 90,000 more people.²⁰ And in November 2024, a manufacturing facility in Louisville, Kentucky exploded, killing two workers, seriously injuring three more, and causing tens of millions of dollars in damage to the facility and surrounding community.²¹

Just this year, the CSB has renewed three times its formal Recommendation 2001-01-H-R3 to EPA to revise the release prevention requirements to explicitly cover catastrophic reactive hazards, including in final investigation reports on the September 2024 warehouse fire and toxic gas release in Conyers, Georgia, and the November 2024 manufacturing facility explosion in Louisville, Kentucky, described above,²² and in comments to EPA opposing a February 2026 proposed rule that would rescind or weaken the Risk Management Program regulations.²³

EPA has repeatedly recognized its obligation and the need to review and revise the List—but has not done so. When promulgating the initial list rulemaking in 1994, EPA explained that section 112(r) requires it “to review, and if necessary revise,” the List every five years.²⁴ In 2014, EPA issued a Request for Information (RFI) to inform a proposal to amend the RMP regulations and also took comment on expanding the List.²⁵ In 2017, EPA took final action on the RMP regulations but not on the List: “EPA will consider these comments when determining whether to propose revisions to list of substances.”²⁶ Again in 2022 and 2024, in amending the RMP regulations, EPA “acknowledge[d] the need for reviewing the list” and the “periodic review” obligation under section 112(r)(3).²⁷ EPA summarized significant evidence demonstrating serious gaps in coverage of the RMP regulations due to unlisted or under-listed

¹⁸ EPA, Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention at 17 (April 19, 2022), <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0066>.

¹⁹ *Id.*

²⁰ CSB, Investigation Report: Chemical Decomposition, Fires, and Toxic Gas Release at KIK Consumer Products / Bio-Lab Conyers Facility, Report No. 2024-04-I-GA at 7 (July 2026), https://www.csb.gov/assets/1/6/bio-lab_report_public_record_copy_.pdf [hereinafter, “CSB 2026 Bio-Lab Report”].

²¹ CSB, Investigation Report: Fatal Runaway Reaction and Explosion at Givaudan Sense Colour / D.D. Williamson, Report No. 2024-06-I-KY at 8-9 (May 2026), <https://www.csb.gov/us-chemical-safety-board-releases-final-report-on-fatal-2024-explosion-at-givaudan-facility-in-louisville-kentucky/>.

²² *Id.* at 11; CSB 2026 Bio-Lab Report at 126.

²³ CSB, Comments to EPA at 11-12 (May 5, 2026), <https://www.regulations.gov/comment/EPA-HQ-OLEM-2025-0313-0212> (citing and reattaching comments from earlier years that recommended expanding the RMP List).

²⁴ See 59 Fed. Reg. at 4480.

²⁵ See 79 Fed. Reg. 44604, 44605, 44607 (July 31, 2014).

²⁶ 82 Fed. Reg. 4594, 4601 (Jan. 13, 2017).

²⁷ 87 Fed. Reg. 53556, 53607 (Aug. 31, 2022); 89 Fed. Reg. 17622, 17633-34 (Mar. 11, 2024).

substances, reiterated that it would “consider [] comments when determining whether to take further action on this issue,” and identified ammonium nitrate as a “priority” substance for EPA’s “upcoming review.”²⁸ As of the date of this letter, however, EPA’s has not followed through on the promised “upcoming” rulemaking.

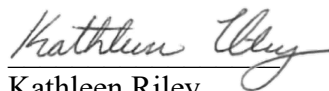
EPA must review and revise the RMP List to meet the statutory requirement of section 112(r)(3) and to fulfill its statutory objective to prevent chemical releases and minimize their consequences in order to protect human health and the environment. 42 U.S.C. § 7412(r)(1), (3)-(5). Present and past incidents involving unlisted and under-listed substances, such as ammonium nitrate and other reactive substances as well as flammables which the CSB has specifically recommended listing, and in the case of ammonium nitrate, EPA has specifically identified as a “priority” for its “upcoming review,”²⁹ demonstrate that EPA must review and expand the list to ensure that more facilities will be covered by the RMP regulatory requirements. 42 U.S.C. § 7412(r)(1), (3)-(5), (7)(A)-(B).

* * *

60-Day Notice. Under section 304 of the Clean Air Act, 42 U.S.C. § 7604, the above-listed organizations may in 60 days from the date of this letter—i.e., on or after December 21, 2026—commence a citizen suit to compel you to as expeditiously as possible perform the required rulemaking to review and revise the List or issue a determination that no revisions are required by section 112(r). *See* 42 U.S.C. § 7604(b)(2); 40 C.F.R. § 54.2(d).

Contact Information. We are acting as attorneys for the above-listed organizations in this matter. Please contact us at your earliest convenience regarding this matter and address any communications to the addresses and telephone number below.

Sincerely,



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Lillian Zhou
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²⁸ 89 Fed. Reg. at 17634; EPA, Response to Comments at 363, 367 (Dec. 14, 2023), <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0583>.

²⁹ *See supra* n.28.