MEMORANDUM May 3, 2024

TO: Members, Subcommittee on Environment, Manufacturing, and Critical Materials

FROM: Committee Majority Staff

RE: Hearing titled, "EPA's RMP Rule: Failures to Protect the American People and American Manufacturing"

I. INTRODUCTION

The Subcommittee on Environment, Manufacturing, and Critical Materials will hold a hearing on May 7, 2024, at 10:00 a.m. (ET) in 2123 Rayburn House Office Building. The title of the hearing is "EPA's RMP Rule: Failures to Protect the American People and American Manufacturing." Witnesses appear by invitation only.

II. WITNESSES

- **The Honorable Gentner Drummond,** Attorney General, State of Oklahoma;
- **Jatin Shah,** Senior Principal Consultant, BakerRisk;
- **Richard Erstad,** Vice President and General Counsel, Hawkins, Inc. o*n behalf of the Alliance of Chemical Distributors;* and,
- **James "Jim" Savage,** Legislative Representative, United Steelworkers International Union.

III. SUMMARY OF STATUTORY AUTHORITY FOR EPA'S RISK MANAGEMENT PROGRAM (RMP)

In the Clean Air Act (CAA) Amendments of 1990,[1] Congress consciously separated responsibilities at a plant using certain chemicals for activities before an accident and after an accident occurred, as well as those activities inside a plant fence line and outside of it. Section 304 of the CAA Amendments of 1990 directed Occupational Safety and Health Administration (OSHA) to take the lead on protecting workers within a facility's fence line, thinking OSHA was best equipped to handle these issues. By contrast, Congress, in section 301 of the CAA Amendments of 1990, gave the Environmental Protection Agency (EPA) authority to protect the environment and human health beyond the fence-line.

Section 301 of the CAA Amendment of 1990, which created CAA section 112(r), was intended to prevent the "unanticipated emission of a regulated substance or other extremely

[1] Public Law 101-549

hazardous substance into the ambient air from a stationary source"[2] and to minimize the consequences of those releases.[3] Paragraph (7) of CAA section 112(r) grants the EPA the authority to issue accidental release prevention, detection, and correction requirements and guidance that has manufacturers prevent and manage those accidental risks through manufacturers' risk management program (RMP) plans.

IV. BASIC BACKGROUND ON EPA'S RMP RULES:

Historically, the RMP rule was built upon existing industry codes and standards. It applies to facilities, who for the purpose of operating their business, hold more than a certain amount (i.e. threshold quantity) of a substance, listed by EPA under CAA section 112(r)(3), that if accidentally released[4] is known or reasonably expected to cause death, injury, or serious adverse effects to human health or the environment.[5][6] Facilities where these kinds of chemicals are above the threshold quantities must develop an RMP plan and submit that plan to the EPA. These RMP plans are required to be revised and resubmitted to the EPA every five years.[7]

The EPA requires each facility's RMP plan to address three (3) areas:

- A hazard assessment that details the potential effects of an accidental release, an accident history of the last five years, and an evaluation of worst-case and alternative accidental releases;
- A prevention program that includes safety precautions and maintenance, monitoring, and employee training measures; and
- An emergency response program that spells out emergency health care, employee training measures and procedures for informing the public and response agencies (e.g., the fire department) should an accident occur.[8]

In addition, RMP rule-regulated substances (i.e. those substances listed by EPA under CAA section 112(r)(3) are also subject to the requirements of CAA section 112(r)(1), the general duty clause. Similar to authority in the Occupational Safety and Health Act, under the General Duty Clause, owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty to (1) identify hazards that may result from accidental releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur.

---

[2] The definition of an 'accidental release' under CAA section 112(r)(2).
[3] The stated objective and purpose of CAA section112(r)'s programs and regulations, as articulated in CAA section 112(r)(1), is to: "prevent the accidental release and to minimize the consequences of any such release of any substance" that is listed by EPA under CAA section 112(r)(3) or any other "extremely hazardous substance."
[4] Under CAA section 112(r)(2)(A), the term ''accidental release'' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
[5] CAA section 112(r)(3)
[6] https://www.epa.gov/rmp/risk-management-program-rmp-rule-overview
[7] Id.
[8] Id.

Finally, where primary enforcement of the CAA Section 112(r) program has been delegated to a state, that state may have additional requirements for the federally listed chemicals, and/or additional listed chemicals.[9]

V. HISTORY OF PROMULGATED RMP RULES

The EPA originally issued the RMP regulations in two stages: the list of hazardous substances and quantities in 1994 and the risk management requirements in 1996.[10] Subsequently, and until 2017, the EPA modified the original RMP rules five times (twice in 1999, twice in 2000, and once in 2004).[11][12]

On January 13, 2017, the EPA published amendments to the RMP rule (82 FR 4594). The 2017 amendments rule was prompted by E.O. 13650, "Improving Chemical Facility Safety and Security,"[13] which directed the EPA (and several other Federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 amendments rule contained various new provisions applicable to RMP-regulated facilities. The 2017 amendments rule addressed prevention program elements for natural hazards, incident investigation root cause analysis, and third-party compliance audits; emergency response coordination with local responders (including emergency response exercises); and availability of information to the public.[14]

The EPA received three petitions for reconsideration of the 2017 amendments rule under CAA section 307(d)(7)(B).[15] In December 2019, the EPA finalized revisions to the RMP regulations to reconsider the rule changes made in January 2017 ("2019 reconsideration rule").[16] The 2019 reconsideration rule rescinded certain information disclosure provisions of the 2017 amendments rule, removed safer technologies and alternative analysis (STAA) requirements added by the 2017 amendments rule, and modified some other provisions of the 2017

---

[9] Id.

[10] https://www.federalregister.gov/documents/2024/03/11/2024-04458/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act-safer

[11] https://www.federalregister.gov/documents/2017/01/13/2016-31426/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act

[12] EPA revised the facility identification data and contact information reported in the RMP (64 FR 964, January 6, 1999). Next, EPA revised assumptions for the worst case scenario analysis for flammable substances and clarified what the Agency means by chemical storage not incidental to transportation (64 FR 28696, May 26, 1999). EPA excluded regulated flammable substances when used as a fuel or held for sale as a fuel at a retail facility (65 FR 13243, March 13, 2000). Later, EPA restricted access to offsite consequence analysis (OCA) data for the public and government officials to minimize the security risks associated with posting the information on the Internet (65 FR 48108, August 4, 2000). EPA also revised the RMP executive summary to remove a requirement to describe the OCA; revised reporting deadlines for RMP reportable accidents and emergency contact changes; and made other minor revisions to RMP facility contact information (69 FR 18819, April 8, 2004).

[13] https://obamawhitehouse.archives.gov/ the-press-office/ 2013/ 08/ 01/ executive-order-improving-chemical-facility-safety-and-security.

[14] https://www.federalregister.gov/documents/2017/01/13/2016-31426/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act

[15] https://www.epa.gov/petitions/petitions-office-land-and-emergency-management

[16] "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act," 84 FR 69834, December 19, 2019

amendments rule.[17] The rule changes made by the 2019 are the current RMP regulations until May 10, 2024.

There are petitions for judicial review of both the 2017 amendments rule and the 2019 reconsideration rule. The 2019 reconsideration rule challenges are being held in abeyance. EPA has requested that the Court allow this to occur until the resolution of any legal challenges to 2024 RMP rule amendments or 30 days after the deadline to file such challenges if no challenges are filed. The case against the 2017 amendments rule is in abeyance pending resolution of the 2019 reconsideration rule case.

As a result of the EPA review, on March 11, 2024, the EPA promulgated final regulations amending its RMP regulations. The revisions,[18] which are scheduled to become effective on May 10, 2024, include several changes to the accident prevention program requirements for natural hazards, power loss, and STAA, as well as enhancements to the emergency response requirements, expansion of public availability of chemical hazard information, third-party audit and recordkeeping requirements, and mandatory employee rights and participation.[19]

VI. ISSUES FOR CONSIDERATION:

The following issues may be examined at the hearing:

- What is risk in the context of an industrial facility?
- What kinds of risks are presented by RMP-regulated facilities, and does the final rule reduce, increase, or change their risk profiles?
- Are there issues complying with the new RMP rule, and what are the impacts that compliance will bring?
- By law, RMP regulations are supposed to be "reasonable." Do stakeholders consider these requirements reasonable?

VII. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Martin, Jerry Couri, or Drew Lingle of the Committee staff at (202) 225-3641.

---

[17] https://www.federalregister.gov/documents/2019/12/19/2019-25974/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act

[18] https://www.epa.gov/rmp/fact-sheet-regulated-facilities-safer-communities-chemical-accident-prevention-risk-management

[19] https://www.federalregister.gov/documents/2024/03/11/2024-04458/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act-safer#footnote-28-p17630