



4201 Wilson Blvd., Suite 0515
Arlington, VA 22203
(703) 527-6223

Statement on behalf of
THE ALLIANCE FOR CHEMICAL DISTRIBUTION

BEFORE THE
U. S. House of Representatives Subcommittee on Environment, Manufacturing, and Critical
Materials

ON THE HEARING
EPA's RMP Rule: Failures to Protect the American People and American Manufacturing.

May 07, 2024

Introduction

I am Richard Erstad, Vice President, General Counsel, and Secretary for Hawkins, Inc. Hawkins is a formulator, manufacturer, blender, distributor, and sales agent for thousands of industrial chemicals sold throughout the United States. Hawkins operates in the districts of several members of this subcommittee and serves water utility customers that provide clean water to many of your constituents. Hawkins is also a member of the Alliance for Chemical Distribution (ACD), and I am providing this testimony on behalf of the Alliance.

ACD respectfully submits these comments in response to the U. S. House of Representatives Committee on Energy and Commerce's Subcommittee on Environment, Manufacturing, and Critical Materials' public hearing "EPA's RMP Rule: Failures to Protect the American People and American Manufacturing." ACD appreciates this subcommittee's leadership in examining the regulatory burdens that the U.S. Environmental Protection Agency (EPA) is imposing on businesses through its recent substantial revisions to its Risk Management Program (RMP) regulations.

ACD represents over 440 member companies, with locations across the country and in every state. ACD members are vital to the supply chain and necessary processes in the U.S., providing chemical products to over 750,000 end users. These chemicals are critical for products used in medicine and health care, food and agriculture, clean water and sanitation, energy production, electronics, and more.

As leaders of the \$27 billion chemical distribution industry, ACD member companies have the extensive expertise, commitment to safety and sustainability, and access to a deep well of resources needed to ensure chemicals are moved safely and responsibly when and where they are needed. ACD owners and operators have a personal stake in the health, safety, and security of their employees, companies, and communities. They demonstrate their commitment through strict adherence to the highest standards in quality, safety, sustainability, and performance through ACD's Responsible Distribution™, a third-party verified program that ensures member companies have active programs designed to continuously improve safety and reduce incidents.

ACD members are alarmed by the EPA's recent changes to its RMP regulations. Chemical facilities, including Hawkins and other ACD members, have already developed systems, trained employees, and invested in infrastructure to meet existing RMP requirements. Prior to the new revisions, the RMP regulations were a proven success. RMP incidents decreased by 70% from 1996 to 2016, with a 57% decrease from 2007 to 2016 alone. The vast majority of facilities have been successful in preventing incidents – 97% of RMP-regulated facilities did not have a reportable incident from 2016 to 2020. There is no evidence of any need to change this established program, and the finalized revisions require a massive undertaking for facilities, even when they have diligently followed all regulations and have never had an incident.

ACD's concerns focus on three specific areas of the revised RMP rule: the new requirements for Safer Technology and Alternatives Analyses (STAA), Public Information Sharing, and Third Party Audits.

Safer Technology Alternatives Analysis

These new obligations include a requirement for a facility to conduct a STAA if it is classified with a 324 or 325 North American Industry Classification System (NAICS) code and is within one mile of another facility with a 324 or 325 NAICS code, or facilities with a 324 NAICS code that utilize hydrofluoric acid in certain processes. Further, it requires the adoption of at least one passive, active, or procedural new measure, unless the facility determines that none of the measures are practicable to adopt. A determination of not practicable may not be based solely on evidence of reduced profits or increased costs. This requirement is flawed for several reasons.

First, the proximity criterion does not effectively improve safety as it fails to account for existing measures being taken by facilities. Instead, it punishes facilities for simply being near others, even when they have closely followed RMP requirements and have had no reportable incidents.

Second, when deciding whether alternatives are practical, facilities are not permitted to account for costs or profitability. This is extremely concerning as this requirement can make certain processes unprofitable, causing facilities to either adopt these required alternatives at a loss or cease engaging in these processes to avoid financial losses. This is regardless of how critical these processes are to producing essential chemicals, the potential public health risk if the

essential chemicals were no longer produced or supplied, the existing safety measures already in place, and the fact there have been no previous incidents for the vast majority of facilities.

Third, the adoption of safer technology alternatives is typically a departure from recognized and generally accepted good engineering practices (RAGAGEP). This is because these alternatives typically utilize newer technologies or strategies, as facilities generally have RAGAGEP strategies already in place due to existing regulatory requirements. This creates possible safety concerns as facilities would be required to adopt newer alternatives that are not yet considered RAGAGEP in place of RAGAGEP processes that have already been established and verified. This is also contrary to other aspects of RMP regulations that require facility owners to ensure process safety information is maintained in compliance with RAGAGEP.

ACD members adopt the safest possible technology and processes practicable, to avoid incidents and provide employees with safe workspaces. This is not only good for business, but is also the right thing to do. These revisions to RMP regulations create arbitrary requirements that force facilities to incorporate these technologies when they are not feasible or warranted.

Information Sharing

Another alarming aspect of the revised RMP program is its extensive new information-sharing requirements. The regulation now requires facilities to supply individuals who live, work, or spend significant time within a six-mile radius to provide information related to chemicals stored onsite, including safety data sheets, chemical processes used, accident history, exercises, inherently safer technology measures adopted since the last process hazard analysis and justifications for rejecting recommendations from natural hazard, power loss, and siting hazard evaluations and STAAs. In conjunction with this requirement, the EPA has created the

Risk Management Public Data Tool website, which displays sensitive information for all RMP facilities in the country to anyone with access to a computer around the world, not only those within six miles of a regulated facility. This creates immense security concerns for all chemical facilities as this information is sensitive and can easily put them at risk of being targeted by bad actors. Moreover, this is at a time when the important tool of the Chemical Facility Anti-Terrorism Standards has expired, making facilities especially vulnerable.

In addition, when receiving a request for information from an individual, it will not be adequate for a facility to respond by simply referring the requester to the website as it does not provide all of the information required by the new RMP rule. Facilities are still expected to have this information available in “at least two other commonly spoken languages by the population potentially affected,” other than English, if requested. This can be especially difficult for facilities located in parts of the country where commonly spoken languages are difficult to translate, as the required information includes nuanced technical jargon used for items such as safety data sheets. For example, at Hawkins’ facility in Black Hawk, South Dakota, the area’s Native American population is significantly greater than the Hispanic population, so one of the most commonly spoken languages other than English is likely Lakota, and it would be difficult and costly for us to secure a translator who knows the proper technical terms. The website does not address this language requirement, nor does it provide information required by the new RMP rule on the declined power and STAA recommendations. Additionally, the RMP regulatory text requires facilities to keep records of the members of the public who requested information, share declined recommendations to RMP plans along with justifications, and share scheduled exercises. The information sharing requirements along with the webpage create a “Worst Case

Scenario” by creating significant administrative burdens for facilities while also making sensitive, potentially dangerous, information widely available to the public.

Third-Party Audits

The EPA also changes third-party audit requirements in this rule, widening the pool of facilities subject to the requirements and applying more restrictive criteria on those who can serve as auditors. These auditors must be external and have certain credentials, adding additional burdens on facilities as it can be difficult to find technically qualified individuals who understand the complexity of the processes. This includes the chemistry involved, the potential reactions, by-products, triggering factors, and engineering.

Also, in their credential requirements, the EPA does not consider that process-specific expertise is often necessary. The credentials required in this rule are broad, allowing auditors to evaluate systems that they may not have experience with. Professional engineers each have unique qualifications and specialties, and ACD fears some may not be technically qualified to conduct RMP audits, effectively making these processes less safe. The EPA should instead remove the credential requirements and allow facilities to utilize third parties based on their experience and demonstrated expertise.

These requirements are especially frustrating as the EPA has the authority to perform third-party audits with EPA employees, eliminating the need for external parties altogether.

Cumulative Burden

It is also important to consider that these changes come as the EPA is finalizing other regulations, such as Clean Water Act Hazardous Substance Facility Response Plans, several new

regulatory rules under the Toxic Substances Control Act, and new air emissions reporting and control measures. The Clean Water Act Hazardous Substance Facility Response Plans regulation alone was finalized just over a month ago and establishes a completely new regulatory program covering facilities with certain chemicals located near a waterway. ACD considers this rule to be an “RMP” regulation for water releases, with added complications. Many of these chemicals overlap with those covered by RMP regulations, forcing facilities to abide by two concurrent EPA programs, both of which have significant costs and duplicative regulatory requirements. This places a significant cumulative impact on facilities, driving up costs and making it more difficult to provide the necessary chemicals on which communities across the country rely.

Conclusion

The new revisions to the RMP program are not necessary and establish new onerous burdens on facilities when the vast majority do not have incidents and have extensive procedures in place to prevent incidents from occurring. Instead, the EPA should focus on enforcing the current regulations, providing guidance to assist facilities, and punishing bad actors who intentionally skirt their regulatory obligations.

We appreciate the Subcommittee’s attention to this issue and urge Congress to act to alleviate the immense regulatory burden that is being imposed on American businesses.

Respectfully submitted,

Richard Erstad
Vice President, General Counsel and Secretary

Hawkins, Inc.

For

The Alliance for Chemical Distribution