

October 31, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Re: Comments for Docket Number: Docket ID No. EPA-HQ-OLEM-2022-0174
Accidental Release Prevention Requirements: Risk Management Programs Under the
Clean Air Act; Safer Communities by Chemical Accident Prevention

Dear Administrator Regan,

The undersigned organizations submit these comments regarding Docket ID No. EPA-HQ-OLEM-2022-0174 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention (Proposed Rule). The organizations represent thousands of facilities across the nation covered by Risk Management Program (RMP) regulations. In addition, the International Institute of Ammonia Refrigeration (IIR) is an ANSI accredited standards writing body whose standards are widely used as Recognized and Generally Accepted Good Engineering Practices (RAGAGEP) as approved by a facility or authority having jurisdiction. The proposed revisions are of great interest and concern to our organizations and member companies, and we appreciate the opportunity to provide comment.

Before addressing specific comments about the Proposed Rule, we would like to raise some general concerns. The agency is currently in the process of implementing the AIM Act, with the goal of phasing down the use of hydrofluorocarbons (HFCs), a common industrial refrigerant. Ammonia, which is subject to the Risk Management Program, is the most efficient and effective alternative for facilities considering a change from HFCs. We are concerned that placing additional burdens on facilities choosing ammonia could dissuade some companies from moving away from HFCs and moving to natural refrigerants like ammonia. We urge the agency to consider the unintended consequences the Proposed Rule may have on moving facilities away from HFCs to ammonia.

We are also concerned with the seemingly perpetual rulemaking related to the Risk Management Program. Industry has been subject to back-and-forth changes over the last several years, which has challenged facilities understanding and planning for compliance. The Occupational Safety and Health Administration (OSHA) is also moving forward with potential changes to Process Safety Management. Because these programs cover very similar elements, the undersigned organizations highly encourage the EPA and OSHA closely coordinate to avoid inconsistencies that could further complicate compliance for industry.

Below are specific comments on the Proposed Rule.

Natural Hazards

While we agree that planning for potential natural hazards is important, we question whether additional emphasis on natural hazards is necessary within the regulation. Natural hazards have been and continue to be considered during a PHA that follows the IIAR suggested “What-if/Checklist” guidelines. IIAR Standards require safeties to protect against any pressure event beyond acceptable limits, whatever the cause, either natural or manmade. Ammonia refrigeration systems are designed for temperature increases that increase pressure. IIAR Standards also require ammonia detection and alarming with personnel being alerted for an unexpected release in a facility due to a natural event. IIAR Standards also require shutdown of equipment when a natural event causes a high-level condition in a system pressure vessel so equipment damage or a ammonia release does not occur. IIAR Standards define many systems to both safely control and to shutdown systems.

We are also concerned that the proposed definition of natural hazards is open to interpretation, especially when it comes to hazards associated with climate change. Addressing climate change as a category is ambiguous and would make the PHA process unnecessarily more challenging. In addition, controlling for all natural hazards (such as tornados) is impractical, if not impossible. For these reasons, we believe that natural hazards are already appropriately covered and additional regulatory language is not necessary.

Power Loss

We agree that facilities should have contingency plans to handle potential power loss and IIAR addresses these issues in its standards and RMP guidance documents. However, the rule should recognize that the impact of power loss can vary among different types of facilities. For example, in a mechanical refrigeration system, a loss of power would result in stopping the ~~only~~ primary pressure producing equipment in a system, which is the compressor(s). Pressures in the system will equalize to a pressure corresponding to ambient conditions that should not result in a release. IIAR Standards provide that the design pressure of all pressure vessels “shall be equal to or greater than the pressure developed in the low-pressure side of the system from equalization with the high side or heating due to changes in ambient temperature after a system has stopped.” This greatly reduces the chance of a release due to power loss.

We also believe that explicitly requiring standby or backup power is unnecessarily limiting in how a facility addresses potential power loss. Having standby power for an ammonia refrigeration system is not necessary because the loss of power should not lead to a refrigerant release, only loss of refrigeration. In addition, a requirement to install backup power for ammonia detectors may be difficult for facilities to comply with as the detection system is connected to other safety systems such as alarms (strobes/horns) and the ventilation system. In order for the detection system to be meaningful during a power outage, the ventilation system and alarms would also need to be connected to the backup power supply. We suggest a change to the wording from “standby or backup power” to “a plan to account for loss of power.”

Facility Siting

Location of a facility and its ammonia system are already considerations in a facility's emergency plan for notification of potentially affected offsite populations, so including this provision would reinforce the need for a thorough review of facility siting. This additional provision could negatively affect where facilities could be built, depending on the distance between a facility process and off-site populations. A policy restricting outside populations from building close to a facility which could interfere with real estate plans and impact local building regulations is highly encouraged.

Having external ammonia detectors is very ineffective due to changing wind directions and air temperatures and the physical characteristics of ammonia vapor, which is lighter than air, meaning it moves very quickly with air currents and goes up to dissipate in the atmosphere. Due to the physical characteristic of ammonia and the environmental conditions at the time of a release, ammonia vapor, which is lighter than air, will mostly go up (vertical), greatly limiting the ground level (horizontal) spread.

Hazard Evaluations – Information Availability

Transparency is highly appreciated and valued but publicly posting details on findings and recommendations to a mostly uneducated public is concerning and unsettling. PHAs and hazard reviews, along with the findings, are highly technical and complicated internal documents that can be easily misconstrued by the general public that does not have sufficient technical understanding of industrial refrigeration systems to know if a recommendation, whether adopted or not, was appropriate. In addition, both the EPA & OSHA only allow facilities to reject a recommendation under strict conditions (i.e.,: (1) the analysis upon which the recommendation is based contains factual errors; (2) the recommendation is not necessary to protect the health of employees or contractors; (3) an alternative measure would provide a sufficient level of protection; or (4) the recommendation is infeasible.

Sharing such information with the general public could open facilities to unnecessary liability and create security vulnerabilities, particularly for chemicals of interest to the Department of Homeland Security. We recommend that this information be made available to first responders and Local Emergency Planning Committees (LEPCs) upon request and with a meeting with those that created the information, but not made generally available.

Safer Alternatives Analysis

While this proposed provision does not apply to ammonia refrigeration, the safer alternatives analysis requirements could ultimately be expanded to other industries. The regulatory burden of requiring costly IST reviews tends to stifle innovation. For those companies already looking to improve safety by implementing IST options, a formal IST review would add unnecessary costs to a process forcing activities being performed to be documented. Small operations might be manpower or expertise limited and lack the resources to cost effectively outsource.

For companies that do not implement IST options, the IST review becomes a “paper exercise” where they document why it is “infeasible” to implement these options. If RMP facilities are required to perform safer alternative options analyses and implementation plans, EPA should not require that the analyses and/or implementation plans be submitted to the agency. Likewise, EPA should not have any role in analyzing or approving such plans.

Incident Investigations & Root Cause Analysis

Root cause analysis in incident investigations is already included in the IIAR guidelines for industry. Additional regulatory language in this area seems unnecessary. If the agency moves forward, defining “recognized investigation method” is highly recommended. Who is recognizing the “approved method”? Revising “recognized investigation method” (53,586) to “investigation method recognized by applicable industry code writing or RAGAGEP establishing body” is strongly encouraged.

Third Party Compliance Audits

Audits are an important component of maintaining a safe facility. However, the proposal to restrict which auditors could be used after an accident is concerning. The use of any qualified auditor should be at the discretion of the facility, including those who may be associated with the company, for such audits. This approach is consistent with the performance-based nature of the regulation. Auditor qualifications are much more important than “independence” in meeting the agency’s goal of more effective audits and do not believe sufficient data has been produced justifying the added cost the proposed restriction would impose on facilities.

Should the agency decide to require third party audits after reportable incidents, major revisions are needed to both the qualifications and independence requirements that have been proposed. Restricting audits to only non-associated third parties, will disproportionately adversely affect businesses and facilities in remote areas because qualified “independent” auditors will be difficult to find, driving up audit costs. Businesses and facilities in rural areas with access to qualified associated auditors should be allowed to use them because they are less able to absorb the significant costs of third-party audits done by non-associated third-party auditors.

Our experience observes that qualified associated auditors in some cases can provide even more effective audits than non-associated auditors because non-associated auditors may be less familiar with unique processes in an industrial refrigeration facility. Qualified associated auditors will be more familiar with the systems and equipment in place and more capable identifying deficiencies and recommending appropriate corrective measures that are most applicable to industrial refrigeration systems. Focusing on the auditor’s qualifications and the core contents of acceptable audits will more likely result in the desired outcome.

The availability of qualified non-associated third-party auditors is also concerning and is exacerbated by the agency’s proposal that contractors doing other work for a facility would be considered “associated” and not eligible to conduct audits after an accident. Many businesses use the same contractor to assist in multiple ways, including audits. Denying them the ability to conduct audits severely restricts the pool of available auditors with relevant experience in the

ammonia refrigeration industry. This restriction also places third party firms in the very difficult position of choosing whether they will be exclusively an auditing firm or a firm that provides a variety of value-added services. After speaking with third-party firms active in the ammonia refrigeration industry, most third-party firms that conduct audits also provide other services. In fact, some of the third-party firms have indicated that they do not exclusively perform audits for any of their clients. The Proposed Rule would disqualify these very well qualified third-party firms from conducting audits after reportable accidents.

Another concern is the proposed restriction on allowing the use of a third-party firm that employs anyone who has a financial connection with the facility, such as retirees. It is a common practice for third party auditors to hire people from facilities within the industry in which they conduct audits. Disallowing facilities to use these firms will make it even more difficult for facilities to find qualified third-party auditors that meet the “independence” requirements. This problem is compounded for small businesses and facilities in rural areas where the number of non-associated auditors with experience in industrial refrigeration may be very small. The restrictions in the Proposed Rule would require these businesses to absorb even more costs by seeking non-associated auditors from outside their immediate facility location.

In summary, all qualified auditors, third-party or otherwise, should be allowed to conduct audits. If the agency moves forward with its restrictive proposal, permitting all qualified third-party auditing firms to conduct audits after an accident, regardless of whether they have done other work for the facility in question, is strongly encourage. In addition, the presence of a retiree or other former employee should not disqualify the firm from conducting audits. Given the already limited pool of resources, qualified retirees and former employees provide added flexibilities that would be particularly important for businesses in rural areas, which comprise a large portion of our member companies.

Making audit findings available to the general public is still a major concern. Such a requirement would be extremely burdensome for minimal to no gain. For the public to understand the rationale of accepted or declined recommendations without sufficient knowledge of the process would be extremely difficult and could cause security concerns, particularly for DHS Chemicals of Interest. Making audit findings available to first responders and LEPCs upon request and with discussion with auditors is the preferred approach.

Lastly, the proposed provision stating that third-party audits could be triggered 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 the competency or independence criteria of § 68.80(c)” is alarming. This appears to be a very subjective policy that is open to interpretation by individual inspectors that could be unevenly applied across different regions and states. Removing this provision, or, at minimum, establish a less subjective standard that can be more consistently and equitably administered would be more beneficial

Employee Participation – PHA consultation

Employee participation in PHAs is important but believe that this is already sufficiently covered by OSHA’s PSM policy in 1910.119(c)(2) which states: “Employers shall 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 standard.” Adding this to the regulatory text for RMP is unnecessary.

Employee Participation – Stop Work Authority

We agree that employees should not be required to do something that they know is dangerous or could lead to a catastrophic release, and that they have ability to stop action that would lead to a potentially dangerous situation. However, an employee would need to be trained and qualified to make an informed and reasonable judgement on whether some action might lead to a release, whether catastrophic or not. PSM and RMP already require employees to be trained and qualified for whatever their job duties include. This provision could unintentionally encourage an employee to inappropriately refuse to perform a task that is within the scope of their assigned responsibility.

We also believe that more specificity is needed in the level of event that would trigger requirements to respond in writing within 30 days. We recommend deleting “reports of hazards” in (53,592).

Employee Participation – Accident & Non-Compliance Reporting

We agree that employees should know that they can voice a concern verbally or in writing without fear of repercussions. However, anonymous reports can be very challenging and require someone judging the validity of the report. It is often necessary to clarify the concern in order to adequately address it. Potential exists for complaints from anonymous employees who may not fully understand the operation of the system in question or other factors. Facilities having to address anonymous reports by misinformed persons could result in a large burden on the operation to appropriately address a complaint. Methods and time frames would need to be developed to determine if a report had any credibility and when appropriate actions should be taken.

Emergency Response – Release Detection

The current RMP program sufficiently addresses the needs of detectors and perimeter monitors. 7.4.G of the RMP eSubmit defines the “process area detectors” and “perimeter monitor” technologies. In the case of ammonia refrigeration, perimeter monitoring does not add additional information beyond the detectors specified in IIAR 9-2020. Due to the characteristics of ammonia being lighter than air, it would be extremely unlikely to detect a release around the perimeter of a facility. Requiring outside “perimeter monitor technologies” would not be a worthwhile expense or result in any actionable information and should be deleted from the provision. Alternatively, it would be acceptable to reword “their process area detectors and

perimeter monitor technologies and models in use to detect” to “effective means to monitor levels of.” (53,595)

Emergency Response – Community Notification of Accidents (Non-Responding Facilities)

The proposed language also seems to place unnecessary burden on improving community notification systems on facilities instead of relying on community agencies, where this authority lies. Having an external notification procedure described in their emergency plan is appropriate but notification to offsite populations should come from a “community” organization that works closely with the facility. A facility having a notification system alerting the public, independent of a community notification system, could cause coordination and appropriate action problems. We suggest changing “and ensure that” to “and partner to ensure that” (53,596).

Emergency Response – Community Notification of Accidents

Strong coordination and collaboration between the facility and local responders is critical for effective community notification. Facilities and local responders must work together to lessen the likelihood of off-site impacts. We recommend that local responders coordinate with facilities and request the necessary information they need to properly respond to an emergency and notify the public.

Emergency Response – Community Response Plan

We agree that facilities should understand what the community plan does and does not do regarding a release. However, in many areas, community plans are very difficult to access. Community plans should be publicly available, but finding them has proven to be challenging. This is even more problematic in rural/remote areas where LEPCs are already overwhelmed and under-resourced, or in some cases inactive. The proposed policy also raised the question of how facilities should react if deficiencies are found in the community plan. If a facility identifies that the local plan is deficient, they must come up with a creditable response plan which seems appropriate. However, an unrealistic burden could be placed on facilities where there is no organization or group in their local area that can appropriately respond depending on what is needed for a proper response. This potentially could force a facility to have an emergency response plan, not just an emergency action plan. This would be costly, and for smaller facilities require more “response” trained employees than they might actually have at a facility for a proper response.

Emergency Response Exercises

While we agree that emergency response exercises can be valuable, their effectiveness depends on the active engagement of responding agencies. The language leading into the discussion of this section indicates drills with responding agencies. However, the regulatory text of the proposed rule does not appear to include that requirement. Facilities are dependent on the availability of the responding agency. Facilities cannot require responder participation; therefore,

it seems inappropriate the agency place the mandate on facilities to conduct an exercise with responders, who are not required to participate. Many smaller response groups do not have the time or budget to be involved in field exercises, especially if there are multiple regulated facilities in their jurisdiction. Another challenge is that many local responders have more than one shift. For exercises to be most effective, all shifts would need to be engaged, which further stretches limited responder resources to participate.

Information Availability – Public Request of Chemical Hazard Information

We are concerned that the proposed provision presents a security risk and conflicts with Department of Homeland Security requirements for not providing information to non-CVI individuals. Many RMP regulated facilities are important to the nation’s critical infrastructure and protecting security sensitive information should be a high priority. If the agency moves forward with this policy, additional safeguards should be considered to ensure that security sensitive information is appropriately protected.

In addition, we believe that the 6-mile radius does not reflect the risk for all types of regulated facilities. For example, with industrial ammonia refrigeration systems it is unlikely that a release would have impacts up to 6 miles from the facilities. We suggest that the public request diameter should coincide with the worst-case release circle. This would result in a more risk-based approach that accounts for the differences between types of RMP regulated facilities and associated hazards.

Technical Clarification – Hot Work Permits

We agree that retaining hot work permits for some period of time is helpful but believe that 5 years is too long and would be overly burdensome. We recommend that a 1-year retention requirement is more appropriate.

RAGAGEP – Most Recent Versions

We are concerned that the proposed provision could create misinterpretations leading to judging a process on current RAGAGEP and result in costly changes to a process that was properly designed and built to older RAGAGEP. As approved by a facility or required by the AHJ the Operating and maintenance practices and procedures should follow current RAGAGEP from the industry and should also incorporate manufacturers recommendations. The effort to find and explain any safety gaps between current codes, standards, or practices of a system built to codes, standards, or practices that maybe older or substantially changed would greatly increase the cost of doing a PHA. However, if there is some issue relating to “safety” a recommendation to bring the issue up to current safety standards/practices should be made. Documenting the rationale of why a recommendation is declined should already be done now under “Actions taken/Supporting Documentation” as shown in the IIAR PSM/RMP guidelines for doing a PHA.

Thank you for the opportunity to provide comment on the proposed changes to the Risk Management Program. Please let us know if you have any questions about our submission or if we can be of any assistance as the rulemaking process moves forward.

Sincerely,

American Frozen Food Institute
Global Cold Chain Alliance
International Institute of Ammonia Refrigeration
North American Meat Institute
Refrigerating Engineers and Technicians Association