August 23, 2018

Via e-filing on www.regulations.gov

U.S. Environmental Protection Agency
EPA Docket Center
Mailcode 2822IT
Attention: Docket ID No. EPA-HQ-OEM-2015-0725
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act

Dear Docket Clerk:

GPA Midstream Association ("GPA Midstream") appreciates this opportunity to submit comments to the U.S. Environmental Agency ("EPA") in response to EPA's proposed rule to improve the Risk Management Program ("RMP") regulations. Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act. 83 Fed. Reg. 24,850 (May 30, 2018) ("EPA May 2018 Proposal" or "Proposal").

GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 corporate members that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane, and natural gasoline or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for more than 90% of the NGLs produced in the United States from natural gas processing. GPA Midstream is the primary advocate for a sustainable midstream industry focused on enhancing the viability of natural gas, natural gas liquids and crude oil.

Summary

GPA Midstream supports EPA's proposal to improve the RMP program by rescinding and/or revising significant portions of the Risk Management Program Amendments final rule. 82 Fed. Reg. 4,594 (Jan. 13, 2017) ("2017 Amendments"). Because EPA had unnecessarily expanded existing RMP regulations, many aspects of the 2017 Amendments should be rescinded or revised for many of the same reasons GPA Midstream articulated in its previous comments on EPA's proposal before the Agency issued the 2017 Amendments. *See* J. Dyer, GPA Midstream

Comments on Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Proposed Rule (Docket EPA-HQ-OEM-2015-0725) (submitted May 13, 2016, and resubmitted here as Exhibit 1) (GPA Midstream 2016 Comments). The additional layers of regulations in the 2017 Amendments not only were unnecessary, but actually would worsen risk management practices, by sowing confusion and creating the wrong incentives. Rescinding and/or revising key aspects of the Final Rule will improve source security and reduce unnecessary expenses by removing unduly prescriptive, duplicative regulatory mandates without in any way compromising the safety of the public or the environment.[1]

I. EPA Should Finalize Proposed Rescission and/or Revisions of Incident Investigation, Third-Party Audit, Process Hazard Analysis, and Compliance Audit Requirements

GPA Midstream supports EPA's proposal to rescind and/or revise the requirements related to incident investigations, third-party audits, process hazard analysis and other portions of Subparts C (Program 2 processes) and D (Program 3 processes) of the RMP Rule as revised by the 2017 Amendments.[2] As acknowledged by EPA, the estimated annualized cost for these and other provisions is substantial, many of these requirements needlessly duplicate Occupational Safety & Health Administration ("OSHA") Process Safety Management ("PSM") regulations and other existing regulatory requirements, and these provisions are unlikely to produce sufficient benefits to offset their substantial additional cost.[3]

A. Incident investigations.

In its 2017 Amendments, EPA had revised its RMP program to require facilities to conduct incident investigations, including a root cause analysis, for catastrophic releases, an incident that "could have" been catastrophic and a "near miss." 40 C.F.R. §§ 68.60, 68.61. In its Proposal, EPA has proposed to retain certain incident investigation requirements, but Sections 68.60(a) and 68.81(a) would be revised to return to pre-2017 Amendments rules that required incident investigations only "for each incident which resulted in, or could reasonably have

[1] GPA urges EPA to consider fully the potential effect of the recent decision in *Air Alliance Houston v. EPA*, No. 17-1155 (D.C. Cir. August 17, 2018) as the Agency moves forward with the May 2018 Proposal. As EPA is aware, in *Air Alliance,* the court of appeals vacated EPA's rule that would delay the effective date of the 2017 Amendments. *See* Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date ("Delay Rule"), 82 Fed. Reg. 27,133-01 (June 14, 2017). Because the D.C. Circuit has not issued its mandate, the Delay Rule remains in effect – and GPA Midstream would urge EPA to ask the full court to reconsider its decision on the Delay Rule on rehearing *en banc*, rather than accepting the *Air Alliance* ruling without appeal. In all events, the decision emphasizes the need for EPA to move forward as expeditiously as possible with these revisions to the RMP Amendments.

[2] EPA May 2018 Proposal at 24,865.

[3] EPA May 2018 Proposal at 24,871-72

resulted in a catastrophic release."[4] The Proposal would also remove both the requirement to conduct a "root cause analysis" in each investigation, as well as the definition of "root cause" that EPA had included in the 2017 Amendments.

As an initial matter, GPA Midstream supports EPA's proposal to return to its pre-2017 Amendments approach for the conditions triggering an incident investigation. This conforms better with the approach taken under OSHA PSM requirements. Moreover, eliminating the requirement to investigate a "near miss" is a sensible revision. An undefined term, "near miss" created an unnecessary ambiguity in the regulation. Further, as GPA Midstream commented, the examples on which EPA had originally relied to justify including a "near miss" were not "near misses" but examples of the measures working to activate protections as designed.[5]

In addition, as GPA Midstream had detailed previously, by *requiring* a root cause analysis for each alleged "near miss," EPA had created a disincentive for facilities to report incidents in order to avoid the substantial burdens of a root cause analysis. By eliminating that mandate, EPA would establish a more flexible approach and eliminate that disincentive.[6]

Further, GPA Midstream urges EPA to adopt its proposal to eliminate a "root cause" analysis as a *per se* requirement, because that will allow facilities the ability to use other methodologies, as appropriate, to investigate an incident. While a useful tool, root cause analysis is not the only method for investigating incidents. Rather, there are many other methods, and before the 2017 Amendments the RMP rules had afforded owner/operators the discretion to use their judgment on the best tool, given the wide variability among processes, facilities, and across industries.[7] There is no need – and no administrative record support - for the one-size-fits-all approach that EPA had adopted in the 2017 Amendments.

EPA's proposal to revert to its pre-2017 Amendments rule and eliminate the requirement for de-registering facilities to meet reporting or incident investigation requirements before being de-registered is also sound.[8] As GPA Midstream explained, there is no benefit added by performing those requirements prior to deregistration.[9] For example, GPA Midstream member companies often de-register sources because regulated substances fall below the regulatory threshold or because market conditions require a source to be taken out of service. There is no reason to impose prescriptive requirements in those or other circumstances.

Further, GPA Midstream agrees with EPA's proposal to rescind the requirements added in the 2017 Amendments that required Program 2 facilities to prepare a "report" following an

[4] EPA May 2018 Proposal at 24,882.

[5] GPA Midstream 2016 Comments at 7.

[6] GPA Midstream 2016 Comments at 6.

[7] GPA Midstream 2016 Comments at 6.

[8] EPA May 2018 Proposal at 24,858.

[9] GPA Midstream 2016 Comments at 7.

incident investigation and Program 2 incident investigation teams to include at least one person "knowledgeable" in the relevant processes.[10] These requirements had unnecessarily increased the burdens imposed on these smaller facilities. Without any record-based support for imposing or retaining these requirements, GPA Midstream supports EPA's proposal to remove them.

B. Third party audits.

EPA has proposed to remove the third party audit requirements added in the 2017 Amendments. *See* 40 C.F.R. §§ 68.58, 68.59, 68.79 and 68.80. These unduly prescriptive requirements mandate third party audits both after reportable incidents and when an agency may decide conditions warrant third party review. GPA Midstream strongly supports EPA's proposal to remove these unnecessary and burdensome requirements.

For one, as GPA Midstream outlined previously, GPA Midstream does not believe that mandating third party audits would help to reduce the risk of future accidents.[11] Indeed, EPA offered no meaningful record support for the proposition that it would – let alone documented evidence that it would be superior to first or second party audits involving experienced, trained internal audit staff independent of the facility with industry and/or institutional knowledge.[12] On the contrary, GPA Midstream does not see the value in mandated audits, as facilities will conduct an appropriate root cause analysis after a catastrophic incident, and an implementing agency will conduct its own investigation.[13]

Further, without any measurable benefit, the audit would inflict an undue financial burden on owner/operators. GPA Midstream member companies, which include small and large entities, estimates a third party audit could cost upwards of $70,000 for a typical facility.[14] That is extraordinary cost for a typical small business. In addition, EPA had justified a third party audit requirement as necessary to identify conditions of concern. However, that too is not reasonable basis, as a third party audit is simply not the right regulatory tool to identify such conditions. Existing rules and procedures, such as Process Hazard Analysis, Pre-startup safety review, and other practices are more than sufficient.[15]

Moreover, EPA had included a host of top down regulatory requirements that would impose unnecessary, bureaucratic requirements and timelines. By removing the requirement, the Proposal would eliminate those undue burdens, which GPA Midstream had detailed at length for EPA in its previous comments.[16] Likewise, EPA's third party audit requirement also had

[10] EPA May 2018 Proposal at 24,852.

[11] GPA Midstream 2016 Comments at 10.

[12] GPA Midstream 2016 Comments at 16.

[13] GPA Midstream 2016 Comments at 10.

[14] GPA Midstream 2016 Comments at 11, 12.

[15] GPA Midstream 2016 Comments at 11.

[16] *See* GPA Midstream 2016 Comments at 12-17, 19-21.

significant legal flaws, as it narrowed longstanding protections afforded by the attorney client privilege and attorney work product doctrine.[17] By eliminating the third-party audit requirement in full, the Proposal effectively corrects these flaws in the 2017 Amendments.

C. Hazard Reviews and Process Hazard Analysis

EPA proposes to improve the hazard review/process hazard analysis provisions in the RMP rules by 1) removing the requirement for Program 2 facilities to include in hazard reviews the findings from incident investigations, 40 C.F.R. § 68.50(a)(2),[18] 2) revising the requirement for Program 3 facilities that conduct process hazard analysis to address all findings from incident investigations, 40 C.F.R. § 68.67(c)(2),[19] and 3) reducing the information Program 3 facilities must report in their risk management plan, to the date of the most recently completed process hazard analysis and the expected date of completing any changes resulting from that analysis. GPA Midstream supports these proposed changes. These additional information requirements place unnecessary burdens on facilities. The RMP rules should allow facilities to concentrate their resources on implementing incident investigation findings, rather than on further information reporting requirements.

Hence, GPA Midstream also opposes EPA's alternative approach, which would retain the requirement in 40 C.F.R. § 68.50(a)(2) that hazard reviews include findings from incident investigations, and (2) various requirements for incident investigation teams.[20] Although GPA Midstream appreciates EPA's desire to improve the coordination of EPA rules with OSHA requirements, in this instance, requiring incident investigation findings in hazard analyses would unnecessarily duplicate existing PSM regulations. Process Hazard Analyses already must address previous incidents that did, or could have, resulted in catastrophic release.[21] While requiring sources to include the same information in hazard reviews would not be inconsistent with OSHA PSM requirements, it would be duplicative and GPA Midstream believes that there would be no material benefits from this alternative approach.

D. Compliance audits

In addition to the third-party audit/auditor requirements, the Amendments had required compliance audits every three years for "each covered process unit" at both Program 2 and Program 3 facilities. 40 C.F.R. § 68.58(a) and 68.79(a). EPA has proposed to remove that phrase in order to better conform its program to existing OSHA PSM requirements. Instead, EPA proposes to revert to the pre-2017 Amendments process and have the owner or operator certify they have evaluated and verified compliance with the requirements of the regulations and

[17] GPA Midstream 2016 Comments at 17-18.

[18] EPA May 2018 Proposal at 24,852.

[19] EPA May 2018 Proposal at 24,858.

[20] EPA May 2018 Proposal at 24,865.

[21] 29 C.F.R. § 1910.119(e)(3)(ii).

that adequate procedures and practices have been developed and are being followed. GPA Midstream supports this revision. There is well established guidance for conducting a true audit – one that takes representative samples in order to evaluate systems and procedures using experienced internal audit staff.[22] By contrast, requiring "each covered process unit" to be audited reflected a substantial policy shift – without documented basis – and would have imposed an enormous and undue burden.

II. GPA Midstream Supports Proposed Revisions to the RMP Information Availability Provisions, But Urges EPA to Streamline Those Provisions Even Further

A. Information availability to the public

In the 2017 Amendments, EPA added several information availability requirements. 40 C.F.R. § 68.210. GPA Midstream supports EPA's proposal to rescind various aspects of these requirements. In particular, we agree with EPA's proposal, as outlined in our previous comments, that the requirement under 40 C.F.R. § 68.210 to provide chemical hazard information, accident history, and response capabilities, including community emergency preparedness information, to anyone requesting these categories of information creates significant security concerns.[23] Information provided should be limited to information that is actually necessary to help improve public awareness of community risks and provide essential information on how to respond. That should be limited to regulated substances held above threshold levels, the name and phone numbers of local emergency response organizations, and the Local Emergency Planning Committee contact information.[24]

Moreover, GPA Midstream strongly supports EPA's proposal to drop the requirement to make information readily available through a company website, social media platforms, or other publicly accessible means in 40 C.F.R. § 68.210(b)-(d).[25] As GPA Midstream commented previously, these types of public disclosures imposed in the 2017 Amendments not only imposed undue burdens, but allows any person to gather sensitive information about regulated substances easily, and anonymously, presenting serious security concerns.[26] Rescinding this broad publication requirement is also justified by the fact that much of the information that the 2017 Amendments had required, such as safety data sheets, whether the source is a responding or non-

[22] This is standard practice in financial auditing. Public Company Accounting Oversight Board, General Auditing Standards, AS 2315: Audit Sampling, available at https://pcaobus.org/Standards/Auditing/Pages/AS2315.aspx. It is an approach that EPA has long followed in environmental audits. *See* Environmental Auditing Policy Statement, 51 Fed. Reg. 25004, 25009 (July 9, 1986) (EPA) (referring to a "process which collects, analyzes, interprets and documents information sufficient to achieve audit objectives). There is no reason to diverge from this approach for RMP compliance audits.

[23] EPA May 2018 Proposal at 24,867-68; *see* GPA Midstream 2016 Comments at 28-29.

[24] GPA Midstream 2016 Comments at 29.

[25] EPA May 2018 Proposal at 24,859.

[26] GPA Midstream 2016 Comments at 29.

responding facility, accident history, and information on emergency response exercises, will do little to inform residents without experience in understanding this information. Worse, it may cause unnecessary and unjustified public alarm.

B. EPA should consider further revisions to the public meeting requirements

GPA Midstream supports EPA's proposal to narrow the information that must be presented at a public meeting to the categories of data listed in 40 C.F.R. §§ 68.42(b)(1)-(11). GPA Midstream also supports the narrowing of the focus of any meeting – that the data provided would be for only the most recent accident, and not for previous accidents covered by the 5-year accident history requirement of § 68.42(a).[27] Collectively, these would reduce the prescriptive requirements and associated burdens imposed by the 2017 Amendments for sources that conduct a public meeting.

However, GPA Midstream urges EPA to go further and revise the rules to rescind the public meeting requirement mandated by the 2017 Amendments. Even as narrowed, requiring a public meeting within 90 days of an event would be of little utility to the public.

First, certain essential information that a source is directed to provide in the regulations, such as the date and time of the release, chemicals released, and weather conditions at the time, will already be known or available to the public through initial release reporting and media reports. Second, other categories of information that a source would still be required to provide at the public meeting may yet be under investigation, in dispute, or the subject of already ongoing or anticipated litigation. These include the exact source of the release, known on-site and off-site impacts, the causes of the incident, and operational and process changes resulting from the subsequent investigation. Compelling companies to make these early statements to the public during or prior to criminal or civil enforcement actions or other civil lawsuits is a significant and unfair burden to place on a source. Further, third, it is unnecessary, as local and state response officials (including the Local Emergency Planning Committee), and federal investigatory agencies (such as EPA, OSHA, or the Chemical Safety and Hazard Investigation Board) often put out their own public statements and conduct their own meetings covering many of these same issues. In practice, between and among local, state, and federal officials, news media, and the source owner/ operator, catastrophic releases often involve an overwhelming amount of information to the public, not too little. Indeed, in the experience of GPA Midstream members, when required, public meetings are generally not well attended – requiring considerable expense, without significant value to the public at large.[28]

As such, GPA Midstream submits that EPA should rescind the mandate in the 2017 Amendments to conduct a public meeting. Rescinding a regulatory mandate would not mean that sources will cease providing necessary information and communicating with the public. On the contrary, after an accident, sources commonly designate company personnel or retain outside

[27] EPA May 2018 Proposal at 24,859.

[28] GPA Midstream 2016 Comments at 30.

communications specialists in order to provide timely, accurate information to the press and surrounding residents – including through voluntarily held public meetings. This allows the company to state what it knows, what it does not know, and whether it disputes any of the information released by other government agencies, without the prescriptive requirements of the 2017 Amendments. In fact, there is nothing in EPA's record to document that there is a systemic problem with sources failing to act responsibly by providing important, real-time information to the public. Allowing sources to continue doing so on a voluntary basis – in a way that tailors the meeting to the local community in which the facility is located - is far preferable to having the federal government dictate the content of public meetings, particularly when it may unnecessarily interfere with ongoing or threatened legal actions.

III. Local Coordination Requirements

A. GPA Midstream Supports EPA's Proposal to Refine the Scope of Information Sources Are Required to Provide to Local Authorities

In the 2017 Amendments, EPA required owners or operators of "responding" and "non-responding" stationary sources to perform required emergency response coordination activities. 40 C.F.R. § 68.93. This includes providing the relevant emergency response plan, contact information, and "any other information that local emergency planning and response organizations identify as relevant to local emergency response planning." *Id.* EPA has proposed to delete this requirement.[29] EPA has also proposed to incorporate protections over classified and confidential information that the 2017 Amendments required to be submitted.[30]

GPA Midstream supports the direction of these revisions. This broadly framed provision in the 2017 Amendments allowed third parties to request and obtain sensitive and confidential information. The Proposal would close that gap by eliminating what had otherwise authorized an open-ended information gathering by local planning and response organizations. EPA has also proposed to provide essential protection over the confidential information that may be included in the information provided. EPA proposes to accomplish that by amending 40 C.F.R. § 69.93 to extend protections by referencing other federal agencies' requirements for handling classified information and EPA's regulations (at 40 C.F.R. Part 2) governing confidential business information. However, while GPA Midstream agrees confidential information should not be disclosed, it is not clear how this approach would accomplish that goal. Those regulatory requirements only cover classified or confidential data submitted to those agencies, *not* information submitted to the local organizations that would receive the classified and confidential information provided under the RMP program. GPA Midstream suggests an alternative approach consistent with its 2016 comments: EPA should adopt a rule that removes the requirement to submit any classified/confidential information by revising the regulations to confine the information that would be provided to the basic, *publicly available* information that

[29] EPA May 2018 Proposal at 24,860

[30] EPA May 2018 Proposal at 24,882

local responders actually would need to do their job effectively.[31] That not only would reduce the burdens on the regulated community, but also avoid overwhelming the limited resources of the (often volunteer) local officials. [32]

B. GPA Midstream Applauds EPA's Proposed Changes to Field and Tabletop Exercise Requirements, But EPA Should Rescind Those Exercises Which Duplicate Requirements Under Other Laws

EPA's Proposal generally retains provisions governing emergency response exercises in the 2017 Amendments, 40 C.F.R. § 68.96. This includes the notification exercises (to be done annually by a source that has a Program 2 or Program 3 process), and the emergency response exercise program. Under the 2017 Amendments, facilities were directed to coordinate with local officials to conduct exercises to establish the appropriate frequency and timing, but at minimum the owner/operator would need to hold a tabletop exercise at least once every three years and a field exercise at least once every ten years. There were various specifications associated with what should be included in those field and tabletop exercises, as well the requirement to prepare an evaluation report.

While GPA Midstream believes EPA could go further, *see* discussion, *supra,* we generally applaud EPA's proposed revisions to the emergency exercise requirements. For example, EPA's proposal to remove the minimum frequency requirement for field exercises is a sensible improvement. This prudently limits the burden of conducting those exercises on the facilities and local responders and eliminates an additional unfunded mandate imposed by the federal government.[33] EPA could, at a minimum, go further here, by limiting the field exercise requirement to responding facilities.[34] Further, while EPA would still require tabletop exercises every three years, instead of mandating the items to be covered by the exercises, EPA has listed the recommended elements, giving more flexibility to the sources and local officials.[35] That is an improvement, but if this requirement is retained, GPA Midstream submits that EPA should likewise allow local responders and facilities, especially non-responding facilities, to determine the best frequency for tabletop exercises. [36] Similarly, EPA has proposed to give to the reasoned judgment of the sources and local response officials the discretion to decide what to include in an evaluation report that would be due 90 days after each exercise.[37] This too would be an

[31] GPA Midstream 2016 Comments at 27-28, *citing* Local Emergency Planning Committees and Risk Management Plans (National Institute for Chemical Studies, 2001).

[32] Therefore, for similar reasons, EPA should not adopt the alternative it proffered that would try to narrow the language to "any other information necessary for developing and implementing the local emergency response plan." EPA May 2018 Proposal at 24,860.

[33] EPA May 2018 Proposal at 24,860-61.

[34] GPA Midstream 2016 Comments at 25.

[35] EPA May 2018 Proposal at 24,860.

[36] GPA Midstream 2016 Comments at 25.

[37] EPA May 2018 Proposal at 24,860-61.

improvement, but EPA should also confirm that the public would not be provided access to the evaluation report for business confidential and security reasons. As GPA Midstream commented previously, revealing exercise scenario details would compromise facility security and highlight potential target areas, while also raising unnecessary concerns among the general public.[38]

EPA also offers two alternatives for comment: 1) EPA would rescind all field and tabletop exercise requirements, or 2) EPA would remove the minimum field exercise frequency, but retain all other 2017 Amendments requirements. [39]

While GPA Midstream supports the changes EPA has outlined, GPA Midstream would urge EPA to go further and adopt its alternative proposal to rescind the field and tabletop exercise provisions entirely. As EPA has acknowledged, relevant facilities are currently conducting tabletop and field exercises in accordance with multiple Federal, state and/or local requirements.[40] Yet, neither the 2017 Amendments nor this proposed rule provided any documented justification for EPA to impose these additional requirements on top of other existing regulations. The Proposal does refer to unnamed "recent accidents" where emergency response procedures were deficient.[41] However, EPA does not provide an evidentiary basis to link the alleged deficient responses during unspecified accidents to a lack of response exercises. Instead, it simply assumes that also requiring these types of exercises under yet another set of regulations will have to provide some additional benefit. Yet, the proposal does not provide any basis to support that assumption. As such, EPA should simply rescind the field and tabletop exercise provisions. Doing so will eliminate regulations that are duplicative of and potentially conflict with OSHA HAZWOPER requirements and ease unnecessary regulatory burdens.

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GPA Midstream appreciates the opportunity to submit these comments in response to EPA's May 2018 Proposal and is standing by to answer any questions that the agency may have.

Respectfully submitted,

/s/ Matthew Hite

Matthew Hite

Vice President of Government Affairs
GPA Midstream Association

[38] GPA Midstream 2016 Comments at 25.

[39] EPA May 2018 Proposal at 24,861.

[40] EPA May 2018 Proposal at 24,861; GPA Midstream 2016 Comments at 25-26 (in addition to regulatory requirements, facilities also conducting exercises in line with trade association guidelines).

[41] EPA May 2018 Proposal at 24,861.