HUNTON& WILLIAMS

HUNTON & WILLIAMS LLP
575 MARKET STREET
SUITE 3700
SAN FRANCISCO, CALIFORNIA 94105

TEL 415 • 975 • 3700
FAX 415 • 975 • 3701

SHANNON S. BROOME
DIRECT DIAL: 415 • 975 • 3718
EMAIL: SBroome@hunton.com

March 14, 2017

VIA CERTIFIED MAIL-EMAIL

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460
pruitt.scott@epa.gov
Fax No: 202-501-1450

The Honorable Barry Breen
Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 5101T
Washington, DC 20460
breen.barry@epa.gov

Re: Supplement to Petition for Reconsideration and Stay Request

Dear Administrator Pruitt and Acting Assistant Administrator Breen:

On March 13, 2017, the Chemical Safety Advocacy Group (CSAG) filed a Petition for Reconsideration and Stay (Petition) with respect to the rule entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Rule*, 82 Fed. Reg. 4594 (Jan. 13, 2017), Docket No. EPA-HQ-OEM-2015-0725. Footnote 60 cites to a September 15, 2016 letter from me to the Environmental Protection Agency's (EPA) Mathy Stanislaus requesting reconsideration of his decision to deny repeated requests to meet with stakeholders to discuss public comments submitted on the March 2016 proposed rule, including those submitted by CSAG. CSAG notes that, despite being a public document relevant to the rulemaking, EPA did not post this letter to the public docket. As a supplement to the Petition previously filed, we are therefore providing the September 15, 2016 letter to be included as Attachment 5 to the Petition.

Please contact me at sbroome@hunton.com or 415.975.3718 if you have any questions about this supplement.

Sincerely,

Shannon S. Broome

Attachments

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN RE: ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, FINAL RULE, 82 FED. REG. 4595 (JAN. 13, 2017)	)	DOCKET NO. EPA-HQ-OEM-2015-0725

SUPPLEMENT TO

PETITION FOR RECONSIDERATION AND STAY

Submitted by

THE CHEMICAL SAFETY ADVOCACY GROUP

SHANNON S. BROOME
CLARE ELLIS*
Hunton & Williams LLP
575 Market Street
Suite 3700
San Francisco, CA 94105
(415) 975-3718
sbroome@hunton.com

CHARLES H. KNAUSS
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, D.C. 20037
(202) 419-2003
cknauss@hunton.com

Counsel for the Chemical Safety Advocacy Group

Dated: March 14, 2017

*Admitted only in Georgia, not admitted in California

Revised List of Attachments

1. Comments of the CSAG on the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule, 81 Fed. Reg. 16,338 (Mar. 14, 2016), dated May 13, 2016, Docket No. EPA-HQ-OEM-2015-0725-0594.

2. Comments of CSAG on the Information Collection Request for the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule, 81 Fed. Reg. 13,638 (Mar. 14, 2016), date Apr. 13, 2016, Docket No. EPA-HQ-OEM-2015-0725-0363.

3. CSAG Presentation to the Office of Information and Regulatory Affairs (OIRA) during Executive Order 12866 meeting regarding Modernization of the Accidental Release Prevention Regulations under Clean Air Act, 2050-AG82 (Nov. 21, 2016).

4. Declaration of Shannon S. Broome (Mar. 13, 2017).

5. Letter from Shannon S. Broome to Hon. Mathy Stanislaus (EPA), re: Follow up on Requests for Meeting (Sept. 15, 2016).

Attachment 5

HUNTON & WILLIAMS LLP
575 MARKET STREET
SUITE 3700
SAN FRANCISCO, CALIFORNIA 94105

TEL 415 • 975 • 3700
FAX 415 • 975 • 3701

SHANNON S. BROOME
DIRECT DIAL: 415 • 975 • 3718
EMAIL: SBroome@hunton.com

September 15, 2016

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 5101T
Washington, DC 20460

Re: Follow up on Requests for Meeting

Dear Assistant Administrator Stanislaus:

I am writing on behalf of the Chemical Safety Advocacy Group (CSAG)[1] to ask you to reconsider the decision to deny the meeting requests of stakeholders who submitted significant and meaningful comments regarding the proposed amendments to the Risk Management Program (RMP), one of the most impactful rules proposed by this Administration.[2] This decision runs counter to core principles of the Administration for robust dialogue with stakeholders and the historical practices of EPA. Indeed, Executive Order 13650 directs EPA to work with regulated entities by including in its purpose statement that "additional measures can be taken by executive departments and agencies (agencies) with regulatory authority to further improve chemical facility safety and security *in coordination with owners and operators*."[3] Even more important, closing off communications after the close of the comment period runs counter to achieving a rule consistent with the law, science, and sound policy, and in particular, reducing risk and not exacerbating it. This approach is also inconsistent with your own past practice, which has been to bridge gaps among stakeholder perspectives on a proposed EPA action to truly understand the concerns *and address them* before finalizing a rule.

[1] CSAG focuses on risk management planning, general duty, and process safety issues affecting our industrial companies, with a primary goal of achieving implementable programs for safe operations and compliance. CSAG has actively participated in EPA's RMP rulemaking process, including comments on EPA's 2014 Request for Information, stakeholder discussions, and comments on the proposed rulemaking.
[2] EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule*, 81 Fed. Reg. 13,638 (Mar. 14, 2016), 40 C.F.R. Part 68.
[3] Executive Order 13650, *Improving Chemical Facility Safety and Security*, § 1, Aug. 1, 2013 (emphasis added).

We write today knowing that on July 27, 2016, eleven state attorneys general wrote the attached letter to EPA raising significant concerns regarding potential dangers created by the Agency's proposed rule if it were finalized, and we have not seen that this letter has been acknowledged by EPA as yet or any response the Agency might have sent. We understand the natural tendency to try to finalize actions already in progress, like the RMP proposed amendments, given the approaching end of the Administration. That said, we can think of no justification for finalizing a rule of this magnitude with the significant changes needed to be made given that the comment period only closed in May. This is a complicated rule with interdependent provisions, such that a revision of one necessarily changes the consequences and effect of several others. The apparent fast-track promulgation currently underway is in no one's interest and is likely to lead to unintended negative consequences for the facilities, compliance capability, and the public. It will also further delay EPA's promise of chemical safety because of inevitable and well-founded legal challenges.

It is incumbent on EPA to engage the public, including the affected industry, who submitted detailed recommendations for improving the proposal. In our view, EPA cannot proceed at its intended pace and still meet its obligations under the Administrative Procedure Act for reasoned decision-making, Clean Air Act Section 112(r)'s obligation to issue "reasonable regulations" and "appropriate guidance," and the Obama Administration EPA's repeated public commitments to public participation, transparency, and sound science in rulemaking.

CSAG has devoted significant resources to provide the Agency information on risk management plan issues and the real-world implications of the proposed rules for plants, with numerous examples and practical input to improve this regulation. Translating these discussions into regulatory text is always a challenge, which is why it is understandable that substantial changes were needed to the proposed regulations. CSAG's comments included extensive, constructive information to aid the Agency in achieving a workable and reasonable (as is required by the statute) final rule and also noted several aspects of the proposed rule language that in fact would run counter to EPA's goals.

As you know, I reached out immediately after the close of the comment period to try to arrange a meeting to discuss the complex issues addressed in our comments. You declined that meeting. I contacted you again in June, asking you to reconsider, and again was declined. I have called the contacts listed in the *Federal Register* as well, again to no avail. Thus, it appears that EPA has decided that there will not be further dialogue to understand and reconcile the comments filed on this rule, even though it is clear, at least to us, that the final rule would benefit from such discussions. We stand ready to assist EPA as it works on regulatory language and makes significant policy choices to help ensure that your goals for the rule are in fact advanced.

As Administrator Jackson made clear in her well-publicized April 23, 2009 memorandum to all EPA employees: "In all its programs, EPA will provide for the *fullest*

possible public participation in decision-making."[4] She also affirmed EPA's commitment to robust dialogue in rulemaking, stating that "[r]obust dialogue with the public enhances the quality of our decisions."[5] She directed EPA offices "to reach out as broadly as possible for the views of interested parties."[6]

These principles and commitments do not cease to apply merely because the end of the Administration is approaching. If the true goal is to achieve the best possible rule, dialogue must continue after the close of the comment period—just as it has in other EPA landmark rules, like the Clean Power Plan. We note that if EPA engaged in this process, it would learn that a diverse range of stakeholders also raised points that CSAG raised and on which CSAG provided detailed, specific suggestions for remedying the concerns through modifications to the Agency's proposal:[7]

Compliance Auditing

- Several public entities echoed CSAG's concern that expansive qualification and impartiality requirements for auditors is burdensome and will limit the pool of available auditors.
- Several public entities included their own comment, like CSAG's, that there is no credible evidence to support the proposition that third party RMP and process safety audits are more robust than those conducted by internal company auditors.

Incident Investigation and Root Cause Analysis

- Public entities stated the very concern that CSAG noted that EPA's revised definition of catastrophic release is overbroad.
- Public entities stated views (consistent with CSAG's) that facilities should have the discretion to determine which near misses to investigate. Even Contra Costa County Health Services (CCHS) seems to agree, commenting that facilities often have their own near miss reporting programs and facilities should be *encouraged* to report and investigate all near misses. CCHS also noted that California's incident investigation requirement is limited to actual incidents (no actual near miss investigation requirement).

Local Coordination

- Several public entities noted that the requirement to conduct exercises is expensive, burdensome, and results in an unfunded mandate.
- Public entities explicitly recognized that the emergency response burden should not rest solely on facilities— The National Association of SARA Title III Program Officials (NASTTPO) (it is not a facility's responsibility to ensure resources and capabilities are in place), TVA (current rule appropriately identifies division of responsibility between Local

[4] Mem. from Lisa P. Jackson, Administrator, EPA, to All EPA Employees, *Transparency in EPA's Operations* (Apr. 23, 2009) (emphasis added).
[5] *Id.*
[6] *Id.*
[7] The bulleted themes listed are based on a review of comments submitted to the docket.

Emergency Planning Committees (LEPCs) and facility), US SBA (unnecessary delegation of its responsibility to facility), just as CSAG explained.

LEPC Disclosure

- Public entities echoed CSAG's concern that security sensitive information should not be released.
- Public entities stated that the requirements include nonessential information, just as CSAG pointed out in its comments—NASTTPO (should only require disclosure of information LEPCs deem useful), NYC (should only disclose information directly related to entities' ability to safely and effectively respond to incidents), TVA (required disclosure includes nonessential information—unlikely to make LEPCs more functional or more effective).

Public Disclosure

- Public entities stated that security sensitive information should not be disclosed and that security controls are needed, making the same points that CSAG made in its comments.

Safer Technology and Alternatives Analysis (STAA)

- Public entities stated that EPA should limit STAA to the design process and keep it out of the Process Hazard Analysis (PHA) process where it is unduly burdensome and contrary to safety improvements, which is also consistent with CSAG comments.

The fact that industry and public entities agree on so many of these key issues is evidence that EPA needs to take the time necessary to fully evaluate all comments submitted, continue the dialogue, and make critical changes to the proposed rule. EPA received many comments, and a continuation of EPA's pre-proposal engagement with stakeholders will only serve to better this rule. As noted, CSAG, a group focused on risk management planning/process safety issues, has made available to EPA the process safety experts who actually implement these programs at plants. CSAG has given EPA constructive and practical advice about what is and is not productive in promoting the aims of the RMP rule. These contributions were evident in the proposed rule and we are certain that continued engagement will improve the final rule and is necessary at this critical stage.

We are available to meet with you anytime this month or next and look forward to discussing this rulemaking further.

Sincerely,

Shannon S. Broome

Attachment

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

July 27, 2016

The Honorable Gina McCarthy
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Docket EPA-HQ-OEM-2015-0725-0001; Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Proposed Rule (RIN 2050-AG82)

Dear Administrator McCarthy,

As the chief legal officers of our states, we write to you to express our objection to your proposed revisions to the above-referenced Accidental Release Prevention Requirements, and to express our support for the comments filed on May 3, 2016, by Louisiana Attorney General Jeff Landry and Texas Attorney General Ken Paxton (attached hereto for ease of reference). The concerns raised by Attorneys General Landry and Paxton must be meaningfully addressed prior to finalization of this rule.

The rule potentially covers up to 12,500 facilities in the agriculture, food processing, chemical manufacturing, oil and gas, and water treatment sectors. The safety of these manufacturing, processing and storage facilities should be a priority for us all, but safety encompasses more than preventing accidental releases of chemicals, it also encompasses preventing *intentional* releases caused by bad actors seeking to harm our citizens. Your proposed rule seeks to make readily-available to the public information that you believe might be useful to the public in the event of an accidental release of chemicals. As the federal agencies responsible for national security have warned you, compiling that information and making it easily accessible also aids those who might seek to cause an intentional release for nefarious purposes, by providing those bad actors with information that would help them both select a target and exploit any security vulnerabilities their target might have.

With terrorist attacks becoming an unfortunately common occurrence, security concerns of this sort should be taken seriously, yet it appears your agency has largely dismissed them. We strongly urge

313 N.E. 21ST STREET • OKLAHOMA CITY, OK 73105 • (405) 521-3921 • FAX: (405) 521-6246

you to rethink this course. A rule of this sort should prioritize national security and demonstrate an awareness that there are those in this world who seek to do us harm, and who might attempt to use our nation's chemical facilities as a means to do so. The proposed rule fails on this front, and should be withdrawn.

Sincerely,

Scott Pruitt
Oklahoma Attorney General

Derek Schmidt
Kansas Attorney General

Luther Strange
Alabama Attorney General

Adam Paul Laxalt
Nevada Attorney General

Mark Brnovich
Arizona Attorney General

Alan Wilson
South Carolina Attorney General

Leslie Rutledge
Arkansas Attorney General

Sean Reyes
Utah Attorney General

Pamela Jo Bondi
Florida Attorney General

Brad Schimel
Wisconsin Attorney General

Sam Olens
Georgia Attorney General

CERTIFICATE OF SERVICE

A copy of the preceding was sent on March 14, 2017 to the Honorable Scott Pruitt, the Honorable Barry Breen, and the Honorable Kevin Minoli *via* certified mail and email.

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460
pruitt.scott@epa.gov
Fax No: 202-501-1450

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Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 5101T
Washington, DC 20460
breen.barry@epa.gov

The Honorable Kevin Minoli
Acting General Counsel
U.S. Environmental Protection Agency
Correspondence Control Unit
Office of General Counsel
1200 Pennsylvania Avenue, NW
Mail Code: 2310A
Washington, DC 20460
minoli.kevin@epa.gov

Shannon S. Broome