



# NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

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May 3, 2019

Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Re: Recommendation to preserve the Chemical Disaster Safety Rule

Dear Administrator Wheeler:

The National Environmental Justice Advisory Council (NEJAC) is extremely concerned about the impacts of chemical disasters on environmental justice communities. We urge the Environmental Protection Agency to halt efforts to rescind, weaken, and further delay parts of the Chemical Disaster Rule (also known as the January 2017 Risk Management Program (“RMP”) Amendments).<sup>1</sup> Instead, NEJAC believes that the Chemical Disaster Rule should be fully implemented and enforced. The safety improvements this rule contains are essential to protect the lives and well-being of fenceline communities, workers, and first responders.<sup>2</sup>

For more than a decade, the NEJAC has received public comments from residents concerned about the impacts of chemical disasters on their communities. They have come to the NEJAC asking for intercession with the EPA to ensure that the Agency adopts and implements regulations that protect fenceline communities. Frontline groups like Texas Environmental Justice Advocacy Services (TEJAS) and the Environmental Justice Health Alliance for Chemical Policy Reform regularly provide public comment to the NEJAC asking for help for fenceline communities threatened by chemical disasters.

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<sup>1</sup> EPA, Final Rule, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 82 Fed. Reg. 4594 (Jan. 13, 2017) (the “Chemical Disaster Rule”), <https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule>.

<sup>2</sup> *Id.*; EPA, Risk Management Program (RMP) Final Rule, Questions & Answers (Feb. 2017), [https://www.epa.gov/sites/production/files/2017-02/documents/rmp\\_final\\_rule\\_qs\\_and\\_as\\_12-21-16\\_final\\_formatted\\_2-6-17.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/rmp_final_rule_qs_and_as_12-21-16_final_formatted_2-6-17.pdf) (“EPA’s changes to the RMP rule will help protect local first responders, community members and employees from death or injury due to chemical facility accidents.”).

## **1. Prevent chemical disasters in frontline communities and recognize that prevention is a critical priority for environmental justice.**

EPA issued the Chemical Disaster Rule in January 2017, in part because a 2013 fertilizer plant explosion in Texas revealed the danger our frontline communities face. Before the rule was issued, community advocates have brought their concerns to NEJAC over the years about the need to strengthen federal regulations in the Risk Management Program. For example, during the October 2011 meeting of the NEJAC in Albuquerque, New Mexico, advocates raised this issue and called for EPA to exercise its Clean Air Act authority to require facilities to prevent, catastrophic chemical disasters where feasible. In March 2012, NEJAC sent a letter to the EPA Administrator urging the agency to issue new rules to reduce or eliminate chemical disaster threats and impacts.<sup>3</sup>

In response, EPA sent a letter to NEJAC in August 2013, stating that “[w]e ... share your concern about chemical accidents and preventing their devastating effects on communities.”<sup>4</sup> From 2014-2016 EPA held public meetings, accepted two rounds of public comment, and coordinated with the Occupational Safety and Health Administration, the Department of Homeland Security, and other agencies to evaluate what regulatory improvements EPA should make to protect communities from chemical disasters.<sup>5</sup> EPA also evaluated data showing over 2,291 chemical explosions, fires, and toxic releases in the preceding decade.

This information gathering and rulemaking process led to EPA’s new Chemical Disaster Rule, the Agency’s first major improvement on chemical facility safety in two decades. EPA determined that the improvements in this rule would prevent and reduce deaths, injuries, toxic exposures, and other harm from these incidents.<sup>6</sup>

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<sup>3</sup> Letter from Elizabeth Yampierre, Chair, NEJAC, to EPA Administrator Lisa P. Jackson (Mar. 14, 2012), <https://www.epa.gov/sites/production/files/2015-02/documents/2012-preventing-chemical-plant-disasters.pdf>.

<sup>4</sup> Letter from EPA Assistant Administrator Mathy Stanislaus to Ms. Margaret J. May, Vice Chairwoman, NEJAC at 1 (Aug. 29, 2013), <https://www.epa.gov/sites/production/files/2015-02/documents/epa-resp-chem-plant-disasters.pdf>.

<sup>5</sup> EPA, Final Amendments to the Risk Management Program (RMP) Rule, <https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule>; Chemical Disaster Rule Regulatory Impact Analysis at 125-27 (Dec. 16, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0734>.

<sup>6</sup> 82 Fed. Reg. 4597-99 (describing reductions in fatalities, injuries, property damage, people sheltering in place, evacuations, lost productivity, environmental impacts, and more), <https://www.govinfo.gov/content/pkg/FR-2017-01-13/pdf/2016-31426.pdf>; Chemical Disaster Rule Regulatory Impact Analysis at 80 (Dec. 16, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0734>.

EPA properly recognized that the new measures are especially important for communities of color and low-income people because they face disproportionate threats from industrial chemical releases.<sup>7</sup>

## **2. EPA should enforce the Chemical Disaster Rule and not finalize its proposed rollback.**

In August 2018 in Boston, NEJAC heard from advocates from around the country about the dire need for EPA to implement these protections. Advocates calling for EPA to keep these protections include: First responders and fire fighters, workers and labor unions, fence-line communities, scientists, tribal governments, and nonprofit environmental and safety activists. NEJAC believes EPA should listen seriously to these voices and keep the Chemical Disaster Rule in force, instead of rolling back these safety measures as requested by industry.

Soon after NEJAC's August meeting, the federal court of appeals in Washington, D.C. struck down EPA's delay of the Chemical Disaster Rule as an illegal move that deprived communities and workers of "life-saving protections."<sup>8</sup> The Chemical Disaster Rule is in effect. Facilities must comply now with important parts of the rule, and take action to prepare to achieve full compliance with all other key provisions.<sup>9</sup>

For these reasons, the NEJAC strongly urges EPA to keep moving forward and not turn back the clock on chemical facility safety. We call on EPA to enforce and not repeal the Chemical Disaster Rule. EPA found that this rule would protect the most vulnerable communities, workers, and first-responders from disastrous chemical releases, fires, and explosions. We ask you to fulfill EPA's responsibility to safeguard public health and ensure that chemical facilities take the common-sense steps required by the Chemical Disaster Rule to prevent more deaths, injuries, evacuations, and shelter-in-place orders, before additional, preventable disasters occur on your watch.

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<sup>7</sup> Chemical Disaster Rule Regulatory Impact Analysis at 122-27 (Dec. 16, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0734>.

<sup>8</sup> *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1065 (Aug. 17, 2018) (mandate issued Sept. 21, 2018), [https://www.cadc.uscourts.gov/internet/opinions.nsf/D635BFF007DFAA56852582EC00509B00/\\$file/17-1155-1746106.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/D635BFF007DFAA56852582EC00509B00/$file/17-1155-1746106.pdf).

<sup>9</sup> EPA, Risk Management Plan (RMP) Delay Rule Vacatur, <https://www.epa.gov/rmp/risk-management-plan-rmp-delay-rule-vacatur>; EPA, Final Rule, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 83 Fed. Reg. 62,268 (Dec. 3, 2018).

Thank you for your review and consideration of the NEJAC's concerns and recommendations. We await your timely response.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Moore". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Moore, Chair

cc: NEJAC Members  
Henry Darwin, Acting Deputy Administrator  
Barry Breen, Acting Assistant Administrator for the Office of Land and  
Emergency Management  
Brittany Bolen, Associate Administrator for the Office of Policy  
Matthew Tejada, Director for the Office of Environmental Justice  
Karen L. Martin, Designated Federal Officer and NEJAC Program Manager

