Congress of the United States
Washington, DC 20515

November 10, 2022

The Honorable Michael Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Administrator Regan:

We write today to express serious concerns with aspects of a rule proposed on August 18, 2022 by your agency—the Environmental Protection Agency (EPA)—entitled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention."[1] This regulatory proposal, the scope of which exceeds the controversial rule finalized by the Obama EPA,[2] will do little to nothing to improve workplace safety but instead drastically raise fuel costs—contrary to President Biden's promise to "use every tool" at the Administration's disposal to lower the price of gasoline for the average American.[3]

The Risk Management Program (RMP[4]) has helped industry and regulators form consensus on process safety standards and best practices, while also appropriately communicating levels of risk to the public. However, EPA's recently proposed rule departs from prior practice for the RMP program, raising questions about how useful this rule will be in protecting workers and the public. EPA's proposal adds costly, burdensome, and ineffective requirements on regulated facilities, including domestic fuel refiners that are not comparable with the alleged safety benefits.

We are particularly concerned by the inclusion of provisions intended to discourage the use of hydrofluoric acid (HF) alkylation technology, which is used by fuel manufacturers to make clean and high-octane gasoline. If implemented as proposed, we understand that this rule has the potential to significantly impede domestic gasoline production, impacting supply chains and increasing costs for consumers. In other words, this rule will be directly responsible for increasing consumer prices at the pump and exacerbating America's high inflation rate.

We question EPA's focus on ending the HF alkylation process in the name of safety. Roughly half of the alkylate produced in the United States is made with HF or modified HF. The other half is made using sulfuric

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[1] Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 87 Fed. Reg. 53556 (Aug. 31, 2022) (proposal to revise 40 C.F.R. Part 68), *available at* https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0003

[2] Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 82 Fed. Reg. 4594 (Jan. 13, 2017), [EPA–HQ–OEM–2015–0725; FRL–9954–46– OLEM], *available at https://www.govinfo.gov/content/pkg/FR-2017-01-13/pdf/2016-31426.pdf*

[3] President Joseph R. Biden. "Remarks on Actions to Lower Gas Prices at the Pump for American Families," Eisenhower Executive Office Building, *available at* https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/31/remarks-by-president-biden-on-actions-to-lower-gas-prices-at-the-pump-for-american-families/

[4] Clean Air Act section 112(r)(7), 42 U.S.C. 7412(r)(7)

acid. Not only does sulfuric acid come with its own associated risks[5]—it uses approximately 200 times more acid than HF alkylation and requires additional acid storage tanks for both fresh and spent acid[6]. Many refineries do not have the capability to conduct sulfuric acid alkylation on-site and must use a third-party, offsite facility. Without an interconnecting pipeline, the most common alternative for acid transport is by railcar or truck. In order to meet the volume of sulfuric acid demanded, a refiner would need hundreds of additional trucks versus the one truck per month required for a facility with an HF alkylation unit, further adding to the potential for an accident to occur.

Importantly, many of the proposed rule's suggested "alternatives" have not been demonstrated at scale and EPA's proposal does not discuss the risks associated with alternative technologies. Risk shifting to alternative technology is inappropriate without the Agency focusing a critical lens on potential adverse consequences of the replacements.

In addition, we question EPA proposing these steps since EPA already "believes many facilities with RMP processes already have the appropriate measures to identify, reduce, and mitigate the threat of an accidental release before it happens."[7] Further, petroleum refiners continually update rigorous safety practices and standards, resulting in a 50-percent decrease in process safety events at refineries and a nearly 40-percent reduction at petrochemical facilities since 2011.[8] We are concerned that EPA's unwarranted focus on HF alkylation units may actually increase risk. The US Chemical Safety Board, too, has found that: "[p]rocess unit startups and shutdowns are significantly more hazardous than normal oil refinery or chemical facility operations."[9] Introducing duplicate and arbitrary stop work provisions or requiring these facilities to conduct frivolous and enormously expensive alternative technology analyses will harm existing risk reduction efforts.

Any proposed update to the RMP must be supported by a strong data and evidence, rather than driven by ideology. It must also not compromise safety nor adversely impact US energy and economic security. We are concerned that the EPA's economic justifications for its policy choices, particularly its focus on HF alkylation, departs from the actual cost of alternative technology replacements.[10] The Agency may be either unable or unwilling to understand the real cost of its proposal to RMP regulated entities.

At a time of record inflation, we can ill afford misguided policies that will only add to the pain American families are feeling. Given the widespread negative impacts of this proposal, particularly on the domestic oil and gas industry, we request:

- Reopen the public comment period for another 60-days to allow for additional input, including from experts in the refining and occupational safety fields; and
- That your agency provide our staffs with a briefing on how EPA plans to avoid risk tradeoffs that make Americans less safe and economically secure.

Thank you for your consideration of these requests. Please contact Jake Kennedy, from the Senate Environment and Public Works Committee at jake_kennedy@epw.senate.gov or 202-224-6176; or Jerry Couri, from the

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[5] https://risk-safety.com/alkylation-technologies-hf-h2so4-or-solid-acid/
[6] https://stratasadvisors.com/Insights/2015/HF-Acid-Alkylation
[7] 87 Fed. Reg. at 53591
[8] Process Safety Performance Metrics, American Fuel and Petrochemical Manufacturers (2022), *(found at: https://www.afpm.org/safety-programs/safety-statistics-programs/process-safety-performance-metrics)*
[9] U.S. Chemical Safety and Hazard Investigation Board, Safety Digest: CSB Investigations of Incidents during Startups and Shutdowns, (*found at: https://www.csb.gov/assets/1/17/csb_start_shut_02.pdf?16301)*
[10] For example, in its proposal, the EPA requires petroleum manufacturers that utilize HF in their alkylation processes to "consider safer technology and alternative risk management measures." 87 Fed. Reg. at 53575

House Energy & Commerce Committee at jerrycouri@mail.house.gov or 202-225-2927 with any questions or comments.

Sincerely,

Shelley Moore Capito
Ranking Member
Committee on the
Environment & Public
Works

Cathy McMorris Rogers
Ranking Member
Committee on Energy &
Commerce