

Congress of the United States
Washington, DC 20510

January 25, 2023

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to express our appreciation and support for your agency's work to protect Americans from chemical disasters by issuing the Safer Communities by Chemical Accident Prevention proposed rule. As the Environmental Protection Agency (EPA) works to finalize the rule, we write to reiterate our earlier call for you to deliver the strongest possible protections for workers in Risk Management Program (RMP) facilities, first responders, and environmental justice communities who live near these facilities and are most vulnerable to the cumulative impacts of chemical exposure. As you know, the RMP, as conceived in Section 112 of the Clean Air Act, was intended as a tool to prevent chemical facility disasters but to date the program has been largely reactive. After the prior Administration rolled back safety measures that ignored both the statute's core prevention objectives and the facts showing a strong need for action to prevent chemical disasters, EPA is making the right decision to change course and follow the science and the law. With this new rulemaking, EPA has the opportunity to finally fulfill the promise of the Act by making the proposed improvements, and by further strengthening the rule to prevent chemical disasters from happening in the first place.

Recent chemical disasters have highlighted shortcomings in federal regulations that fail to sufficiently protect workers and communities living near hazardous chemical facilities. From 2004-2020, EPA found that industry reported a total of 3,425 incidents, and acknowledged both reporting delays and under-reporting.¹ This does not account for near-misses, and some of these events could have been much worse if not for highly trained workers acting to prevent a more disastrous outcome. For example, just earlier this year, a chemical fire at a facility in Passaic, New Jersey nearly reached a warehouse storing three million pounds of chemicals, including chlorine pellets.² Catastrophe was largely averted due to the efforts of roughly 200 firefighters who worked for three days to keep the fire contained while nearby residents sheltered in place.

As climate change continues to drive more frequent and intense severe weather, EPA must also do more to protect communities from the "double disasters" that result when chemical disasters

¹ U.S. Environmental Protection Agency. (19 April, 2022). Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention. Docket # EPA-HQ-OLEM-2022-0174.
<https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0066>

² Coming Clean and Environmental Justice Health Alliance for Chemical Policy Reform. (2022.) Preventing Disaster: Three chemical incidents within two weeks show urgent need for stronger federal safety requirements.
<https://comingcleaninc.org/assets/media/images/Reports/Preventing%20Disaster%20final.pdf>

coincide with earthquakes and extreme weather events like hurricanes, floods, and wildfires. A February 2022 Government Accountability Office (GAO) report highlighted this need, finding that roughly a third of RMP facilities are at increased risk from climate impacts and that the current RMP rule does not adequately protect against these climate risks.³

We are encouraged by the steps that EPA has taken with this proposed rule toward protecting communities from the danger of chemical disasters, and we urge the agency to further strengthen the rule in several key ways. As many of us wrote to you in April of last year, the updated RMP rule should prioritize hazard reduction and prevention measures, including transitioning to inherently safer chemicals and processes and requiring third-party audits to verify compliance. However, the proposed rule excludes the vast majority (95%) of RMP facilities from the requirement to conduct a Safer Technologies and Alternatives Analysis (STAA), and in most cases only requires a third-party audit after two incidents have occurred. We encourage EPA to broadly require the transition to inherently safer chemicals and processes at RMP facilities, and to lower the threshold that prompts third-party compliance audits. In addition, given EPA's mandate to prioritize environmental justice established in E.O. 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," we urge the agency to require cumulative impact assessments as part of stationary source siting evaluations in the final rule.

To further ensure adequate protections for the millions of Americans that live near RMP facilities, the final rule should improve requirements for outreach to inform the public about RMP facility hazards and emergency response plans before and during incidental releases, and require that this information be made available in multiple languages. To foster information access and transparency, EPA should maintain a publicly accessible RMP database and commit to delivering that database on the fastest possible timeline.

To adequately recognize and protect chemical facility workers and their unions as key partners in incident prevention, the final rule should: expand the conditions in which workers and their representatives are granted stop work authority; ensure that authority extends to workers in all RMP facilities regardless of program level; clarify and require safety reporting that better protects workers' anonymity; allow workers and their representatives to be meaningfully involved in all elements of the rule; require employers to provide workers information and training about the rule and to develop a written program to ensure there is no retaliation against employees for using their rights to prevent a chemical disaster.

Lastly, we commend the EPA for taking steps to recognize climate change as a threat multiplier and proposing important requirements to assess and plan for natural hazards and power loss. We encourage EPA to strengthen these provisions by also requiring implementation of mitigation measures to prevent these climate-related "double disasters", as emphasized in the GAO's February 2022 report. Additionally, the proposed rule does not require real-time air fenceline monitoring, leak detection, nor full facility back-up power, and would be strengthened by each of these requirements. We also note concerns about air monitoring and control equipment being removed from service before extreme weather events, as occurred during Hurricane Harvey,

³ United States Government Accountability Office. (2022, February). Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change. <https://www.gao.gov/products/gao-22-104494>.

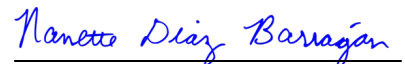
which leaves community members and regulators in the dark as to the full extent of air pollution and chemical disasters that may be exacerbated by extreme weather and/or power loss. The final rule can be strengthened by requiring penalties for intentionally removing air monitoring and control equipment from service, including before extreme weather events.

Thank you for your ongoing work on this and other environmental justice issues. We look forward to continuing to work with you to ensure that the communities we represent, and those across the country, are protected from the danger of chemical disasters by a truly preventative Risk Management Program.

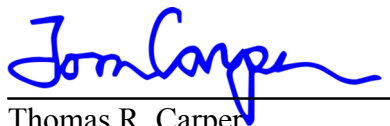
Sincerely,



Cory A. Booker
United States Senator




Nanette Diaz Barragán
Member of Congress



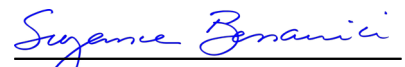
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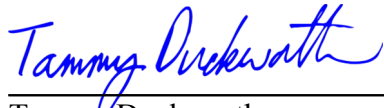
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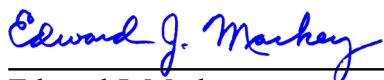
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Member of Congress



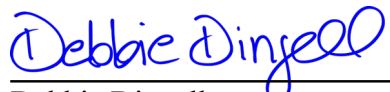
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United States Senator



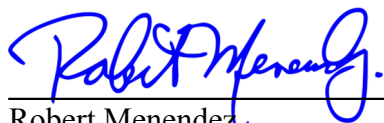
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United States Senator



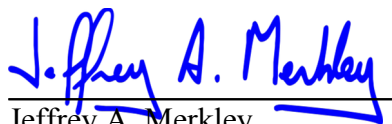
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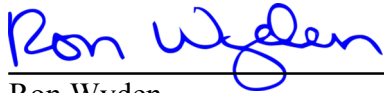
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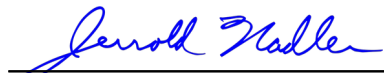
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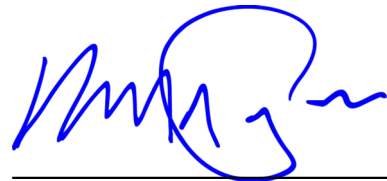
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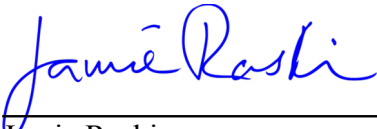
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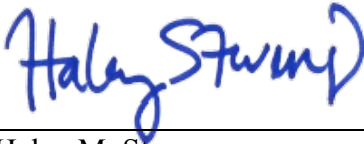
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