



May 13, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Docket # EPA-HQ-OEM-2015-0725

Dear Administrator McCarthy:

On behalf of the nation's cities, counties and mayors, we respectfully submit comments on the U.S. Environmental Protection Agency (EPA) proposed rule for *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Docket # EPA-HQ-OEM-2015-0725*.

Cities, counties and mayors across the country have a significant interest in this proposed rule. Local governments play an instrumental role in managing and overseeing public safety policy and services including police and sheriff departments, 911 call centers, emergency management professionals, fire departments, public health officials, public records and code inspectors, among others. They are the first responders in any disaster, and are often the first emergency response and recovery teams on the scene. Additionally, local governments own and operate water and wastewater facilities that would be required to comply with this proposed rule.

Under the proposed rule, local governments may be most impacted on two fronts. First, as owners and operators of publically owned water/wastewater treatment facilities, local governments would be regulated through new requirements on facilities. In particular, we are concerned that in addition to the increased managerial costs associated with compliance, EPA is considering subjecting these facilities to safer alternative technology (STAA) reviews. Safer technology alternatives to reduce risk at a water treatment plant could inadvertently counter other federal environmental quality objectives and, selecting the most appropriate water treatment chemicals and technology applications should be made by water utility managers based on science, practical experience, and their professional opinion of what will most effectively make water safe for public consumption and comply with the Safe Drinking Water Act.

Second, since local governments often serve as our nation's first line of defense before and after disasters strike, changes to emergency protocol will directly impact them. The proposed rule will expand local government responsibilities, without providing funding to implement the more complex requirements.

In EPA's cost benefit analysis, we believe that EPA has not adequately considered all the necessary local government costs that would be needed to implement these new responsibilities. The proposed rule would require local governments to coordinate emergency response activities with 11,900 individual facilities. This will be costly and complex for local governments to implement, and more staff and other resources will be needed to effectively meet the goals of the rule. Furthermore, EPA did not consider how an increased local government workload as a result of this rule would be funded. Since publicly owned water treatment systems are funded through user fees, under law, the new facility management costs would be borne by them.

Additionally, we are concerned that the costs and impacts of a more prescriptive risk management program will fall disproportionately on smaller communities, compounding their challenges of complying with the new federal mandates. These jurisdictions generally have small staffs who are already managing a wide range of issues. Larger communities will also be faced with increased reporting and activity burdens as first responders, emergency planners, and regulators of land use activities.

Moreover, while we are appreciative the agency held a one-hour briefing for our organizations during the rule's public comment period, we remain concerned about the proposed rule's direct impact on local governments. We believe the agency missed a valuable opportunity to engage local governments prior to the rule's publication in the *Federal Register*. This is counter to EPA's internal "Guidance on Executive Order 13132: Federalism" (Nov. 2008), which specifies that states and local governments must be consulted on rules if they impose substantial compliance costs, preempt state or local laws and/or have "substantial direct effects on state and local governments." If the agency had engaged us prior to public comment period, we believe we could have flagged some of these problems and identified potential solutions.

For these reasons, we urge you to delay advancing the proposed rule and perform a local government impact analysis and consultation with the nation's cities, counties and mayors before finalizing this rule.

As an intergovernmental partner, we thank you for the opportunity to comment on the proposed rule, which will have a major impact on our various constituencies. On behalf of the nation's cities, counties and mayors, we thank you for your consideration of our request. If you have any questions, please contact us: Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; or Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org.

Sincerely,



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