December 2, 2016

Mr. Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street N.W.
Washington D.C. 20503

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

Dear Administrator Shelanski:

On behalf of the nation's cities, counties and mayors, we are writing to express concerns about the U.S. Environmental Protection Agency's (EPA) proposed rule for Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act (Docket # EPA-HQ-OEM-2015-0725). Under Executive Order 12866: Regulatory Planning and Review, we request a meeting to discuss our concerns outlined below with the proposed rule.

The risk management programs (RMP) proposed rule would give communities access to information about nearby chemical hazards, the associated risks and potential response options. This rule is of specific interest to our members since local governments play a key role in ensuring the health, safety and welfare of our residents and communities. These responsibilities include operation and management of water and wastewater facilities and emergency response, both of which would be directly impacted by this proposed rule.

While we support the purpose of this rulemaking, we have a number of overarching concerns with the rulemaking process and the proposed rule itself. This includes the process used to craft the proposed rule, the scope and substance of the rulemaking, and the ability of local governments to effectively implement the rule.

For the reasons that follow, we request that OMB refer the proposed rule back to EPA to address our concerns and request that EPA fulfills its obligation to perform a meaningful consultation with local elected officials.

1. The process used to craft the proposed rule circumvented EPA's internal guidance on Executive Order 13132

Local governments are a key partner in the federal-state-local intergovernmental system. Citiesand counties are both subject to state and federal regulations and help to implement regulations at the local level. Therefore, as both regulated entities and regulators, it is critical that local governments be fully engaged as intergovernmental partners through the entire federal regulatory process—from initial development through implementation.

Since this rule has a direct impact on local governments, we are concerned that EPA did not engage cities, mayors and counties during the writing of the rule. Only after the rule was proposed, and only at our organizations request, did the EPA hold a one-hour briefing on May 4, 2016—one week before the public comment period for the rule closed. As a result of that briefing, on May 9, 2016 our organizations requested an extension of the comment period to ensure that our local governments could fully analyze EPA's proposal, but EPA denied this request.

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 its intergovernmental partners prior to public comment period, we believe we could have flagged some of our concerns listed below and identified potential solutions before the rule was proposed.

2. The proposed rule does not take into account the broad impacts on local governments.

Under the proposed rule, local governments will be impacted on two fronts. First, as owners and operators of publicly owned water and wastewater treatment facilities, local governments would be regulated through new requirements on these facilities. Second, since local governments often serve as our nation's first line of defense before and after disasters strike, changes to emergency protocols will have a direct impact on local resources. The proposed rule will expand local government responsibilities, without providing funding to implement the more complex requirements.

a. Water and wastewater facilities are low risk facilities; regulatory requirements should reflect actual risk.

Water and wastewater treatment facilities are uniquely impacted by this rule. EPA estimates that there are approximately 155,000 public drinking water systems in the nation (U.S. EPA, November 2008). This includes 52,000 community water systems and 16,000 publicly owned wastewater treatment plants. While water and wastewater facilities use chemicals to remove impurities, they are considered "simple process" and/or "low risk" facilities. Moreover, for the last decade, the water industry has relied on safe best-practices and has no concrete examples of "hits" or "near misses" that jeopardized public safety. This low

risk profile and demonstrated record of safety is not representative of the chemical process safety risks that the proposed RMP rule aims to address. **Therefore, we urge EPA to afford the water sector with regulatory flexibility since water and wastewater facilities pose low risk for chemical accidents.**

b. Public safety services would be overburdened.

Local governments play an instrumental role in managing and overseeing public safety as they are the first responders in any disaster and are often the first emergency response and recovery teams on the scene**.** Local government public safety services include police and sheriff departments, 911 call centers, emergency management professionals, fire departments, public health officials, public records and code inspectors, among others.

The proposed rule would require local governments to coordinate emergency response activities with 11,900 individual facilities, including water treatment facilities, located within their boundaries. As part of these requirements, regulated facilities would be required to consult individually with emergency managers on a yearly basis for notifications and tabletop exercises and every five years to conduct field exercises.

While the intent of the provision is laudable, the rule does not take into account the extra emergency response manpower needed to participate in additional emergency response drills. For example, if a community has 20 regulated facilities within its borders, local government emergency responders would be responsible for an additional 80 tabletop exercises and 20 field exercises over the course of five years.

One of NACo's Pennsylvania counties estimates that it takes approximately 60-80 hours to develop a tabletop exercise and 100-150 hours to develop a functional or full scale exercise. Additionally, it takes 48-80 man hours to participate in a tabletop exercise and approximately 200 man-hours to participate in one functional or full-scale exercise. These numbers are estimated solely for internal hazmat and emergency management components and do not reflect the participation of fire, police, emergency management systems, local emergency management agencies, hospital, facility personnel or other local government representatives.

Finally, the rule doesn't take into consideration the public safety responsibilities our emergency responders have under other federal rules and regulations. Many cities and counties are already required to actively participate on a yearly basis in a number of emergency response drills, tabletops, functional and full scale exercises as required under the Homeland Security Exercise and Evaluation Program for a variety of potential situations including natural disaster, active shooter, transportation, nuclear power plant, mass casualty, etc. These drills are expensive and time consuming, and the proposed rule would be duplicative of current responsibilities.

c. Proposed rule vests too much authority with Local Emergency Planning Committees.

Local Emergency Planning Committees (LEPCs) are an independent, community-wide body comprised of elected state and local officials; public safety and health professionals; environment, transportation and hospital officials; facility representatives; and representatives from community groups and the media.

LEPCs are charged with identifying potential risks associated with stored and transported chemicals. Under the proposed rule, LEPCs will be given greater responsibility and authority in chemical emergency response.

While LEPCs work well in some communities, their effectiveness varies across the country. They are more common in larger cities and counties, however, many rural and suburban communities may not have active programs, simply because they do not have the available resources (lack of time, staff, funds, expertise, etc.). Therefore, relying on LEPCs to guide emergency response at chemical facilities is not a viable option nationally.

The proposed rule would also involve LEPCs in land use decisions. We have strong concerns that this provision could lead to preemption of local authority since local governments are given direct authority to undertake local land use planning, zoning and code enforcement activities to balance the interests of residents, commercial and industrial activities, and institutional land uses.

3. Proposed definitions and other provisions are vague and unworkable.

The proposed rule is complex and lengthy, and many of the provisions and definitions are overly broad and vague, which is likely to cause uncertainty at the local level. Specifically, we are concerned with the terms "root cause investigations," and "safer technology and alternative analysis."

a. Root Cause Investigations

While root cause investigations are an important part of community safety programs, we are concerned that new terms and definitions may circumvent successful investigations. Use of the terms "correctable failures in management systems" and "near miss" incidents are difficult to measure. This is especially problematic at water and wastewater facilities that are, by their very nature, considered low risk for accidents. **Instead of using the term "near miss," root cause investigations should be triggered by incidents that involve injuries, neighborhood evacuations and shelter in-place incidents.**

b. Safer Technology and Alternatives Analysis (STAA)

Additionally, EPA has proposed that "simple process" and "low risk" water and wastewater treatment plants use safer alternative technology analysis. While we agree with the underlying objective, we are concerned that reliance on STAA may undercut other federal environmental quality objectives. Any changes to what is already a highly complex treatment process could impact other chemical processes for corrosivity, lead, copper, chlorination, trihalomethanes, etc. in our water supply. **We urge EPA to give water and wastewater treatment facilities flexibility to select the most appropriate treatment based on local conditions, science and professional experience, instead of setting specific STAA.**

4. The costs to local governments have not been fully considered.

EPA's cost-benefit analysis does not adequately consider the necessary local government costs associated with implementing the new responsibilities for water treatment facilities and emergency response under the proposed rule. 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.

Since municipal water facilities are solely funded through user fees, facility owners and operators carefully plan budgets years in advance to ensure that costs remain affordable for citizens and customers. These new requirements under the proposed rule will likely require municipal water agencies to further raise rates, which could lead to a greater disproportionate impact on low, moderate and fixed income populations. In our opinion, EPA has not adequately considered these costs.

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.

For these reasons, we urge EPA to conduct a thorough cost analysis that fully considers the impact of the proposed rule on local governments.

In conclusion, in light of these aforementioned concerns, we request that OMB send the rule back to EPA for consideration and consultation with the nation's cities, counties and mayors before finalizing this rule.

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,

Clarence E. Anthony
CEO and Executive Director
National League of Cities

Matthew D. Chase
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Tom Cochran
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The U.S. Conference of Mayors

cc: EPA Office of Air and Radiation and Intergovernmental