



December 9, 2015

Ms. Laura Free  
Project and Program Manager  
Regulatory Management Division  
Office of Policy  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

**Re: The Environmental Protection Agency's Risk Management Modernization Rule;  
Small Business Advocacy Review Panel**

Dear Ms. Free,

The Gas Processors Association ("GPA") appreciates the opportunity to participate as a Small Entity Representative (SER) on EPA's Risk Management Modernization Rule Small Business Advocacy Review (SBAR) Panel. GPA further appreciates the opportunity to submit comments as a follow up to the November 19, 2015 Panel Outreach meeting.

GPA has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA is composed of over 100 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products ("NGLs") such as ethane, propane, butane and natural gasoline. GPA members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs. A large portion of GPA's membership is small businesses.

EPA is developing a proposed rule that would update EPA's existing Risk Management Plan (RMP) regulation. As part of that process EPA, is conducting a Small Business Review Panel to discuss some of the changes it is considering in the proposed rule. GPA is submitting the following comments on several sections of the proposed rule that may adversely affect GPA member companies that meet the small business classification.

**1. Incident Investigations & Root Cause Analysis:**

- a. Existing regulation: Risk Management Program (RMP) regulations, 40 C.F.R. part 68, and Process Safety Management (PSM) program regulations, 29 C.F.R. part 1910.119; both establish owner/operator requirements to investigate incidents that

resulted in, or could reasonably have resulted in, a catastrophic release of a highly hazardous substance.

- b. Existing regulation does not require investigation of near miss events, and **it does not define a near miss**. EPA states that the current catastrophic release definition (includes a “near miss”) not well defined and misinterpreted.
- c. EPA should not propose regulations to define, require investigation or tracking of “near misses”. Very important to promote a safety culture of reporting up near misses to use as lessons learned or best practices shared across facilities. There are differences between companies, and even among facilities within the same company. Facilities must have the flexibility in defining and addressing incidents that do not cause a release, but could have potentially caused one. Must remain focused on the internal reporting of near misses – a regulatory approach could have the unintended consequence of personnel not bringing up issues at a facility to avoid lengthy investigations, including root-cause analysis on why a near miss incident occurred.
- d. Points to add concerning incident investigations requiring root cause investigations: There are limited resources available to devote time, lead or participate in lower risk investigations (including near misses) to identify root causes of incidents. Detailed root cause analysis methods should be reserved for incidents that caused actual releases. Requiring these root cause analysis methods for near misses could potentially reduce the overall quality of the investigations.
- e. GPA supports investigating incidents and determining causal factors and recommendations to prevent or minimize the likelihood of recurrence. However, requiring Root Cause Analysis (RCA) could potentially have a significant impact on GPA member’s operations. Many operators that meet the small business classification do not have employees who are formally trained in RCA nor the resources to conduct RCA on incidents as well as near misses. GPA member companies would incur additional investigator professional development costs, including training, which needs to be factored in to EPA’s proposed changes. Further, depending on how EPA defines “near misses,” RCA may be required on near misses that don’t need or warrant the rigors of performing a RCA. The examples that EPA uses when discussing “near miss” on Slide 27 of the Panel Outreach slide deck are overly broad and could potentially require an RMP-subject facility to conduct an extraordinary number of RCA investigations each year. This would subject GPA members to significant additional costs and time to investigate a broader range of near misses than what are currently conducted. GPA member companies currently perform incident investigations as required by the existing RMP rule and EPA has not shown that the existing requirements are deficient in determining the cause of an incident/near miss nor in developing corrective actions to prevent recurrence.
- f. The following proposal will be extremely burdensome for RMP facilities to implement. Improvements to incident notification system, investigation protocols, and communication of findings to similar facilities are necessary. The ultimate implementation of corrective actions at similar facilities will require a determination based on risk of occurrence vs. cost of implementation. Implementation may be required by Rule, regardless of implementation cost. The frequency of process upsets that require an RCA would require an increase in facility manpower and

program costs just to conduct RCA investigations. The additional cost of corrective action implementation would be enormous with no added benefit to the protection of offsite receptors (EPA RMP Power Point Slide 27, See bullet points 2 & 3).

**2. Local Coordination (Coordinate Annually, Document Coordination and Emergency Response):**

- a. Existing regulation: Risk Management Program (RMP) regulations, 40 C.F.R. part 68, and Process Safety Management (PSM) program regulations, 29 C.F.R. part 1910.119 establish requirements for facilities to develop and implement an emergency response plan, which includes a requirement to coordinate with local emergency planning committees (LEPCs) or emergency responders.
- b. With respect to *local coordination*, EPA has indicated that it intends to propose revisions to the RMP rule to require all Program 2 and Program 3 facilities to (1) coordinate annually with the LEPC/emergency responders and ensure response capabilities exist, (2) document such coordination, and (3) allow LEPC/responders to request that a facility prepare an emergency response program.
- c. With respect to *emergency response exercises*, EPA intends to propose revisions to require all Program 2 and Program 3 facilities to (1) conduct “notification exercises,” which would presumably be a dry run of a notification to the LEPCs or fire departments (for non-responding facilities) or to the facility’s emergency response teams (for responding facilities) and (2) conduct a field exercise every 5 years and a “tabletop exercise” annually in the interim years for responding facilities and invite the LEPCs or other local responders to participate in the exercise.
- d. Implementation of local coordination and emergency exercises/drills is best left to individual companies and corresponding LEPCs based on their needs. Important to note that many LEPCs do not have adequate funding to accomplish these proposed requirements.
- e. GPA member companies that meet the small business classification will be especially burdened if required to increase the coordination level with LPECs and local responders in many locations. For example, many natural gas processing plants in west Texas and New Mexico are located in remote areas with LEPCs that are limited in their own resources and staffing. As a result, the LEPCs in these areas, as well as the small gas processor operators, will be challenged to elevate the level of coordination (e.g. specify an annual meeting) between them to beyond basic information sharing. Many of the natural gas processing plants in these remote areas rely on local volunteer fire departments for emergency response and these departments have minimal resources available for planning purposes. GPA is concerned that EPA has not fully analyzed this situation and its potential impact for rural areas both in terms of impact to small gas processors and to LEPCs. GPA supports the current regulatory requirements and believes those requirements provide sufficient discretion in how operators and LEPCs coordinate planning activities.
- f. The current rule requires coordination whenever changes to the written RMP require further notification to the LEPC or coordination. Requiring an annual coordination is akin to the current DOT Part 192 Public Awareness Program Rule,

in that such coordination is only effective with cooperation. As stated by the GPA, volunteer departments do not have the manpower to cooperate in annual meetings. The Rule should allow the coordination through a mail campaign, as does DOT Part 192; although this does little to improve the effectiveness of the coordination with an LEPC or the exchange of capabilities information with local responders.

- g. GPA supports coordination between small gas processing operators and LEPCs and believes that coordination is important to ensure safe emergency response and protection of the public. However, GPA is concerned with this provision because the LEPC or local responders could potentially request the facility to prepare an Emergency Response (ER) program that goes beyond what is practical and reasonable and could possibly require additional specifications and resources based on the LEPC's expectations. It would be very helpful to know what EPA's specific intentions and expectations are with this proposed change. GPA believes that this could become especially burdensome to our operators that meet the small business classification if they are required to create specialized emergency response plans with requirements that are inconsistent with typical industry emergency response protocol. Also, EPA does not stipulate who would be responsible for approving the emergency response program document. If EPA's intention is for the LEPC or responder organization to approve this then EPA could potentially be creating a secondary set of requirements stipulated by the LEPC or responder in addition to the RMP requirements.
- h. Likely, most small gas processing operators that meet the small business classification will be "non-responding" organization because they will not have the on-site employees or resources to respond to emergencies themselves. They would then rely on the local responder (i.e. local fire department) to be the "responding" organization. GPA believes there could be situations where a local voluntary fire department may elect not to be designated as the "responder" which, based on EPA's RFI, could then relegate the "responder" role back to the small operator. This would place a huge economic burden on GPA's small operators if they are required to be the "responder" because the local fire department declines to be designated as such. GPA would also like to emphasize that EPA's proposed field exercises and table top exercises would be burdensome and costly to our small operators. There is considerable planning that occurs to conduct a field emergency response exercise including arranging for the mobilization of equipment and medical services. GPA supports the current RMP requirements in that it provides sufficient flexibility for individual facilities in defining and implementing their emergency response plans and for coordinating with local responders.
- i. It can be assured that the cost mobilization of each emergency responder for tabletop and field exercises would be passed to GPA member companies. Further, the cost of drills and exercises are not value added to GPA members, as the majority of volunteer response agencies lack the capabilities to "...reduce the consequences of an accident on the community" (EPA RMP Power Point Slide 36).

### **3. Information Sharing**

- a. Existing regulation: The RMP regulation requires the public disclosure of a facility's risk management plan, but the PSM regulation does not.

- b. EPA intends to propose a significant broadening of the categories of information that would automatically be sent to LEPCs and other responders, including summaries of chemical hazard information, incident investigation reports (with root cause findings), drill/exercise reports, compliance audits, accident history, and a summary of the inherently safer technologies implemented or planned to be implemented. EPA also indicates that it would propose to make easier the general public's access to "existing public information." In addition, EPA indicates it would propose a requirement to hold public meetings once every five years and within 30 days of a reportable accident.
- c. Both LEPCs and responder authorities may be staffed by volunteers who have limited time to sift through extensive written materials that do not directly provide information relevant for *responding* to a release. LEPCs, including responders, need only the essential information for developing an emergency plan. In the event of an incident, the responder authorities need only the information essential for making sound decisions in *response* to a release, in an easily accessible format.
- d. Companies and responding agencies currently conduct a public meeting when there is a need. Requiring a meeting within 30 days of a RMP reportable accident could lead to unnecessary public frustration, if reliable information is not quite available (for example, an RCA may take more than 30 days to complete). Also important to note, that attendance at initial RMP public meetings (around 1999) was very sparse.
- e. EPA is proposing to require public meetings every five years and within thirty days of a RMP-reportable accident. GPA believes that this is an overly burdensome requirement and should be significantly modified or withdrawn altogether. It is important to note that most small operators do not have internal resources to prepare and facilitate a public meeting. EPA is also likely subjecting these small operators to the cost of having to hire a 3<sup>rd</sup> party or consultant to comply with this requirement which our members feel would be very expensive without providing tangible benefits.
- f. The majority of information proposed to be shared is of little value to an emergency responder. The flammable chemicals, volumes, and storage locations at GPA member facilities are currently communicated to each agency and the DOT Emergency Response Guidebook is a recognized source of emergency response information utilized by GPA members and the responders.

#### 4. Costs

GPA believes that EPA underestimated the costs associated with coordinating with local responders. We request that EPA factor in the time it takes to arrange a meeting, prepare for the meeting, hold the meeting, and then address any follow-up items from the meeting. While these costs will vary depending on the size and organizational capabilities of the operating company, they are not inconsequential.

GPA also believes that EPA underestimated the cost of setting up a public meeting. GPA estimates the cost of a small operator hiring a 3<sup>rd</sup> party or a consultant to set up the meeting is probably two to three times the cost that EPA has estimated.

## **Conclusion**

GPA would like to thank you once again for selecting GPA to serve as a SER and for the opportunity to provide input during the SBAR panel process. Please feel free to contact me at (202)2270-1664 or at [mhite@gpaglobal.org](mailto:mhite@gpaglobal.org) if I can be of any further assistance.

Sincerely,

Matthew Hite

Vice President of Government Relations

Gas Processors Association