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U. S. Environmental Protection Agency
Office of Land and Emergency Management
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May 13, 2016

RE: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Proposed Rule, Docket Number: EPA-HQ-OEM-2015-0725

Dear Sir or Madam:

The Chlorine Institute ("CI" or the "Institute") is a 190 member, not-for-profit trade association of chlor-alkali producers worldwide, as well as packagers, distributors, users, and suppliers. The Institute's North American Producer members account for more than 93 percent of the total chlorine production capacity of the U.S., Canada, and Mexico. The Institute's mission chemicals, namely chlorine, sodium hydroxide and potassium hydroxide, and hydrogen chloride, are used throughout the U.S. economy and are paramount to the protection of public health.
With reference to the public comment period for the Risk Management Program ("RMP") proposed rule, The Chlorine Institute requests that EPA reconsider its requirements on Third-Party Audits, Safer Technology and Alternatives Analysis, and Information Disclosures.

Third-Party Compliance Audits

The Institute believes that employers should be afforded the discretion to choose the audit method best suited to their unique operations including self-audits, second-party audits, or third-party audits. Company-led audits can be far more effective in actually addressing issues uncovered during an audit, due to the company auditor's intimate knowledge of the organization and how it functions. Using common audit questions and a standardized scoring system across the company also allows for the ready comparison of results across sites, including consistent report writing and recommendation tracking across the company. And as many can attest, using internal resources broadens Process Safety Management ("PSM") management system education while leveraging the auditor's detailed knowledge of the organization and how it functions.

Auditor Competency

The requirement of having a licensed PE on audit teams would prove highly impractical. Professional Engineer ("PE") licensure is an admirable distinction, however, it does not guarantee auditing skills. The National Society of Professional Engineers[1] distinguishes PEs from engineers in their legal ability to submit plans to a public authority, to consult, to win government contracts, and to teach. Safety and Environmental Management Systems ("SEMS") Auditing was mentioned in the proposed rule. SEMS offers auditor training[2] and advertises that upon completion of the lead auditor course, participants will have knowledge and understanding of:

- Management of change processes
- Hazard and risk analysis
- The development and implementation of … facility operating procedures
- Asset integrity management
- Roles and responsibilities within the Audit Team of the Auditors and Lead Auditor
- Implementation and maintenance of safety and environmental management systems for … facilities

The skills attained from SEMS auditor training are vastly different from those possessed by a PE. Although it is possible that an individual may possess both skillsets, a PE licensure does not guarantee proficiency in auditing.

Considering that auditors of chemical facilities should have chemistry-related backgrounds, it is probable that audit teams will utilize chemical engineers. The Bureau of Labor Statistics acknowledges that chemical engineers are less likely to obtain a PE.[3] A writer for the American Institute of Chemical Engineers wrote a light-hearted piece noting that the most frequent use of his PE stamp was to stamp the applications of colleagues pursuing licensure.[4] The PE requirement in the proposed rule would not increase the effectiveness of the audit. For these reasons, CI requests that EPA drop the PE requirement for auditing teams.

Auditor Independence

EPA's proposed auditor independence requirements in 40 CFR 68.59 and 68.80 impose a significant burden to the chlor-alkali industry if "owner/operator" is defined as a corporation. The regulatory language would restrict retired employees with very specialized knowledge of chlorine production and handling from auditing newly acquired facilities. Over the last five years, the chlor-alkali industry has had many consolidations. Chlorine producer Axiall formed as

1 http://www.nspe.org/resources/licensure/what-pe
2 http://www.us.bureauveritas.com/home/our-services/certification/training/sems/sems_lead_auditor_training
3 http://www.bls.gov/ooh/architecture-and-engineering/chemical-engineers.htm#tab-4
4 http://www.aiche.org/chenected/2011/02/top-5-reasons-get-your-pe-chemical-engineer

a result of PPG's and Georgia Gulf's merger in 2013.[5] Olin acquired Dow's chlorine production facilities in late 2015.[6] Chlorine repackager Hawkins acquired Vertex Chemical's assets in 2011.[7] Westlake Chemical is in the process of attempting to purchase Axiall.[8] For example, imagine an engineer has worked for Dow for thirty years then retires a year after the Olin acquisition. Will that engineer, who never worked or even stepped foot into a legacy Olin facility, be disqualified from conducting an audit for a full three years at legacy Olin facilities? The engineer in this example possesses great insight into what to look for during an audit. The Institute suggests that the regulatory language be modified to allow former employees to audit facilities in corporations where they were previously employed, yet did not have professional responsibility. This should apply to former employees, regardless of merger history. Many CI member companies have locations throughout the U.S., separated by hundreds of miles. If an employee no longer works at one location, that professional should be able to put her/his auditing skills to work where it makes a difference.

Safer Technology and Alternatives Analysis ("STAA")

STAA Language

The Institute does not want EPA to elaborate on the STAA requirement beyond what is already written in the rule, "[t]he owner or operator shall determine the feasibility of the inherently safer technologies and designs considered."

Submission of STAA findings

CI members strongly oppose the submission of STAA findings. The reasons different technologies are not implemented at a particular time in the life cycle of a facility are complex. Many CI members operate integrated facilities where a multitude of chemicals are produced. Changing one chemical production or storage capability could vastly impact the entire facility, and the facility's product output. Add to that the remaining life expectancy of operating equipment, capital expenditures, and market demands--switching from one technology to another becomes a decision to be weighed carefully. Any submitted STAA findings would probably not take into account the nuance of the real practicality of switching. Likewise, if facilities are not required to switch to alternate technologies, it is unclear how EPA intends to use these data.

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5 http://www.businesswire.com/news/home/20130114005481/en/Axiall-Corporation-Company-Georgia-Gulf-Merger-PPG
6 http://www.b2i.us/profiles/investor/ResLibraryView.asp?BzID=1548&ResLibraryID=79197&Category=1094
7 http://www.prnewswire.com/news-releases/hawkins-inc-announces-agreement-to-acquire-the-assets-of-vertex-chemical-corporation-113238604.html
8 http://www.prnewswire.com/news-releases/westlake-chemical-discloses-proposal-to-acquire-axiall-corporation-for-2000-per-share-in-cash-and-stock-300212092.html

Clearinghouse of Safer Technologies

The Institute does not believe a government clearinghouse of safer technologies would reduce chemical accidents. Each chemical process is highly complex and unique; it would be difficult to find value in a massive database of technologies. Additionally, the Institute has effectively created its own clearinghouse through the publication and maintenance of The Chlorine Institute publications[9] (which are freely available to download to members and nonmembers alike), semi-annual conferences, and regular member exchange forums. Member exchange forums provide professionals in the same industry the opportunity to meet face-to-face and ask each other how their respective organizations have increased safety through equipment changes, administrative controls, training and other means. Additionally, the Institute hosts a technology symposium every other year, where members can learn about new technologies, both from members sharing their experiences and directly from vendors and consultants. As mentioned previously, the Institute represents over 93% of chlorine production capacity in North America.

Public Disclosure Requirements to LEPCs

The primary purpose of an LEPC is to prepare for emergencies and emergency responses. To do so, LEPCs must be equipped with knowledge to respond to the immediate threat of the emergency – the release. The proposed information disclosures (incident investigation results, safer technology alternatives and analysis, and compliance audit reports) do not aid in responding to the fluid environment of an emergency situation. If members of the LEPC want to model tabletop or field exercises from real-world scenarios, LEPCs may use the accident history that is already publically available – either directly from EPA through a FOIA request or on databases posted online by non-governmental organizations.

Information Availability to the Public

The reactive nature of chlorine makes it a substance used in many processes to produce life-saving pharmaceuticals, clean water, and many more applications. However, that same reactive nature makes it a potential target for those with ill intent. The Institute strongly opposes disclosing tabletop and/or field exercise information to the public and the responding or non-responding source designation. This information could reveal the immediate actions of responders following an incident. As seen in the Boston Marathon bombings, attackers staged secondary explosives to maximize impact. Those with nefarious intent could use this information to distract the actions of first responders during an incident and would also know specific means to release chemicals in order to stage an attack.

The Institute recommends that instead of facilities making available names of regulated

9 http://bookstore.chlorineinstitute.org/mm5/CI%202016_Catalog.pdf

substances held in a process above threshold quantities and facility's accident history required under § 68.42 that EPA update its RMP database and make it more easily searchable to the public.

The Chlorine Institutes agrees that members of the public should be aware of the emergency response infrastructure within their communities and should post the name and phone number of local emergency response organizations with which the source last coordinated emergency response efforts, pursuant to § 68.180.

Thank you for the opportunity to comment on this proposed rule and your careful attention.

Best Regards,

Robyn Brooks
Director - Health, Environment, Safety and Security