



Solidarity House

8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

RAY CURRY, *PRESIDENT* • FRANK STUGLIN, *SECRETARY-TREASURER*
VICE-PRESIDENTS: CHUCK BROWNING • CINDY ESTRADA

October 28, 2022

Office of Land and Emergency Management
U.S. Environmental Protection Agency
Docket: EPA–HQ–OLEM–2022–0174
1200 Pennsylvania Avenue NW
Washington, DC 20460

Comments on Proposed Rule:

40 CFR Part 68

EPA–HQ–OLEM–2022–0174; FRL–5766.6–01–OLEM

RIN 2050–AH22

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention

Submitted via Regulations.gov by

Ray Curry, President

International Union, UAW

The International Union, UAW, representing one million active and retired members, many of whom work in facilities covered by the Risk Management Plan (RMP) rule and/or live in the vulnerability zone of such facilities, submits these comments to Docket EPA–HQ–OLEM–2022–0174. We strongly support the proposed rule: *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*. In addition, we have recommendations to make the final rule stronger and more protective.

In July of 2021, we submitted comments recommending amending the existing RMP rule to improve it in the following areas:

- To bolster the safety of workers, the rule should require worker and union participation in incident prevention, investigation, and response. It should require worker training in order to enhance safety and facilitate meaningful participation.
- It should prevent chemical disasters by ensuring hazard reduction, not merely improved response to preventable disasters. This should be done by requiring the identification and use of available inherently safer methods to eliminate or reduce catastrophic hazards.

- The rule should address disproportionate, cumulative impacts for communities with multiple RMP facilities.
- The rule should restore and implement essential requirements for safer chemicals, technologies and practices, worker training, third-party audits, root cause analysis, deregistration analysis, and emergency exercises.

In these comments, we offer an evaluation of whether the proposed rule, published in the Federal Register August 31, 2022 meets these criteria. We offer additional comments, based on the content of the proposed rule.

**The Assertion that Improvements to the Rule Are Not Necessary,
Due to a Decline in Accidents, is Incorrect: There Has Been No Such Decline**

As indicated above, we strongly support the proposed rule, and urge the EPA to make the final rule stronger and more protective. An argument has been made against improvements to the RMP rule based on the incorrect assertion that accidents are declining. This assertion was repeated by the US Chamber of Commerce during a non-government stakeholder listening session held on 06/16/2022. (EPA-HQ-OLEM-2022-0174-0074). The claim is based on two errors. The first of these is to use the most recent five years in the analysis. Comparing the most recent five years with previous years will always create the appearance of a decline because data from the most recent five years are always incomplete. Not only are these data always incomplete, but the data from the very most recent years are more incomplete, creating the appearance of a year-over-year decline which, in reality, does not exist. This is because, despite the requirement to report accidents within six months, many facilities wait until the end of the five-year reporting period to do so. This can be seen clearly if we compare data from Exhibit 3-7 (p. 34) of the Regulatory Impact Analysis for the proposed reconsideration rule¹, extracted in “early 2015” with data from Appendix A² of the current proposal, extracted in August 2021:

Comparison of Data Extracted by EPA from RMP Database More than Six Years Apart Shows that Under-reporting in the Most Recent Five Years Produces False Apparent Decline			
Year	Number of Accidents Reported as of "Early 2015"	Number of Accidents Reported as of August 2021	% Increase
2004	197	202	2.5%
2005	152	160	5.3%
2006	140	145	3.6%
2007	204	208	2.0%
2008	168	177	5.4%
2009	149	162	8.7%
2010	128	138	7.8%
2011	138	158	14.5%

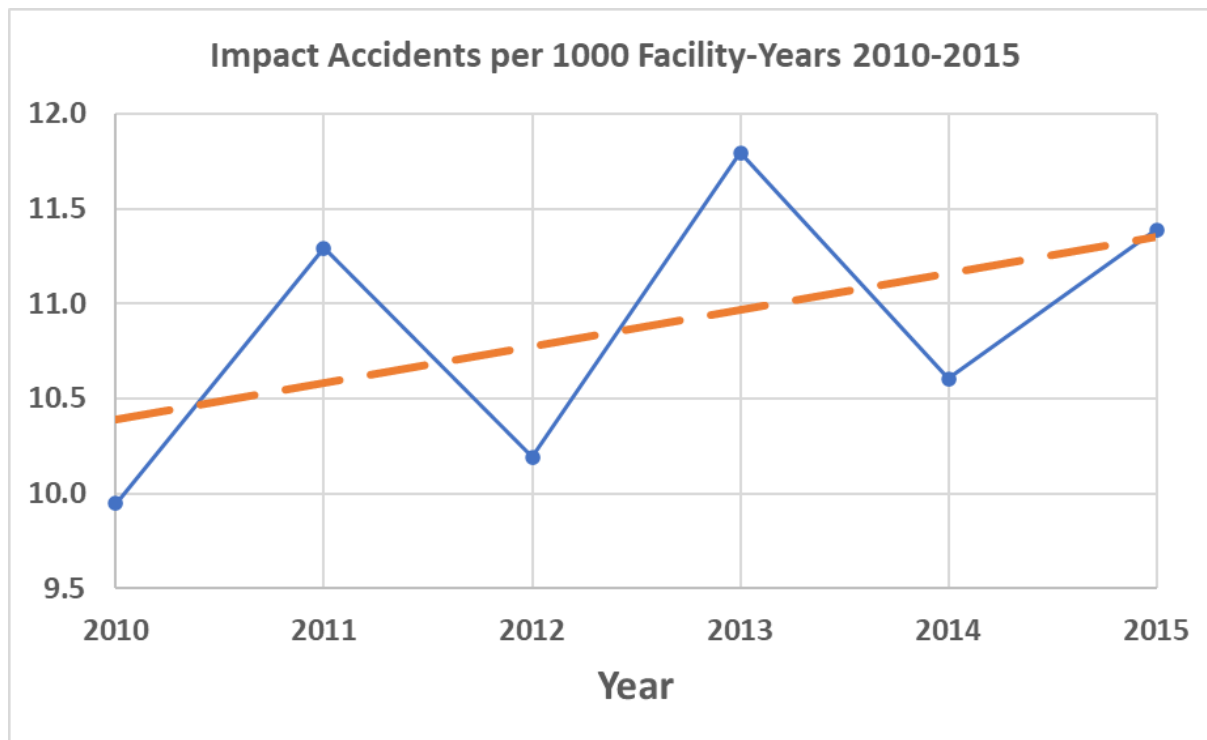
Comparison of Data Extracted by EPA from RMP Database More than Six Years Apart Shows that Under-reporting in the Most Recent Five Years Produces False Apparent Decline			
Year	Number of Accidents Reported as of "Early 2015"	Number of Accidents Reported as of August 2021	% Increase
2012	118	144	22.0%
2013	123	164	33.3%

Apparently, there are some very late reporters because there are five accidents that occurred in 2004 that had not been as of “early 2015,” but were reported by August 2021. Nevertheless, data extracted in early 2015 are 90% complete or more for the years 2004-2010. Starting in 2011, the data extracted in 2015 begin to be considerably less than 90% complete and therefore would begin to show an artificial decline based not on fewer accidents but on incomplete reporting.

The second problem with the claim of declining accidents is that it is based on absolute numbers, not on rates. To see why it is incorrect to look for a trend in numbers rather than in rates, imagine that there are 100 facilities one year and the next year half of them go out of business. In the first year there were six accidents and in the second there were four. It would not be wrong to say accidents declined, but it would be deceptive because in reality 6% of the facilities had accidents in the first year and 8% of the facilities had accidents in the second year. The probability of an accident went up, not down.

When the Kendall rank correlation coefficient³ is used to analyze accident rates⁴, we find that there is no statistically significant change in rates for the period 2004-2015 (Correlation Coefficient: -.091, Sig. (2-tailed): .681). Moreover, for the years 2010-2015, there is a non-statistically significant increase in impact accident rates:

Figure 1



Finally, even if there were a real decline in rates, such a decline would not justify maintaining the existing rule because catastrophic events have severe consequences but their likelihood of being observed in a data covering a short time-span, such as 20 years or less, is small. For example, let us assume that an event that kills 1000 people has the unacceptably high probability of 1 in 1000 per year under current regulations and that stricter regulations would be required to reduce this risk. In a period of two decades, there would be a 98% probability that such an event would not have occurred. At the same time, there would be an egregiously high 2% probability (1 in 50) that an event killing 1000 people would occur in the next two decades. Hence looking at the actual data from the last two decades, which would likely reflect that no such severely adverse event had occurred, would not provide adequate information as to whether the risks faced over the next two decades were acceptably controlled. Despite this, the US Chamber of Commerce and others would make the specious argument that a declining trend over less than two decades (which, in reality, does not exist) means that no further regulation is necessary.

**Worker Protection, Safer Technologies and Alternatives Assessment (STAA)
and Environmental Justice,**

The UAW supports the proposal's requirement for Safer Technologies and Alternatives Assessment (STAA). We urge that it be strengthened and that its coverage be increased in order to protect more workers and reduce environmental injustice.

Specifically, the UAW strongly supports EPA's proposal that owners and operators of RMP-covered facilities be required to include in their Process Hazard Analyses (PHAs) consideration and documentation of the feasibility of applying safer technologies and alternatives. We are particularly supportive of the requirement to that a facility's STAA team include, and document the inclusion of, one member who works in the process and has expertise in the process being evaluated. We wish to see a requirement that the member be chosen by the employee representative, where there is one. Further, we support EPA's proposal to require owners and operators to identify, evaluate, and document the practicability of implementing inherent safety measures, including documenting the practicability of publicly available safer alternatives. These requirements are all very good. So good, in fact, that all RMP facilities should be expected to meet them, not only the relatively small number required under this proposal.

The current proposal requires STAA only in processes in oil refining and chemical manufacturing located within one mile of another RMP-regulated facility that also has a similar process (as well as facilities using hydrofluoric acid (HF) in an alkylation unit). This means that EPA's proposal requires STAA at *less than 5% of facilities covered by RMP*. This proposal therefore denies the benefits of STAA in the *prevention* of inherent hazards at 95% of RMP facilities. We believe that coverage of the STAA requirement should be expanded to **all** RMP facilities because all use or store Extremely Hazardous Substances in quantities that can pose severe risks to workers, neighbors, and emergency responders. If they didn't, they would not be regulated by RMP. As of May 22, there were more than 11 thousand active RMP facilities. Based on facility self-reporting to the RMP database of the number of full-time equivalent (FTE) employees, there were somewhere between 1.135 million and 1.87 million people employed at these facilities. Less than 9% of these employees (approximately 100-160 thousand) would be protected from a chemical catastrophe by the STAA requirements in this proposal.

In addition to expanding coverage to all RMP facilities, EPA should require each and every RMP facility to adopt safety measures identified by its own STAA analysis, where practicable. We urge EPA to require *all* RMP regulated facilities to routinely conduct STAA, and, where practicable, adopt identified safety measures. We support EPA's proposal requiring a justification in the Risk Management Plan when STAA recommendations are not adopted. In addition, EPA should clarify that the term inherently safer technology/design (IST/ISD) includes only those technologies and/or practices that are integral to, inseparable from, and necessary for the operation of a process. Add-on controls, such as warning systems or secondary containment are not IST/ISD.

Environmental Justice

Executive Order 12898 requires Federal agencies to identify and address, "...disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." Environmental justice (EJ) disparities persist around RMP facilities in terms of housing value, household income, race and ethnicity, education levels, and poverty.⁵

In order to identify the current state with regard to environmental justice of the impact of RMP facilities, we performed statistical analysis at the zip code level. We began by identifying the

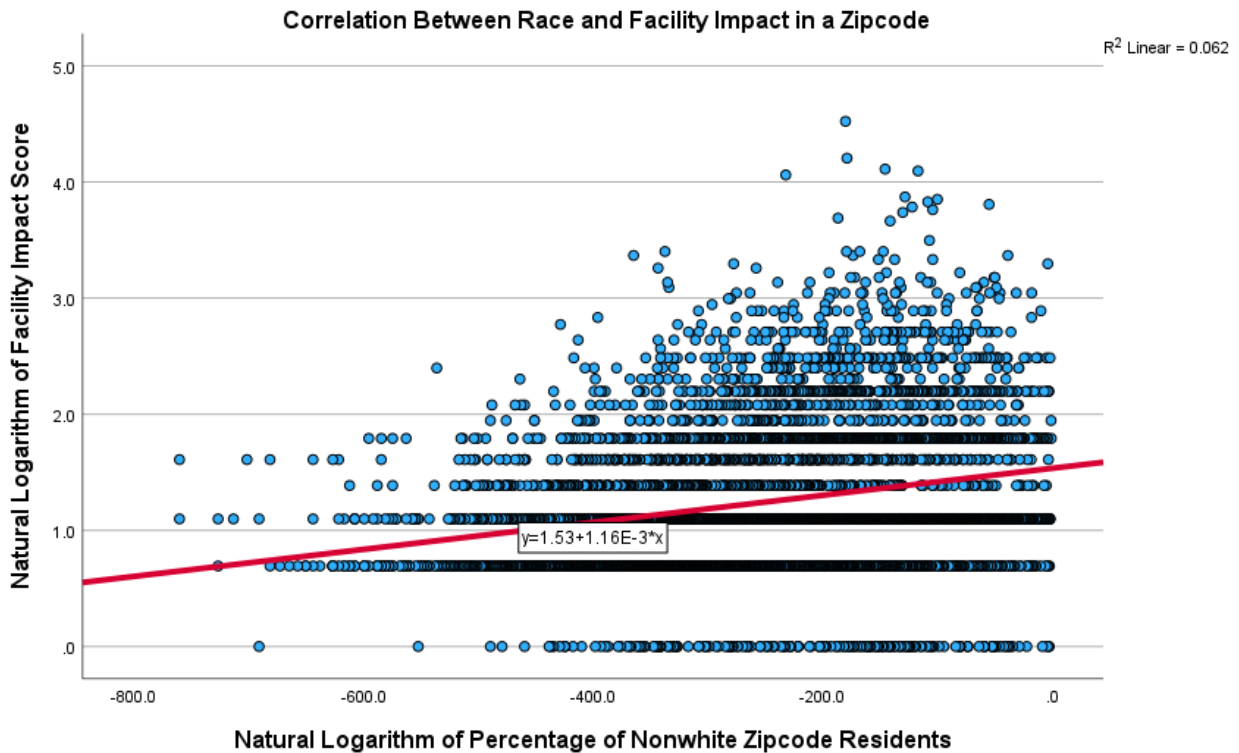
total impact of RMP facilities in a zip code by constructing facility impact scores. To do so, we assigned three points for each facility in a zip code with at least one program level three process, 2 points facility in a zip code whose highest program level process was program level 2 and one point and one point for each facility in a zip code whose highest process was program level 1.

Race and Facility Impact

To analyze the degree of racial injustice in the location of RMP-facilities we examined the Pearson⁶ and Spearman⁷ correlations between facility impact score and percent of population in zip code that is not white. We then repeated these analyses using the natural logarithms of the facility impact score and the percent of population in zip code that is not white to increase the normality of the distribution and thereby reduce statistical error.

We found that there is a statistically significant correlation between race and facility impact no matter how the correlation is measured. When the percentage of non-white people in a zip code is analyzed against the zip code's facility impact score, Spearman's Rho is 0.3 (p-value: 6.02×10^{-142}). The Pearson Correlation Coefficient is 0.15 (p-value: 1.1×10^{-35}). When the natural logarithm of a zip code's percentage of non-white people is analyzed against the natural logarithm of its facility impact score, Spearman's rho is 0.28 (p-value: 3.3×10^{-112}). The Pearson Correlation Coefficient is 0.25 (p-value: 1.23×10^{-90}). Figure 2 plots the natural logarithm of the percentage of non-white residents in a zip code against the natural logarithm of the zip code's facility impact score. The trendline clearly shows that the more nonwhite residents a zip code has, the higher the impact of RMP facilities in that zip code is.

Figure 2

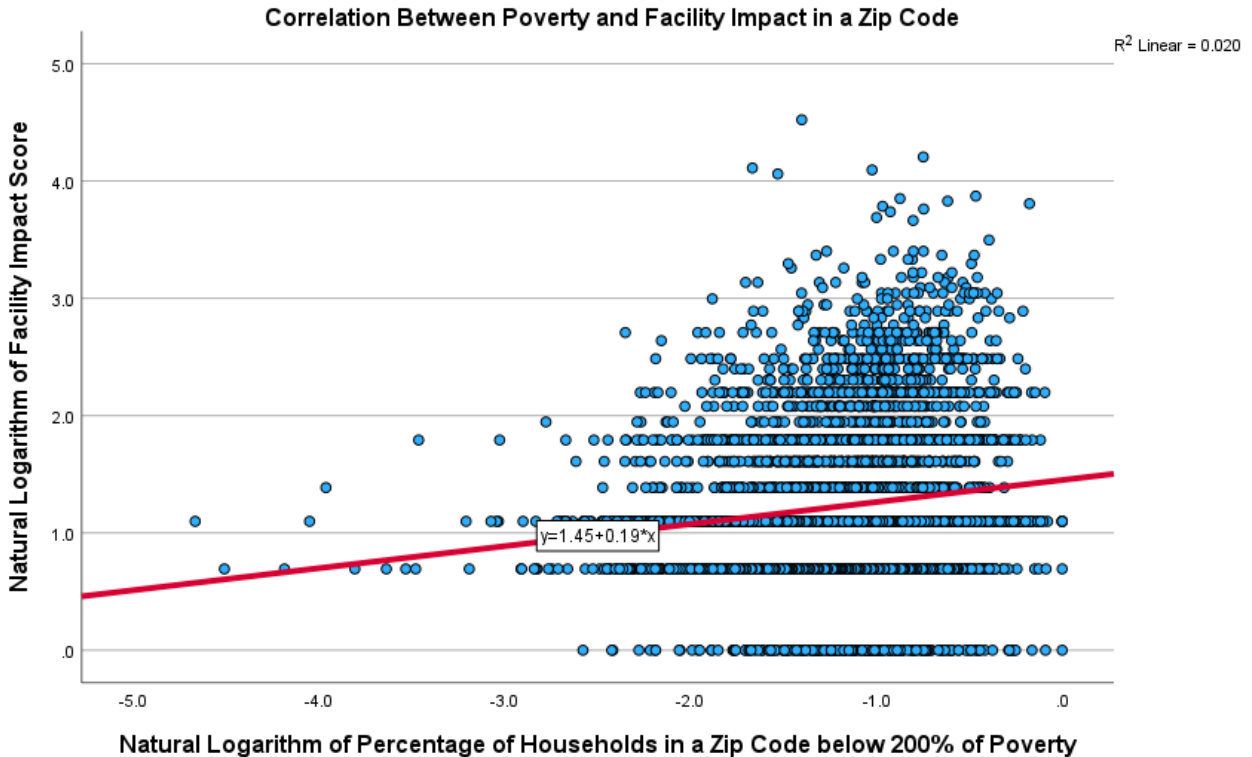


Poverty and Facility Impact

Applying the methods described above to the relationship between income and facility impact yields similar results. There is a statistically significant correlation between poverty and facility impact no matter how the correlation is measured. When the percentage of households in a zip code with incomes below 200% of the poverty level is analyzed against the zip code's facility impact score, Spearman's Rho is 0.15 (p-value: 6.4×10^{-37}). The Pearson Correlation Coefficient is 0.12 (p-value: 1.7×10^{-25}). When the natural logarithm of a zip code's percentage of households with incomes below 200% of the poverty level is analyzed against the natural logarithm of its facility impact score, Spearman's rho is 0.15 (p-value: 6.5×10^{-36}). The Pearson Correlation Coefficient is 0.14 (p-value: 3.14×10^{-31}). Figure 3 plots the natural logarithm of the percentage of households in a zip code with incomes below 200% of the poverty level against the zip code's facility impact score. The trendline clearly shows that the more low-income residents a zip code has, the higher the impact of RMP facilities in that zip code is.

Overall, the analysis shows that whether examined by race or by income the current state of the distribution of RMP facilities represents an environmental injustice that needs to be addressed.

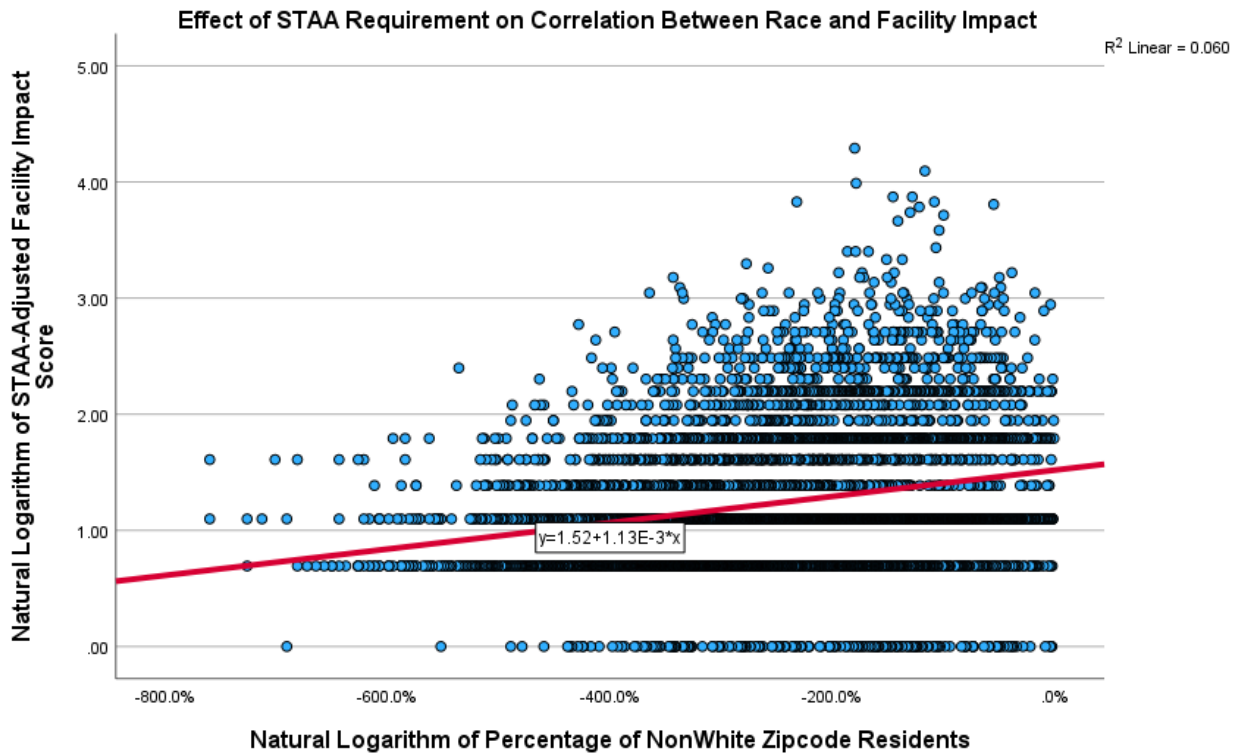
Figure 3



Does EPA’s Current STAA Proposal Serve Environmental Justice?

In order to examine whether the proposed STAA requirement would meaningfully address this environmental injustice, an adjusted facility impact score was calculated for each zip code by subtracting the number of facilities in that zip code for which STAA would be required from the facility impact score. A set of analyses, similar to those done for the original facility impact score were performed using STAA-adjusted facility impact scores. When the percentage of non-white people in a zip code was analyzed against the zip code’s facility impact score adjusted for the number of facilities in the zip code subject to the STAA requirement, the correlation between race and impact remained statistically significant. Spearman’s rho was 0.3 (p-value: 2.9×10^{-138}). Pearson’s correlation coefficient was 0.15 (p-value: 5.08×10^{-36}). When the natural logarithm of a zip code’s percentage of non-white people was analyzed against the natural logarithm of its STAA-adjusted facility impact score, Spearman’s rho was 0.27 (p-value: 3.5×10^{-109}). The Pearson Correlation Coefficient was 0.25 (p-value: 1.5×10^{-88}). These values are nearly identical to those for the unadjusted facility impact scores. The likely reason is the small number of facilities that are covered by the STAA requirement. Figure 4 plots the natural logarithm of the percentage of non-white residents in a zip code against the natural logarithm of the zip code’s STAA-adjusted facility impact score. The trendline clearly shows that the proposed STAA requirement has a negligible impact. It remains the case that the more nonwhite residents a zip code has, the higher the impact of RMP facilities in that zip code is.

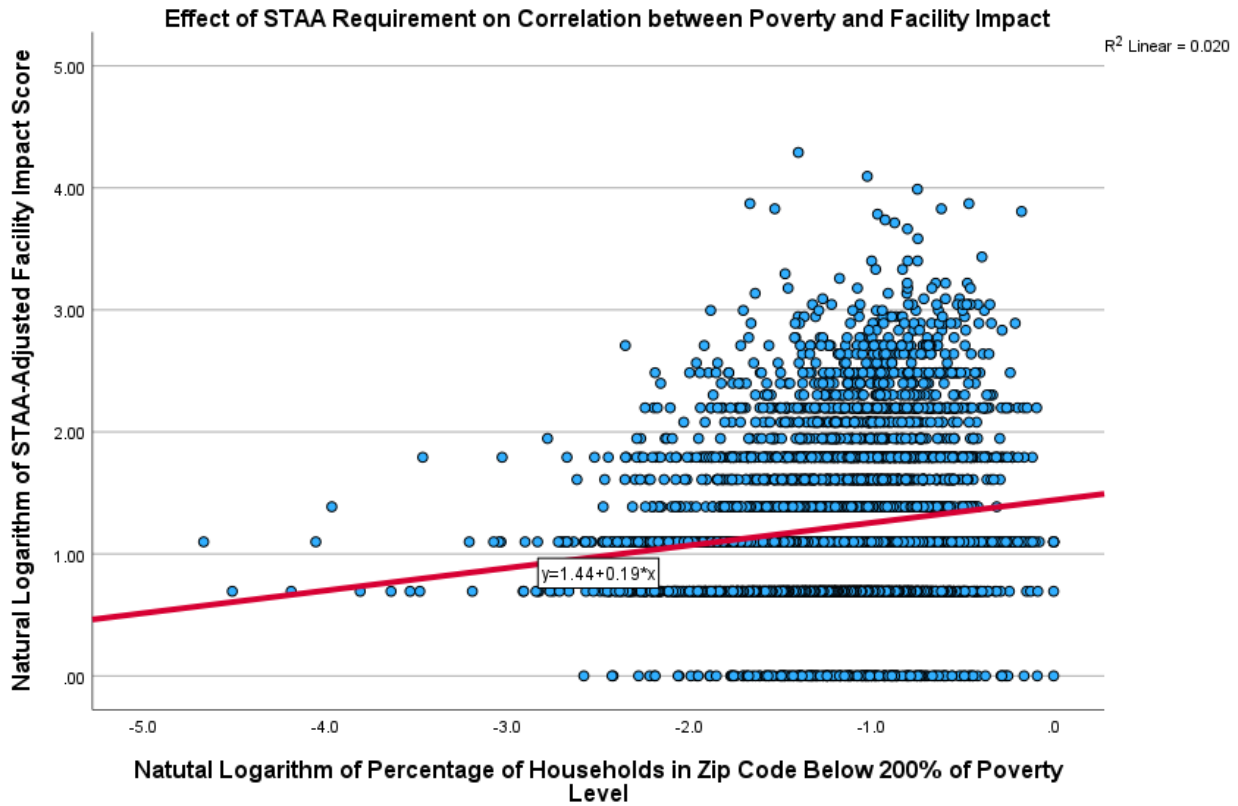
Figure 4



When the percentage of households in a zip code with incomes below 200% of the poverty level was analyzed against the zip code’s facility impact score, adjusted for the number of facilities in the zip code subject to the STAA requirement, the correlation between poverty and impact remained statistically significant. Spearman’s rho was 0.15 (p-value: 1.28×10^{-36}). Pearson’s correlation coefficient was 0.13 (p-value: p-value: 1.7×10^{-25}). These values are nearly identical to those for the unadjusted facility impact scores. The likely reason is the small number of facilities that are covered by the STAA requirement. Figure 5 plots the natural logarithm of the percentage of households in a zip code with incomes below 200% of the poverty level against the zip code’s STAA-adjusted facility impact score. The trendline clearly shows that the proposed STAA requirement has a negligible impact. It remains the case that the more low-income residents a zip code has, the higher the impact of RMP facilities in that zip code is.

The failure of the STAA program to have a meaningful impact on environmental justice indicates the need greatly to increase the coverage of STAA.

Figure 5



**Participation of Employees and their Representatives
Should be the Same for All Program Levels**

In our July 2021 comments, we called for the rule to require worker and union participation in incident prevention, investigation, and response. We called for it require worker training in order to enhance safety and facilitate meaningful participation. EPA’s proposed rule includes many of the elements we called for and we commend EPA for that. In addition, we believe that some improvements can be made to the worker participation provisions.

EPA Proposes to require

- (1) in Program Level 3, employee participation in process hazard analyses, compliance audits and incident investigations;
- (2) in Program Level 3, certain work refusal and stop work procedures; and
- (3) in Program Levels 2 and 3, employee participation, and anonymous accident, hazard and non-compliance reporting.

We support EPA in enhancing participation of workers and their representatives as an essential means of protecting workers, the public and the environment from chemical disasters. EPA states (87 FR 53587):

Employees directly involved in operating and maintaining a process are most exposed to its hazards. These same employees are typically the most knowledgeable about the daily requirements for safely operating the process and maintaining process equipment; they may sometimes be the only source of process-specific knowledge... gained through their unique experiences. Their direct participation and involvement in ensuring and enhancing the safety of process operations are often essential to protecting their own welfare. Such actions help keep communities safe as well. A long-standing premise of the RMP rule is that actions that promote worker safety as part of a well-designed process safety system generally help protect the public and the environment.

This statement provides an excellent framework for development of specific Stop Work Authority programs at the facility level through engagement with employees and their representatives. We believe that, because of their experience, knowledge, and skill, workers in *all* program levels are well positioned to help prevent chemical disasters. Unfortunately, EPA's proposal builds on the *current* rule's provisions, which applies only to Program Level 3:

§68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

(c) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this rule.

We believe this language should apply to all process levels within the RMP program. Employees and their representatives at all RMP stationary sources, regardless of Program Level, should have the same equitable, meaningful and clearly stated rights and authorities to prevent hazards. No one's rights to protect safety should be limited by the size or complexity of a process or a facility.

Providing these rights to employees at all program levels would be consistent with EPA's longstanding position that "*incidents that primarily or even exclusively impact **on-site** [emphasis added] receptors are potentially relevant to protection of the public and the environment from the risks of an accidental release... because they 'may reflect safety practices at the source' and because 'accidental releases from covered processes which resulted in deaths, injuries, or significant property damage on-site, involve failures of sufficient magnitude that they have the potential to affect offsite areas.'*"

The rule should apply the proposed Program 3 employee participation provisions to Program 1 and 2, as follows:

The owner or operator shall consult with employees and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations and findings of, as

applicable, hazard reviews, process hazard analyses under § 68.67(e), compliance audits under § 68.79(d), and incident investigations under § 68.81(e).

Similarly, EPA's proposed new language for additional authorities, which we support, should also apply to Programs 1 and 2:

(d) The owner or operator shall provide the following authorities to employees and their representatives, and document and respond, in writing within 30 days of the authority being exercised:

- (1) Refuse to perform a task when doing so could reasonably result in a catastrophic release.
- (2) Recommend to the operator in charge of a unit that an operation or process be partially or -completely shut down, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.
- (3) Allow a qualified operator in charge of a unit to partially or completely shut down an operation or process, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.

Unless this scope of coverage issue is addressed, workers and their representatives and supervisors will find it highly challenging to comprehend what participation provisions cover the stationary sources where they are employed and the specific processes where they are assigned. An analysis of RMP's database indicates that many thousands of employees work at each process Program level:

Under the proposal, at Program 1 processes, employees will continue to have no RMP participation opportunities.⁸ *Program 1 includes 660 stationary sources with 30,000 - 178,000 employees.*⁹

Program 1 employees would be denied all RMP participation opportunities, at 300 oil and gas extraction sites; 79 warehouses; 67 manufacturers; 54 chemical plants; 40 non-government owned utility/water facilities; 23 petroleum wholesalers; and 42 other workplaces.¹⁰

At Program 2 processes, employees, for the first time, will have *some* participation opportunities. Program 2 employees, however, will not have work refusal or stop work authorities under RMP. *Program 2 includes 3,975 stationary sources with 39,000 - 156,000 employees.*

Program 2 employees would be denied essential authorities to refuse to perform a task that could lead to a catastrophic release and stop work authority, including at 2,635 agricultural chemical distributors/wholesalers; 129 non-government owned utility/water facilities; 75 warehouses; 86 chemical wholesalers; and 63 chemical manufacturing plants.

At Program 3 processes, employees will have a wider range of participation rights. *Program 3 includes 7,105 stationary sources with 930,000- 1.76 million employees.*

It is our understanding that employees working at Program 1 and 2 processes within the very same facility will not have the same authorities as those at Program 3 processes in that facility.

It appears that an operator who moves a short distance from a Program 3 process to a nearby Program 2 process loses authority to refuse to perform a task that could result in a catastrophic release. Moreover, it is possible that a failure at a program level 1 process could cause a catastrophic failure at a program level 3 process in the same facility. It is conceivable that a worker at a program level 1 process could fore see a catastrophic chain reaction and not have the authority to prevent it. It is possible that once that reaction has been initiated, it is too late for the workers at the program level 3 process to prevent it. Clearly, the proposed requirement is both inequitable and needlessly complex. Instead, as previously indicated, we think the rule should apply proposed and improved Program 3 employee participation provisions to Programs 1 and 2.

Stop Work Authority

We strongly support EPA's proposed text as follows at 68.83(d), with recommended changes shown in bold text below:

(d) The owner or operator shall provide the following authorities to employees and their representatives, and document and respond **to employees and their representatives**, in writing ~~within 30 days~~ **promptly after** the authority ~~being~~ **is** exercised:

- (1) Refuse to perform a task when doing so could reasonably result in a catastrophic release.
- (2) Recommend to the operator in charge of a unit that an operation or process be partially or completely shut down, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.
- (3) Allow a qualified operator in charge of a unit to partially or completely shut down an operation or process, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.

We urge EPA to remove the 30-day response period in (d). It makes no sense in the context Stop work authority, which is most frequently used in imminent danger and emergency situations where rapid response is essential.

Reporting stop-work utilization to EPA may also be useful as a way to incentivize owners or operators to address and resolve refusal and stop work authority before they are utilized by employees and provide useful information to EPA. Hence, we propose the following text:

Additionally, If the owner or operator learns that an authority in (d) may be used or has been used, "...the owner or operator shall report this to the implementing agency within 30 days of when the owner or operator learned this information."

Training and Information

EPA requested comment on "Whether owners and operators should distribute an annual written or electronic notice to employees that employee participation plans and other RMP information is readily accessible upon request and provide training for those plans and how to access the information."

In our view, this information should be provided. Many workers are unaware of the offsite consequence information developed for their own sites. Many have limited awareness of the provisions of the RMP program. Without required information and training, workers may be unaware of their opportunities and authorities to participate in hazard prevention. Lack of worker understanding will inevitably lead to less participation, which would frustrate RMP's purpose. Workers, employee representatives, supervisors, and other management personnel will find the new rule difficult to understand unless EPA requires owners or operators to provide information and training its provisions. Existing RMP training requirements do not address this need.

We believe the RMP rule should state for all Program levels that:

The owner or operator shall provide employees and their representatives with readily accessible information and effective training about the provisions of this rule before the time of their initial assignment to a process; before a new process begins operation; or before major modifications to a process. Refresher training shall be provided every three years or more often, as necessary. The owner or operator must inform and train each employee in a language which he/she comprehends.

In addition, "The owner or operator shall distribute annually a written or electronic notice to all employees and their employee representatives specifying that RMP information is readily available for review. The notice shall include the statement that *No owner or operator may discharge or in any manner discriminate against any employee for exercising any rights under the Clean Air Act or this rule.*

We urge EPA to consult further with the Occupational Safety and Health Administration concerning adoption of the most effective information and training provisions.

Number of Workers and Worker Representatives Participating

EPA requested comment on "Whether there should be a representative number or percentage of employees and their representatives involved in these recommendations decision teams as well as the development of other process safety elements as outlined in 40 CFR 68.83(b)."

We propose the following specific rule language to address this question, which should apply to all Program levels:

"At stationary sources with an employee representative, the employee representatives may designate two or more members to each RMP-related committee, team, and/or other entity established by the owner or operator, including those engaged in hazard reviews, process hazard analysis, safer technology alternatives analysis, management of change reviews, compliance audits, third party audits, incident investigations, and emergency response planning."

Additionally, we recommend the following requirements to promote employee engagement:

“The owner or operator shall collaborate with employees and their representatives to develop, conduct, and periodically evaluate the facility risk management plan, hazard reviews, process hazards analyses, a written plan of action describing how the owner or operator will comply with this rule, and all other requirements of this rule.”

Process safety issues can be contentious. We recommend text stating:

“If there is a disagreement between the owner or operator and the employee representative, the owner or operator shall maintain any written statements submitted by workers and their representatives indicating their concerns.”

Anonymous Reporting of Hazards

At 68.62 (b), for Program Level 2 processes, EPA proposes that “The owner or operator shall develop and implement a process to allow employees and their representatives to anonymously report unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or any other non-compliance with 40 CFR part 68.”

At 68.63 (e), for Program Level 3 processes, this language is repeated precisely. EPA does not propose such a provision for Program Level 1 processes.

We are concerned that the language proposed for Levels 2 and 3 does not adequately specify what the “process” should actually be. Is it a reporting mechanism to the owner or operator or to EPA or to both entities? Moreover, the provision is of limited value since an employee could already report anonymously any of the specified issues to management and/or to an implementing agency even if there is no formal process for this. Further, the provision appears restrictive. As written, the requirement may exclude reporting in situations where the employee or employer representative *wants* to be identified as the originator of the report rather than to remaining anonymous.

In order to fix these issues, we recommend including the following language:

The owner or operator shall collaborate with employees and their representatives to develop, implement and evaluate a process for employees and their representatives to report, unaddressed RMP related hazards to the owner or operator and EPA including but not limited to those that could lead to a catastrophic release, unreported RMP reportable accidents, or any noncompliance with this rule. Those who report should have the option to remain anonymous or not to with no consequences to them for either choice. Anonymous and identified reports should be treated with equal seriousness.

In addition:

The owner or operator shall:

- 1) document and maintain reports of all RMP-related safety issues reported by workers and their representatives, including near-miss events;
- 2) respond in writing within seven days indicating their response to the submitted information to the worker(s) and employee representatives submitting the information and their representatives;¹¹ and

- 3) disclose all information developed under this rule to implementing agencies and third-party auditors, including during RMP inspections, safety audits, or incident investigations.

Anti-discrimination

For employees to effectively participate in protecting public safety and the environment, they must be protected from all forms of employer retaliation. The Clean Air Act at 42 U.S.C. §7622 states that discharge or discrimination by employers for any actions to carry out the purposes of the Act is prohibited. Despite this intent to prohibit employer retaliation, employees still face discrimination for exercising their legal rights to protect the environment and public safety. In FY2015-FY2020, 311 employees filed whistleblower complaints under the CAA and five other federal environmental protection statutes.

EPA proposes to expand the authority of employees and their representatives to prevent hazards, including through task refusals and Stop Work Authority. These authorities, however, won't be used in many cases if workers fear that their employment will be jeopardized. The proposal addresses this by stating that "EPA recognizes that workers may often overlook hazards or areas that they know are non-compliant with standards for fear that it will affect their employment. This may particularly be the case for the stop work and accident reporting provisions. The Agency reminds owners and operators that OSHA enforces whistleblower protections provided under the CAA, the Occupational Safety and Health Act, and other Federal laws." (87 FR 53953)

This reminder is insufficient to prevent employer retaliation. Therefore, in addition to the proposed notice requirement above, we urge EPA to adopt this text in the final rule:

The owner or operator shall collaborate with employees and their representatives to develop, implement, and periodically update a written program to ensure that there is no discrimination against any employee or contractor or employee representative for exercising their rights under the Clean Air Act or this rule.

Conclusions

- The UAW strongly supports the proposed rule: *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*. We commend President Biden and Administrator Regan for taking this important action to improve workplace safety.
- An argument has been made against improvements to the RMP rule based on the incorrect assertion that accidents are declining. This assertion is based on two errors.
 - o The first one is to use data that are recent and incomplete. When incomplete recent data are compared to older more complete data, the result is an apparent recent decline in the number of accidents, which is entirely an artifact of comparing incomplete data with complete data.

- The second error is to use numbers of accidents instead of rates. An analysis of rates shows that there is no statistically significant decline in accident rates. In fact, there is a non-statistically significant increase in rates since 2010.
 - Finally, it is incorrect to use trends over a short period like 20 years or less to draw conclusions about whether there is adequate protection against a chemical catastrophe going forward.
- The UAW supports the proposal's requirement for Safer Technologies and Alternatives Assessment (STAA). We urge that it be strengthened and that its coverage be extended to all RMP facilities in order to protect more workers and reduce environmental injustice.
- We commend EPA's proposed rule for including many elements of worker participation, such as stop-work authority. We have identified improvements can be made to the worker participation provisions. Most importantly, it should cover workers at all RMP facilities regardless of Program Level.
- Thank you for the opportunity to share our views on this important matter.

End Notes

¹ EPA. April 27, 2018. Regulatory Impact Analysis, Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7). USEPA, Office of Emergency Management. EPA-HQ-OEM-2015-0725-0907.

² RMP Accidents 2004-2020 (Appendix A); 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. EPA-HQ-OLEM-2022-0174-0065. <https://downloads.regulations.gov/EPA-HQ-OLEM-2022-0174-0065/content.xlsx> (Accessed 10/25/2022).

³ Kendall, M. G. (1938). A new measure of rank correlation. *Biometrika*, 30(1/2), 81-93.

⁴ The calculation of rates requires denominators. The most appropriate unit for the denominator is the facility-year, which was calculated as follows:

1. Each facility was considered to have entered the program on the postmark date of its first report (postmark date was chosen over receipt date because EPA assigned the anniversary date at five years after the postmark date, rather than five years after the receipt date).
2. Facilities were considered to have left the program on their deregistration effective dates (deregistration effective dates are frequently identical or very close to deregistration dates, but where they differ, the deregistration effective date is when the facility was no longer covered by the program and the deregistration date is when EPA was informed of that fact. Hence the deregistration effective date was chosen. A few facilities reported more than one deregistration effective date. The latest such date was chosen.)
3. In the year of entry into the program, each facility was credited with the fraction of the year in which it participated. (For example, a facility that entered on May 31 would be credited with 7/12 year.)
4. In the year of deregistration (for those facilities that deregistered), each facility was credited with the fraction of the year in which it participated. (For example, a facility that deregistered on May 31 would be credited with 5/12 year.)
5. If entry and deregistration occurred in the same year, each facility was credited with the fraction of a year between entry and deregistration.
6. For the years between entry and deregistration, each facility was credited with a full year.
7. The total number of facility-years in each calendar year was calculated using an excel spreadsheet.
8. Rates were calculated by using the total number of accidents for a year divided by the number of facility years
9. In order to avoid artificially inflating accident rates, an accident was excluded from the numerator if it occurred before the postmark date of a facility's first report or after the facility's deregistration effective date.
10. In order to determine whether there was a meaningful trend over time (decline or increase) Kendall's Tau was applied to a data set containing the value for the variable Year with the range 2004-2015 and the variable Accident Rate corresponding to the years in question.

⁵ Orum, P., Moore, R., Roberts, M., & Sanchez, J. (2014). Who's in danger? Race, poverty, and chemical disasters. *Environmental Justice and Health Alliance for Chemical Policy Reform*, May..

⁶ Pearson, K. (1909). Determination of the coefficient of correlation. *Science*, 30(757), 23-25.

⁷ C. Spearman. (1907). Demonstration of Formulæ for True Measurement of Correlation. *The American Journal of Psychology*, 18(2), 161-169. <https://doi.org/10.2307/1412408>

⁸ Some Program 1 facilities are also regulated by OSHA's Process Safety Management Standard (29 CFR 1910.119) and workers would have the limited rights delineated in that standard.

⁹ Concerning the statistics on the number of employees for each Program Level: The analysis selected active facilities by eliminating facilities with deregistration or deregistration effective dates; it identified maximum and minimum Program Level and maximum and minimum full-time employees (FTE) number associated with each unique EPA facility ID; summed FTEs by Program Level for minimum and maximum Program level and for minimum and maximum FTE. Using minimum or maximum FTE may not have any systematic effect. It does give a sense of the potential variability. Using minimum Program level produces the higher estimates of FTEs associated with Programs 1 and 2. Using maximum program level produces the higher estimates of FTEs associated with Program 3.

¹⁰ EPA Reg Impact Analysis page 23

¹¹ We propose a response time of 7 days. Under the Clean Air Act (as well as the Occupational Safety and Health Act), an employee has just 30 days to file a complaint of employer discrimination. If there was a 30-day owner or operator response time, the response could include retaliation against the employee – and the employee would be outside the statutory deadline specified by the CAA (and OSHA) for filing a complaint).