CKRC
CEMENT KILN RECYCLING COALITION

March 31, 2017

VIA Electronic Filing

RE: US Department of Commerce Office of Policy and Strategic Planning
Notice, Request for Information
Impact of Federal Regulations on Domestic Manufacturing
82 FR 12786 (March 7, 2017)
Docket 170302221-7221-01

Dear Director Comstock:

In a Request for Information implementing Executive Order 13771, the Department of Commerce seeks information on federal permitting requirements that impact permitting and regulations that burden domestic manufacturing. The Request seeks General Information, and information about the Manufacturing Permitting Process and Regulatory Burden/Compliance. CKRC is pleased to submit these comments in response to the Request for Information.

INTRODUCTION

The Cement Kiln Recycling Coalition (CKRC) is a national trade association representing cement manufacturers in the U.S. that recycle the value in energy-bearing secondary materials by using them as fuel in kilns that produce Portland cement. CKRC also represents companies that collect, process, manage, and market alternative fuels for use in cement kilns.

CKRC member companies comply with myriad regulatory requirements under many different environmental and health and safety laws. Our members are dedicated to operating in accordance with the regulatory requirements to ensure the protection of human health and the environment. Over the last 30 years, engineers, combustion and testing specialists, risk assessors, and technicians have worked together to develop significant resources to understand the complex combustion and emissions control opportunities accomplished while producing Portland cement. Decades of rulemaking development, regarding both the cement kiln combustion system process emissions and the use of alternative fuel in the process, have resulted in the stringent regulation

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of our facilities under the CAA and other environmental laws. Extensive emissions testing to demonstrate compliance and detailed studies have documented the efficacy of using secondary materials as fuel in cement kilns. Agency review of these efforts has concluded that the use of alternative fuel does not pose an unacceptable risk to human health and the environment, and that the regulatory process is in place to support this conclusion.

We believe it is important to develop and implement regulatory requirements in a manner that ensures the manufacture of our important product, Portland cement, remains a viable process in the U.S. Identifying and addressing areas of regulation that are duplicative or overly-burdensome with no related increase in environmental or human health protection is essential. Toward that end, CKRC and its members look forward to working cooperatively with the Department of Commerce as it seeks information on federal permitting requirements that impact permitting and regulations that burden domestic manufacturing. According to the Portland Cement Association (PCA), the "U.S. cement manufacturers employ over 14,300 workers with an annual payroll of nearly $1 billion. When including related industries such as concrete, the number of employees grows to nearly 535,000 with an annual payroll of approximately $25 billion." CKRC's membership represents the operation of facilities, plants, and offices in almost every state in our country and employs approximately 7,000 workers whose jobs are associated with the process of beneficially recovering energy from alternative fuels in the manufacture of Portland cement.

CKRC member companies' use of alternative fuels represents a significant sustainability component incorporated in cement manufacturing operations throughout the U.S. Each year, the United States generates millions of tons of secondary materials that have significant energy value. To recover this energy and avoid wasting it, the cement industry uses very substantial quantities of these materials as alternative fuel, which replaces a portion of the non-renewable traditional fossil fuels used to provide energy for the cement manufacturing process.

The U.S. uses over 90 million tons of cement every year, a rate of use that grows when the economy strengthens. Cement is the active ingredient in concrete, the most widely used construction material in the world. Cement is produced in huge rotary kilns by heating a mixture of minerals to over 2,600°F. This is a very energy intensive process and cement manufacturers have developed technology that allows them to use energy-rich secondary materials created by other industrial processes to replace non-renewable fossil fuels. In

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addition to alternative fuels derived from hazardous wastes, non-hazardous alternative fuels can be a wide variety (or mixture) of energy-bearing materials such as tires and similar rubber-related materials, paper and plastics, fibers and fabrics, and much more.

The benefits of energy recovery are important for the environment. When cement kilns use alternative fuels derived from secondary materials, substances that would otherwise be regarded as waste are removed from the environment and handled and re-used in a safe and responsible manner. In addition, the amount of fossil fuels needed to produce cement is reduced, thereby conserving non-renewable energy resources and reducing emissions of greenhouse gases. For example, as EPA has noted, "both GHG and PM emissions have been reduced as a co-benefit of the use of secondary materials." "For example, the GHG rate associated with the combustion of scrap tires is approximately 0.081 $MTCO2_E$ per MMBtu of scrap tires combusted, while the GHG emissions rate for coal is approximately 0.094 $MTCO2_E$ per MMBtu. Combined with the avoided extraction and processing emissions 0.006 $MTCO2_E$/MMBtu for coal, the total avoided GHG is 0.019 $MTCO2_E$ per MMBtu." EPA has also noted additional benefits: "The use of secondary materials, such as use as a fuel in industrial processes may also result in other benefits. These may include reduced fuel imports, reducing negative environmental impacts caused by previous dumping (*e.g.*, tires), and reduced methane gas generation from landfills." Proposed Rule, *Identification of Non-Hazardous Secondary Materials That Are Solid Waste*, 75 FR 31844, 31849 (June 4, 2010).

CKRC's member companies represent a prime example of what can be accomplished when manufacturing a vital product and protecting human health and the environment are well-balanced. The energy and materials recovery realized in the cement manufacturing process embraces sustainability goals and reflects the very important interconnections among our economy, society and the environment.

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COMMENTS

CKRC provides the following comments, which follow the format provided in the Request for Information. We first provide GENERAL INFORMATION about facilities that manufacture cement using hazardous and non-hazardous secondary materials (HSM and NHSM) as fuels, including some materials regulated as hazardous waste. Then, regarding the MANUFACTURING PERMITTING PROCESS, we identify several specific permitting requirements of the US Environmental Protection Agency (EPA) that duplicate other federal permitting requirements and identify several States whose permitting procedures are exemplary and should be considered as models for improving federal permitting procedures. Lastly, we provide information regarding unnecessary REGULATORY BURDEN on CKRC members' facilities. Of the rules identified, some are currently in effect and others have been proposed or finalized but are not yet in effect. In the case of the regulations not yet in effect, a pending administrative proceeding offers an opportunity to address the needless duplication, complexity and burden.

I. GENERAL INFORMATION

A. NAICS codes:

- 327310 (Cement Manufacturing)
- 562211 (Hazardous Waste Treatment and Disposal)

B. What do you manufacture:

CKRC's member companies manufacture Portland cement and replace a portion of their fossil fuel needs by recovering energy found in hazardous waste and non-hazardous secondary materials to fuel the cement kilns in this energy-intensive production process. Other non-hazardous secondary materials are also widely used as ingredients in the cement manufacturing process to replace quarried rock.

C. Location of CKRC-member facilities/plants that are involved in the recovery of energy from hazardous or non-hazardous alternative fuels in the manufacture of cement and/or the use of non-hazardous secondary materials as ingredients in the cement manufacturing process:

Alabama, Arkansas, Colorado, Indiana, Kansas, Maine, Mississippi, Missouri, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Washington.

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II. MANUFACTURING PERMITTING PROCESS

A. Federal permit that overlaps with another federal permit

Resource Conservation and Recovery Act (RCRA) Subparts Duplicate Clean Air Act (CAA) Subparts

Regulatory Application	Duplicative RCRA Provision	Duplicative CAA Provision
Air Emission Standards from Process Vents	Part 264, Subpart AA Part 265, Subpart AA	Part 60, Subpart NNN Part 63, Subpart DD
Air Emission Standards for Equipment Leaks	Part 264, Subpart BB Part 265, Subpart BB	Part 60, Subpart V Part 60, Subpart VV Part 63, Subpart DD (incorporating Subpart H)
Air Emission Standards from Tanks, Surface Impoundments, Containers	Part 264, Subpart CC Part 265, Subpart CC	Part 60, Subpart Kb (Tanks only) Part 61, Subpart FF Part 63, Subpart DD

Description of overlap and burden:

CKRC member facilities are subject to various provisions of RCRA and the CAA. In many cases, these two statutes do not necessarily cross-reference each other, which can lead to inconsistency and duplication. In the case of the Part B RCRA Permit and the corresponding CAA Permit, the statutes are substantially duplicative. *See* 40 CFR § 270 and 40 CFR §§ 70-71. Both RCRA and CAA permits cover the same air emissions from the facility for emissions from waste management units if the applicability criteria are met.

This results in needlessly burdensome requirements on facilities that are subject to both statutes, including the submission of duplicative permit application information, development and implementation of duplicative compliance documentation, submission of duplicative reporting requirements, etc. Requiring the facility to provide and regulating the same information twice does not provide any additional protection to human health or the environment. The following explains the duplicative RCRA and CAA air emission standards identified in the above Table.

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RCRA incorporates three different air emission standards at 40 CFR Part 264, Subparts AA, BB, and CC.[1] The Subpart AA, BB, and CC regulations are required to be addressed in the RCRA permitting process. *See* 40 CFR §§ 270.24, 270.25, and 270.27.

CAA regulations also apply to the same types of facilities and units as those covered by RCRA regulations in 40 CFR Part 264, Subparts AA, BB, and CC, which are substantively very similar to and significantly overlap with these RCRA standards. Where applicable, these CAA standards must be addressed in a facility's Title V or State Operating Permit. *See* 40 CFR § 70.8(d). The following describes the overlaps and proposes solutions to each issue.

Issue 1: Regulatory Language Differences in Subparts AA, BB, and CC:

The overlap between the RCRA and CAA standards is addressed by allowing facilities to comply with CAA standards in lieu of the RCRA standards. *See* Subparts AA, BB, and CC, 40 CFR §§ 264.1030(e), 264.1064(m), and 264.1080(b)(7)).

As such, RCRA Subparts AA and CC specifically exempt, or exclude from applicability under RCRA, equipment that the owner/operator certifies is providing air emission controls in accordance with CAA rules under 40 CFR Parts 60, 61, or 63. *See* 40 CFR §§ 264.1030(e) and 264.1080(b)(7).

However, RCRA Subpart BB language is different. Subpart BB does not fully exclude the relevant equipment from Subpart BB, rather, it requires the facility to "determine compliance" with RCRA – *i.e.* the facility must document compliance with the RCRA provisions by showing compliance with CAA regulations at 40 Part 60, 61, or 63. *See* 40 CFR § 264.1064. In other words, the facility remains subject to RCRA Subpart BB, but may "demonstrate compliance" by documenting compliance with another rule. Therefore, the facility may remain subject to both RCRA and CAA standards for the same equipment and must include this information in each permit application.

[1] Note that 40 CFR Part 265 contains substantively identical regulations for interim status facilities and Large Quantity Generators (LQGs). The explanation below references Part 264 standards for permitted TSDFs, but should be considered as comments for the applicable Part 265 standards as well.

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Proposed Solution:

Subpart BB could be revised to incorporate the same applicability exclusionary language of Subparts AA and CC. This revision would be a conforming, technical change to the regulations, which EPA could accomplish under existing regulatory authority.

Issue 2: CAA Standards Do Not Offer the Same RCRA Exclusionary Options:

Depending on the types of units at a RCRA Treatment, Storage and Disposal Facility (TSDF), the applicable RCRA standards may be preferable for application at a hazardous waste TSDF than the corresponding CAA standards for the regulated entity. However, the CAA and standards detailed above do not include similar language to allow RCRA permitted treatment storage and disposal facilities (TSDFs) to implement the Subpart AA, BB, or CC standards in lieu of the CAA standards.

Proposed Solution:

The CAA could defer to RCRA to specifically exempt, or exclude from applicability under CAA, equipment that the owner operator certifies is "equipped with and operating air emission controls in accordance with the … requirements of an applicable Resource Conservation and Recovery Act regulation codified under 40 CFR part 264, Subparts AA, BB, and/or CC."

Issue 3: RCRA Air Standards Should Mirror Certain CAA Exemptions for Minor Sources

The RCRA Subparts AA, BB, and CC air emissions standards apply to a TSDF irrespective of whether the facility is a CAA minor or major source. Several TSDF facilities are CAA minor/area sources of volatile organic compounds (VOCs) and hazardous air pollutants (HAPs) and therefore, have minimal impacts on air quality. Demonstrating compliance with air emission standards at these minor/area sources incurs significant costs and is unduly burdensome given their low emissions. For these reasons, EPA has determined that the Part 61 and 63 CAA standards detailed above do not apply to these minor/area sources. However, the RCRA Subparts AA, BB, and CC air emission standards *do* apply no matter the amount of emissions. To achieve consistent RCRA and CAA air emission regulation of sources, minor sources already exempt from CAA standards should likewise be either exempt from RCRA Subparts AA, BB, and CC or be allowed to comply with CAA air emission standards in lieu of RCRA Subparts AA, BB, and CC air standards.

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Proposed Solution that would exclude CAA minor sources:

RCRA should be amended to be consistent with the CAA and limit applicability of these standards to "major sources" of VOCs and HAPs. This could be accomplished by revising 40 CFR §§ 264.1030(a) and 264.1050(a), as follows (proposed revision in bold underline):

> "(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 264.1) **and are major sources under the Clean Air Act."**

and

Revise 40 CFR § 264.1080(a) as follows (proposed revision in bold underline):

> "(a) The requirements of this subpart apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subpart I, J, or K of this part except as § 264.1 and paragraph (b) of this section provide otherwise**, and are major sources under the Clean Air Act."**

Alternative Proposed Solution that would allow CAA minor sources to comply with CAA major source standards in lieu of RCRA air emission standards:

RCRA should be amended to be consistent with the CAA and allow sources that are minor for VOCs and HAPs to comply with CAA major source standards in lieu of RCRA air emission standards. This could be accomplished by revising 40 CFR §§ 264.1030(e), 264.1064(m), and 264.1080(b)(7) as follows (proposed revision in bold underline):

40 CFR § 264.1030(e):

> (e) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. **This exemption shall also be available to minor sources under the Clean Air Act that elect to comply with one of these standards.** The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

and

40 CFR § 264.1064(m)

> (m) The owner or operator of a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to §264.1064 of this subpart, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. **This exemption shall also be available to minor sources under the Clean**

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Air Act that elect to comply with one of these standards. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

and

40 CFR § 264.1080(b)(7):

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. **This exemption shall also be available to minor sources under the Clean Air Act that elect to comply with one of these standards.** For the purpose of complying with this paragraph, a tank for which the air emission control includes an enclosure, as opposed to a cover, must be in compliance with the enclosure and control device requirements of §264.1084(i), except as provided in §264.1082(c)(5).

B. Proposed federal permit that overlaps with another federal permit

Proposed Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) Financial Assurance requirements overlap with RCRA provisions

Statute	Regulatory Provisions that overlap or are needlessly complex
CERCLA § 108(b)	40 CFR § 320—Financial Responsibility Requirements For CERCLA Liabilities Examples of requirements: 40 CFR § 320.1 (financial responsibility to reflect risk) 40 CFR § 320.61(a) (health assessment, response and natural resource damages) 40 CFR §§ 320.25 and 320.27 (requirements apply until EPA releases facility)
RCRA § 3004(a)(6); § 3004(t)	40 CFR §§ 264.140–264.151, Subpart H—Financial Requirements Examples of requirements: 40 CFR § 264.143 (closure) 40 CFR § 264.145 (post-closure care) 40 CFR § 264.147(a) (liability for sudden accidental occurrences) 40 CFR § 264.147(b) (non-sudden accidental occurrences

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Description of overlap and burden:

EPA has proposed new requirements under CERCLA § 108(b) that require facilities to demonstrate financial responsibility to cover costs of releases and potential releases of hazardous substances. *Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry*, 82 FR 3388 (Jan. 11, 2017). EPA intends to apply these new requirements to a number of industry source categories, beginning with the hardrock mining sector.

The proposed financial assurance requirements under CERCLA § 108(b) would duplicate the financial assurance requirements under several other authorities, including RCRA federal requirements, State requirements and other possibly applicable laws. Most CKRC-members have facilities that are permitted under RCRA Subtitle C, and comply with RCRA § 3004 financial responsibility requirements. RCRA § 3004(a)(6) and (t) requires sources to establish financial responsibility, including for corrective action, as EPA determines is "necessary or desirable…." EPA regulations require extensive financial assurances, including, for example, (1) closure of the facility; (2) post-closure care; (3) liability coverage for sudden accidental occurrences; and (4) coverage for non-sudden accidental occurrences. In some cases, CKRC facilities must also meet overlapping State financial assurance requirements.

Proposed Solution:

CERCLA Financial Assurance requirements should be drafted so that they do not duplicate already burdensome and protective Financial Assurance requirements of other statutes applicable to the same sources.

Given the status of this rulemaking, EPA has an opportunity to address this duplication and burden *before* it is finalized. EPA is developing the CERCLA § 108(b) rules pursuant to a judicial consent order that sets deadlines for EPA to propose and finalize Financial Assurance rules for several specified source categories, and that requires EPA to assess the need for applying these requirements to other industry sectors. *See In re Idaho Conservation League*, 811 F.3d 502 (DC Cir. 2016). EPA's new Financial Assurance rules will apply to all other industry sectors for which EPA – at some future date – may determine the rules are appropriate. However, because EPA published the proposed rule as applicable to hardrock mining, all other industry sectors that may be covered in the future have not been given adequate notice of the rules that may affect them. Therefore, CKRC suggests that EPA revise the proposed rule to eliminate the duplication and issue a new

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Notice of Proposed Rulemaking. This would resolve the substantive overlap and cure the procedural defect of the pending rulemaking proceeding.

C. State Agencies whose permitting practices should be widely implemented

CKRC members have facilities in a broad geographic range and subject to many different State permitting agencies. Several States have exemplary permitting procedures and could be considered as models for improving federal permitting procedures.

In addition to specific improvements in Federal permitting, CKRC suggests a re-commitment by EPA and other Federal authorities to the *supporting* role of the Federal government clearly enunciated by Congress in the US environmental statutes. In the Clean Air Act, for example, Congress clearly defined the Federal role as leading a research effort and providing support to the States' own pollution prevention programs:

> (b) The purposes of this title are— (1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population; (2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution; (3) *to provide technical and financial assistance to State and local governments in connection with the development and execution of their* air pollution prevention and control programs; and (4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

42 U.S.C. § 7401(b), CAA § 101(b) (emphasis added).

In keeping with these principles, EPA and other Federal regulators should defer to State agencies as the primary decision-makers, including when States are running programs under authorized or delegated authority by EPA. State agencies have proven their programs to be environmentally protective and at the same time more agile and able to adapt quickly to circumstances specific to the State or locale.

1. South Carolina Expedited Review Program. The South Carolina Department of Health and Environmental Control (DHEC) Expedited Review Program offers facilities applying for an air construction permit a shortened permit application review time frame in exchange for a fee paid by the facility. For example, a minor source construction permit that is accepted into the Expedited Review Program is expected to be issued within 30 calendar days rather than the regulatory-required 90 days. A large project that requires Prevention of Significant Deterioration (PSD) review has an expected

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issuance 120-150 calendar days,[2] including the 30 day public comment period, following acceptance into the program (the required regulatory issuance is within 270 days).[3] The Expedited Review Program offers facilities an opportunity to initiate time-sensitive projects much more quickly. Empirical knowledge suggests the program is widely accepted and utilized by industry. The DHEC's Standard Operating Procedures for this program are attached.

2. Pennsylvania Department of Environmental Protection (PADEP) Request for Determination (RFD) Procedures. The RFD process allows facilities to obtain permit exemption determinations for projects of "minor significance." The on-line RFD process allows users to "self-register" for the program and submit a request following the RFD template forms. This improves the data gathering process for the PADEP's review, resulting in faster evaluations and turn-around time. CKRC member experience ranges from two to three days to three weeks.
3. Texas Permit by Rule Program. Knowing that the air permitting process is often complex and lengthy, the State of Texas has pre-determined that air quality is not threatened by certain types of small-scope construction projects, and has stream-lined the authorization process for such projects via its permit-by-rule (PBR) program. The intent of PBRs is to allow plant operations to carry out small-scope changes without waiting on agency approval—and without overwhelming the agency with reviews. Some PBRs require registration timed with the activity, while others require a notification. A submittal to the agency usually consists of a process description, a project description, an area map, a plot plan, a Core Data form, a simple form, various standardized checklists, a copy of the PBR, a line-by-line description of how the project meets each requirement of the PBR, and the supporting emission calculations. If the PBR does not require site approval from the TCEQ (and many do not), the facility may begin construction (or the activity) right after submittal of registration to TCEQ. Generally, PBRs offer numerous Texas facilities a high degree of permitting flexibility.
4. Indiana Department of Environmental Management (IDEM) presents a positive and cooperative spirit in the air permitting process by working hard to meet internal deadlines in a timely manner. The state also

[2] A PSD application that does not impact a Class I area (i.e., where modeling is not required) has an issuance date of 120 days following program acceptance, and a PSD application impacting a Class I area has an issuance date of 150 days after acceptance into the program.
[3] In these examples, the fee for a minor construction permit is $3,000, and a PSD permit ranges from $20,000 - $25,000 dependent upon whether or not the project impacts a Class I area.

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has authority to do risk assessments which significantly helps streamline the process and make for a much more efficient permitting experience.

III. REGULATORY BURDEN / COMPLIANCE – EPA REGULATIONS

A. How regulatory compliance could be simplified

Clean Water Act (CWA) Spill Prevention, Control, and Countermeasure (SPCC) requirements overlap with Resource Conservation and Recovery Act (RCRA) Contingency Plan

Statute	Regulatory Provisions that overlap or are needlessly complex
CWA	40 CFR § 112.7: General Requirements for Spill Prevention, Control, and Countermeasure Plans.
RCRA	40 CFR Part 264, Subpart D: RCRA Contingency Plan Provisions 40 CFR Part 265, Subpart D: RCRA Contingency Plan Provisions

Description of overlap and burden:

The CWA SPCC regulations are intended to prevent and designed to establish countermeasures for accidental discharges of oil that could affect water quality. These rules apply to tanks/containers where oil is considered a hazardous waste under 40 CFR Part 261 or has been mixed with hazardous waste and the tank is therefore subject to the Federal RCRA standards and, in some cases, the RCRA Contingency Plan provisions. The CWA SPCC requirements duplicate RCRA requirements and thus impose an unnecessary burden and complexity for no apparent environmental benefit.

Proposed Solution:

SPCC regulations must be revised to exempt oil tanks/containers that contain material defined as hazardous waste and subject to the RCRA Contingency Plan requirements at 40 CFR Part 264, Subpart D or 40 CFR Part 265, Subpart D. To accomplish this, we propose this specific revision:

- Revise 40 CFR § 112.1(d) to exclude from regulation, tanks and containers that are used to store hazardous waste as defined at 40 CFR § 261.3 and are subject to the RCRA Contingency Plan Requirements at Part 264, Subpart D or Part 265, Subpart D.

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B. How regulatory compliance could be simplified

Clean Air Chemical Accident Prevention Program Standards Overlap with OSHA PSM Standards

Statute	Regulatory Provisions that overlap or are needlessly complex
CAA Chemical Accident Prevention Provisions	40 CFR Part 68, Subpart D: Program 3 Prevention Program
OSHA Process Safety Management (PSM) Standards	29 CFR Part 1910.119: Process Safety Management of Highly Hazardous Substances

Description of needless complexity and burden:

Section 112(r) of the 1990 Clean Air Act, 42 U.S.C. § 7412(r), required promulgation of regulations for the prevention of accidental releases of regulated substances from certain regulated stationary sources. These regulations are outlined in detail at 40 CFR Part 68, Chemical Accident Prevention Provisions.

The goal of Part 68 (otherwise referred to as the "risk management program (RMP)"), is to prevent accidental releases of substances that can cause serious harm to the public and the environment from short-term exposures and to mitigate the severity of releases that do occur. Part 68 requires facilities to determine their applicability under the rule by performing a threshold determination for all chemicals listed at 40 CFR § 68.130. If a facility determines that it manages one or more regulated substances in a process at or above the appropriate threshold quantity, it must then determine the appropriate Program Level with which it must comply under RMP. These Program Levels range from Program 1, which requires minimal prevention requirements other than to coordinate emergency activities with local emergency response agencies, to Program 3, which requires facilities to implement a rigorous Prevention Program.

As acknowledged by EPA, the Program 3 Prevention Program Requirements of the RMP regulations were modeled after the OSHA Process Safety Management (PSM) Standards promulgated at 29 CFR § 1910.119. So much so, that the RMP Program 3 Prevention Program Requirements are virtually identical to the requirements detailed under the OSHA PSM Standards.

The requirement for facilities regulated under RMP to reproduce this information as part of its Risk Management Plan submission to EPA is the definition of redundant and overly burdensome.

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Proposed Solution:

The RMP regulations at 40 CFR Part 68 could be revised to exempt facilities from the Program 3 Prevention Program Requirements if the owner/operator certifies that it has implemented a PSM program under 29 CFR § 1910.119 for the regulated process that would normally be subject to the Program 3 Prevention Program Requirements. This certification can be included with the on-line RMP submission to EPA.

Clean Air Chemical Accident Prevention Program Standards Overlap with RCRA Standards

Statute	Regulatory Provisions that overlap or are needlessly complex
CAA Chemical Accident Prevention Provisions	40 CFR Part 68, Subpart E: Emergency Response
RCRA TSDF Contingency Plan Standards	40 CFR Part 264, Subpart D: Contingency Plan and Emergency Procedures

Description of needless complexity and burden:

40 CFR §§ 68.90 and 68.95 require that owners or operators of a stationary source with Program 2 and Program 3 processes "develop and implement an emergency response program for the purpose of protecting public health and environment…." The requirements for this emergency response program include the following elements:

> (1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:
>
> > (i) Procedures for informing the public and local emergency response agencies about accidental releases;
> > (ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and
> > (iii) Procedures and measures for emergency response after an accidental release of a regulated substance;
>
> (2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;
>
> (3) Training for all employees in relevant procedures; and
>
> (4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

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40 CFR § 68.95(a). 40 CFR Part 264, Subparts C and D (and Part 265, Subparts C and D for Interim Status Facilities) require TSDFs to prepare and implement a Preparedness and Prevention Procedures and a Contingency Plan and Emergency Procedures to minimize these same risks at facilities that store RCRA hazardous waste, which may also be regulated under the CAA RMP regulations. The RCRA Contingency Plan, Preparedness and Prevention, and Training Requirements also require the following shared elements with the RMP Emergency Response Program:

- Procedures for notifying appropriate State or local agencies with designated response roles (§§ 264.56(a)(2) and (d)(2))
- Procedures for emergency response (§ 264.56)
- Procedures for the use, inspection and testing of emergency equipment (§§ 264.52(e), 264.33)
- Contingency Plan Training (§ 264.16)
- Procedures for updating the Contingency Plan (§ 264.54)

This overlap in regulatory provisions requires RCRA TSDFs to submit to EPA, Emergency Response Plan information that duplicates the Contingency Plan information that has been submitted to, and approved by, the RCRA-authorized State agencies.

Proposed Solution:

The CAA RMP regulations should be revised to exempt facilities from the Emergency Response Program requirements at 40 CFR Part 68, Subpart E, if the facility is required to prepare and implement a Contingency Plan under the Federal RCRA Permitting or Interim Status regulations at 40 CFR Parts 264 or 265.

Clean Air Chemical Accident Prevention Program Applicability and Overlap with RCRA Standards

Statute	Regulatory Provisions that overlap or are needlessly complex
CAA Chemical Accident Prevention Provisions	40 CFR Part 68.10: Applicability
RCRA TSDF Standards	40 CFR Part 264.72(c): Manifest Discrepancies in Type

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Description of needless complexity and burden:

For purposes of determining applicability of the RMP regulations, 40 CFR § 68.10(a) states, in part, that:

> (a) An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under §68.115, shall comply with the requirements of this part no later than the latest of the following dates: ***
>
> (3) The date on which a regulated substance is first present above a threshold quantity in a process."

A process, under RMP, is defined at § 68.3 as follows:

> *Process* means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

RCRA TSDF facilities many times receive hazardous waste in containers that must be off-loaded from the transportation vehicle and temporarily staged at the facility while personnel sample the incoming containers and implement the facility's RCRA Permit Waste Analysis Plan (WAP) (i.e., implement its incoming shipment review procedures). At this time, the facility has not accepted the hazardous waste into permitted storage.

However, based on the RMP definition of "process," in the event that a RCRA TSDF were to identify a waste stream in its temporary staging area that contained an RMP chemical in excess of the applicable RMP threshold quantity, the RMP applicability standards at Section 68.10(a) could be construed to read that the facility is subject to the RMP standards at that time. Due to this potential issue, several facilities may believe it necessary to prepare and submit a "predictive filing" under RMP in the event that a material were to be delivered to the site above the regulatory thresholds, even though it would be rejected and not accepted into permitted storage.

The preparation of an RMP program and submission of a predictive filing is an unnecessary and burdensome process to account for such short-term scenarios.

As detailed above, the Federal RCRA standards allow facilities to "receive" waste streams while they implement its WAP and, if necessary, reject the wastes before they are considered to be part of the "Permitted Storage." We believe that a similar concept should be incorporated into the RMP standards by excluding from applicability, waste materials received at facilities that are undergoing incoming shipment review procedures under the facility's WAP and not yet "accepted into storage."

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Proposed Solution:

40 CFR § 68.10(a) could be revised as follows (bold underline indicates proposed revisions):

> "(a) **Except as provided at §68.10(a)(4), a**n owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under §68.115, shall comply with the requirements of this part no later than the latest of the following dates: ***
>
> **(4) RMP chemicals temporarily received and staged at a RCRA treatment storage and disposal facility (TSDF) that are undergoing incoming shipment acceptance review procedures under the facility's RCRA Waste Analysis Plan shall not be considered to be part of the facility's "process" until they have been accepted under the facility's RCRA permit and placed in permitted storage."**

C. How regulatory compliance could be simplified

***Recently amended* Clean Air Act Risk Management Plan provisions**

Statute	Regulatory Provisions that overlap or are needlessly complex
CAA	40 CFR Parts 68.60 and 68.81(root cause analysis) 40 CFR Parts 68.58, 68.59, 68.79, and 68.80 (compliance audit) 40 CFR §68.93(a) (local responder coordination)
RCRA	40 CFR Part 264 (contingency plan required field exercises)

Description of needless complexity and burden:

EPA recently finalized revisions to its CAA Risk Management Program. Final Rule: *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,* 82 FR 4594 (Jan. 13, 2017). Several of the new provisions increase regulatory burden without improving environmental, health or safety protections. For example, the amendments require root cause analysis for events that do not result in a release; impose onerous third-party audit requirements; new requirements for Emergency Response Program to duplicate existing coordination with local responders; mandate new field and table-top emergency response drills; mandate that chemical hazard information be made available to the Local Emergency Planning Committee; and require that certain RMP and chemical hazard information be made available to the public in the

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local library or other readily available manner. These provisions duplicate existing law or increase burden but they do not enhance the safety of facilities or provide any additional prevention of harm. Worse, some of the new amendments will create safety risks, for example, by requiring disclosure of sensitive site data that could create security concerns.

Proposed Solution:

EPA has granted a Petition for Administrative Reconsideration of the final rule and has stayed the effective date of the rule to June 19, 2017. Final Rule; Delay of Effective Date: *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date*, 82 FR 13968 (Mar. 16, 2017). EPA could use the administrative review and proceed with additional rulemaking proceedings to analyze and address this needless duplication. In comments on the proposed rule, CKRC provided specific suggestions for addressing each area of concern. These are attached.

CONCLUSION

CKRC appreciates the opportunity to bring to the attention of the Department of Commerce and the Environmental Protection Agency, several federal regulations that duplicate other regulations or needlessly impose burdens. The revisions we propose here would not result in less protection of human health or the environment. CKRC would be pleased to provide additional information that may be helpful to a better understanding of the burdens on its member facilities.

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