



## Marathon Petroleum Company LP

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September 18, 2017

### BY OVERNIGHT DELIVERY

Patrick Davis  
Deputy Assistant Administrator for the Office of Land and Emergency Management  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N. W.  
**Mail Code:** 6101A  
Washington, DC 20460

Re: Risk Management Program Rule Amendments

Dear Deputy Assistant Administrator Davis:

We appreciated the opportunity to meet with you and your colleagues on July 12, 2017, to discuss the revisions to the Risk Management Program (RMP) regulations at 40 C.F.R. Part 68. As you requested, Marathon Petroleum Company LP (MPC) respectfully submits these comments regarding compliance audits. Specifically, we request that EPA reconsider the rule language requiring owners to audit “each covered process” and, alternatively, adopt language consistent with industry auditing practices, which recognizes a representative sampling approach to auditing. Next we propose adoption of a voluntary auditing program that would encourage owners to participate in independent audits prior to any incidents occurring at facilities. We believe that an auditing program designed to prevent incidents would be much more beneficial than requiring independent third-party auditing after an incident has occurred.

**The revised RMP requirement to audit “each covered process” is unduly burdensome. Instead, the rule should be amended to require the owner to audit a representative sample of covered processes to verify compliance with the RMP regulations.**

The revised RMP rule has expanded the auditing requirements for those facilities that have more than one covered process. The compliance audit provisions in 40 C.F.R. §§ 68.58(a) and 68.79(a) as amended by the RMP Amendments state:

The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart *for each covered process*, at least every three years to verify that the procedures and practices developed under the rule are adequate and being followed. (emphasis added).

Read literally, a facility owner would be required to review *each* RMP element at *each* covered process at its facility during a compliance audit. The time and resources necessary to perform such a task is significantly greater than any benefit that could be derived. Further, auditing of each covered process is not necessary to verify compliance with the RMP regulations. Ample regulatory and industry guidance exists regarding the way in which to perform comprehensive compliance audits, focusing on auditing of the RMP management system and representative sampling. The RMP management system is typically implemented across the entire facility, and, thus, auditing a sample of processes would be representative of all covered processes within the management system. Any common audit findings identified in multiple processes sampled would be addressed system-wide, and not just at the processes in which the finding was discovered.

An audit of the system is consistent with OSHA's approach to Process Safety Management (PSM) compliance audits. In Appendix C to §1910.119, OSHA states, "Employers need to select a trained individual or assemble a trained team of people to audit the process safety management system and program. . . . The audit is to include an evaluation of the design and effectiveness of the *process safety management system* and a field inspection of the safety and health conditions and practices to verify that the employer's systems are effectively implemented." 29 C.F.R. §1910.119, App. C, ¶14 (emphasis added).

OSHA further discusses the use of sampling in auditing. "An audit is a technique used to gather sufficient facts and information, including statistical information, to verify compliance with standards. Auditors should select as part of their preplanning a sample size sufficient to give a degree of confidence that the audit reflects the level of compliance with the standard." *Id.* This approach is further defined in OSHA's guidelines. In preparing for a compliance audit, OSHA recommends that during planning "auditors should select a sufficient number of processes to give a high degree of confidence that the audit reflects the overall level of compliance with the standard. Each employer must establish the format, staffing, scheduling, and verification methods before conducting the audit."<sup>1</sup>

Like OSHA, industry experts endorse statistical sampling strategies in execution of a comprehensive audit for an RMP covered stationary source. For example, the Center for Chemical Process Safety (CCPS) guidelines for auditing PSM Systems apply various unit sampling strategies to ensure a robust PSM audit.

For example, CCPS's most recent version of *Guidelines for Auditing PSM Systems* (2011), indicated a "lead auditor and audit coordinator for the site should decide which units will be chosen as representative units. A representative unit is a unit or part of a unit covered by the PSM program that is being audited in lieu of and as a representative of all covered units."<sup>2</sup> The guidelines further describe that levels of risk, age (of units), incident history, audit history and availability are all factors in considering covered process unit sampling strategies.

In addition, the Board of Environmental, Health & Safety Auditor Certifications (BEAC) and The Auditing Roundtable, in their joint letter to EPA commenting on the revised RMP rule, suggested that the following language is a better auditing strategy based on their expertise and experience:

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<sup>1</sup> *Process Safety Management Guidelines for Compliance*, U.S. Department of Labor, Occupational Safety & Health Administration (OSHA 3133, 1994).

<sup>2</sup> *Guidelines for Auditing Process Safety Management Systems*, Center for Chemical Process Safety, p.84 (2nd Ed., 2011).

The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart *for a representative sample of covered processes sufficient to reflect compliance*, at least every three years to verify that the procedures and practices developed under the rule are adequate and being followed.<sup>3</sup>

MPC respectfully requests EPA adopt the covered process unit sampling strategies described in the referenced guidelines, which have been compiled by OSHA, industry experts and audit certifying organizations with specific experience in process safety management. In their documents, these organizations have presented compelling explanation and rationale why auditing a representative sample of a facility's covered processes is as effective, if not better, than arbitrarily requiring, by a prescriptive regulation, an audit of each covered process.

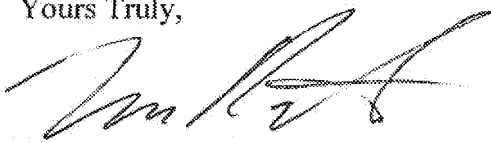
**A voluntary auditing program would encourage independent auditing of facilities before accidental releases occurred.**

In addition to requiring a compliance audit of "each covered process," the revised RMP rule also mandates that the audit be performed by an independent third-party auditor within twelve months of an accidental release. We support the comments from API, AFPM and CSAG regarding concerns with the third-party auditing provisions. Rather than rehash those comments, we offer an alternative to the third-party auditor requirement. We propose a program, similar to OSHA's Voluntary Protection Program (VPP), in which facility owners would voluntarily submit to independent third-party audits in exchange for certification. These audits would take place *before* an accidental release occurred at a facility and would serve to prevent, rather than react, to an incident.

Attached is an outline of considerations for a voluntary auditing program. The program could work in tandem with OSHA's VPP and provide facilities that are already certified under OSHA's VPP with an expedited path to similar status under EPA's program. In addition, the voluntary auditing program could provide compliance assistance to small businesses and facilities seeking guidance.

We would be happy to discuss further any of the information presented herein. Please do not hesitate to contact me at 419-421-2869.

Yours Truly,



Timothy J. Peterkoski  
Manager, ESS&PQ

TJP:ceg  
Attachment

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<sup>3</sup> Letter dated May 12, 2016 to OSWER Docket, EPA Docket Center from Bill N. Qualls, President of The Auditing Roundtable and Joseph Cotier, Chair of the Board of Environmental, Health & Safety Auditor Certifications.

## **Risk Management Program “Voluntary Protection Program”**

### **Abstract**

Create a voluntary compliance assurance and protection program at EPA that allows RMP-regulated entities to invite an EPA audit without fear of penalty.

### **Goals**

1. Improve industry-agency relations
2. Avoid litigation
3. Provide certainty to participating companies
4. Encourage a more goal-oriented approach for industry rather than penalty-avoidance behavior
5. Shift EPA’s enforcement focus to “outliers” (bad actors)

### **Implementation Considerations**

- Ensure the program does not conflict with OSHA VPP requirements for PSM-regulated facilities.
- Provide expedited path for PSM-regulated facilities already meeting OSHA VPP requirements.
- Ensure companies have ample opportunity to cure issues identified through the application process so they can participate. Ensure that companies accepted in the program cannot be easily kicked out of the program and assessed penalties for issues identified through periodic audits.
  - If the company does not meet the qualifications, they should have a reasonable period to take corrective actions and be accepted into the program.
  - If the company’s corrective actions do not suffice, EPA may deny their application. The company should then be able to apply again after one year.
    - \*\*EPA may not assess monetary penalties for potential violations discovered through the voluntary inspections\*\*
    - Willful conduct is excluded
- Provide special assistance for small businesses to apply and participate without hassle
- Five to seven year reevaluation.
- Participating companies would be exempt from penalties from voluntary inspections, but will continue to be inspected, with penalties assessed, for violations found during inspections initiated through complaints and/or incidents.
- Provide for an EPA sponsored ‘consult’ program to provide guidance on developing and implementing compliant programs