



American
Petroleum
Institute



U.S. Chamber of Commerce



July 17, 2024

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

RE: -- Providing for congressional disapproval of Environmental Protection Agency New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry” Final Rule (89 FR 42932, May 16, 2024).

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Johnson, and Minority Leader Jeffries:

The undersigned trade associations representing diverse sectors of the economy strongly support H.J.Res.161 and S.J. Res 100, legislation to disapprove the Environmental Protection Agency (EPA) rule, “New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry” (HON rulemaking).

Our members operate across the country in compliance with existing local, state, and federal statutory requirements through programs under key statutes like the Clean Air Act (CAA), Clean Water Act, Resource Conservation and Recovery Act, and other regulatory frameworks. Our members also maintain longstanding commitments to improve performance while providing critical and innovative products and materials.

While we acknowledge some of EPA's constructive changes in the final rule (e.g., additional compliance time for some chemicals, removal for impractical flaring restrictions), our associations remain significantly concerned with several other aspects of the rule, all of which set dangerous precedents and will adversely impact and hinder the ability of our facilities to maintain important economic productivity. Many of these problematic requirements are a result of EPA's discretionary choice to conduct a new risk review for the source category under CAA Section 112(f). This voluntary decision, in addition to EPA's application of a deeply flawed toxicity value for ethylene oxide (EO) and chloroprene derived from the Integrated Risk Information System (IRIS), has led EPA to ignore costs for several provisions of the final rule and instead advance overly stringent controls that do not meaningfully reduce risk and that will likely have sweeping adverse market impacts. While we are seriously concerned about EPA's legal authority to promulgate these requirements, we also have concerns with the practical impacts of many technical issues in the final rule, some of which we have addressed in this letter.

First, EPA's finalized fence line monitoring program, the substance of which was unchanged from proposal, will pose significant practical and technical challenges. While some additional compliance time may help, our associations are concerned with the substantive and structural components of the program. For example, the program's current structure will trigger compliance obligations for emissions sources outside of the category covered by the rule. In addition to setting a concerning precedent, this also erodes regulatory certainty by requiring facilities to investigate, identify, and attempt to address sources that may be either covered by another regulatory program or outside of the facility's control entirely. The fence line program is also based on extremely low action levels – 0.2 ug/m³ for EO and 0.3 ug/m³ for chloroprene – that will likely challenge the analytical ability of labs to process samples with interference issues like background concentrations. Finally, the frequency of monitoring is onerous and will create continuous time and labor burdens on facility staff at a time when staff time is already at capacity dealing with existing regulatory requirements as well as other expanded obligations imposed by the HON.

Additionally, EPA effectively removed important delay of repair provisions that allow for timely and common-sense periods of repair for small leaks. By removing this critical flexibility, EPA has created scenarios in which facilities will be forced to shut down entire process units to address minor fugitive leaks. Because shutdowns have associated emissions, EPA's approach will unnecessarily increase emissions to address otherwise small leaks. EPA also finalized extremely low definitions of EO concentrations that trigger control requirements for things like process vents, equipment leaks, and storage tanks, among others.

These issues are all underpinned by EPA's continued use of a deeply flawed toxicity value for ethylene oxide derived from the IRIS to evaluate risk. This IRIS value defies reason—it is 23,000 times lower than naturally occurring levels found in the human body. Some of the new restrictions threaten to affect the production of chemistries that are needed for countless everyday products and are used in key industries, including agriculture, healthcare, semiconductors, and electric vehicle batteries. Unfortunately, the value's continued application in this rule along with EPA's reliance on outdated facility specific emissions data has led to overly stringent final requirements that are based on inflated risks and speculative benefits.

Unfortunately, EPA's recent response-to-comment document sheds little light on any agency rationale for these problematic requirements or its consideration of our previous comments. Unless the Biden Administration fully addresses these concerns and takes a different, more thoughtful regulatory approach, the availability of critical chemistries will be jeopardized and will dwindle — and the country's climate, infrastructure, and supply chain priorities will suffer as well.

We and our members support focused and data-driven regulations that improve safety, reduce emissions in a cost-effective way, and advance the competitiveness of American manufacturing. EPA's HON rulemaking fails to meet this mark. We urge you to support the resolution of disapproval of the HON final rule under the Congressional Review Act.

Sincerely,

American Chemistry Council
Alliance for Chemical Distribution
American Petroleum Institute
Communications Cable and Connectivity Association
Council of Producers and Distributors of Agrotechnology
Essential Minerals Association
Louisiana Chemical Association
National Federation of Independent Businesses
National Association of Manufacturers
Society of Chemical Manufacturers & Affiliates
Texas Chemistry Council
The Vinyl Institute
U.S. Chamber of Commerce