Message

From: Laura Berkey-Ames [lberkeyames@nam.org]
Sent: 6/18/2018 4:14:38 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]
Subject: BENJ Feedback re: EJ Screen
Attachments: BNEJ Comments on draft EJ 2020 Action Agenda_Clean_July28_2016.pdf

Flag: Follow up

Hi Brittany:

I hope this email finds you well. This note is to follow up on your request during our meeting last month for additional feedback on EJ Screen as well as other EJ-related issues. On behalf of one of my BNEJ Coalition members, I wanted to pass along the following information. Hopefully you will find it helpful.

- EPA should provides opportunities for facilities to correct errors in the ECHO database.
- It would be helpful for EPA to do a case study or two about how EJ Screen is intended to be used – e.g., to get discussions about facility permits on the same ground factually with regard to demographics, including potentially translation needs, to review additional traffic and how to avoid congestion and burden, to educate the permit writers and others about information needs (what does TRI actually mean? Do releases actually mean likely exposure, etc.).
- Suggest EPA revise the release to land data to distinguish between placement of hazardous substances in RCRA-regulated treatment or disposal units vs. simply land spreading. Any facility with a Subtitle C treatment or disposal permit suddenly appears to be a huge source of toxics, when in fact the permitting programs assure no exposure.

Pages 7 and 9 – 11 of the attached BNEJ comments are compatible with the issues identified above.

Please feel free to contact me if you have questions or need additional information. I look forward to continuing to work with you.

Regards,
Laura

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Comments of the Business Network for Environmental Justice
on EPA's draft EJ 2020 Action Agenda

The Business Network for Environmental Justice ("BNEJ") appreciates the opportunity to submit these comments on the Environmental Protection Agency's ("EPA's") draft EJ 2020 Action Agenda ("EJ Agenda"). Based at the National Association of Manufacturers, the BNEJ is a voluntary organization of industry and trade associations interested in environmental justice ("EJ") issues. The BNEJ believes that all people should be treated fairly under the laws and have the opportunity for meaningful participation in public processes, without discrimination based on race, color, or national origin.

OVERVIEW

On July 14, 2015, the BNEJ submitted comments on the EPA's April 15, 2015 Draft EJ 2020 Action Agenda Framework ("Draft Framework"). The draft EJ Agenda constitutes the EPA's revision of the Draft Framework after consideration of public comments and sets forth the EPA's EJ strategic plan for the next five years. The BNEJ believes that the Draft Framework has been strengthened by consideration of public input. The BNEJ now offers the following comments on the draft EJ Agenda.

The BNEJ commends the EPA for the comprehensiveness of the draft EJ Agenda and for many of its features. In particular, the EPA's vision statement in the draft EJ Agenda recognizes the importance of all members of our nation living in sustainable, healthy communities, and that "strong partnerships" provide the foundation for achieving this vision. The BNEJ fully supports these principles. Business and industry are important partners in efforts to improve the environmental and health conditions in all communities. As an organization comprised of business and industry members interested in cooperative engagement with other stakeholders, the BNEJ looks forward to participating as partners with the EPA in pursuit of the EJ Agenda's laudable vision and the fair administration of environmental laws.

One impediment to providing useful substantive comments on the EJ Agenda is the lack of complete detail regarding how its ambitious goals will be implemented. The many concepts mentioned in the EJ Agenda, although clarified through actions, strategies and measures, frequently do not provide a sufficient blueprint to inform commenters how they will applied. For example, steps appropriate for voluntary, cooperative decision-making may be inappropriate if embodied in mandatory rules, permit conditions or enforcement measures. Likewise, the resources and funding required may vary greatly depending on how the concepts in the Agenda will be applied. The absence of a detailed implementation plan, accompanied by an outline of the necessary staff resources and funding, hampers the ability of all stakeholders to provide fully the meaningful comment that the EPA seeks.

As is the case with most draft plans published for public comment, there are opportunities for improving the draft EJ Agenda to sharpen its focus and enhance its consistency, thereby increasing opportunities to achieve its mission. Since many of the BNEJ's comments are

Sierra Club v. EPA 18cv3472 NDCA Tier 7 ED_002061_00082087-00001

applicable to more than one section of the draft EJ Agenda, these comments are organized by topic.

Several themes appear in these comments, including the following: first, to be effective in advancing the EJ Agenda's goals, partnerships should include business and industry as essential partners and utilize collaborative processes. Second, the existing, robust community engagement strategies employed by some companies should be recognized and serve as a foundation for further efforts by those and other companies. Third, rigorous definitions and methodologies would aid the predictability and validity of an EJ analysis. Fourth, the EPA should only use sound science and high quality data. Fifth, public information concerning the regulatory compliance of facilities should be coupled with an effective and efficient process for correcting errors in the EPA's data bases. Sixth, the EPA's existing regulatory framework and standards that are protective of vulnerable communities should be utilized where applicable to the action or stressor at issue. These and other themes are emphasized in the specific comments below.

1. **The EJ Agenda should consistently emphasize the value of including business and industry in partnerships to advance EJ goals.**

In the BNEJ's view, the EJ Agenda's emphasis on cultivating strong partnerships provides a sound foundation for achieving its EJ goals. Embracing business and industry as an important stakeholder is vital to forming effective partnerships. Businesses play an essential role in the economic health of the community. A sustainable community is in part one that provides employment to its members and, in turn, supports the businesses providing jobs. Many businesses actively engage with the communities in which they are located and are part of the social as well as economic fabric of the community. The BNEJ believes that EPA's strategic plan should include facilitating and incentivizing even greater business participation in these partnerships wherever feasible.[1]

To this end, where the goals, objectives and strategies listed in the draft EJ Agenda emphasize the importance of partnerships, in some instances business and industry are appropriately among the partners mentioned. For example, the objective for "permitting" includes collaboration with, among others, "permit applicants to identify and share tools, promising practices, and approaches." EJ Agenda at 2. Likewise, the strategy associated with community-based work includes "building stronger on-the-ground partnerships with communities and involving academia, business, philanthropy and other sectors." EJ Agenda at 3. The BNEJ strongly supports the inclusion of business and industry in these collaborative efforts. Ongoing and future partnerships that include the participation, perspective and resources of business and industry can help achieve the EJ Agenda's goals.

Although the references to business and industry cited above are very helpful, other portions of the draft EJ Agenda should be enhanced by noting the positive role business and industry can play in partnerships formed to further EJ goals. In particular, in both Goal II, EJ

[1] Providing public recognition to those businesses devoting resources to partner with communities and offering permit flexibility to businesses that address community concerns are two examples of useful incentives.

Agenda at iv (Work with Partners), and the paragraph on "Stakeholder Engagement," EJ Agenda at 7, the EJ Agenda should add a reference to the important role of business. In designing best practices for outreach, EJ Agenda at 10, Action 4.2, the EPA should consider facilitating discussions among interested stakeholders, including business, in addition to conducting its separate outreach efforts.

In Chapter 3 (Permitting), little detail is offered on how the EPA will engage with permit applicants to share approaches for conducting enhanced outreach in communities. The EJ Agenda should reference the innovative and proactive approaches taken by some businesses to date and express the advantages of building on these lessons learned. *See, e.g.*, the EPA's Environmental Justice Collaborative Problem-Solving Model, EPA-300-R-06-002 (June 2008) (Appendix) (describing example of business-community partnership).

Although a stated objective in Chapter 3 of the EJ Agenda is fostering collaboration in permitting, the EPA does not mention business and industry when discussing its collaboration with other stakeholders, such as the Environmental Council of the States (ECOS). *See* EJ Agenda at 12, Action 2.1. Collaboration between business and industry and state regulators provides a useful mechanism to identify or develop best or promising practices. State regulators have knowledge of how community engagement activities fit into the approaches to permitting and other activities that they conduct. Business has the experience and interest in helping to design voluntary, flexible measures for community engagement. These stakeholders working together can design voluntary measures with the flexibility necessary to adjust to the unique circumstances of each permit application and the potentially affected populations. The BNEJ recommends expressly including business in partnerships to design these measures.

Likewise, the discussion of "stakeholder partnerships" in Chapter 10, Significant National EJ Challenges, EJ Agenda at 38, would benefit from discussion of the collaborative role business has played and will continue to play in developing promising practices for community engagement and in addressing the "Challenges."

2. **<u>The term "overburdened community" should be clarified.</u>**

The BNEJ supports the fair treatment of all people under all laws, including environmental laws, without discrimination based on race color or national origin. This is consistent with the requirements of Title VI of the Civil Rights Act of 1964, and with Executive Order 12898 (59 Fed. Reg. 7629, February 16, 1994), which emphasized that minority and low income populations should be fairly treated.

As defined in the EJ Agenda glossary, the term "overburdened community" creates confusion regarding whether the EJ Agenda seeks to address populations outside of those identified in Title VI and Executive Order 12898, and if so, whether the EPA intends to focus its rulemaking, permitting and enforcement authorities to restrict activities that may affect these populations. The BNEJ encourages the EPA to clarify the definition in order to create more certainty regarding whether a population affected by a stressor is an "overburdened community." The following are some portions of the definition that merit revision:

a. The EJ Agenda defines an "overburdened community" to include not only minority, low-income, tribal or indigenous populations, but also "geographic locations." The proper focus under Executive Order 12898 is on certain "populations" affected by an activity, not on geographic locations. *See* Executive Order 12898, Section 1-1 ("[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low income populations…."

b. An EJ analysis requires identification of an affected population. While the geographic location of persons exposed to a stressor may at times coincide with a "community," at other times the potential effects may cut across communities. To assess whether "disproportionate effects" exist, *see* definition in Glossary, it is important to use scientific methodologies and rigorous exposure data gathered using sound science to identify only the affected population, not to assume that the effects of an action fall on all persons who reside within a community. Just as a "community" does not define an affected population, proximity to a source is also a poor surrogate. The Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EPA 2016) (the "EJ Technical Guidance") states that "use of actual exposure data is generally preferred to proximity data." EJ Technical Guidance at 50. The EJ Agenda should incorporate this principle.

c. The draft EJ Agenda's definition of "overburdened community" states that populations or geographic locations must "potentially experience" disproportionate environmental harms or risk. This language should be clarified to focus the analysis on exposure and actual risks, not just "potential" ones. Opening the door to "potential" risks introduces a measure of speculation and subjectivity that may lead different analysts to reach different results.

d. The BNEJ believes that all members of the public should have a full opportunity to participate in decisions about a proposed activity. *See* definition of "meaningful involvement" in the Glossary. The definition of "overburdened community" should distinguish this interest in a fair, inclusive process, a procedural goal, from the concepts of vulnerability and susceptibility, which should be defined in the Glossary. Vulnerability involves differential exposures and preparedness of a population while susceptibility relates to the population's biological response.[2] These attributes of a population, rather than procedural opportunities, determine the health and environmental effects of a stressor on that population. The definition also notes that disproportionate effects may result from "other factors" without elaborating what they may be, thereby diminishing the usefulness of the definition.

e. Vulnerability, although undefined in the draft EJ Agenda, is a useful concept when evaluating the risk to a group of people from exposure to a stressor. However, the EPA should not automatically associate vulnerability with "lack of positive" conditions.

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[2] *See* EJ Technical Guidance at 69.

f. After citing to "disproportionate effects," which is separately defined in the EJ Agenda Glossary, the definition of "overburdened community" then uses the term "disparities." This term is not the same as "disproportionate effects" or "unequal treatment." One purpose of analyzing an action for disproportionate effects is to determine whether a minority, low-income or indigenous population has suffered a significantly higher and more adverse health and environmental effect than a comparison (reference) group. This principle appears to be embodied in the defined term, "fair treatment." Subject to point 8 below, the EPA may plan to consider disproportionate effects as one of many factors in evaluating the fairness of an action. In contrast, a comparison of any two populations will detect "disparities," and be of little value in an EJ analysis. To be consistent with Executive Order 12898 and cogent EJ analysis, the EJ Agenda should employ the term "disproportionate effects" and maintain that focus throughout the EJ Agenda.

g. The introduction of the concept of cumulative effects in the definition creates an impediment to applying it in a consistent, uniform manner. As the EPA has acknowledged, there are no established scientific methodologies for conducting cumulative risk assessments for multiple environmental stressors. *See* EJ Technical Guidance at § 4.2.4 ("The science supporting assessments of such cumulative impacts is evolving, however, and the data and analytical tools needed to develop informative, scientifically sound analyses of these effects may not be available in many cases."). The analysis becomes even more difficult and removed from established scientific methods when attempting to assess how socioeconomic and environmental conditions interact. *See* EJ Agenda at 19.

   Neither the definition of "overburdened community" nor other parts of the EJ Agenda offer quantitative or qualitative measurements to determine the degree to which cumulative effects may burden a population. Likewise, they are unclear whether "overburden" can be determined by looking only at a single community or requires a comparison to a reference group to determine whether the burdens identified fall disproportionately on minority or low income populations. Indeed, in the absence of any quantitative thresholds such as those provided in the EJ Technical Guidance at § 2.2, members of the public using the definition may come to conflicting conclusions on such basic elements as whether a population is minority or low-income, let alone when the cumulative effect of environmental and social stressors creates "overburden." Until the science is developed, use of the concept of "overburdened community" as defined by the cumulative effects of environmental, health, social and other factors will be ad hoc and subjective, leading to uncertainty for all affected stakeholders. Therefore, until that time, reference to cumulative effects in the definition of "overburdened community" should be removed.

If EPA does not modify the definition of "overburdened community" to promote more predictable and consistent outcomes, and certainty for those who will be impacted by the actions outlined in the EJ Agenda, the BNEJ suggests that the EJ Agenda note that the definition is primarily useful as a screening tool to begin an analysis of whether minority or low income

populations as identified in Executive Order 12898 are disproportionately affected. A clearer definition and much further analysis using rigorous data, risk assessment techniques, and other scientific methods to analyze for disproportionate effects is essential when EPA's rulemaking, permitting or enforcement tools are used.

3. **<u>The EJ Agenda should consistently require application of sound science to high quality data.</u>**

The BNEJ commends EPA on the principles articulated at the beginning of Chapter 5: Science. EPA importantly notes: "At the federal and state level, high quality data, rigorous risk assessment and state-of-the-science analytical tools provide a foundation for the legal, political, health and economic decisions to protect public health and the environment in these communities." EJ Agenda at 17. The BNEJ whole-heartedly agrees with this emphasis on sound science when conducting environmental justice analyses. The BNEJ notes that this principle applies not only to protecting the health of vulnerable populations, but also to protecting all persons benefited by federal or state environmental requirements.

The BNEJ is concerned, however, with the EJ Agenda's willingness to deviate from the rigorous scientific approach when offering tools to communities. In particular, the EJ Agenda notes: "Cumulative impact assessment may involve the use of more qualitative or semi-quantitative information, and may be particularly useful to communities for identifying and prioritizing problems." EJ Agenda at 17. In reality, cumulative impact assessments conducted without the scientific rigor of a risk assessment may result in mistaken conclusions concerning risk, demands for actions that are not directed to actual risks, misdirection of limited resources toward perceived but not actual risks, and disillusionment by community members when reductions in perceived risks do not result in actual health benefits. Tools such as next generation monitoring and citizen science may suffer from the same lack of scientific rigor when not undertaken by trained individuals following scientific protocols. While EPA tools under development such as the Community-Focused Exposure and Risk Screening Tool (C-FERST) may provide some information useful for assessing cumulative impacts, as discussed in item 2.g above, EPA has acknowledged that further scientific research is needed. Great caution should be taken in promoting use of tools that have not been shown to be scientifically valid for decision making by communities or others, and tool output should be clearly identified as screening results and not necessarily representative of risk.

4. **Increased EPA compliance activity should be focused on activities that present a greater risk.**

The EJ Agenda includes EPA's plan to increase compliance evaluations of facilities and activities that impact vulnerable populations. EJ Agenda at 14. The EJ Agenda does not, however, suggest how the compliance targets should be selected.

The BNEJ believes that EJ analysis should identify any disproportionate effects on vulnerable populations, not potential disparities. Current tools utilized by EPA do not focus on actual risk and therefore should be used only as starting points for an EJ analysis. For example, the BNEJ commends EPA on developing EJSCREEN as a publicly available tool that integrates various national data sets. By making multiple indicators available to define vulnerable and susceptible populations, EJSCREEN can serve as a useful tool to begin the process of identifying the demographics of populations who may be exposed to stressors. In places, however, the EJ Agenda appears to afford more weight to EJSCREEN than is appropriate for a screening tool. *See, e.g.,* EJ Agenda at 16, Actions 2.2 and 2.3 (using EJSCREEN for enforcement purposes) and at 45 (reports on RCRA Corrective Action Program and Superfund Remedial Program facilities based on EJSCREEN).

The EJ Agenda should explicitly note the limitations of EJSCREEN. As the EPA has recognized in the context of explaining the tool, EJSCREEN does not perform a comprehensive risk assessment, does not purport to identify EJ communities, uses screening indicators that may not show actual exposure, uses data that may not be current and is limited by the availability of national data sets that may not examine the route of exposure at issue for a particular population such as drinking water quality. *See* EPA EJSCREEN Webinar. In addition, depending on the thresholds that the user of the tool selects for each of the indicators, EJSCREEN may be over-inclusive in defining an affected population, thereby misdirecting attention and resources away from the most vulnerable populations. EJSCREEN can be most useful as a screening tool to examine demographic information and whether a risk assessment or other scientifically valid evaluation should be performed to determine actual exposures and effects.

The absence of tools that provide more than a screening function presents an obstacle to EPA's plan to identify the 100 most overburdened communities. In part because EJSCREEN does not validly measure actual risks, it is not capable of prioritizing sites in a scientifically valid and reproducible manner. Community advocates as well as other stakeholders are likely to identify different communities as priorities. Absent a valid scientific methodology for selecting the 100 most overburdened communities, the selection process may become politicized. Risk assessments would provide a better basis for prioritization, but as discussed above, even they cannot account for the cumulative relationship of all environmental and social stressors.

The BNEJ recommends that when discussing EPA compliance activities, the EJ Agenda note that the EPA's Office of Enforcement and Compliance Assurance has flexibility to assist companies in meeting the requirements of complex regulatory programs, not merely to pursue enforcement actions when violations allegedly occur. Particularly when alleged violations have caused little if any adverse effect, the EPA should carefully examine whether appropriate allocation of resources favors use of compliance assistance tools.

Chapter 4, Action 1.3 in the draft EJ Agenda states a "goal of increasing the number of SEPs [supplemental environmental projects] and mitigation projects affecting overburdened communities." The BNEJ agrees that in appropriate circumstances, voluntary SEPs can play a helpful role in addressing conditions to which vulnerable populations are exposed. In many instances, the most effective actions that can be taken to improve the health and environmental conditions in communities are those identified through collaborative efforts of stakeholders. For example, communities may benefit most from services and programs tailored to that community's specific needs. Actions such as these, when not required by law, depend upon voluntary participation by stakeholders. Under some circumstances, companies may view a SEP as an opportunity to improve community conditions, enhance relationships with community members and improve the company's reputation while resolving an enforcement matter. The BNEJ encourages the EPA to work with targets of enforcement actions and communities to identify and promote SEPs when appropriate in the context of a particular proceeding and ensure that the SEPs selected benefit communities.

5. **<u>The EJ Agenda would be enhanced by citing and conforming to certain portions of the EJ Technical Guidance.</u>**

In June, 2016, the EPA issued the final EJ Technical Guidance. The draft EJ Agenda, developed before the final EJ Technical Guidance was issued, cites to and notes the importance of completing the EJ Technical Guidance. The final EJ Technical Guidance incorporates some of the comments submitted by the BNEJ and other members of the public and EPA's Science Advisory Board on the draft EJ Technical Guidance. The EJ Agenda would be improved by adherence to certain portions of the EJ Technical Guidance, notwithstanding the BNEJ's concerns regarding other portions.

In particular, the EJ Technical Guidance appropriately rejected a "one-size-fits-all" approach to EJ analysis. Instead, it recommended utilizing a screening analysis to identify the extent to which a regulatory action may raise potential EJ concerns and what level of analysis is feasible and appropriate. EJ Technical Guidance at 1. The EJ Technical Guidance discusses "feasible" in terms of the availability and quality of data, and "appropriate" in terms of relevant policy, budgetary and statutory considerations. EJ Technical Guidance at 3.2. This principle should be extended to all actions contemplated by the EJ Agenda.

Based upon a recommendation by the EPA's Science Advisory Board for clearer use of defined terms, the EJ Technical Guidance sets forth clearer definitions and uses them throughout the guidance. The EJ Agenda would likewise benefit from greater definitional clarity. For example, the definitions of "population group of concern highlighted in E.O. 12898," EJ Technical Guidance at § 2.2, and glossary terms such as "vulnerability" and "susceptibility," *id.* at 69, promote consistency in identifying populations that are the focus of Executive Order 12898. Even if the EPA chooses to modify the thresholds or other features of these definitions, they can guide the EPA in revising the EJ Agenda Glossary to allow more predictable outcomes when evaluating when an action may raise EJ concerns.

As discussed above in paragraph 2.g., the EJ Technical Guidance also recognizes the data and methodology limitations in applying cumulative risk assessment discussed above. *See*, *e.g.*, *id.* at §§ 4.2.4 and 5.2.3. The BNEJ recommends that the EJ Agenda cite to the Technical Guidance as a reason to put a "placeholder" on routine use of cumulative risk in EJ analysis until the science is sufficiently developed.

A shortcoming of both the EJ Technical Guidance and the EJ Agenda is the absence of consideration of the EPA's decades of standard-setting activity during which the EPA has considered the risk to human health, including vulnerable populations. The EPA has established a protective regulatory framework for many pollutants using conservative assumptions and safety factors, and businesses have taken aggressive steps to comply with these standard for several decades. In considering impacts of pollutants on vulnerable populations, the EJ Agenda should emphasize the utility of relying on standards EPA has already established through rulemaking.

Likewise, neither the EJ Technical Guidance nor the EJ Agenda explains how social or personal responsibility factors should be considered when defining a population affected by an activity or evaluating the degree of risk to the exposed population. The draft EJ Agenda would benefit from consistently emphasizing that regulatory decisions must be based on scientifically valid data and methods.

6. **The BNEJ recommends that EPA provide opportunities to correct any errors in information that EPA discloses to the public.**

The BNEJ favors transparency and recognizes that at times information concerning emissions and discharges from a facility, and the facility's compliance history, may assist persons to assess the potential risk posed by the facility. The EPA's Enforcement and Compliance History Online (ECHO) database is an example. *See* EJ Agenda at 16, action 3.2. However, inputs to the ECHO database are at times incorrect or incomplete, and requests to correct erroneous information are sometimes met with bureaucratic inertia. Misinformation is unfair to and damages the regulated entity and may do community members more harm than good. Accordingly, the BNEJ recommends that the EJ Agenda expressly recognize that a mechanism to correct errors in publicly available data base information is an important component of any public dissemination policy. The EJ Agenda should specify as a measure of success of public disclosure the promptness in which errors in the database are corrected when brought to EPA's attention.

7. **The BNEJ supports efforts to build the capacity of communities and promote community engagement.**

The BNEJ supports community capacity building and urges the EPA to note industry leadership in community engagement. As an organization committed to informed dialogue among citizens, the BNEJ supports the application of available resources to build the capacity of vulnerable populations. Outreach, technical assistance and grants, and training are all important components of a capacity-building program that will enable vulnerable populations to

meaningfully participate in EPA decision making processes and collaborative efforts with business and industry and others to build and sustain healthy communities.

The draft EJ Agenda should note industry leadership in community engagement. EPA has elsewhere stated:

> Industrial facilities are important members of the communities in which they are located. In addition to their important role as a source of employment and economic stability within a community, facilities play other roles. Many facilities, for example, have robust community engagement strategies that recognize the value of community outreach. Pursuant to these strategies, facilities engage actively with the community through environmental initiatives, neighborhood beautification projects, education programs and charitable giving, civic programs and the arts, youth activities, and other investments in communities. Indeed, many companies and public authorities embody these principles in their mission statements, using words and phrases like collaboration, respect, and building mutually beneficial relationships. Some even aspire to measure their own success by the success of their customers, shareholders, employees and communities. In short, a corporate culture has emerged in this Nation that values and actively promotes community partnerships.[3]

The BNEJ requests that a similar description of the proactive role taken by many businesses to work closely with communities be expressed in the EJ Agenda.

8. **<u>A collaborative process is the best mechanism to address most civil rights complaints.</u>**

The draft EJ Agenda states: "Where possible, EPA seeks to address the concerns of the affected communities outside of the civil rights enforcement process as an important component of the Agency's efforts to make a prompt and visible difference in communities." EJ Agenda at 6. The BNEJ supports this statement and EPA's focus on developing tools that may bring people together to reach long-term solutions to civil rights problems. The BNEJ believes that EPA's Environmental Justice Collaborative Problem-Solving Model cited above provides a useful approach to collaborative decision making and suggests that EPA emphasize the usefulness of this Model in the EJ Agenda.

The goals of Title VI and other federal civil rights statutes are consistent with the principle that the BNEJ supports: all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color or national origin. As discussed above, determining whether an impact is harmful and disproportionally affects vulnerable populations requires sufficient valid data and a scientifically-valid methodology for assessing risk, defining the affected community and comparing the demographics of affected and

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[3] "EPA Activities to Promote Environmental Justice in the Permit Application Process," 78 Fed. Reg. 27220, 27228 (May 9, 2013).

comparison (reference) communities. In addition, disparate impact alone is not proof of discrimination – Title VI requires equal treatment, not equal environmental results.[4] Under these circumstances, resolving civil rights concerns in the first instance through use of the collaborative problem-solving model with full participation of vulnerable populations, government, business and industry and other affected persons would best serve the purposes of civil rights laws.

9. **Building community capacity to adapt to any changes in climate conditions should focus on building knowledge and resiliency.**

The draft EJ Agenda appropriately focuses on building sustainable and resilient communities as a response to stressors, including any that may result from increases in atmospheric greenhouse gas concentrations. *See, e.g.,* EJ Agenda at 7. Working toward healthy communities for all populations is an important goal. One specific element of concern, however, is the provision in the draft EJ Agenda for "training the next generation of young climate justice leaders." It is unclear whether the EPA intends to target this effort on capacity building to participate in environmental decision making, or to inappropriately enter the realm of political advocacy. The BNEJ suggests that this goal be clarified to avoid any implication that the EPA intends to train youth to become political advocates rather than knowledgeable community participants in collaborative efforts to reduce or adapt to stressors.

10. **Informal communications may provide valuable community input, but serve as an enhancement of, not substitute for, the rulemaking process.**

The BNEJ supports the EPA exploring informal ways to promote meaningful community involvement in rulemaking. *See* EJ Agenda at 10, Action 4.1. It is important for the EJ Agenda to note, however, that informal communications do not substitute for the submission of comments into the rulemaking administrative record upon which agency decisions are made and reviewed. The EJ Agenda should emphasize the importance of all stakeholders submitting formal comments through the rulemaking process and encourage community members to do so regardless of any informal communications in which they may have participated.

11. **Environmental monitors are appropriate enforcement objectives only in limited circumstances.**

The draft EJ Agenda views environmental monitors as an important component of enforcement settlements. EJ Agenda at 16. The EJ Agenda establishes as a measure of its success the annual number of EPA enforcement settlements that incorporate environmental monitors. *Id.* Although environmental monitors may be appropriate as part of enforcement settlements in limited circumstances, the BNEJ believes that these monitors are inappropriate in many other situations. Where monitors are unlikely to provide meaningful, accurate data, they can mislead rather than improve community members' understanding of their environments. In addition, to be of use to potentially affected populations, accurate monitoring data must be coupled with resources to educate the affected population regarding the overall context of the monitoring and

[4] *Alexander v. Sandoval*, 532 U.S. 275 (2001).

the specific relationship of the monitoring results to community health or environmental quality. Those resources are not always available or correctly deployed. As such, the number of times monitors are required in settlements is not a useful measure of success of an EJ enforcement program.

Thank you for the opportunity to submit these comments.

Message

From: Bradford Frisby [bfrisby@lime.org]
Sent: 12/7/2017 8:46:35 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Improving TRI Regulation
Attachments: NLA ltr to Bolen on TRI 12-7-17.pdf; NLA ltr to EPA 2004.pdf; EPA Response to NLA 2004.pdf; NLA Comments to EPA on Reg Reform 5-15-2017.pdf; NLA Comments on TRI ICR July 27 2017.pdf

Flag: Follow up

Dear Ms. Bolen,

It was a pleasure hearing you speak on November 30th at Hunton & Williams' program: *Insights into Environmental Law and Policy: A Conversation with Key Regulators*. By virtue of your position on the EPA regulatory reform task force, I wanted to bring an issue to your attention that merits action by the agency, and ask for your help in arranging a meeting with the appropriate EPA staff to discuss it.

Under the toxic release inventory (TRI) program, chemical lime manufacturers are required to report releases of TRI chemicals into the environment. Limestone quarries, which supply the raw materials for making lime in lime plants, are appropriately not covered under the program. However, many lime plants are co-located with limestone quarries, and in this circumstance the agency requires them to report to the agency all TRI chemicals "released" by both the lime plant and the quarry.

This is a problem because many of the TRI chemicals that are reported as "released" by a limestone quarry involve nothing more than trace elements contained within millions of pounds of unconsolidated overburden (aka rocks and dirt) that are simply picked up and moved from point A to point B to gain access to the bedrock limestone formations below. As EPA has acknowledged in a closely analogous context (unconsolidated overburden from metal mines), "overburden contains EPCRA § 313 [TRI] chemicals in negligible amounts, and that reporting is unlikely to provide the public with any valuable information." Worse, even though such chemicals exist in small quantities relative to the overburden, the sheer quantity of material that is moved can mislead the public and EPA into believing that lime plants are releasing large quantities of toxic chemicals into the environment when they are not.

When EPA added metal mining to the TRI program in 1997, they wisely created a broad exemption for unconsolidated overburden for the reasons quoted above. However, there was never any reason for an overburden exemption for non-metal mines (like limestone quarries) because they were not included in the TRI program in the first place. No thought was given to the possibility of co-located facilities.

We raised this issue with the Bush Administration in 2004, and although they seemed to agree that it should be corrected, no action was taken. We have likewise included this in our comments to EPA and the Department of Commerce in the regulatory reform effort by the Trump Administration earlier this year. Most recently, we raised the issue with both EPA and the Office of Management and Budget (OMB) because EPA's authority to collect this information is currently expired, and its information collection request (ICR) must be renewed by OMB under the Paperwork Reduction Act. In its response to comments filed with OMB, although EPA declined our invitation to correct the problem in the ICR process, EPA acknowledged our requested relief and stated that: "EPA is open to dialogue with NLA and any other stakeholder on this topic…"

We would greatly appreciate the opportunity to take EPA up on this invitation and meet with you or someone else on your staff to discuss this issue and how the agency can reform this policy to improve the TRI program, decrease the burden on manufacturers, and benefit the public by providing more useful and accurate information.

Attached are copies of the relevant documents: our 2004 letter to EPA and the agency's reply; our comments to EPA on regulatory reform; our comments to EPA and OMB on the information collection request; and a pdf copy of this letter. Please let me know if we can provide any additional information. We look forward to hearing from you.

Sincerely,

Bradford Frisby

Bradford Frisby
Deputy General Counsel
National Lime Association
200 North Glebe Road
Arlington, VA 22203
Ex. 6
bfrisby@lime.org

May 12, 2004

Hunter L. Prillaman
National Lime Association
200 N. Glebe Road
Arlington, Virginia 22203

Dear Mr. Prillaman:

Thank you for your letter of February 23, 2004, requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, you want to know if the metal mining overburden exemption provided for at 40 CFR 372.38(h) can be applied to activities at facilities other than metal mines in Standard Industrial Classification (SIC) code 10.

According to your letter, some lime manufacturing facilities have on-site limestone quarries. As you know, stand alone limestone quarries are not subject to the Toxics Release Inventory (TRI) reporting requirements because they are in SIC code 1422 which is not covered for EPCRA section 313 reporting purposes. If, however, a limestone quarry is located at a multi-establishment facility with a primary SIC code that is covered by EPCRA section 313, then the entire facility has met the SIC code criterion and must report to the Environmental Protection Agency (EPA) if the other reporting criteria are met. As you state in your letter, when EPA expanded the number of industries that are subject to the TRI reporting requirements (62 FR 23834, May 1, 1997) it provided the metal mining overburden exemption for facilities in SIC code 10. This exemption allows metal mining facilities to disregard toxic chemicals in overburden as defined at 40 CFR 372.3 (hereafter unconsolidated overburden) from the processing and otherwise use thresholds and release and other waste management calculations.

As you know, the Agency created the exemption because it determined that unconsolidated overburden at metal mining facilities in SIC code 10 contains EPCRA section 313 chemicals in negligible amounts and that reporting these chemicals is unlikely to provide the public with any valuable information. EPA believes that unconsolidated overburden at limestone quarries, as well as other mineral mines, may be similar to that at metal mining facilities. In light

of the situation at your member facilities, the metal mining overburden exemption may have been drafted too narrowly in scope and perhaps should have included unconsolidated overburden from other types of mineral mining facilities. Accordingly, the Agency will consider a proposed rule to expand the metal mining overburden exemption to any mineral mining facility.

I hope this information is helpful. If you have any other questions, or desire further information, please call Marc Edmonds, of my staff, at Ex. 6

Sincerely,

Michael J. Petruska, Director
TRI Program Division

NATIONAL LIME ASSOCIATION

July 27, 2017

Ms. Cassandra Vail
Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

EPA-HQ-TRI-2017-0057

Dear Ms. Vail:

The National Lime Association (NLA) submits the following comments on EPA's Information Collection Request (ICR) titled: "*Toxic Chemical Release Reporting and Renewals of Form R, Form A, and Form R Schedule 1*" identified by EPA ICR No. 1363.26 and OMB Control No. 2025-0009. NLA is a trade association that represents U.S. and Canadian commercial lime companies, as well as suppliers to the lime industry. NLA's members produce more than 98% of domestic lime.

Lime is an integral ingredient in many other manufacturing processes and industries. It is an important part of the steel manufacturing process, road building, and the creation of other building products like mortar and plaster. Lime is also integral in environmental compliance of many industries, as it is used to purify water and scrub pollutants from air stack emissions.

Lime manufacturing facilities are subject to TRI reporting requirements because they are within NAICS code 3274 (Lime). While "stand alone" limestone quarries are NOT subject to TRI reporting requirements (because their NAICS code, 2123, is not covered by the program), EPA has stated that multi-establishment facilities (such as lime plants with co-located limestone quarries) must make threshold determinations and must report on releases, waste management activities, and source reduction activities for the entire facility, even including establishments that are not in covered SIC codes.

The metal mining sector enjoys an exemption from reporting TRI chemicals contained in their overburden. Overburden is the unconsolidated material that overlies a deposit of useful materials or ores. It does not include any portion of the ore itself, or the waste rock that is created by processing the ore. As EPA stated, this exemption is based on the fact that:

> "overburden contains EPCRA § 313 chemicals in negligible amounts, and that reporting is unlikely to provide the public with any valuable information." 62 Fed. Reg. 23,859 (May 1, 1997).

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EPA should establish a similar exemption from TRI reporting obligations for overburden from non-metal mining operations, including multi-establishment facilities such as lime plants with co-located limestone mines. The rationale for exempting TRI reporting in overburden is the same for our industry as it was for the metal mining sector. The only reason that an exemption does not exist is because the agency never contemplated that such material would be reported in the first place, given that limestone quarries are not themselves covered under the TRI reporting program.

Under the Paperwork Reduction Act, federal agencies like EPA must ensure that collections of information are: (1) necessary for the proper functioning of the agency; (2) have "practical utility;" and (3) minimize the burden on those providing the information. In this case, requiring TRI reporting of overburden from non-metal limestone mines violates all three of those statutory requirements.

Such information isn't necessary for the agency's TRI program. Not only is the reporting of overburden "unlikely to provide the public with any valuable information" (as EPA explained regarding metal mining overburden), but it may have the potential of *misleading* the public into believing that large quantities of TRI chemicals are being "released" into the environment, when in fact such reporting involves nothing more than moving large amounts of rocks and dirt.

This information also lacks practical utility. Practical utility is defined as the ability of an agency to use the information. Clearly, if such information is unlikely to provide the public with any valuable information, it is likewise of little use to the agency.

By recognizing a parallel exemption for the reporting of overburden, both EPA and OMB would fulfill their mission under the Act of minimizing the burden on those providing the information. Moreover, such a clarification would simultaneously further the Presidential Memorandum *Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing*. This memo instructs all agencies, including EPA, to reduce regulatory burdens affecting domestic manufacturing. Creating an exemption for overburden in TRI reporting would reduce such burdens on this important manufacturing sector.

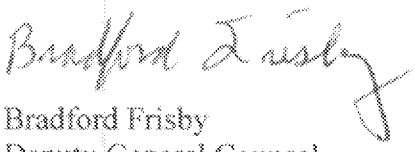
NLA initially made this request over 13 years ago. Although the agency sent a reply letter three months later which admitted that: "EPA believes that unconsolidated overburden at limestone quarries, as well as other mineral mines, may be similar to that at metal facilities" and that "the Agency will consider a proposed rule to expand the metal mining overburden exemption to any mineral mining facility," EPA never followed up on this action – it never proposed a rule and did not change its policies in this regard.

NLA believes that EPA should correct this error and issue a written clarification in the form of a letter, policy or guidance that overburden from non-metal mines is exempt from threshold consideration and reporting under the TRI program, even if such facilities are co-located with a lime plant that may be reporting TRI chemicals for other reasons.

Attached are copies of the NLA letter to EPA and the agency response from 2004, as well as our May 15, 2017 comments submitted regarding EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification. 82 Fed. Reg. 17,793 (April 13, 2017).

We look forward to your response. If you would like to contact me regarding this matter, please feel free to call me at Ex. 6 email me at bfrisby@lime.org.

Sincerely,



Bradford Frisby
Deputy General Counsel
National Lime Association

cc: Wendy Cleland-Hamnett
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Kevin Bromberg
Office of Advocacy
U.S. Small Business Administration

Danielle Jones
Office of Information & Regulatory Affairs
Office of Management and Budget

NATIONAL LIME ASSOCIATION

May 15, 2017

Ms. Sarah Rees
Director
Office of Regulatory Policy and Management
Office of Policy
1200 Pennsylvania Avenue, N.W.
Mail Code 1803A
Washington, D.C. 20460

Docket ID No. EPA-HQ-OA-2017-0190

Dear Ms. Rees:

The National Lime Association (NLA) submits the following comments on the Environmental Protection Agency's request for input on regulations that may be appropriate for repeal, replacement, or modification. 82 Fed. Reg. 17,793 (April 13, 2017). This action was taken pursuant to the President's Executive Order 13777 titled: "*Enforcing the Regulatory Reform Agenda*" (February 24, 2017). NLA represents U.S. and Canadian commercial lime companies, as well as suppliers to the lime industry. NLA's members produce more than 98% of the lime produced for sale in the United States.

Lime is an integral ingredient in many other manufacturing processes and industries. It is an important part of the steel manufacturing process, as well as in road building, and for creating other building products like mortar and plaster. Lime is also a critical component for the environmental compliance of many industries, because it is used to purify water and scrub pollutants from air stack emissions.

Although the lime industry is burdened with numerous regulatory requirements, the following are examples of existing EPA rules and policies that could be significantly improved to avoid unnecessary burdens on our industry. These examples provide the name of the rule or policy, a brief description of the problem, and recommended solutions.

NLA appreciates the opportunity to provide comments to EPA on its request for comments regarding regulations that may be appropriate for repeal, replacement, or modification. Should you require any additional information, please feel free to contact me by telephone at Ex. 6 Ex. 6 or via email at bfrisby@lime.org.

200 North Glebe Road, Suite 800, Arlington, VA 22203 * Ph 202.243.5463 * Fax 202.243.5489 * www.lime.org

Sincerely,

Bradford V. Frisby
Deputy General Counsel
National Lime Association

"Once In, Always In" Policy

Regulation/Policy: 1995 Guidance Memo titled: "*Potential to Emit for MACT Standards -- Guidance on Timing Issues*"

Description of the problem:

EPA issued a guidance document in 1995 called: *Potential to Emit for MACT Standards -- Guidance on Timing Issues*. This guidance says that once an air emission source becomes a major source (emitting more than 10 tons of any hazardous air pollutant per year), it will always be considered a "major source" even if it later emits less than that threshold amount. This policy is unfair and is contrary to the Clean Air Act, which says that sources that emit less than the threshold amount are classified as "area sources" rather than "major sources."

This policy is not required by statute, and is not spelled out in any regulation. It is based solely on a 22-year old policy memo. It discourages manufacturers from reducing emissions of their facilities to below the threshold amount. In addition, there have been instances where this policy has been applied to sources that have never actually exceeded the threshold for a major source. This situation occurred when a company purchased property and proposed permits for two sources at a site that (together) would have exceeded the threshold for a major source. However, it turned out that only one of the two lime kilns at the site was constructed. But because of this policy, that lime plant has been required to meet the standards for a major source, even though it never emitted more than the threshold triggering amount.

Proposed Solution:

EPA should revoke the 1995 guidance document and eliminate the "once in, always in" policy.

Chemical Data Reporting

Regulation/Policy: Chemical Data Reporting (40 C.F.R. Part 711)

Description of the Problem:

Chemical data reporting requirements under the Toxic Substances Control Act are duplicative and extremely burdensome, requiring substantial hours of preparation and input from multiple individuals and departments within each company required to submit the report. Within the lime industry, customers and end uses of lime seldom vary, and due to the estimates and potential inaccuracies inherent in the report, it follows that the CDR report filed every 4 years is of questionable use and benefit. In particular, the downstream reporting is the most burdensome aspect of this regulation, and a partial exemption for typical commodity products such as lime should be available after at least one cycle of complete reporting has occurred.

Proposed Solution:

Have EPA review these downstream chemical data reporting requirements and eliminate those that are overly burdensome, and repetitive (or offer a partial exemption from future reporting).

New Source Review/Prevention of Significant Deterioration

Regulation/Policy: New Source Review/Prevention of Significant Deterioration, 40 C.F.R. Parts 51-52

Description of the Problem:

New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements discourage, and sometimes prohibit, the construction of new manufacturing facilities and the improvement and/or expansion of existing facilities. These requirements can have the perverse effect of making it less burdensome to continue operating old, less efficient and higher-polluting sources than to build new facilities or upgrade equipment that would be more efficient and produce fewer emissions. Offsets are allowed, but are prohibitively expensive in many cases.

Proposed Solutions:

Allow the use of probabilistic modeling instead of extreme and unlikely worst case scenarios.

Increase flexibility in the use of offsets generated outside of a nonattainment area to be used for emissions increases in a nearby nonattainment area.

Allow States to set aside a portion of State Implementation Plan reductions for offsets.

Grandfather pending permit applications to ensure that applications are not required to be continually updated based on delays in EPA permit processing.

Allow emission fees in lieu of obtaining offsets. Fees paid to State or local agencies should be used to pay for or subsidize emission reductions that will most effectively lead to attainment.

Require better PSD/NSR permit issuance timing consistency to ensure that the permitting process does not take too long.

Greenhouse Gas Reporting Requirements

Regulation/Policy: Greenhouse Gas Reporting Regulations (40 C.F.R. Part 98)

Description of the Problem:

The greenhouse gas (GHG) reporting program is burdensome and takes many hours to complete. To gain accurate information on emissions, employees must: collect the necessary samples for GHG analysis; analyze the GHG samples; log the analytical data; retrieve and compile the analytical data from both internal sources and fuel suppliers; complete the necessary calculations; quality assure/internally audit the data; and enter the data into EPA's electronic greenhouse gas reporting tool (e-GGRT).

There are also concerns regarding confidential business information required to be reported to EPA. Some lime industry specific data considered inputs to emissions equations have been granted CBI protection; however, other lime industry specific data has yet to receive a final CBI determination.

Proposed Solution:

Given the President's recent executive order on energy independence and its instruction to reverse GHG policies, eliminate these reporting requirements or mandate reporting only when a significant change in emissions has occurred (from a base year).

Enforcement and Compliance History Online (ECHO database)

Regulation/Policy: ECHO Database

Description of the Problem:

There is a consistent thread of errors in the ECHO database that seriously undermines the credibility and value of this public electronic compliance history. EPA's own inspector general report found that almost 9% of the information in the database for key data elements is not correct. Reliable data on facility compliance is essential to maintain public trust and to ensure that facilities are not unfairly maligned in the press or at community gatherings. While State environmental agencies can and will assist facilities to remove incorrect compliance information, these "fixes" are often piecemeal, one-off corrections that take considerable effort on the part of the State agency staff and do nothing to correct flaws in the underlying data collection system. Transparency is only as valuable as the accuracy of the underlying data used to measure compliance efforts.

Proposed Solutions:

EPA should expand the use of a disclaimer on the website to warn viewers that the ECHO database should not be relied upon for the most accurate information. Rather, viewers should contact their State agency officials to obtain the most accurate information.

EPA should remove the ECHO database from their website and start over to create a new system that better collects and reports the compliance and enforcement history submitted by each State agency.

Toxic Release Inventory (TRI)

Regulation/Policy: Toxic Release Inventory (40 C.F.R. Part 372)

Description of the Problem:

The Emergency Planning and Community Right-To-Know Act (EPCRA) Section 313 toxic release inventory (TRI) program provides little benefit to the environment or to public health. In the TRI program, the EPA does not consider health risks in the list of reportable chemicals or in establishing reporting thresholds. TRI data provides no information on whether releases reflect responsible management of chemicals or recycling. TRI overlooks quantities treated, recycled, and energy recovery.

Companies face potentially millions of dollars in penalties for untimely reports, errors in reporting, and accidently misreporting under the TRI program. The EPA heavily inspects companies utilizing a long tedious inspection process with heavy fines. TRI reporting is extremely difficult given the thousands of pages of regulations and guidance documents (over 30 documents) that have become enforceable. The threshold analysis is more difficult than the actual report, where many of the chemicals have a threshold of 10 lbs. This threshold can easily be missed even by environmental engineers who work within the company year around.

Not only is the TRI database not relevant for measuring risks to health or the environment, it is not accurate. It is widely known throughout industry that large errors exist in the TRI database; even EPA studies have shown large errors. This is unsurprising, considering the arcane and often ambiguous requirements of the rule and the related guidance, including difficult (and often nonsensical) distinctions among chemicals that are "manufactured," "processed," or "otherwise used," distinctions that can significantly change the applicable thresholds.

The lime industry is particularly burdened by several inconsistencies in the TRI rule and guidance. Lime manufacturing facilities are subject to TRI reporting requirements because they are within SIC code 3274 (Lime). Stand-alone limestone mines are not subject to TRI reporting requirements, because they are within SIC code 1422 (Crushed and Broken Limestone). However, EPA, in guidance, has stated that a multi-establishment facility must make threshold determinations and must report on releases, waste management activities, and source reduction activities for the *entire facility*, even from establishments that are not in covered SIC codes. (See EPCRA Section 313 Questions and Answers, Revised 1998 Version ("Q&A"), Question 68.) This means that lime plants with co-located mines must report on quantities of reportable chemicals in waste rock and overburden from those quarries, even though they are no different from off-site quarries in terms of operations and risk.

To make this even more difficult for lime plants, EPA in 1997 extended TRI reporting obligations to metal mines, but not to limestone mines—but at the same time provided a threshold and reporting exemption to overburden at those metal mines. In 2004, NLA wrote EPA to ask for a clarification that a similar overburden exemption should be applied to co-located limestone mines. Meetings and discussions followed, and EPA ultimately agreed that an exemption made sense, but said that it would consider a rulemaking to apply the exemption. No such rulemaking was undertaken.

Proposed Solutions:

The EPA owes it to the public to take an honest look at the value and the social cost of the data that is being reported under TRI. Making vast amounts of data on chemical quantities available to the public should not be assumed to provide value without an examination of whether reliable and meaningful information is being conveyed about health and environmental risk. In fact, in many cases, TRI information can be misleading, and can therefore result in limited resources being misallocated away from serious environmental problems and toward situations that have very limited environmental impacts.

The TRI regulations should be comprehensively reviewed and overhauled, and if they are retained, at the least they should be extensively revised to make their requirements clear and consistent.

More specifically, EPA should immediately clarify in guidance that limestone mines co-located with lime plants should be excluded from TRI reporting, and that the exemption for overburden applies not only to metal mines, but also to non-metal (including limestone) mines that are co-located with facilities subject to TRI reporting.

NATIONAL LIME ASSOCIATION

December 7, 2017

Ms. Brittany Bolen
Deputy Associate Administrator
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Room 3513E WJC-North MC-1804A
Washington, D.C. 20460

Dear Ms. Bolen,

It was a pleasure hearing you speak on November 30th at Hunton & Williams' program: *Insights into Environmental Law and Policy: A Conversation with Key Regulators.* By virtue of your position on the EPA regulatory reform task force, I wanted to bring an issue to your attention that merits action by the agency, and ask for your help in arranging a meeting with the appropriate EPA staff to discuss it.

Under the toxic release inventory (TRI) program, chemical lime manufacturers are required to report releases of TRI chemicals into the environment. Limestone quarries, which supply the raw materials for making lime in lime plants, are appropriately not covered under the program. However, many lime plants are co-located with limestone quarries, and in this circumstance the agency requires them to report to the agency all TRI chemicals "released" by both the lime plant and the quarry.

This is a problem because many of the TRI chemicals that are reported as "released" by a limestone quarry involve nothing more than trace elements contained within millions of pounds of unconsolidated overburden (aka rocks and dirt) that are simply picked up and moved from point A to point B to gain access to the bedrock limestone formations below. As EPA has acknowledged in a closely analogous context (unconsolidated overburden from metal mines), "overburden contains EPCRA § 313 [TRI] chemicals in negligible amounts, and that reporting is unlikely to provide the public with any valuable information." Worse, even though such chemicals exist in small quantities relative to the overburden, the sheer quantity of material that is moved can mislead the public and EPA into believing that lime plants are releasing large quantities of toxic chemicals into the environment when they are not.

When EPA added metal mining to the TRI program in 1997, they wisely created a broad exemption for unconsolidated overburden for the reasons quoted above. However, there was never any reason for an overburden exemption for non-metal mines (like limestone quarries)

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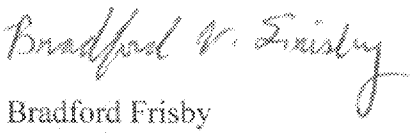
because they were not included in the TRI program in the first place. No thought was given to the possibility of co-located facilities.

We raised this issue with the Bush Administration in 2004, and although they seemed to agree that it should be corrected, no action was taken. We have likewise included this in our comments to EPA and the Department of Commerce in the regulatory reform effort by the Trump Administration earlier this year. Most recently, we raised the issue with both EPA and the Office of Management and Budget (OMB) because EPA's authority to collect this information is currently expired, and its information collection request (ICR) must be renewed by OMB under the Paperwork Reduction Act. In its response to comments filed with OMB, although EPA declined our invitation to correct the problem in the ICR process, EPA acknowledged our requested relief and stated that: "EPA is open to dialogue with NLA and any other stakeholder on this topic…"

We would greatly appreciate the opportunity to take EPA up on this invitation and meet with you or someone else on your staff to discuss this issue and how the agency can reform this policy to improve the TRI program, decrease the burden on manufacturers, and benefit the public by providing more useful and accurate information.

Attached are copies of the relevant documents: our 2004 letter to EPA and the agency's reply; our comments to EPA on regulatory reform; and our comments to EPA and OMB on the information collection request. Please let me know if we can provide any additional information. We look forward to hearing from you.

Sincerely,



Bradford Frisby

Bradford Frisby
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National Lime Association
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bfrisby@lime.org

National Lime Association

200 N. Glebe Road
Arlington, Virginia

Feb. 23, 2004

Mr. John M. Dombrowski
2844T
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460
dombrowski.john@epa.gov

Re: National Lime Association Question on Overburden

Dear Mr. Dombrowski:

I am writing this letter on behalf of the National Lime Association (NLA) to seek clarification of a point in the TRI reporting regulations. Specifically, we are seeking clarification that TRI chemicals contained in overburden at non-metal mines (such as limestone quarries) are not required to be included in threshold determinations or reports from affiliated facilities (such as lime plants) that are subject to TRI reporting.

Background

Lime manufacturing facilities are subject to TRI reporting requirements because they are within SIC code 3274 (Lime). Stand-alone limestone quarries are not subject to TRI reporting requirements, because they are within SIC code 1422 (Crushed and Broken Limestone). However, EPA has stated that a multi-establishment facility must make threshold determinations and must report on releases, waste management activities, and source reduction activities for the entire facility, even from establishments that are not in covered SIC codes. (See EPCRA Section 313 Questions and Answers, Revised 1998 Version ("Q&A"), Question 68.)

Accordingly, at lime plants with a co-located quarry, owners have looked at chemicals in quarry operations as part of their overall reporting requirement. EPA's position is that TRI chemicals in waste rock should not be included in a threshold determination, but that they must be included in reports if the threshold is met elsewhere at the facility (unless they are present in the waste rock at de minimis levels). (See Q&A Question 341; EPA explanation of Barrick case, http://www.epa.gov/tri/lawsandregs/barrick_lawsuit_epa_analysis.htm.)

Overburden Exemption

In 1997, the TRI regulations were amended to add certain SIC codes, including metal mining operations. Non-metal mining operations, including limestone quarry operations,

remain excluded. At the time the metal mines were added, an exemption for overburden was included in 40 CFR § 372.38(h):

> *Metal mining overburden*. If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25 or § 372.27, or determining the amounts to be reported under § 372.30.

Overburden is defined in § 372.3 as follows:

> *Overburden* means the unconsolidated material that overlies a deposit of useful materials or ores. It does not include any portion of ore or waste rock.

EPA explained this exemption in preamble language:

> However, EPA believes, based on the Agency's current understanding, that overburden contains EPCRA section 313 chemicals in negligible amounts and that reporting is unlikely to provide the public with any valuable information… EPA believes that this action will reduce the compliance burdens on metal mining facilities while not depriving the public of any valuable information regarding toxic chemicals.

62 Fed. Reg. 23859 (May 1, 1997).

<u>Applicability to Non-Metal Mining Overburden</u>

NLA is seeking clarification from EPA that overburden from non-metal mining is also exempt from threshold consideration and reporting, for the following reasons.

First, it is clear that the language of the overburden exemption refers only to metal mining overburden for the simple reason that only metal mines were being added to the TRI system in the rule. (Coal mines were also added in that rule; they enjoy an even broader exemption for chemicals in extraction.) The drafters of the regulatory language apparently did not focus on the fact that certain non-metal mines would be included in the TRI system by virtue of the rules for multi-establishment facilities. NLA has not found any discussion of non-metal mining facilities in connection with the overburden exemption in the relevant preambles or background materials. Accordingly, it seems clear that there was no intent on the part of the regulatory drafters to include non-metal mining overburden in the TRI requirements, or to distinguish between metal and non-metal mining overburden.

Second, the rationale for exempting TRI chemicals in overburden from non-metal mining is the same as that for metal mining. Overburden in non-metal mining is also unconsolidated material not containing ore or waste rock, and is similarly unlikely to contain toxic chemicals at levels of concern. As with metal mining overburden, it would not be helpful to the public to receive information on the contents of this material—

especially given the fact that the vast majority of non-metal mines are not within the TRI reporting system at all.

Thus, the issue confronting the lime industry is that the technical language of the rule does not make it clear that the overburden exemption applies to non-metal mining, even thought the justification is the same.

In the EPCRA Section 313 Questions and Answers, EPA has dealt with analogous situations in which the technical language of the rules does not specifically exempt certain chemicals. Thus, for example, EPA was asked in Question 237 whether office type products require reporting. EPA responded:

> EPA does not intend to require covered facilities to account for listed toxic chemicals in typical office supplies such as correction fluid and copier machine fluids. Although not specifically exempted by the regulation, EPA interprets such mixtures or products to be equivalent to personal use items or materials present in a facility's cafeteria, store, or infirmary (40 CFR Section 372.38(c)(3)). [italics omitted]

In response to a similar question about "white-out" (Question 238), EPA responded even more succinctly that "[o]ffice products fall within the same realm as the personal use exemption."

Although these examples obviously deal with very different kinds of material from mining overburden, the situation is otherwise similar. Overburden from non-metal mining clearly falls within the same "realm" as overburden from metal mines, and the two types of overburden are "equivalent."

NLA requests that EPA follow a similar rule of reason with regard to non-metal mining overburden.

Conclusion

NLA requests that EPA clarify that overburden from non-metal mining qualifies for the same exemption as overburden from metal mining.

Please let me know if we can provide any further information to assist you in addressing this issue. Thank you for your consideration.

Very truly yours,

Hunter L. Prillaman
National Lime Association
Ex. 6
hprillaman@lime.org

Message

From: Michael K. Henry [mhenry@alpinegroup.com]
Sent: 6/13/2017 2:49:21 AM
To: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Greg Means [gmeans@alpinegroup.com]
Subject: RE: Confirming the 6/13 Meeting with Brittany Bolen
Attachments: Comments by the Rubber Manufacturers Association to Docket ID No. EPA-HQ....pdf

Sorry I am so slow in turning around the background info for tomorrow's meeting with Brittany (copied). Attached please find USTMA's comments for Evaluation of Existing Regulations. This is probably the best backgrounder for insights into the TMA perspective.

On the apology front, I have one more. I had a Ex. 6 Ex. 6 Unfortunately, I am still getting around in a wheelchair and feel it's better that I not attend. Instead, my partner, Greg Means will be joining – Greg is not only a founder of our firm, he is an upgrade from me! That said, I hoped to make the meeting and am sorry to miss. His cellular is Ex. 6

Please do not hesitate to reach out to either of us if you need anything in advance of the meeting.

Thank you!

mike

From: Kime, Robin [mailto:Kime.Robin@epa.gov]
Sent: Monday, June 12, 2017 8:21 AM
To: Michael K. Henry <mhenry@alpinegroup.com>
Subject: RE: Confirming the 6/13 Meeting with Brittany Bolen

Much appreciated!

From: Michael K. Henry [mailto:mhenry@alpinegroup.com]
Sent: Monday, June 12, 2017 8:19 AM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: Re: Confirming the 6/13 Meeting with Brittany Bolen

I hope you had a good weekend!

Sorry for the delay, but we are all set to meet at 11a tomorrow. With respect to materials, I'm still waiting to receive them and will follow up asap. However, in the meantime, following are the attendees:

Tracey Norberg (Senior Vice President & General Counsel; US Tire Manufacturers Association)

Jesse Levine (Manager, Regulatory Affairs; TMA)

Sarah Amick (Vice President EHS&S and Senior Counsel; TMA)

Courtney Titus Brooks (Director, Government Relations; TMA)

Mike Henry (Alpine Group)

As you have likely noticed, the Rubber Manufacturers Association has been renamed since we set up the meeting to the US Tire Manufacturers Association. New logo, email and name to better reflect the mission and membership. Otherwise, completely the same entity.

Thank you!

Mike

On Jun 11, 2017, at 9:45 AM, Kime, Robin <Kime.Robin@epa.gov> wrote:

> Good morning,
> I hope you are well. I just wanted to confirm Tuesday's 11:00 a.m. meeting with Brittany. Would you mind sending me any read-ahead material tomorrow and also the list of attendees? Thanks very much and take care.
> Robin
>
> -----Original Appointment-----
> **From:** Inge, Carolyn **On Behalf Of** Bolen, Brittany
> **Sent:** Thursday, May 25, 2017 11:38 AM
> **To:** Bolen, Brittany; mhenry@alpinegroup.com
> **Cc:** Kime, Robin; Inge, Carolyn; Jesse Levine; Sarah Amick; Tracey J. Norberg
> **Subject:** Rubber Manufacturers Association (RMA)
> **When:** Tuesday, June 13, 2017 11:00 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
> **Where:** DCRoomARN3500/OPEI
>
> Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station**. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.
>
> EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.
>
> Request: Any chance you have time in the next week or so to meet with me and a client, the Rubber Manufacturers Association (RMA). We would like to come in and discuss issues in your purview relative to the domestic tire manufacturers - including the nanomaterial reporting rule, residual risk and technology review, Phase 2 rule, biomass and TSCA implementation. Following are some bullets from a letter they transmitted in May, just to give you some color of what's currently on their radar.

- RMA encourages EPA to meet the court deadline (2018 or 2020) for completing the RTR review of the Tire MACT

- RMA members are committed to effective implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA).

- RMA recommends that EPA stay the effective date of the nanomaterial reporting rule until guidance is issued to clarify reporting obligations in the rule.

- RMA encourages EPA to accept RMA's petition for reconsideration of the Phase 2 rule and issue technical corrections to address the issues raised.

- RMA recommends that EPA designate biomass as carbon neutral and remove the burden of ASTM testing to determine the biogenic fraction of tire-derived fuel (TDF).

RUBBER
manufacturers
association

1400 K Street, NW • Washington, DC 20005 • tel (202) 682-4800 • fax (202) 682-4854 • www.rma.org

May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
Attention Docket ID No. EPA-HQ-OA-2017-0190
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Evaluation of Existing Regulations (April 13, 2017)

I. Introduction

The Rubber Manufacturers Association (RMA) is the national trade association representing major tire manufacturers that produce tires in the United States, including Bridgestone Americas, Inc., Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Kumho Tire Co., Inc.; Michelin North America, Inc.; Pirelli Tire North America; Sumitomo Rubber Industries, Ltd.; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA supports the goal of Executive Orders 13771 and 13777 to reduce regulatory burdens by implementing and enforcing regulatory reform to repeal, replace, or modify rules that are outdated, unnecessary, or ineffective. We appreciate the opportunity to contribute to this process by providing comments on EPA's Evaluation of Existing Regulations (April 13, 2017). As the EPA advances its regulatory reform priorities, RMA encourages the agency to adopt the recommendations provided in RMA's comments.

II. Background

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," which requires that for every new regulation issued, two be identified for elimination, unless prohibited by law. The executive order also provides each agency with a regulatory budget of $0 for fiscal year 2017, meaning that for any new regulation that imposes costs on the public, the agency must identify cost savings elsewhere, unless prohibited by law.

On February 24, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda," which directs each federal agency to select a regulatory reform officer and task force to evaluate existing regulations and to make recommendations to the agency head regarding which rules to prioritize for repeal, replacement, or modification. The Executive Order also directs the task forces to base their recommendations on input received from those affected by federal regulations including states, businesses, NGOs, and trade associations.

On March 24, EPA Administrator Scott Pruitt issued a memorandum outlining EPA's steps to comply with E.O. 13777. The memorandum identified members of EPA's regulatory reform task force and directed EPA's various offices to provide recommendations to the Administrator this month. On April 11, EPA opened Docket ID No. EPA-HQ-OA-2017-0190 to receive comments on regulatory reform

from the public. Comments submitted to this docket will be compiled and cited in memoranda from the task force to the Administrator recommending how to implement E.O. 13777.

III. RMA encourages EPA to meet residual risk and technology review (RTR) deadlines outlined in the Blue Ridge case

As Administrator Pruitt works to refocus EPA on its traditional mission of implementing the nation's environmental laws, RMA would like to be a resource for the agency. For example, with court orders in Blue Ridge v. Pruitt and California Communities Against Toxics v. Pruitt, the agency has over 30 RTRs to complete by 2020. To support the agency in meeting the court deadline for review of the rubber tire manufacturing National Emission Standards for Hazardous Air Pollutants (NESHAP), RMA is committed to continuing its collaborative work with the agency to provide information about the industry that will assist the agency in completing the RTR review.

For the past year, RMA has been working to educate the agency about tire manufacturing and how air emissions from tire manufacturing are calculated. RMA members voluntarily agreed to provide emissions data to the agency in lieu of EPA sending a section 114 request for the information. We plan to continue to assist the agency so it can complete the rubber tire manufacturing RTR by the 2018 and 2020 deadlines outlined in the Blue Ridge case.

IV. RMA members are committed to effective implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA)

RMA supported the bipartisan effort to revise and update the Toxic Substances Control Act (TSCA). As EPA works to implement the LCSA, it is important that the agency has sufficient time to develop the key framework rules, which establish the process the agency will follow going forward. RMA commented and recommended solutions to address issues with the inventory reset rule, the prioritization rule, the risk evaluation rule, and the first risk management rule issued under the LCSA (see attached comments as appendices).

The LCSA establishes that the TSCA program be funded through a combination of congressional appropriations and new industry fees up to $25 million per year. Additionally, the law requires TSCA to be funded by Congress at levels no lower than those from 2014 ($56 million annually). Both the congressional appropriations and industry fees are critical to the success of the LCSA implementation. We support a federal approach for risk evaluation and risk management of chemical substances that pose an unreasonable risk to avoid a patchwork of unworkable, varying state regulations.

V. RMA recommends that EPA stay the effective date of the nanomaterial reporting rule until guidance is issued to clarify reporting obligations in the rule

As noted *supra*, RMA supported the bipartisan effort to revise TSCA and enact the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA). The LCSA makes clear that EPA should not require reporting that is unnecessary or duplicative and, if reporting is needed, EPA should minimize compliance costs for reporting. LCSA Section 8(a). Unfortunately, the nanomaterial reporting rule does not appear to meet the statutory criteria of the LCSA. Additionally this rule is not required by the LCSA. Instead, this rule appears to create unnecessary reporting burdens and costs for industry without providing clarity on several issues, including what is considered a nanomaterial, whether mixtures or articles or research materials with nanomaterials are covered by the rule, and what health data should

be provided. Given that this rule is overly burdensome, unnecessary, and contrary to the requirements of LCSA section 8(a), RMA recommends that the agency stay the rule and provide guidance to clarify reporting obligations in the rule.

VI. RMA encourages EPA to accept RMA's petition for reconsideration of the Phase 2 rule and issue technical corrections to address the issues raised

On December 23rd, 2016, RMA filed a petition for reconsideration of EPA's Phase 2 Rule, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles (81 Fed. Reg. 73478, Oct. 25, 2016). As noted in the petition, RMA supports the goals of the Phase 2 rulemaking and appreciates the opportunity to partner with other stakeholders in contributing to better fuel economy and GHG emission reductions. RMA also appreciates several changes made to the final rule, addressing issues raised in RMA comments, such as the changes incorporating tire-pressure monitoring systems ("TPMS") into the greenhouse gas emission model ("GEM") and basing EPA's recall authority on the plain language of the Clean Air Act.

However, RMA believes that on several other issues such as lab alignment, standards for non-box and non-aero box trailers, SAE J1025 and J2452, and adjustable spread axle trailers, the agencies should reconsider their approach as these issues if left unaddressed could increase compliance burdens and costs. Since filing the petition, RMA has been working with EPA staff on finding solutions to the issues raised in the petition. In line with the goal of E.O. 13777 to identify solutions to regulatory provisions that may be ineffective, RMA recommends that EPA accept the RMA petition for reconsideration, continue working with the tire manufacturing industry, and propose technical fixes to the Phase 2 rule. For your reference, RMA has included its petition as an appendix to these comments.

VII. RMA recommends that EPA designate biomass as carbon neutral and remove the burden of ASTM testing to determine the biogenic fraction of tire-derived fuel (TDF)

In several EPA policies, including the Greenhouse Gas Reporting Rule, the Biomass Accounting Framework and the Clean Power Plan, EPA has determined that biomass, including the natural rubber fraction in tires, does not contribute net CO_2 to the atmosphere. Additionally, on May 5th, 2017, the President signed into law H.R. 244, an appropriations bill that directs EPA to deem biomass as renewable and carbon neutral as long as the energy production does not result in a loss of carbon sinks. Consistent with EPA's past policies and Congress' directive, RMA recommends that EPA determine that biomass, which includes the natural rubber fraction in tires, does not contribute net CO_2 to the atmosphere when combusted.

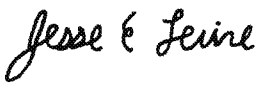
Additionally, RMA recommends that EPA reduce the burden of calculating the biogenic or natural rubber fraction in tire derived fuel (TDF). In the current greenhouse gas reporting rule, if municipal solid waste (MSW) or TDF makes up less than 10% of a unit's generated energy, then the user can calculate biogenic CO_2 emissions by multiplying the natural rubber average by the fuel mass, heat value and emission factor according to the section 98.33(e)(3)(iv) formula. But if MSW or TDF makes up more than 10% of a unit's generated energy, then costly and burdensome ASTM air emission tests are required to determine biogenic CO_2 emissions. These ASTM tests are unnecessary for TDF because RMA surveyed members for natural rubber percentages in passenger/light truck and truck/bus tires and then weighted those percentages by sales data for each company for the past ten years to calculate a consistent 24% natural rubber average for the total scrap tire stream.

Given that TDF has a consistent biogenic fraction, the section 98.33(e)(3)(iv) formula for calculating biogenic CO_2 emissions should not be limited to units in which TDF makes up less than 10% of a unit's generated energy. While ASTM test methods to identify biogenic material may make sense for MSW, a material with compositional variability, they do not for TDF. Therefore, RMA recommends that EPA propose to amend the greenhouse gas reporting rule to allow all TDF users to calculate biogenic CO_2 emissions based on the natural rubber average because regardless of the percentage of TDF used in a unit, the net result should be a 24% reduction in GHGs given that TDF has a consistent biogenic fraction.

VIII. Conclusion

RMA again thanks the EPA for its consideration of our response to the agency's request for comment: Evaluation of Existing Regulations (April 13, 2017). If you have any questions please contact Sarah Amick (samick@rma.org; 202-682-4836) or Jesse Levine (jlevine@rma.org; 202-682-4866).

Respectfully submitted,



Jesse E. Levine
Manager, Regulatory Affairs
Rubber Manufacturers Association

Message

From: Laura Berkey-Ames [lberkeyames@nam.org]
Sent: 5/29/2018 5:48:13 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]
Subject: Thank You!

Hi Brittany and Daisy:

On behalf of the BNEJ, I wanted to thank you both for taking time out of your busy schedules to meet with the coalition this morning. We found the meeting to be very informative and the BNEJ looks forward to working with you in the months and years to come!

I will circle back in the near future with additional suggestions/feedback on EJ Screen. In the meantime, if you have any questions, feel free to contact me.

Regards,
Laura

Laura Berkey-Ames
Director, Energy and Resources Policy
National Association of Manufacturers
Email: lberkeyames@nam.org
Direct: Ex. 6

NAM Facebook | Twitter | Instagram | LinkedIn | YouTube

Message

From: Paul Balserak [pbalserak@steel.org]
Sent: 9/19/2017 1:02:32 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: Thank you

Hi Brittany,
I'm looking forward to lunch with you and Samantha on Oct 3 to continue our discussion of NSR Reform. I'm wondering if I could speak very briefly with you on the phone this week if possible? You can just call me at any time that works for you.
Thanks
Paul
Paul Balserak
Vice President, Environment
American Iron and Steel Institute
25 Massachusetts Ave. NW, Suite 800
Washington, DC 20001
Ex. 6 (office)
(mobile)

From: Bolen, Brittany [mailto:bolen.brittany@epa.gov]
Sent: Tuesday, August 08, 2017 6:11 PM
To: Paul Balserak
Cc: Kime, Robin
Subject: Re: Thank you
Hi Paul,
I'm here pretty much all of August as well! Carolyn is out of the office for a couple of weeks, please work with Robin to find a good time. Would be great to block off at least a full hour on this.
Thanks,
Brittany

On Aug 2, 2017, at 1:36 PM, Paul Balserak <pbalserak@steel.org> wrote:

> Hi Brittany,
> Just checking in on meeting to discuss NSR with you, per your interest below. I'm in almost all of August (unfortunately ☺), and would be able to meet pretty much any time that worked for you. Let me know.
> Hope you are well.
> Thanks
> Paul
> **Paul Balserak**
> Vice President, Environment
> American Iron and Steel Institute
> 25 Massachusetts Ave. NW, Suite 800
> Washington, DC 20001
> Ex. 6 (office)
> (mobile)
>
> **From:** Bolen, Brittany [mailto:bolen.brittany@epa.gov]
> **Sent:** Monday, July 10, 2017 12:52 PM
> **To:** Paul Balserak
> **Subject:** Re: Thank you
> Hi Paul,

So sorry for the delayed response. This email seems to have been buried in my inbox. Thank you for your time on June 29th. The case studies on NSR your members provided were very helpful. I would absolutely like a follow-up meeting with you to discuss NSR. I think it would also be good for you and Daisy to meet and discuss Sectors Strategies as Samantha and I have tasked her with getting that program up and running again.
Best,
Brittany

On Jun 29, 2017, at 1:34 PM, Paul Balserak <pbalserak@steel.org> wrote:

> Dear Brittany and Daisy,
> Thank you very much for meeting with the steel industry this morning regarding our regulatory reform submission of May 15, 2017. We greatly appreciate the opportunity to provide some background and context on our issues. As we stated in our meeting, we are encouraged by the renewed effort under Administrator Pruitt to carefully consider the perspectives of the regulated community in the important work of environmental protection.
> I am very happy to serve as the point person for follow-up with you regarding NSR, Superfund and any other matters. It was very good to see you again, Brittany, and good to meet you, Daisy. Please pass on Tom Gibson and my greetings to Samantha.
> Best,
> Paul
> **Paul Balserak**
> Vice President, Environment
> American Iron and Steel Institute
> 25 Massachusetts Ave. NW, Suite 800
> Washington, DC 20001
> Ex. 6 (office)
> (mobile)

Message

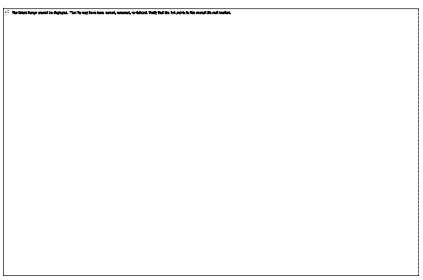
From: Laura Berkey-Ames [lberkeyames@nam.org]
Sent: 4/26/2018 12:48:35 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Inge, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7f763e42702a4f468cdf42323ee94520-Cinge]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: RE: Meeting Request re: Environmental Justice
Attachments: ATT00001.txt

Brittany: Thank you for the quick response! I very much look forward to meeting with you in the near future.

Carolyn and Robin: Please let me know what time(s) Brittany would be available for the dates provided in the email below. However, if we could meet earlier in the month, that would be ideal. I look forward to hearing from you!

Regards,
Laura

Laura Berkey-Ames
Director, Energy and Resources Policy
National Association of Manufacturers
Email: lberkeyames@nam.org
Direct: Ex. 6



NAM Facebook | Twitter | Instagram | LinkedIn

From: Bolen, Brittany <bolen.brittany@epa.gov>
Sent: Wednesday, April 25, 2018 7:39 PM
To: Laura Berkey-Ames <lberkeyames@nam.org>
Cc: Inge, Carolyn <Inge.Carolyn@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: Meeting Request re: Environmental Justice

Hi Laura,
Thanks for your email. I'd be happy to meet with your members on EJ issues. Please work with Carolyn Inge and Robin Kime (cc'd) on scheduling.
Brittany

From: Laura Berkey-Ames [mailto:lberkeyames@nam.org]
Sent: Tuesday, April 24, 2018 11:13 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>

Subject: Meeting Request re: Environmental Justice
Importance: High

Hi Brittany:

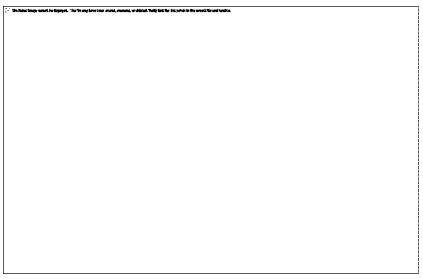
This email is to request a brief meeting with you to discuss the NAM's involvement with environmental justice (EJ) issues. For years we have run the Business Network for Environmental Justice Coalition and I would love to have the opportunity to introduce members of the coalition to you, as well as discuss our EJ priorities prior to the first (teleconference) meeting of the National Environmental Justice Advisory Council which is scheduled to occur at the end of May.

The group's availability is fairly flexible next month, and the days we are available in May are as follows: 10 and 11, 14 and 15, 18, 21 and 22, 25, 29, 30 and 31.

I look forward to hearing from you!

Regards,
Laura

Laura Berkey-Ames
Director, Energy and Resources Policy
National Association of Manufacturers
Email: lberkeyames@nam.org
Direct: Ex. 6



NAM Facebook | Twitter | Instagram | LinkedIn

Message

From: Jay Timmons [Jay.W.Timmons@nam.org]
Sent: 11/30/2017 4:20:24 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Reminder | Please Join Us for the NAM Holiday Party

Can't see the images? View it online.

Jay Timmons and the National Association of Manufacturers invite you to the official holiday celebration for manufacturers in America. Join us to toast the people who are creating the future.

DECEMBER 14

5:00 - 8:00 P.M.

NAM HEADQUARTERS
733 10TH STREET NW, SUITE 700
WASHINGTON, DC 20001

RSVP NOW

Please RSVP by December 4

This event has been designed to meet the "reception exception" as stated by the Senate Select Ethics and House Ethics Committees. Invitation is non-transferable.

CREATORS
WANTED

Message

From: Paul Balserak [pbalserak@steel.org]
Sent: 9/25/2017 3:25:13 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Re: Introduction

Alex, how would October 12 at either 1:00 or 3:00 be?

Thanks very much,
Paul

Sent from my iPhone

On Sep 25, 2017, at 1:12 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

> Hey Paul,
>
> Happy to set something up. Would you be able to do:
>
> Thursday, October 5th at 11:15AM or 4:00PM?
> Thursday, October 12th at 11:15AM or 4:30PM?
>
> Best,
>
> **Alex Dominguez**
> *Policy Analyst to the Senior Advisors to*
> *the Administrator for Air and Water*
> U.S. Environmental Protection Agency
>
> ---
>
> **From:** Paul Balserak [mailto:pbalserak@steel.org]
> **Sent:** Friday, September 22, 2017 3:11 PM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> **Cc:** Dominguez, Alexander <dominguez.alexander@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
> **Subject:** Introduction
>
> Hi Mandy,
>
> We have spoken on the phone once or twice, but have never had a chance to meet in person. I was wondering if we might have a brief meeting, either in your office or over coffee. I am out on business travel all next week, but would be happy to meet any time that is convenient for you upon my return. Please let me know.
>
> Thanks very much,
> Paul
>
> Paul Balserak

Vice President, Environment

American Iron and Steel Institute
25 Massachusetts Ave. NW, Suite 800
Washington, DC 20001
Ex. 6 (office)
(mobile)

Message

From: Curt Wells [cwells@aluminum.org]
Sent: 3/14/2018 10:38:36 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Automatic reply: 3/6/18 Aluminum Association Meeting Follow Up

I am out of the office with limited access to email until Monday, March 26th. If you need asssistance prior to that time, please try my cell phone at Ex. 6

Thanks.

Curt Wells

Message

From: Paul Balserak [pbalserak@steel.org]
Sent: 9/20/2017 9:46:03 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Call

Hi Brittany,

Would we be able to talk very briefly in prep for our lunch on Oct 3? Call my cell phone whenever works for you.

Thanks,

Paul Balserak
Vice President, Environment

American Iron and Steel Institute
25 Massachusetts Ave. NW, Suite 800
Washington, DC 20001
Ex. 6 (office)
(mobile)

Message

From: Jay Timmons [Jay.W.Timmons@nam.org]
Sent: 11/13/2017 6:02:05 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Please Join Us for the NAM Holiday Party

Can't see the invitation? View it online.

CREATORS WANTED

Jay Timmons and the National Association of Manufacturers invite you to the official holiday celebration for manufacturers in America. Join us to toast the people who are creating the future.

DECEMBER 14
5:00 - 8:00 P.M.

NAM HEADQUARTERS
733 10TH STREET NW, SUITE 700
WASHINGTON, D.C. 20001

RSVP NOW ▶

Please RSVP by December 4

This event has been designed to meet the "reception exception" as stated by the Senate Select Ethics and House Ethics Committees. **Invitation is non-transferable.**

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/14/2018 10:38:24 PM
To: Curt Wells [cwells@aluminum.org]; Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
CC: Lauren Wilk [lwilk@aluminum.org]
Subject: RE: 3/6/18 Aluminum Association Meeting Follow Up

Thanks, Curt.

From: Curt Wells [mailto:cwells@aluminum.org]
Sent: Friday, March 9, 2018 10:32 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Lauren Wilk <lwilk@aluminum.org>
Subject: 3/6/18 Aluminum Association Meeting Follow Up

Samantha/Brittany –

Thank you for taking the time to meet with Aluminum Association representatives earlier this week. As the time for our meeting was unfortunately abbreviated, below is a summary of the agenda items (discussed and not) along with related action items.

SO2 NAAQS
The Association requests that an alternative compliance form for the 75 ppb hourly standard be considered and provided as part of the current SO2 NAAQS review process. This alternative would continue to be protective of human health and be based on hours rather than days. This is a major issue for the US aluminum smelter base and the Association will follow up with Clint Woods in the EPA Air Office for additional engagement on this issue.

Roundtop Furnace Testing
The 2015 Secondary Aluminum NESHAP RTR revisions included an exemption from testing hooding for existing roundtop furnaces but not for new furnaces. Unfortunately, inherent characteristics in roundtop furnace design involving lifting the furnace lid on and off prevent hooding during testing. Uncertainty in approving the impracticality of hooding for new round top furnaces has resulted in delays installing and testing roundtop furnaces that support growth and expansion opportunities and the Association requests that new furnaces be provided the same exemption as existing furnaces.

Water Quality Criteria and Test Methods
The Association is supportive of EPA's efforts to update the aluminum water quality criteria that date from 1988 and are not reflective of current science. A critically important corollary to that work is the need to modify the aluminum in water test method to capture only the bioavailable fraction of aluminum present in the waterbody to compare against the criteria. The Association is meeting with OW staff on Wednesday 3/14 to advance this issue.

TSCA CDR
The Association previously submitted petitions to exclude aluminum oxide and aluminum in massive form from the list of CDR reported compounds. These requests were denied based on EPA's desire to review the 2012 and 2016 CDR data. With this review now complete, the Association plans to resubmit the petitions for EPA consideration. In addition, the Association looks forward to engaging on EPA's upcoming rulemaking on inorganic byproduct reporting as aluminum related byproducts are currently affected by this reporting.

Smart Sectors

The aluminum industry is interested in pursuing an aluminum Smart Sector. Engagement with Daisy Letendre on this has been initiated per your suggestion.

Mobile Source GHG Rules
Aluminum can be of significant benefit in GHG reduction through vehicle lightweighting and strong standards coupled with the regulatory certainty of a program harmonized across EPA, NHTSA, and CARB is important in ensuring the viability of current and future investments to support the growth of aluminum use in vehicle lightweighting applications.

Manufacturing Environmental Priorities
The Association supports EPA's efforts to reform the NSR/PSD permitting process, revise the Clean Power Plan, and clarify WOTUS.

Thanks again for your engagement this week and we look forward to further working with you and the EPA Office of Policy.

The Aluminum Association
Curt Wells
Senior Director, Regulatory Affairs
The Aluminum Association
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Arlington, VA 22202
T Ex. 6 | C Ex. 6 F 703.894.4938
JOIN THE CONVERSATION:

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/29/2017 2:35:43 PM
To: pbalserak@steel.org
Subject: You still in building?

Swing by my office. I just got off a call, but I have an 11am meeting.

Brittany Bolen
Deputy Associate Administrator, Office of Policy
U.S. Environmental Protection Agency

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/24/2017 5:26:17 PM
To: Bradford Frisby [bfrisby@lime.org]
Subject: Re: Chamber of Commerce event

Bradford,
It was nice to meet you, too. Thank you for your email.
Best,
Brittany

On May 23, 2017, at 4:26 PM, Bradford Frisby <bfrisby@lime.org> wrote:

> Dear Brittany,
>
> It was nice meeting you today at the Chamber of Commerce event this morning--I enjoyed your presentation. I look forward to working with you on upcoming issues and furthering Administrator Pruitt's goal of returning the agency to its core missions. I have represented the lime industry since 2016, and prior to that I spent many years on environmental issues representing the coal industry for the National Mining Association. If I can provide any information to you, please let me know.
>
> Regards,
>
> Bradford Frisby, NLA
>
> Bradford Frisby
> Deputy General Counsel
> **National Lime Association**
> 200 North Glebe Road, Suite 800
> Arlington, Virginia 22203
> Ex. 6
> Fax: (703) 243-5489
> Website www.lime.org

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/23/2017 4:46:57 PM
To: Michael K. Henry [mhenry@alpinegroup.com]
CC: Carolyn Inge (Inge.Carolyn@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7f763e42702a4f468cdf42323ee94520-Cinge]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: RE: Meeting Request

Hi Mike,
Thanks for your email. Please work with Carolyn (cc'd) on scheduling a meeting.
Best,
Brittany

Brittany Bolen
Deputy Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
(202) 564-3291
Bolen.Brittany@epa.gov

From: Michael K. Henry [mailto:mhenry@alpinegroup.com]
Sent: Monday, May 22, 2017 2:12 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Meeting Request

Brittany-

Hope all is well with the move to EPA!

Any chance you have time in the next week or so to meet with me and a client, the Rubber Manufacturers Association (RMA)? We would like to come in and discuss issues in your purview relative to the domestic tire manufacturers - including the nanomaterial reporting rule, residual risk and technology review, Phase 2 rule, biomass and TSCA implementation.

Following are some bullets from a letter they transmitted in May, just to give you some color of what's currently on their radar.

Do you have time to meet with us?

Thanks!!

Mike

- RMA encourages EPA to meet the court deadline (2018 or 2020) for completing the RTR review of the Tire MACT

- RMA members are committed to effective implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA).

- RMA recommends that EPA stay the effective date of the nanomaterial reporting rule until guidance is issued to clarify reporting obligations in the rule.

- RMA encourages EPA to accept RMA's petition for reconsideration of the Phase 2 rule and issue technical corrections to address the issues raised.

- RMA recommends that EPA designate biomass as carbon neutral and remove the burden of ASTM testing to determine the biogenic fraction of tire-derived fuel (TDF).