Delivery Report

From: Microsoft Outlook [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]
Sent: 6/12/2018 9:03:19 PM
To: Haley Schleppe (nschleppe@sandfireamerica.com) [nschleppe@sandfireamerica.com]
Subject: Undeliverable: Billings Smart Sectors report
Attachments: Billings Smart Sectors report

Your message
To: Randy Weimer; Lynn Cardey-Yates (lcardey-yates@parsonsbehle.com); Shane LaCasse; Peder Maarbjerg (peder.maarbjerg@hq.doe.gov); Ed Coleman (ecoleman@mt.gov); tlivers@mt.gov; Randall Richert (rrichert@trihydro.com); Mullins, Jerry; Haley Schleppe (nschleppe@sandfireamerica.com); Peggy Trenk; Alan Olson (alan@montanapetroleum.org); Thielman, Jason (Daines); Nylund, Erik (Tester); Tripp McKemey (tripp.mckemey@mail.house.gov)
CC: Benevento, Douglas
Subject: Billings Smart Sectors report
Sent: 6/12/2018 9:03:16 PM

Your message to nschleppe@sandfireamerica.com couldn't be delivered.

nschleppe wasn't found at sandfireamerica.com.

davis.patrick	**Office 365**	**nschleppe**
Action Required		Recipient

Unknown To address

How to Fix It

The address might be misspelled or might not exist. Try one or more of the following:

- **Retype the recipient's address, then resend the message -** If you're using Outlook, open this non-delivery report message and click **Send Again** from the menu or ribbon. In Outlook on the web, select this message, and then click the "**To send this message again, click here.**" link located just above the message preview window. In the To or Cc line, delete and then retype the entire recipient's address (ignore any address suggestions). After typing the complete address, click **Send** to resend the message. If you're using an email program other than Outlook or Outlook on the web, follow its standard way for resending a message. Just be sure to delete and retype the recipient's entire address before resending it.
- **Remove the recipient from the recipient Auto-Complete List, then resend the message -** If you're using Outlook or Outlook on the web, follow the steps in the "Remove the recipient from the recipient Auto-Complete List" section of this article. Then resend the message. Be sure to delete and retype the recipient's entire address before clicking **Send**.

- **Contact the recipient by some other means,** (by phone, for example) to confirm you're using the right address. Ask them if they've set up an email forwarding rule that could be forwarding your message to an incorrect address.

If the problem continues, ask the recipient to tell their email admin about the problem, and give them the error (and the name of the server that reported it) shown below. It's likely that only the recipient's email admin can fix this problem.

Was this helpful? Send feedback to Microsoft.

More Info for Email Admins

Status code: 550 5.4.1

This error occurred because a message was sent to an email address hosted by Office 365, but the address doesn't exist in the receiving organization's Office 365 directory. Directory Based Edge Blocking (DBEB) is enabled for sandfireamerica.com, and DBEB rejects messages addressed to recipients who don't exist in the receiving organization's Office 365 directory. This error is reported by the recipient domain's email server, but most often it can be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

Check that the email address exists and is correct - Confirm that the recipient address exists in your Office 365 directory, is correct, and is accepting messages.

Synchronize your directories - Make sure directory synchronization is working correctly, and that the recipient's email address exists in both Office 365 and in your on-premises directory.

Check for errant forwarding rules - Check for forwarding rules for the original recipient that might be trying to forward the message to an invalid address. Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Forwarding or Inbox Rules features.

Make sure the recipient has a valid license - Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license to them (Users > Active Users > Select the recipient > Assigned License > Edit).

Make sure that mail flow settings and MX records are correct - Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are set up correctly.

For more information and additional tips to fix this issue, see this article.

Original Message Details

Created Date:	6/12/2018 9:03:16 PM
Sender Address:	davis.patrick@epa.gov
Recipient Address:	nschleppe@sandfireamerica.com
Subject:	Billings Smart Sectors report

Error Details

Reported error:	*550 5.4.1 [nschleppe@sandfireamerica.com]: Recipient address rejected: Access denied [QB1CAN01FT005.eop-CAN01.prod.protection.outlook.com]*
DSN generated by:	SN1PR09MB0847.namprd09.prod.outlook.com
Remote server:	QB1CAN01FT005.mail.protection.outlook.com

Message Hops

HOP	TIME (UTC)	FROM	TO	WITH
1	6/12/2018 9:03:16 PM	SN1PR09MB0800.namprd09.prod.outlook.com	SN1PR09MB0800.namprd09.prod.outlook.com	mapi
2	6/12/2018 9:03:16 PM	SN1PR09MB0800.namprd09.prod.outlook.com	SN1PR09MB0847.namprd09.prod.outlook.com	Microsoft SMTP Server cipher=TLS_ECDHE_RS

Original Message Headers


```
DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=usepa.onmicrosoft.com;
 s=selector1-epa-gov;
 h=From:Date:Subject:Message-ID:Content-Type:MIME-Version:X-MS-Exchange-SenderADCheck;
 bh=lGFP3Dvq9cFVejuLYQ7Fs7ZM7T23iXOXug+ikhSdMRg=;

b=GhDlSkWhYUp0aemZo7cxnWjTvd8K24KkgzDF7MT4oG4Fy82YvtMNRiJQkFU7tlXrPveRzSh7cobL6CJiSkfstxn
n0+AarQqIpX2zefoHG7qFPX9eZp4FpXcrSRcOtGcXHprRk4YET8mddlNOlvBtnQNf08LPcDHIydZGREYeHkc=
Received: from SN1PR09MB0800.namprd09.prod.outlook.com (10.162.101.146) by
 SN1PR09MB0847.namprd09.prod.outlook.com (10.162.101.156) with Microsoft SMTP
 Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_GCM_SHA384) id
 15.20.841.15; Tue, 12 Jun 2018 21:03:16 +0000
Received: from SN1PR09MB0800.namprd09.prod.outlook.com
 ([fe80::c90e:8100:283e:825a]) by SN1PR09MB0800.namprd09.prod.outlook.com
 ([fe80::c90e:8100:283e:825a%5]) with mapi id 15.20.0841.019; Tue, 12 Jun 2018
 21:03:16 +0000
From: "Davis, Patrick" <davis.patrick@epa.gov>
To: Randy Weimer <rweimer@sibanyestillwater.com>, "Lynn Cardey-Yates
 (lcardey-yates@parsonsbehle.com)" <lcardey-yates@parsonsbehle.com>, Shane
 LaCasse <shane.lacasse@chsinc.com>, "Peder Maarbjerg
 (peder.maarbjerg@hq.doe.gov)" <peder.maarbjerg@hq.doe.gov>, "Ed Coleman
 (ecoleman@mt.gov)" <ecoleman@mt.gov>, "tlivers@mt.gov" <tlivers@mt.gov>,
       "Randall Richert (rrichert@trihydro.com)" <rrichert@trihydro.com>, "Mullins,
 Jerry" <jmullins@nma.org>, "Haley Schleppe (nschleppe@sandfireamerica.com)"
       <nschleppe@sandfireamerica.com>, Peggy Trenk <ptrenk@tsria.net>, "Alan Olson
 (alan@montanapetroleum.org)" <alan@montanapetroleum.org>, "Thielman, Jason
 (Daines)" <Jason_Thielman@daines.senate.gov>, "Nylund, Erik (Tester)"
       <Erik_Nylund@tester.senate.gov>, "Tripp McKemey
 (tripp.mckemey@mail.house.gov)" <tripp.mckemey@mail.house.gov>
CC: "Benevento, Douglas" <benevento.douglas@epa.gov>
Subject: Billings Smart Sectors report
```

Thread-Topic: Billings Smart Sectors report

Thread-Index: AdQCj4jPNMHe1pfZS+OliQegnK8CbAAAG4sg

Date: Tue, 12 Jun 2018 21:03:16 +0000

Message-ID:
<SN1PR09MB0800BBF563009D76F83FA3D2EF7F0@SN1PR09MB0800.namprd09.prod.outlook.com>

References:
<SN1PR09MB08003700B8827DEEAFCC87BBEF7F0@SN1PR09MB0800.namprd09.prod.outlook.com>

In-Reply-To:
<SN1PR09MB08003700B8827DEEAFCC87BBEF7F0@SN1PR09MB0800.namprd09.prod.outlook.com>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach: yes

X-MS-TNEF-Correlator:

authentication-results: spf=none (sender IP is)

 smtp.mailfrom=davis.patrick@epa.gov;

x-originating-ip: [204.47.62.58]

z-ms-publictraffictype: Email

x-microsoft-exchange-diagnostics:
1;SN1PR09MB0847;7:lYL9bfdlsIEcFq2QrULGPljvm22qckrhfcqp+E4G3EG44m/0N42pcUCqojLj9I+WZnaymNl
IgYhFcKTd268CG6VIAdyAbIbSxLXtjwteo4+VTnMFJT4Dceszsadmulo5P/9yjtGvJvVZCQA/y9hUa4y+i5xqtbHO
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SvNKNwU

x-ms-exchange-antispam-srfa-diagnostics: SOS;

z-microsoft-antispam:
UriScan:;BCL:0;PCL:0;RULEID:(7020095)(4652020)(5600026)(4534165)(4627221)(201703031133081
)(201702281549075)(2017052603328)(7153060)(49563074)(7193020);SRVR:SN1PR09MB0847;

z-ms-trafficlypediagnostic: SN1PR09MB0847:

x-ld-processed: 88b378b3-6748-4867-acf9-76aacbeca6a7,ExtAddr

z-microsoft-antispam-prvs:
<SN1PR09MB0847B73E682467854AFA1190EF7F0@SN1PR09MB0847.namprd09.prod.outlook.com>

x-exchange-antispam-report-test: UriScan:(28532068793085)(21748063052155);

x-ms-exchange-senderadcheck: 1

x-exchange-antispam-report-cfa-test:
BCL:0;PCL:0;RULEID:(102415395)(6040522)(2401047)(5005006)(8121501046)(3231254)(944501410)
(52105095)(93006095)(93001095)(3002001)(10201501046)(149027)(150027)(6041310)(20161123560
045)(20161123564045)(20161123562045)(201703131423095)(201702281528075)(20161123555045)(20
1703061421075)(201703061406153)(20161123558120)(6072148)(201708071742011)(7699016);SRVR:S
N1PR09MB0847;BCL:0;PCL:0;RULEID:;SRVR:SN1PR09MB0847;

z-forefront-prvs: 07013D7479

x-forefront-antispam-report:
SFV:NSPM;SFS:(10019020)(39860400002)(376002)(346002)(39380400002)(366004)(396003)(199004)
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6003)(9686003)(54896002)(6436002)(6306002)(33656002)(55016002)(3480700004)(8936002)(29001
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9286004)(6506007)(9326002)(14454004)(921003)(1121003);DIR:OUT;SFP:1102;SCL:1;SPVR:SN1PR09
MB0847;H:SN1PR09MB0800.namprd09.prod.outlook.com;FPR:;SPF:None;LANG:en;PTR:InfoNoRecords;
A:1;MX:1;

received-spf: None (protection.outlook.com: epa.gov does not designate

 permitted sender hosts)

x-microsoft-antispam-message-info:
0+vMVvlKKDtWvsTiKJthepByNIph/zfKXTvJz3bXvOlD8k2nv2rH85hg3V56uXrOJ249fnB57T6UjslJeSqU0xxtV

3t/nxUlGDmODyXQkl8fP8ztWTQLBVefkAtxYWWiUB5VjrP1w/ySQUYq0BuO10KFjn1xbeNFLRVJgvh1Bh375Jeijt
0OhBrVIj5p9i1h

spamdiagnosticoutput: 1:99

spamdiagnosticmetadata: NSPM

Content-Type: multipart/mixed;

boundary="_005_SN1PR09MB0800BBF563009D76F83FA3D2EF7F0SN1PR09MB0800namp_"

MIME-Version: 1.0

X-MS-Office365-Filtering-Correlation-Id: 9b1f1345-3050-421a-fc72-08d5d0a7eb1a

X-OriginatorOrg: epa.gov

X-MS-Exchange-CrossTenant-Network-Message-Id: 9b1f1345-3050-421a-fc72-08d5d0a7eb1a

X-MS-Exchange-CrossTenant-originalarrivaltime: 12 Jun 2018 21:03:16.4854
(UTC)

X-MS-Exchange-CrossTenant-fromentityheader: Hosted

X-MS-Exchange-CrossTenant-id: 88b378b3-6748-4867-acf9-76aacbeca6a7

X-MS-Exchange-Transport-CrossTenantHeadersStamped: SN1PR09MB0847

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 6/12/2018 9:03:16 PM
To: Randy Weimer [rweimer@sibanyestillwater.com]; Lynn Cardey-Yates (lcardey-yates@parsonsbehle.com) [lcardey-yates@parsonsbehle.com]; Shane LaCasse [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=userca292f0d]; Peder Maarbjerg (peder.maarbjerg@hq.doe.gov) [peder.maarbjerg@hq.doe.gov]; Ed Coleman (ecoleman@mt.gov) [ecoleman@mt.gov]; tlivers@mt.gov; Randall Richert (rrichert@trihydro.com) [rrichert@trihydro.com]; Mullins, Jerry [jmullins@nma.org]; Haley Schleppe (nschleppe@sandfireamerica.com) [nschleppe@sandfireamerica.com]; Peggy Trenk [ptrenk@tsria.net]; Alan Olson (alan@montanapetroleum.org) [alan@montanapetroleum.org]; Thielman, Jason (Daines) [Jason_Thielman@daines.senate.gov]; Nylund, Erik (Tester) [Erik_Nylund@tester.senate.gov]; Tripp McKemey (tripp.mckemey@mail.house.gov) [tripp.mckemey@mail.house.gov]
CC: Benevento, Douglas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=93dba0f4f0fc41c091499009a2676f89-Benevento,]
Subject: Billings Smart Sectors report
Attachments: Report from may 31 mining smart sectors meeting in Billings Montana.docx; May 31 Smart Sectors attendees.xlsx

Hello,

Thank you for participating in the EPA Smart Sectors Roundtable discussion on May 31 in Billings, MT. Attached is the report from the meeting and a list of the attendees. Please feel free to contact me with questions.

Sincerely,

Patrick Davis
U.S. Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202
Ex. 6 (direct)
(cell)

Name	Affiliation / Contact Info	Contact Info
Patrick Davis	US EPA	Davis.patrick@epa.gov
Randy Weimer		rweimer@sibanyestillwater.com
Lynn Cardey-Yates	AMEA	Lcardey-yates@parsonsbehle.com
Shane LaCasse	CHA Refinery	Shane.lacasse@chsinc.com
Peder Maarbjerg	DOE	Peder.maarbjerg@hq.doe.gov
Ed Coleman	DEQ	ecoleman@mt.gov
Tim Livers	DEQ	tlivers@mt.gov
Pepper Peterson	Coldwater Group	
Randall Reichert	Trihydro Corp	rreichert@trihydro.com
Jerry Mullins	National Mining Association	jmullins@nma.org
Haley Schleppe	Sandfire America Mining	nschleppe@sandfireamerica.com
Peggy Trenk	Treasure State Resources Association	ptrenk@tsria.net
Alan Olson	Montana Petroleum Association	alan@montanapetroleum.org
Joshua Sizemore	Sen. Steve Daines	
Sen. Steve Daines	US Senator	

US EPA and Montana Department of Environmental Quality

Mining Smart Sectors Meeting

Thursday, May 31 - 4:30 pm – 6:00 pm

Draft Meeting Summary

Welcome and Introductions

Environmental Protection Agency (EPA) Region 8 Director Doug Benevento welcomed attendees and introduced US Senator Steve Gaines and Montana DEQ Director Tom Livers.

Mr. Benevento's expressed a desire to understand, from stakeholders, ways to improve NEPA implementation, increase Good Samaritan Initiative implementation and permitting and regulatory impediments.

Stakeholder Input

Participants introduced themselves and provided the following comments.

- Nutrient Standard Variances. Numerous attendees indicated that it is challenging to meet the nutrient standard with wastewater treatment (nitrogen and selenium were noted). It is difficult to "prove" economic infeasibility and receive a variance. Montana Senate Bill 325 addressed the nutrient issue. (http://deq.mt.gov/Water/WQPB/standards/SB325Rulemaking)
- Toxic Release Inventory (TRI). The TRI annual reporting for chemicals released into the environment was criticized as not relevant and causing public misperceptions of dangers. Better metrics are need as the current requirements are "meaningless and not relevant." It was noted that TRI is viewed as punitive toward the extractive industry and inaccurately conveys the actual impact and risk of hard rock mining. It was noted that this issue applies to more than hard rock mining.
- Monitoring and air quality attainment issues were raised including the example of SO2 non-attainment in Laurel Montana.
- There is a need to coordinate policy direction and guidance across federal government agencies including EPA and DOI agencies.
- The issue of federal oversight of states that have assumed 404 responsibilities, like Montana, was discussed. There is a desire for both more flexibility and direction from EPA.
- Support for the Montana DEQ's work was expressed including the existing bonding program. An attendee noted that there is not a need for 'double bonding' based on the work of the state.

- Support for new coal fired power plants, maintaining existing coal fired power plants, and a desire for public financing for new coal plants and was expressed. The New Source Review (NSR) air quality permitting for coal fired power plants was discussed including the view that its application is flawed and inaccurate, like change of minor pipes. This is an issue that should be examined further.
- Department of Interior is rewriting oversite directives with states.
- It was stated that the lack of certainty is a thread which runs through concerns in the mining sector. Doug stated that extra guidance creates confusion.
- Communication with EPA that is more responsive and is 'back and forth' was encouraged. Having the right people and technical experts at the table for discussions is important to making timely progress, particularly in the air quality compliance arena.
- When the subject of Colstrip, MT was raised the discussion turned to the need for financing for coal plants. Doug talked about new source review.
- The Good Samaritan initiative was discussed including:
    - There is a lack of long-term certainty and guidance regarding cleanup for abandoned hard rock mines (Good Samaritan Initiative). A participant noted that the liability issue is 'chilling'.
    - One approach is to highlight Good Samaritan successes and articulate where, from EPA's perspective, additional opportunities and solutions may exist. The idea of 'cooperative federalism' and out-of-the-box thinking was discussed.
    - In regards to the Good Samaritan Initiative, attendees expressed an interest in doing more if there are protections from liability (particularly 3rd party lawsuits).
    - The example of Trout Unlimited and other non-profits was held up as a potential model to enhance abandoned mine clean up. Attendees expressed interest in examining whether a non-profit or foundation approach could provide umbrella protections and liability relief.
    - Other participants asked whether a legislative fix could help support of the clean up of abandoned mines.
    - Demonstration and pilot projects could also be used to explore expansion of this opportunity.
- The lack of capacity at copper smelter facilities in the U.S. results in the product going abroad. There is a need for incentives and a streamlined approval of new smelters and the development of such capacity. Copper was not included in the critical minerals act. It was noted that rare-earth metals are being mined from the Berkley Pit.
- The clean-up of metals-contaminated sites to background levels was discussed including a desire for more standardization, innovation and provision of a 'safe harbor' for use of new technological approaches.
- The rules surrounding 'secure storage' of CO_2 (storing carbon dioxide emissions underground) was discussed. An attendee expressed a desire for EPA support to include Class II wells, that have been properly plugged and abandoned, as well as Class VI mines

for geologic sequestration. A desire for a more limited monitoring timeframe for these wells was expressed.

- The National Environmental Protection Act (NEPA) as discussed. Participants expressed a desire for NEPA reviews at EPA to focus on relevant issues, conduct concurrent reviews across agencies, encourage project proponents to focus on realistic alternatives and encouraging non-deliberative communication and feedback with 3rd party contractors throughout the project development.
- AEMA suggested that the NEPA process should not address alternatives which are not technically feasible.
- Provide clarity regarding the definition of "Waters of the United States" including the review and potential revision to the definition.
- Use of new technology for abandoned mine clean-up was explored along with public/private partnerships that capitalize on the 'know how' close to the resource was expressed.

Next Steps

Mr. Benevento expressed appreciation to the attendees for the substantive input provided and summarized the key issues to explore further. These issues include additional examination on nutrient standards, pursuing opportunities to encourage more cleanup of abandoned mines (including non-profit model), improved agency responsiveness in communication and focus EPA's role on relevant NEPA issues.

Attendees

See attached list of participants.

Message

From: Berger, Andy [aberger@tristategt.org]
Sent: 1/9/2018 6:54:03 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
CC: Kramer, Drew [akramer@tristategt.org]
Subject: Re: [EXTERNAL] Re: [EXTERNAL] Re: [EXTERNAL] RE: Nice to meet you

just parked across street

Andy Berger
Tri-State G&T
303.916.1289

> On Jan 9, 2018, at 11:53, Davis, Patrick <davis.patrick@epa.gov> wrote:
>
> Running 10 minutes late.
>
> Patrick Davis
> Environmental Protection Agency
> Senior Advisor to the Regional Administrator for Public Engagement (Region 8)
> 303-312-6855 office
> Ex. 6
>
> Emails sent to this address may be subject to FOIA.
>
> Sent from my iPhone
>
>> On Jan 9, 2018, at 11:41 AM, Kramer, Drew <akramer@tristategt.org> wrote:
>>
>> Gentlemen,
>>
>> I got to Wynkoop early and have a table in the back room on the main floor. See you when you get here.
>>
>> Drew
>>
>>
>>
>>> On Jan 9, 2018, at 8:55 AM, Davis, Patrick <davis.patrick@epa.gov> wrote:
>>>
>>> Yes, noon at wynkoop' s
>>>
>>> Patrick Davis
>>> Environmental Protection Agency
>>> Senior Advisor to the Regional Administrator for Public Engagement (Region 8)
>>> 303-312-6855 office
>>> Ex. 6
>>>
>>> Emails sent to this address may be subject to FOIA.
>>>
>>> Sent from my iPhone
>>>
>>>> On Jan 8, 2018, at 9:29 PM, Kramer, Drew <akramer@tristategt.org> wrote:
>>>>
>>>> Hi, Patrick.
>>>>
>>>> Just confirming for tomorrow (Tuesday). Andy and I are still up for lunch if you are.
>>>>
>>>> Looking forward to it,
>>>> Drew
>>>>
>>>> Drew Kramer
>>>> Senior External Affairs Advisor
>>>> Tri-State Generation and Transmission Association
>>>> Office:
>>>> Mobile: Ex. 6
>>>> Email: AKramer@TriStateGT.org
>>>> Web: www.TriState.coop
>>>>
>>>> -----Original Message-----
>>>> From: Davis, Patrick [mailto:davis.patrick@epa.gov]

>>>> Sent: Monday, December 11, 2017 5:17 PM
>>>> To: Kramer, Drew <akramer@tristategt.org>
>>>> Cc: Berger, Andy <aberger@tristategt.org>
>>>> Subject: [EXTERNAL] RE: [EXTERNAL] RE: Nice to meet you
>>>>
>>>> Lets just say the Wynkoop Brewery at 12 Noon on January 9.
>>>>
>>>> Patrick Davis
>>>> Senior Advisor to the Regional Administrator for Public Engagement
>>>> 1595 Wynkoop Street
>>>> Denver, CO 80202
>>>> 303-312-6855 (direct)
>>>> Ex. 6 (cell)
>>>>
>>>> -----Original Message-----
>>>> From: Kramer, Drew [mailto:akramer@tristategt.org]
>>>> Sent: Monday, December 11, 2017 3:30 PM
>>>> To: Davis, Patrick <davis.patrick@epa.gov>
>>>> Cc: Berger, Andy <aberger@tristategt.org>
>>>> Subject: Re: [EXTERNAL] RE: Nice to meet you
>>>>
>>>> Great - that works for us. Since you're local to that area, please feel free to pick a spot and let us know by that morning.
>>>>
>>>> Thanks, Patrick. Looking forward to it.
>>>> Drew
>>>>
>>>>
>>>> Thoughtfully composed on Drew Kramer's iPad
>>>>
>>>> On Dec 11, 2017, at 12:39 PM, Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>> wrote:
>>>>
>>>> Hi Drew,
>>>>
>>>> How about lunch in downtown Denver near Union Station on Tuesday, January 9?
>>>>
>>>> Thanks,
>>>>
>>>> Patrick Davis
>>>> Senior Advisor to the Regional Administrator for Public Engagement
>>>> 1595 Wynkoop Street
>>>> Denver, CO 80202
>>>> 303-312-6855 (direct)
>>>> Ex. 6 (cell)
>>>>
>>>> From: Kramer, Drew [mailto:akramer@tristategt.org]
>>>> Sent: Wednesday, December 6, 2017 3:44 PM
>>>> To: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
>>>> Cc: Berger, Andy <aberger@tristategt.org<mailto:aberger@tristategt.org>>
>>>> Subject: RE: Nice to meet you
>>>>
>>>> Patrick,
>>>>
>>>> Would you be interested in meeting for coffee, breakfast or lunch on Jan 8, 9 or 10? All three days are wide open for me and my colleague Andy Berger, who serves as our Senior Manager of Environmental Policy. We would welcome you to the Westminster area or be happy to meet you downtown if that's easier for you - though meeting downtown for lunch would be preferable to a breakfast for those commuting south from the northern suburbs (like Andy).
>>>>
>>>> Please let us know what works best. We're eager to learn more about what sort of work you're doing for EPA and how we might be able to collaborate.
>>>>
>>>> Best,
>>>> Drew
>>>>
>>>>
>>>> Drew Kramer
>>>> Senior External Affairs Advisor
>>>> Tri-State Generation and Transmission Association
>>>> Office: Ex. 6
>>>> Mobile:
>>>> Email: AKramer@TriStateGT.org<mailto:AKramer@TriStateGT.org>
>>>> Web: www.TriState.coop<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.TriState.coop&d=DwMFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=OxwVf_OyiTQxNLARIkgpg67SG9jUG3T-YETRK8ATU-Y&m=FwkVT49FbUn5DajdAOkeLZ8Itba_CjUJw_mk6a_96cO&s=Hn2QZmFRjHCdSLuAbGpY2W4CtOBYcde3Grv6kQwrGtk&e=>?
>>>>

>>>>
>>>>
>>>> _____
>>>> From: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
>>>> Sent: Thursday, November 30, 2017 2:26 PM
>>>> To: Kramer, Drew
>>>> Subject: [EXTERNAL] Nice to meet you
>>>>
>>>> Hi Drew,
>>>>
>>>> It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.
>>>>
>>>> Thanks,
>>>>
>>>> Patrick Davis
>>>> Senior Advisor to the Regional Administrator for Public Engagement
>>>> 1595 Wynkoop Street
>>>> Denver, CO 80202
>>>> Ex. 6 (direct)
>>>> (cell)
>>>>

Message

From: Kramer, Drew [akramer@tristategt.org]
Sent: 12/5/2017 6:37:30 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: Re: Nice to meet you

Hi, Patrick.

Thanks for following up. I'd enjoy sitting down over coffee, breakfast or lunch to learn more about exactly what you do over there at EPA. I'd like to include one of my colleagues who does environmental policy work, so give me a little time to coordinate schedules with him, then I'll shoot you a few dates that we can aim for. Happy to come downtown or host you up here in Westminster - do you have a preference?

See you soon,
Drew

Drew Kramer
Senior External Affairs Advisor
Tri-State Generation and Transmission Association
Office: Ex. 6
Mobile: Ex. 6
Email: AKramer@TriStateGT.org<mailto:AKramer@TriStateGT.org>
Web: www.TriState.coop<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.TriState.coop&d=DwMFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=OxwVf_0yiTQxNLARIkgpg67SG9jUG3T-YETRK8ATU-Y&m=FwkVT49FbUn5DajdAOkeLZ8Itba_CjUJw_mk6a_96c0&s=Hn2QZmFRjHCdSLuAbGpY2W4Ct0BYcde3Grv6kQwrGtk&e=>?

From: Davis, Patrick <davis.patrick@epa.gov>
Sent: Thursday, November 30, 2017 2:26 PM
To: Kramer, Drew
Subject: [EXTERNAL] Nice to meet you

Hi Drew,

It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202
303-312-6855 (direct)
Ex. 6 (cell)

Message

From: Danny Fernandez [DFernandez@bockornygroup.com]
Sent: 10/5/2017 3:57:28 PM
To: Spencer Pederson [spederson@bockornygroup.com]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
CC: Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: RE: Question

Flag: Flag for follow up

Thanks Spencer and everyone, I appreciate it. If it's alright can we send a separate email with my CVS contact to try and set something up? Thank you again.

Danny Fernandez
BOCKORNY GROUP
202.659.9111
Ex. 6
www.bockornygroup.com

From: Spencer Pederson
Sent: Thursday, October 05, 2017 11:52 AM
To: Lyons, Troy <lyons.troy@epa.gov>
Cc: Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Danny Fernandez <DFernandez@bockornygroup.com>
Subject: RE: Question

Thanks for the quick response, Troy—you are awesome!

I'm also Ccing my colleague Danny Fernandez who works on this as well.

Kaitlyn, and Patrick—look forward to hearing from you. Thanks for the help.

Spencer

From: Lyons, Troy [mailto:lyons.troy@epa.gov]
Sent: Thursday, October 5, 2017 11:49 AM
To: Spencer Pederson <spederson@bockornygroup.com>
Cc: Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
Subject: Re: Question

Thanks, Spencer.

Kaitlyn, could you find time for Spencer and into get together?

I've also copied Patrick Davis who would be your POC on the waste management.

Patrick-please see Spencer's note below.

_____
Troy M. Lyons

Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
Ex. 6 (cell)

Sent from my iPhone

On Oct 5, 2017, at 9:37 AM, Spencer Pederson <spederson@bockornygroup.com> wrote:

> Hey man,
> I hope you are well and having fun over there! I guess we still need to grab coffee...
>
> I know you all are still a little short staffed but have a personnel question for you. We have CVS as a client, who surprisingly has some issues they'd like to discuss with EPA. Specifically, they'd like to talk to someone about some regulations surrounding nicotine replacement therapy and disposal of hazardous waste.
>
> Any help would be appreciated! Thanks!
>
> Spencer
>
> Spencer Pederson
> BOCKORNYGROUP
> 1350 I Street, NW, Suite 800
> Washington, DC 20005
> o: 202-659-9111
> Ex. 6
> www.bockornygroup.com

Message

From: Risotto, Steve [Steve_Risotto@americanchemistry.com]
Sent: 6/28/2017 3:00:27 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]; Hill, Teresa [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fa5cb0ccf6b24276a9a0d898d3e04c87-thill02]
CC: Kapuscinski, Rich [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=879f9a71110c4afbb515bd080aec9c21-Kapuscinski, Rickard]; Stalcup, Dana [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70b76eb4c1c54ae585333e7fbcc83fed-Stalcup, Dana]; Brooks, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f369a2ef33e4a87af349210a3915a57-BBrooks]; Raffaele, Kathleen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cc48281bbab34bf5bf3ab1a63780d5ca-Kathleen Raffaele]; Cheatham, Reggie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c04c7b4fbf4d45108592282991c719cb-RCheatha]; Clark, Becki [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a906e07f1cd143b9a3c2ddab813b8140-Clark, Becki]; Brust, Laura [Laura_Brust@americanchemistry.com]; Taylor, Jennifer [Jennifer_Taylor@americanchemistry.com]
Subject: follow-up letter on TCE
Attachments: ACC follow-up letter on TCE.pdf; USEPA OSTRI memo on TCE - 08 27 2014.pdf

Patrick –

Thank you again for meeting to discuss TCE last week. I have attached a summary of our request. Please let me know if you have questions or would like to discuss this issue further.

Steve

Steve Risotto | American Chemistry Council
Senior Director, Chemical Products & Technology Division
srisotto@americanchemistry.com
O: Ex. 6 C: Ex. 6
https://www.americanchemistry.com

++++++++++++++++++++++++++++++ This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, www.americanchemistry.com

June 28, 2017

Mr. Patrick Davis
Deputy Assistant Administrator
Office of Land and Emergency Management
Mail Code 5101T
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: OLEM Policy Concerning Short-Term Exposure to Trichloroethylene in Indoor Air

Dear Mr. Davis:

Thank you again for meeting with us to discuss our concerns with EPA's approach to addressing indoor air exposure to trichloroethylene (TCE) from vapor intrusion at contamination sites. As we indicated, the policy is defined in the enclosed 2014 memo from the Office of Superfund Remediation and Technology Innovation (OSRTI) which interpreted scientific data on non-cancer (*i.e.*, developmental) effects to establish a national policy for accelerated response at remediation sites. The results on which the policy relies have not been reproduced in better conducted studies. We are aware of no Agency precedent, moreover, for OSTRI's application of a chronic inhalation reference concentration to short-term exposure.

Implementation of the 2014 policy memo has resulted in a significant increase in remediation costs and caused confusion among state and regional officials and the general public. Implementation of the policy has been inconsistent among EPA Regions, moreover, and at least one state (Indiana) has taken the position that the OSTRI policy is "not scientifically supportable."

As we discussed, the ongoing risk evaluation for TCE by EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) under the Lautenberg Chemical Safety Act provides an opportunity for your office to review and, as appropriate, update its policy on TCE remediation. This evaluation will be enhanced by the availability of data from new research that the industry expects to complete by the end of this year.

Consequently, we respectfully request that OLEM suspend the implementation of the 2014 OSTRI memo, and related memos issued by EPA Regional Offices, [1] until OCSPP's risk evaluation of TCE is complete. Until that time, OLEM can enforce the existing remediation values for TCE based on chronic risk exposures (of non-developmental risk endpoints) to ensure public health protection. Once the risk evaluation of TCE is complete, your office can assess the impact of its conclusions on OSTRI policy.

---

[1] ACC is aware of memos issued by Region 7 on November 2, 2016, by Region 9 on June 30, 2014 and July 9, 2014, and by Region 10 on December 13, 2012.

Thank you again for considering our request. Please feel free to contact me at Ex. 6 or at srisotto@americanchemistry.com if you have questions or if you would like to discuss our request further.

Sincerely,

Steve Risotto

Stephen P. Risotto
Senior Director

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 27 2014

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Compilation of Information Relating to Early/Interim Actions at Superfund Sites and the TCE IRIS Assessment

FROM: Robin H. Richardson, Acting Director
Office of Superfund Remediation and Technology Innovation (OSRTI)

TO: Superfund Division Directors, EPA Regions 1 - 10

Purpose

This compilation of information was prepared in response to requests from U.S. Environmental Protection Agency (EPA) Regional Offices. It provides information regarding existing EPA guidance on early or interim actions at Superfund sites. It also provides current information about the toxicity of trichloroethylene (TCE). The information referenced in this document may be used to support Superfund decision making at sites with actual or potential inhalation exposures to TCE.

Background

In September 2011, the U.S. Environmental Protection Agency (EPA) published a toxicological assessment for TCE[1]. Based upon a weight-of-evidence evaluation of the available information, including human epidemiologic studies, animal dosing studies, and experimental mechanistic studies, the assessment concluded that TCE poses a potential human health hazard for noncancer toxicity to the central nervous system, kidney, liver, immune system, male reproductive system, and the developing fetus, and is "carcinogenic to humans" by all routes of exposure. The assessment for IRIS derived a chronic inhalation reference concentration (RfC) for noncancer effects of TCE, which is two micrograms per cubic meter (2 $\mu g/m^3$). This RfC is based in part on the developmental toxicity endpoint of increased incidence of fetal cardiac malformations.

Early or Interim Action for TCE

In considering how the 2011 TCE IRIS assessment should be used in Superfund decision making, the existing Federal statutes and EPA guidance offer the following:

[1] U.S. EPA (2012). *Toxicological Review of Trichloroethylene in Support of the Integrated Risk Information System (IRIS).* Currently available online at: http://www.epa.gov/iris/toxreviews/0199tr/0199tr.pdf.

Internet Address (URL) ● http://www.epa.gov
Recycled/Recyclable ● Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

- *Early or interim actions:* EPA expects to take early actions at Superfund sites where appropriate to eliminate, reduce, or control the hazards posed by a site. In assessing such cases, EPA will act with a bias for initiating response actions to ensure protection of human health[2].
- *Considering noncancer health effects:* For purposes of the Superfund program and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), unacceptable risk occurs when exposures exceed concentrations to which the human population, including sensitive subgroups, may be exposed without adverse effect during a lifetime or part of a lifetime, as appropriate to address teratogenic and developmental effects[3].
- *Developmental toxic effects*: In most cases, it is assumed that a single exposure at any of several developmental stages may be sufficient to produce an adverse developmental effect,[4] but the RfC for a single exposure hasn't been determined yet by EPA.
- *IRIS Database*: IRIS normally represents the official Agency scientific position regarding the toxicity of the chemicals based on the data available at the time of the review and is the generally preferred source of human health toxicity values used to support Superfund response decisions[5]. For noncancer effects, a concentration of 2 $\mu g/m^3$ TCE in indoor air is expected to be a reasonable maximum exposure condition for a continuous chronic exposure to prevent risk of adverse health effects during a lifetime.
- *Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment)* [6] addresses the use of inhalation toxicity values in Superfund risk assessments, including discussion of estimating exposures in microenvironments[7] by calculating time-weighted average exposures concentrations for each exposure period characterized by a specific activity pattern. It also recognizes that chemical-specific elements of metabolism and kinetics, reversibility of effects, and recovery time should be considered when defining the duration of a site-specific exposure scenario.
- *ARARS*: At sites contaminated with TCE addressed by CERCLA, additional (non-EPA) TCE concentration or toxicity values may exist that could represent applicable or relevant and appropriate requirements (ARARs), including more stringent state standards or policy.[8]

---

[2] National Oil and Hazardous Substances National Contingency Program (NCP) ((see 40 CFR 300.415 (b)(1)-(3) and 300.430 (a)(1)(ii)(A)).

[3] U.S. EPA (1991). *Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions.* OSWER Directive 9355.0-30. Currently available on-line at: http://www.epa.gov/oswer/riskassessment/pdf/baseline.pdf

[4] U.S. EPA (1991). *Guidelines for Developmental Toxicity Risk Assessment* (EPA/600/FR-91/001) describes the procedures that EPA follows in evaluating potential developmental toxicity associated with human exposure to environmental agents. Currently available online at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=23162

[5] U.S. EPA (2003) *Human Health Toxicity Values in Superfund Risk Assessments* (OSWER Directive 9285.7-53). Currently available online at http://www.epa.gov/oswer/riskassessment/pdf/hhmemo.pdf

[6] U.S. EPA (2009). *Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment.* This document is currently available on-line at: http://www.epa.gov/oswer/riskassessment/ragsf/pdf/partf_200901_final.pdf

[7] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter: Volume II.* Microenvironments are defined as a space that can be treated as a well-characterized, relatively homogeneous location with respect to pollutant concentration for a specified time period (e.g., rooms in homes, restaurants, schools, offices, inside vehicles, or outdoors). Currently available online at: http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=95398

[8] For a description of ARARs, see, for example: http://www.epa.gov/superfund/policy/remedy/sfremedy/arars.htm

Summary

Existing guidance provides that responders should consider *early or interim* action(s) where appropriate to eliminate, reduce, or control the hazards posed by a site. In doing so, IRIS generally provides the best available toxicological information in support of *early or interim* action for buildings where investigations of indoor air contamination identify site-related concentrations of TCE.

Additional Information

Additional information related to vapor intrusion and existing OSWER guidance can be found at http://www.epa.gov/oswer/vaporintrusion/ and http://www.epa.gov/oswer/riskassessment/. Please contact Michael Scozzafava (Chief, Science Policy Branch) at (703) 603-8833 if you have questions or require further information.

cc: Mathy Stanislaus, OSWER/IO
Nitin Natarajan, OSWER/IO
Barry Breen, OSWER/IO
Reggie Cheatham, OSWER/OEM
David Lloyd, OSWER/OBLR
Charlotte Bertrand, OSWER/FFRRO
Carolyn Hoskinson, OSWER/OUST
Kent Benjamin, OSWER/IPCO
Barnes Johnson, OSWER/ORCR
Nigel Simon, OSWER/OPM
Cyndy Mackey, OECA/OSRE
John Michaud, OGC/SWERLO
Franklin Hill, OSWER/OSRTI
Dana Stalcup, OSWER/OSRTI
Michael Scozzafava, OSWER/OSRTI
Richard Kapuscinski, OSWER/OSRTI
Barbara Hostage, OSWER/PARMS
Stiven Foster, OSWER/PARMS

Message

From: Roewer, James [JRoewer@eei.org]
Sent: 9/14/2017 8:55:52 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: USWAG Rulemaking Peition
Attachments: EPA CCR Letter August 16.pdf

Patrick,

We appreciate what EPA has done to bring some clarity to the CCR rule and to establish a framework for approval of state permit programs to implement the federal standards.

We are very pleased to receive EPA's response to our petition for reconsideration and indication that it intends to reconsider the rule's provisions identified in the petition.

Revisions to the CCR are necessary the underlying federal rule to put back into the rule the site-specific flexibility that EPA originally proposed but decided not to include in the final rule because there was no permitting authority. The WIIN Act and the ability of States to implement the rule through permit programs eliminates this concern.

While we appreciate EPA's efforts for rapid roll out of State implementation under the WIIN Act, it is critical that EPA extend, through notice and comment rulemaking, the upcoming deadlines in the CCR rule for the groundwater monitoring and related requirements to allow time for transition to state permitting programs <u>and</u> for rule revisions.

If we don't get these extensions, we will be making significant capital investments to comply with requirements that may be not be necessary once the state begins implementing the rule (for example, site-specific groundwater monitoring requirements). These unnecessary investments will be extremely difficult to recover. In some instances, upcoming deadlines will trigger the closure of disposal units that may lead to the closure of certain coal-fired plants. The attached letter underscores these points.

We also understand that EPA is reassessing its position in industry's litigation challenging the CCR rule. In light of the Agency's decision to propose revisions to the rule and deadline extensions, EPA should reassess their position in the litigation and move to hold the case in abeyance until its rulemakings can play out.

We believe that EPA has time to extend the CCR rule deadlines through a rulemaking. Would be glad to discuss this further with you.

Please contact me with any questions, etc.

Jim

ACCCE
AMERICA'S POWER

August 16, 2017

Mr. E. Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

We are writing to urge that the United States Environmental Protection Agency ("EPA") take immediate steps to postpone the compliance deadlines under the Coal Combustion Residuals ("CCR") rule. Although EPA has just issued guidance to the states on implementation of the CCR rule, the guidance does nothing to avoid the additional coal plant retirements that will result from this rule over the next few years.

An estimated sixty percent (60%) (about 150,000 megawatts) of the U.S. coal fleet's electric generating capacity relies on unlined surface impoundments and, therefore, is at risk because of the CCR rule. Many electric utilities that operate coal-fired power plants will undertake compliance steps soon that could lead to plant retirement decisions within a year unless the compliance deadlines are postponed.

Besides the threat of these coal-fired generating unit retirements, the required compliance steps will likely be unnecessary and wasteful for many coal plants because there are likely to be changes to the CCR Rule. These changes are expected as a result of the pending petition for reconsideration filed by the Utility Solid Waste Activities Group and the passage of the WIIN Act to authorize implementation of the CCR rule through state permit programs.

As you know, we are very appreciative of the efforts by you and President Donald J. Trump to help the coal industry. Thank you for considering our request that the EPA postpone the CCR compliance deadlines.

1155 15th Street NW | Suite 900 | Washington, DC 20005 | 202.459.4800 | www.americaspower.org

Sincerely,

The American Coalition for Clean Coal Electricity

Robert E. Murray
Chairman

Paul Bailey
President and CEO

1155 15th Street NW | Suite 900 | Washington, DC 20005 | 202.459.4800 | www.americaspower.org

Message

From: John Hasselmann [JohnHasselmann@ipc.org]
Sent: 3/9/2017 3:21:13 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]; Huggins, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0314e81a1f4843fcbbe0910cfddd53f4-Huggins, Richard]; Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]; Fern Abrams [FernAbrams@ipc.org]
CC: Johnson, Barnes [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c39e9338cbf04dc3b4b29f78e5213303-Johnson, Barnes]; 'Rozsa, Gabe' [Gabe.Rozsa@prime-policy.com]; Hilosky, Nick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39e1182ac8cd4709ae0787ca4a068d2d-NHilosky]; Nam, Katherine [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960947dcfbc944538af795ab8f122cc9-KNAM]; Devlin, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b76a4bf5afc84459a6bf2a6a4645f40f-BDEVLIN]
Subject: RE: IPC meeting with OLEM

Received at IPC as well. Thank you!

John Hasselmann
Vice President, Government Relations
IPC - Association Connecting Electronics Industries®
1331 Pennsylvania Avenue NW, Suite 910
Washington, DC 20004
W Ex. 6
M
www.ipc.org

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Thursday, March 9, 2017 8:25 AM
To: 'Huggins, Richard' <Huggins.Richard@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Fern Abrams <FernAbrams@ipc.org>
Cc: Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Nam, Katherine <nam.katherine@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>
Subject: RE: IPC meeting with OLEM

Thank you Richard.

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
O: Ex. 6
www.americanchemistry.com

From: Huggins, Richard [mailto:Huggins.Richard@epa.gov]
Sent: Thursday, March 09, 2017 7:40 AM
To: Davis, Patrick; Abrams, Fern
Cc: Johnson, Barnes; Hasselmann, John; 'Rozsa, Gabe'; Hulse, Leslie; Hilosky, Nick; Nam, Katherine; Devlin, Betsy
Subject: RE: IPC meeting with OLEM

Good morning everyone, as promised yesterday, attached is the sign in sheet from our meeting.

Have a good day,
Richard

Richard Huggins Jr.
Senior Special Assistant
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
Desk: 703-308-0017 iPhone: Ex. 6

From: Davis, Patrick
Sent: Monday, March 6, 2017 4:38 PM
To: Fern Abrams <FernAbrams@ipc.org>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>; Hulse, Leslie <Leslie_Hulse@americanchemistry.com>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Nam, Katherine <nam.katherine@epa.gov>; Devlin, Betsy <Devlin.Betsy@epa.gov>; Huggins, Richard <Huggins.Richard@epa.gov>
Subject: RE: IPC meeting with OLEM

Hi Fern,

Yes, indeed we are awaiting your arrival on Wednesday, March 8 at 2:30 p.m. We will be meeting in room 4144 West. Please enter the EPA at the West Building entrance located at 1301 Constitution Avenue.

Participating from the EPA:

Patrick Davis, Office of the Administrator
Katherine, EPA, OGC
Betsy Devlin, EPA, OLEM
Richard Huggins, EPA, OLEM

Thanks,
Patrick Davis

From: Fern Abrams [mailto:FernAbrams@ipc.org]
Sent: Monday, March 6, 2017 4:12 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>; Hulse, Leslie <Leslie_Hulse@americanchemistry.com>
Subject: RE: IPC meeting with OLEM

Dear Patrick,

I am writing to confirm our meeting on Wed March 8th at 2:30 pm. Can you provide a location for the meeting?

Our meeting attendees will be:
John Hasselmann, IPC VP Government Relations
Fern Abrams, IPC Director Regulatory Affairs
Leslie Hulse Assistant General Counsel, American Chemistry Council

Please let me know if you need additional information from us. May I ask who from EPA you expect will be attending?

For your reference and by way of background, I am enclosing the comments on the Hazardous Waste Generator Improvements Proposed Rule that were filed by IPC, ACC and other industrial generators organizations. During the meeting we hope to focus on the issue regarding Conditions for Exemption, discussion of which begins at the bottom of page 6 in the executive summary and in detail on page 14. I provide these only for your reference as we will discuss them during the meeting – please don't feel the need to read through them in advance.

We are looking forward to the meeting and thank you in advance for your time.

Sincerely,

Fern Abrams
Director of Regulatory Affairs and Government Relations
IPC- Association Connecting Electronics Industries
1331 Pennsylvania Avenue, Suite 910
Washington, DC 20004
Ex. 6
fabrams@ipc.org
www.ipc.org

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Thursday, March 2, 2017 1:18 PM
To: Fern Abrams <FernAbrams@ipc.org>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Hi Fern,

By all means, bring your colleagues. They are welcome at the EPA.

Thanks,
Patrick Davis

From: Fern Abrams [mailto:FernAbrams@ipc.org]
Sent: Thursday, March 2, 2017 12:13 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Dear Patrick,

Absolutely – we like fast moving balls.

If you are amenable, we would like to bring with us one or two colleagues from other trade associations with which we have been working on this rule. Please let us know if that is ok and we will send you a list of intended attendees.

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Subject: RE: IPC meeting with OLEM

Hi Fern,

Could we please meet at 2:30 p.m. on Wednesday, March 8 in order to keep moving the ball down the field quickly?

Thanks,
Patrick Davis

From: Fern Abrams [mailto:FernAbrams@ipc.org]
Sent: Wednesday, March 1, 2017 5:12 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Dear Mr. Davis, Mr. Huggins and Mr. Barnes,

IPC appreciates the opportunity to meet with you to discuss our concerns with the recently issued Hazardous Waste Generator Improvements rule.

We are available next week on Wed, March 8th at 2:30 pm or anytime thereafter; on Thursday March 9th between 9am and 11 am or at 2:30pm or anytime thereafter; and on Friday March 10 after 2pm. If none of these times are convenient, we can look at the following week.

Additionally, please let us know if it would be ok if we included in the meeting one or two colleagues from other trade associations with which we have been working on this rule.

Regards,

Fern Abrams
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Ex. 6
fabrams@ipc.org
www.ipc.org

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Tuesday, February 28, 2017 5:00 PM
To: Fern Abrams <FernAbrams@ipc.org>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Subject: IPC meeting with OLEM

Hi Fern,

Thank you for coming by the EPA today. I was a pleasure to meet you. I have copied Barnes Johnson and Richard Huggins from our Office of Land and Emergency Management for the purpose of scheduling a meeting regarding the hazardous waste generator issue.

Please let us know when you and your team would be available to come over to the EPA for a visit.

Sincerely,
Patrick Davis

++++++++++++++++++++++++++++++ This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, www.americanchemistry.com

Message

From: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Sent: 5/19/2017 4:53:43 PM
To: Belke, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c32df961c274152b3ba2873b03ae555-jbelke]
CC: Doster, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=322510375a3644b48f424addff4962da-BDOSTER]; Averback, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a22b8532c15649898118cf917497a43d-JAVERB02]; Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]; Erny, Bill [Bill_Erny@americanchemistry.com]
Subject: ACC comments on proposed stay of effective date of RMP Final Rule
Attachments: ACC Final Comments on Prop Ext of RMP Effective Date May 19 2017.pdf

Dear Jim,

Attached please find the comments of the American Chemistry Council on EPA's proposed stay of the effective date of the RMP Final Rule. I have just submitted these comments directly to www.regulations.gov but thought I would send you a copy of them as a courtesy. Thank you in advance for your consideration of our comments.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
O: Ex. 6
www.americanchemistry.com

++++++++++++++++++++++++++++++ This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, www.americanchemistry.com

May 19, 2017

Mr. James Belke
U.S. Environmental Protection Agency
Office of Land and Emergency Management
1200 Pennsylvania Avenue, N.W.
(Mail Code 5104A)
Washington D.C. 20460

Submitted electronically via www.regulations.gov

Re: Comments of the American Chemistry Council on *EPA Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date; Proposed Rule,* 82 Fed. Reg. 16,146 (Apr. 3, 2017) EPA Docket ID: EPA-HQ-OEM-2015-0725, RIN: 2050-AG91

Dear Mr. Belke:

The American Chemistry Council (ACC)[1] welcomes the opportunity to submit these comments in response to the U.S. Environmental Protection Agency's proposed rule referenced above. The proposed rule would stay until February 19, 2019, the effective date of the January 13, 2017, final rule amending 40 C.F.R. Part 68, the Risk Management Program (RMP) regulations. *See*, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Rule*, 82 Fed. Reg. 4594 (Jan. 13, 2017) (hereinafter "Final Rule"). ACC strongly supports this action for the reasons discussed below.

Background to the April 3, 2017 Proposed Rule

The effective date of the Final Rule is presently delayed until June 19, 2017. The EPA Administrator took that final action, pursuant to Clean Air Act (CAA) section 307(d)(7)(B), on March 16, 2017 after announcing on March 13, 2017 by letter that EPA would convene a proceeding for reconsideration of the Final Rule. *See*, *Accidental Release Prevention*

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[1] The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $797 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date; Final Rule, 82 Fed. Reg. 13,968 (Mar. 16, 2017). Section 307(d)(7)(B) authorizes the Administrator to stay the effectiveness of a final rule pending reconsideration for up to three months. 42 U.S.C. § 7607(d)(7)(B). In this administrative action, EPA is proposing to further delay the effective date of the Final Rule to February 19, 2019 to allow the Agency to complete the necessary steps involved in the reconsideration process. As discussed below, ACC strongly supports the proposed extension of the effective date of the Final Rule until February 19, 2019, or until the reconsideration process is complete.

Rationale for Delaying the Effective Date

EPA received three petitions for reconsideration of the Final Rule. On February 28, 2017, an administrative petition for reconsideration and request for an agency stay of the Final Rule was submitted to EPA by a group of trade associations consisting of ACC, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the Utility Air Regulatory Group.[2] On March 13, 2017, the Chemical Safety Advocacy Group (CSAG) submitted a petition for reconsideration and a stay, and on March 14, 2017, eleven states submitted a petition for reconsideration and request that EPA delay the compliance dates in the Final Rule.

EPA granted reconsideration of the Final Rule and stayed the rule until June 19, 2017. A continued administrative stay of the effective date is both appropriate and necessary as the Agency considers and addresses the numerous flaws in the Final Rule. Further staying the effective date of the Final Rule will prevent harm to ACC member companies and others in the regulated community and will serve the public interest. Specifically, the Final Rule is flawed and reconsideration is necessary to address several key provisions of the rule, some of which may be unlawful, as well as the following shortcomings of the rulemaking process:

- The Final Rule requires facilities to make available sensitive information about covered processes that could expose vulnerabilities to terrorists and others who may target refineries, chemical plants, and other facilities.

- The Final Rule raises significant security concerns and compliance issues that will harm ACC members and others in the regulated community. Certain provisions, such as the requirement to audit "each covered process" in a facility's compliance audit, impose costly and burdensome obligations on facilities immediately upon the Final Rule becoming effective.

- The Final Rule potentially undermines safety, creates significant security risks, and does nothing to prevent criminal acts that threaten facilities. The tragic explosion in

[2] Petition for Reconsideration and Request for Agency Stay Pending Reconsideration and Judicial Review of Final Rule titled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act* (hereinafter "RMP Coalition Petition for Reconsideration").

West, Texas was an impetus for the Final Rule, but the requirements in the Rule would do nothing to prevent or mitigate those acts.

- Some of the more significant defects of the RMP rulemaking process include: (1) procedural deficiencies that deprived commenters of effective notice and comment; (2) a change of circumstances from proposal to final that undermined the factual predicate for the rulemaking; and (3) the introduction of new provisions or rationales in the Final Rule for which commenters had no notice and that were not a logical outgrowth from what was proposed.

EPA's Authority to Delay the Effective Date

EPA has authority to delay the effective date of the Final Rule. In the proposal, EPA relies on its CAA section 307(d) authority to administratively stay the effectiveness of the Final Rule pending reconsideration for a period of three months. EPA has proposed to extend the stay to allow for the completion of the rulemaking process as consistent with its rulemaking authority under CAA section 307(d), which it states "generally allows the EPA to set effective dates as appropriate unless other provisions of the CAA control." 82 Fed. Reg. at 16,148. Here, no other provisions of the CAA mandate that EPA set a specific or earlier date by which the standards must be effective. Accordingly, EPA may exercise its discretion under Clean Air Act section 307(d) in delaying the effective date beyond three months.

EPA also has authority under section 112(r)(7)(A) of the CAA to establish the effective date of regulations promulgated under this subsection to address chemical accident prevention. Specifically, section 112(r)(7) provides that "[r]egulations promulgated pursuant to this paragraph [CAA section 112(r)(7)(A), Accident Prevention] shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable." 42 U.S.C. § 7412(r)(7)(A). Here, EPA has reasonably determined that setting the effective date of the Final Rule as February 19, 2019, is "as expeditiously as practicable," as EPA must "evaluate the objections raised by the various petitions for reconsideration of the Risk Management Program Amendments, consider other issues that may benefit from additional comment, and take further regulatory action." 82 Fed. Reg. 16,148-9.

Notably, this language—"as expeditiously as practicable"—appears in other parts of section 112 (such as: section 112(e)(1) (promulgating emission standards for certain sources); section 112(i)(3)(A) (establishing a compliance schedule for existing sources); and section 112(k)(3)(F) (implementing a national strategy to address emissions of hazardous air pollutants from area sources in urban areas)), but in each of those instances, the language is limited by a specified time frame or date certain by which the activity must be completed. For example, under section 112(k)(3)(F), Congress provided that EPA shall implement the national strategy for area sources "as expeditiously as practicable *assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990*." 42 U.S.C. § 7412(k)(3)(F)(emphasis added).[3] Clearly, Congress knew how to constrain EPA's discretion

[3] Section 112(e)(1) provides that EPA shall promulgate maximum achievable control technology (MACT) standards as expeditiously as practicable, but then goes on to require specific dates by which specific numbers of standards

when it meant for EPA to comply with a specific schedule, and included those constraints where it saw fit. However, Congress did not include such restrictions in the RMP accident prevention provisions. Instead, Congress gave the Administrator significant discretion to establish the effective date for RMP regulations as long as compliance is achieved as "expeditiously as practicable." Here, EPA's proposal to extend the stay through the rulemaking process comports with the requirement that compliance be achieved as expeditiously as practicable and therefore falls squarely under the discretion afforded the Agency under section 112(r)(7)(A) of the Clean Air Act.

Independently, EPA also has authority to stay the effective date of the Final Rule under section 705 of the Administrative Procedure Act (APA). 5 U.S.C. § 705. Under section 705, an agency may issue a stay while judicial review is pending if "justice so requires." *Id.* To demonstrate that justice requires a stay, the courts have found that the traditional four-part standard for injunctive relief applies to a request for a stay pending judicial review: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding, and (4) where the public interest lies. *See, Sierra Club v. Jackson*, 833 F.Supp.2d 11, 30-32 (D.D.C. 2012) (internal citations omitted) (concluding "that the standard for a stay at the agency level is the same as the standard for a stay at the judicial level: each is governed by the four-part preliminary injunction test…") *and Nken v. Holder*, 556 U.S. 418 (2009) (setting forth the traditional four-factor standard for a stay).

Judicial petitions for review have been filed on the Final Rule. As such, EPA may issue a stay under APA section 705 to delay the effective date of the Rule pending judicial review, provided it satisfies the four-factor test outlined above. *Sierra Club v. Jackson*, 833 F.Supp.2d at 26 (stating that "Congress did not intend to prohibit EPA or the federal courts from staying the effective date of emission standards pending judicial review under Section 705 of the APA" and concluding that EPA had the authority to issue a delay notice under this authority). The challenges to the Final Rule by the RMP Coalition and other industry petitioners, have a strong likelihood of success. ACC hereby incorporates by reference the arguments in the RMP Coalition's petition for reconsideration and request for a stay in the section titled "Request for an APA 705 Stay Pending Judicial Review."[4] In sum, petitioners can show that each of the four factors is satisfied: (1) petitioners are likely to succeed on the merits, given the deficiencies in the Final Rule, including that EPA exceeded its authority, or failed to identify its authority, for several key requirements; (2) the regulated community will suffer irreparable harm as a result of the security risks introduced by the rule, as well as the confusion and costs incurred as a result of complying with new requirements; (3) there will be no harm to others were a stay to be granted, given the lack of data on the benefits EPA claims will accrue from the new requirements beyond those produced by the existing (and effective) RMP program; and (4) the public has an overriding interest in the security of facilities. Thus, because EPA can show that "justice so

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must be issued. 42 U.S.C. § 7412(e)(1). Section 112(i)(3)(A) provides that EPA must require compliance by existing sources with emission standards as expeditiously as practicable, but then limits the compliance date to three years after the effective date of the standards, with some exceptions. 42 U.S.C. § 7412(i)(3)(A).

[4] RMP Coalition Petition for Reconsideration at 16-21.

requires" staying the rule for the reasons described here and discussed in more detail in the RMP Coalition's request for a stay, EPA may exercise its authority to delay the effective date of the Final Rule under the independent authority of APA section 705.

Unlike a stay under section 307(d)(7)(B) of the CAA, there is no limitation on the duration of a stay that may be issued under section 705 of the APA by either an agency or a court pending judicial review. Moreover, the fact that EPA has also stayed the rule pending reconsideration pursuant to its authority under CAA section 307(d)(7)(B) in no way limits its ability to use an APA section 705 stay when such a stay also serves to delay the effective date pending judicial review.

Duration of Delay Needed

EPA needs a minimum of eighteen months to ensure adequate time to undertake a full review of the issues under reconsideration and to complete a new rulemaking. EPA's reconsideration of the Final Rule will necessarily involve at least the following steps:

- Review the three petitions for reconsideration;
- Review the existing administrative record for the Final Rule;
- Review historical RMP data to determine whether changes to the existing regulations are needed;
- Draft proposed revisions to the existing RMP Final Rule;
- Conduct intra-agency review of the proposed revisions;
- Allow for review of the draft proposal by the Office of Management and Budget (OMB) (a process that may take up to 90 days);
- Publish the proposal in the Federal Register;
- Provide a public comment period (preferably 90 days);
- Review and consider comments submitted;
- Draft the new final rule;
- Draft the Response to Comments document;
- Conduct intra-agency review of the new final rule;
- Allow for OMB review of the final rule (which may take up to 90 days).

Therefore, a stay of at least eighteen months, or until February 19, 2019, is necessary to allow EPA to complete a robust review and rulemaking process to support needed revisions to the existing Final Rule.

Conclusion

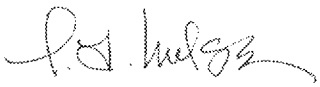
EPA has already been made aware of the central concerns raised by ACC and other petitioners regarding the Final Rule, but other issues may benefit from additional comment. Any proposed revisions to the existing RMP regulations must be supported by data and a sound rationale, including a showing that the additional cost of any new requirement is outweighed by specific benefits derived from that requirement.

Critically, time is of the essence in finalizing this proposed action. EPA must ensure that it takes final action on *this* proposal before June 19, 2017 to allow for a seamless extension of the effective date. Failure to do so would create significant confusion in the regulated community as to the immediate applicability of the Final Rule and compliance with its provisions.

ACC looks forward to our continued engagement in RMP rulemakings and to assist EPA, the Occupational Safety and Health Administration, and other federal stakeholders in finding ways to improve chemical process safety, support local emergency responders in responding to accident releases, and safeguard the communities living around our member companies' facilities.

Thank you in advance for your consideration of ACC's comments. If you have any questions please feel free to contact me directly at Ex. 6 or you may email me at Leslie_Hulse@americanchemistry.com.

Sincerely,



Leslie A. Hulse
Assistant General Counsel

Message

From: Huggins, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0314E81A1F4843FCBBE0910CFDDD53F4-HUGGINS, RICHARD]
Sent: 3/9/2017 12:40:28 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]; Fern Abrams [FernAbrams@ipc.org]
CC: Johnson, Barnes [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c39e9338cbf04dc3b4b29f78e5213303-Johnson, Barnes]; John Hasselmann [JohnHasselmann@ipc.org]; 'Rozsa, Gabe' [Gabe.Rozsa@prime-policy.com]; Hulse, Leslie [Leslie_Hulse@americanchemistry.com]; Hilosky, Nick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39e1182ac8cd4709ae0787ca4a068d2d-NHilosky]; Nam, Katherine [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960947dcfbc944538af795ab8f122cc9-KNAM]; Devlin, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b76a4bf5afc84459a6bf2a6a4645f40f-BDEVLIN]
Subject: RE: IPC meeting with OLEM
Attachments: IPC Generator Rule Sign in Sheet 3-8-17.pdf

Good morning everyone, as promised yesterday, attached is the sign in sheet from our meeting.

Have a good day,
Richard

Richard Huggins Jr.
Senior Special Assistant
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
Desk: 703-308-0017 iPhone: Ex. 6

From: Davis, Patrick
Sent: Monday, March 6, 2017 4:38 PM
To: Fern Abrams <FernAbrams@ipc.org>
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Subject: RE: IPC meeting with OLEM

Hi Fern,

Yes, indeed we are awaiting your arrival on Wednesday, March 8 at 2:30 p.m. We will be meeting in room 4144 West. Please enter the EPA at the West Building entrance located at 1301 Constitution Avenue.

Participating from the EPA:

Patrick Davis, Office of the Administrator
Katherine, EPA, OGC
Betsy Devlin, EPA, OLEM
Richard Huggins, EPA, OLEM

Thanks,
Patrick Davis

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Subject: RE: IPC meeting with OLEM

Dear Patrick,

I am writing to confirm our meeting on Wed March 8th at 2:30 pm. Can you provide a location for the meeting?

Our meeting attendees will be:
John Hasselmann, IPC VP Government Relations
Fern Abrams, IPC Director Regulatory Affairs
Leslie Hulse Assistant General Counsel, American Chemistry Council

Please let me know if you need additional information from us. May I ask who from EPA you expect will be attending?

For your reference and by way of background, I am enclosing the comments on the Hazardous Waste Generator Improvements Proposed Rule that were filed by IPC, ACC and other industrial generators organizations. During the meeting we hope to focus on the issue regarding Conditions for Exemption, discussion of which begins at the bottom of page 6 in the executive summary and in detail on page 14. I provide these only for your reference as we will discuss them during the meeting – please don't feel the need to read through them in advance.

We are looking forward to the meeting and thank you in advance for your time.

Sincerely,

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Absolutely – we like fast moving balls.

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Subject: RE: IPC meeting with OLEM

Dear Mr. Davis, Mr. Huggins and Mr. Barnes,

IPC appreciates the opportunity to meet with you to discuss our concerns with the recently issued Hazardous Waste Generator Improvements rule.

We are available next week on Wed, March 8th at 2:30 pm or anytime thereafter; on Thursday March 9th between 9am and 11 am or at 2:30pm or anytime thereafter; and on Friday March 10 after 2pm. If none of these times are convenient, we can look at the following week.

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Subject: IPC meeting with OLEM

Hi Fern,

Thank you for coming by the EPA today. I was a pleasure to meet you. I have copied Barnes Johnson and Richard Huggins from our Office of Land and Emergency Management for the purpose of scheduling a meeting regarding the hazardous waste generator issue.

Please let us know when you and your team would be available to come over to the EPA for a visit.

Sincerely,
Patrick Davis

DATE March 8 2017

PURPOSE Generator Rule Meeting

CUE COLUMN

NOTES

NAME	Organization	Email
Richard Huggins Jr.	US EPA / OLEM / ORCR	huggins.richard@epa.go
Betsy Devlin	US EPA / OLEM / ORCR	devlin.betsy@epa.gov
Leslie Hulse	ACC	leslie_hulse@americanchemistry.com
Fern Abrams	IPC	fabrams@ipc.org
John Hasselmann	IPC	johnhasselmann@ipc.o
Katherine Nam	US EPA / OGC	nam.katherine@epa.go
Patrick Davis	US EPA / OA	davis.patrick@epa.gov

SUMMARY

Message

From: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Sent: 3/8/2017 9:03:44 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: meeting tomorrow on RMP
Attachments: RMPCoalition - Cover Letter and Petition for Reconsideration and Stay.pdf

Hi Patrick,

It was so good to meet you today and thank you for any assistance you may be able to provide in persuading EPA to join with us in putting the case in abeyance and allowing for some discussions to see if we can resolve our differences on the HWG Rule.

As I mentioned to you, there is a 3pm meeting tomorrow at EPA on the RMP Rule (another rule that was rushed out the door in the last Administration) room 6528 North Bldg. The EPA staff that are likely to be present tomorrow are the following: Cheatham, Reggie; Doster, Brian; Averback, Jonathan; Jennings, Kim; Cogliano, Gerain; Bosecker, Elizabeth; Gioffre, Patricia; Franklin, Kathy; Belke, Jim; Clark, Becki; Brooks, Becky; Albores, Richard; and Indermark, Michele.

If you would be free to join in the meeting that would be great. I also was going to send an email to George Sugiyama about the meeting to see if he could stop by (he knows how important the RMP Rule is to a number of trade associations (ACC, API, U.S. Chamber, AFPM, NAM, etc) all of which will be present tomorrow).

I have attached the petition for reconsideration that we filed with EPA – this meeting stems from that filing.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
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February 28, 2017

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: Petition for Reconsideration and Request for Agency Stay Pending Reconsideration and Judicial Review of Final Rule entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*

Dear Administrator Pruitt:

Please find enclosed a petition for reconsideration and request for stay for the U.S. Environmental Protection Agency's final rule, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), 82 Fed. Reg. 4594, published in the Federal Register on January 13, 2017. This petition and request is filed on behalf of the RMP Coalition, consisting of the American Chemistry Council, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the Utility Air Regulatory Group.

Please contact me with any questions you may have.

Sincerely,

Justin Savage

Partner
justin.savage@hoganlovells.com
Ex. 6

cc: Michael Flynn, Acting Deputy Administrator, EPA
John Reeder, Acting Chief of Staff, EPA
Barry Breen, Acting Assistant Administrator, EPA Office of Land and Emergency Management

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act	)	Docket No. EPA-HQ-OEM-0725

PETITION FOR RECONSIDERATION AND STAY

Pursuant to Section 307(d)(7)(B) of the Clean Air Act ("CAA" or the "Act")[1] and Sections 553 and 705 of the Administrative Procedure Act (the "APA"),[2] the American Chemistry Council ("ACC"), the American Forest & Paper Association ("AF&PA"), the American Fuel & Petrochemical Manufacturers ("AFPM"), the American Petroleum Institute ("API"), the Chamber of Commerce of the United States of America (the "Chamber"), the National Association of Manufacturers ("NAM"), and the Utility Air Regulatory Group ("UARG") (collectively the "Coalition") hereby petition the Administrator of the U.S. Environmental Protection Agency ("EPA" or the "Agency") to reconsider and rescind its final rule entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4594 (Jan. 13, 2017) ("RMP rulemaking" or "Final Rule"), and to stay the effective date of the Final Rule.[3]

The Coalition shares EPA's goal of promoting process safety. EPA's data shows that the pre-existing RMP regulation promoted safety, with a significant decline in the rate of accidental releases and incidents in the last twenty years. Unfortunately, the Final Rule undermines safety, creates significant security risks, and does nothing to further prevent criminal acts that threaten facilities, such as the sabotage that led to the tragedy in West, Texas. We stand ready to work

[1] 42 U.S.C. § 7407. EPA promulgated the Final Rule under its authority in Section 112(r) of the CAA to issue rules to prevent, detect, and respond to accidental releases of regulated substances. CAA Section 112(r)(7)(E) provides that regulations or requirements under that subsection are to "be treated as a standard in effect under [CAA Section 112] subsection (d)," which in turn are subject to the rulemaking and review procedures of Section 307(d). Thus, rulemaking and petition requirements of Section 307(d) apply to regulations issued under Section 112(r).
[2] 5 U.S.C. §§ 553(e), 705.
[3] Due to the imminent compliance deadlines for certain requirements in the RMP Rule, the Coalition submits this initial petition today and reserves the right to supplement with additional material.

with EPA, OSHA and other federal stakeholders to find ways to improve chemical process safety, assist local emergency responders in responding to accident releases, and safeguard the communities living around our member companies' facilities.

The objections raised in this petition were either impracticable to raise during the comment period or arose subsequent to the end of the comment period and are of central relevance to the Final Rule. Section 307(d)(7)(B) of the CAA thus requires EPA to "convene a proceeding for reconsideration of the rule" and impart all the procedural rights that "would have been afforded had the information been available at the time the rule was proposed."[4]

The Coalition submits this Petition on the grounds that the Final Rule was procedurally deficient so as to deprive commenters of effective notice and opportunity to comment; that circumstances changed—and undermined the factual predicate for the rule—when the comment period was nearly over such that it was impracticable to comment on how those circumstances impacted EPA's proposed provisions; and that EPA introduced new provisions or rationales in the Final Rule for which commenters had no notice and which were not a logical outgrowth from what was proposed.

An administrative stay is appropriate and necessary while the Agency considers and addresses the numerous flaws in the Final Rule. Under Section 307(d) of the Act, EPA may grant a 90-day stay pending reconsideration, and we respectfully request that it do so. The Coalition also requests a stay under Section 705 of the APA pending resolution of the petition for review that the Coalition is filing in the U.S. Court of Appeals for the D.C. Circuit challenging the lawfulness of the Final Rule. A stay under APA Section 705 is not subject to the three month limitation that restricts stays under CAA Section 307(d) while petitions for reconsideration are pending, and may be issued by EPA while judicial review is pending if "justice so requires." EPA and the courts have determined that "justice so requires" a stay under APA Section 705 where the party filing the petition for review is likely to succeed on the merits, the party will incur irreparable harm without a stay, other parties will not be harmed by staying the rule, and it is in the public interest to stay the effective date of the rule.

Justice so requires a stay here. The Coalition is likely to prevail on the merits of its challenges to the Final Rule due to its numerous procedural and substantive flaws. Staying the Final Rule will prevent irreparable harm to the Coalition's member companies and will serve the public interest. The Final Rule raises ***significant security concerns*** and compliance issues that will cause irreparable harm to the Coalition members. The Final Rule, for example, compels facilities to make available sensitive information about covered processes that could expose vulnerabilities to terrorists and others who may target refineries, chemical plants and other facilities. Certain provisions, such as the requirement to audit "each covered process" in a facility's compliance audit, impose costly and burdensome obligations on facilities immediately upon the Final Rule becoming effective. The Final Rule should be stayed to grant EPA, the Department of Homeland Security ("DHS"), the Federal Bureau of Investigation ("FBI"), and other relevant agencies the opportunity to engage with stakeholders to discuss appropriate

[4] 42 U.S.C. § 7607(d)(7)(B).

protections to avert potential security risks. Because of imminent deadlines in the rule, the Coalition requests that EPA act as expeditiously as possible.

BACKGROUND

In the wake of the 2013 ammonium nitrate explosion at a fertilizer plant in West, Texas, President Obama issued Executive Order 13650 directing EPA, the Occupational Safety and Health Administration ("OSHA"), and DHS, in connection with other agencies, to collaborate in order to consider changes that could be made to prevent future similar incidents.[5] Executive Order 13650 required EPA to "review the chemical hazards covered by the RMP . . . and determine if the RMP . . . can and should be expanded *to address additional regulated substances and types of hazards*."[6] Once such additional regulated substances and types of hazards were identified, EPA was directed to "develop a plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP . . . *in a manner that addresses the additional regulated substances and types of hazards*."[7]

EPA accordingly issued a Request for Information in July 2014 and subsequently published a proposed rule, entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 81 Fed. Reg. 13,638 (Mar. 14, 2016) ("Proposed Rule"), to amend its RMP regulations on March 14, 2016.

Though ostensibly intended to address the Executive Order directive and the West, Texas explosion, EPA instead used this opportunity to significantly expand its authority and increase the burden of the RMP requirements on regulated industries without squarely addressing the conditions giving rise to the West, Texas explosion. For example, the Proposed Rule included provisions that would require facilities use third parties to conduct compliance audits after any reportable release or when an implementing agency required it due to "substantial noncompliance." In connection with this requirement, EPA proposed to severely limit who might

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[5] The government has since determined that the explosion was the result of an intentional criminal act rather than an accidental release. *See* ATF Announces $50,000 Reward in West, Texas Fatality Fire, (May 11, 2016), *available at* https://www.atf.gov/news/pr/atf-announces-50000-reward-west-texas-fatality-fire.

[6] Exec. Order No. 16,350; 78 Fed. Reg. 48,029, *Improving Chemical Facility Safety and Security* (Aug. 1, 2013) (emphasis added). Notably, ammonium nitrate is not a covered substance under the RMP Final Rule. *See* Final Rule, 82 Fed. Reg. 4602.

[7] *Id.*; *see also* Office of the Press Secretary, White House, Fact Sheet: Executive Order on Improving Chemical Facility Safety and Security (Aug. 1, 2013), *available at* https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/fact-sheet-executive-order-improving-chemical-facility-safety-and-security ("Today, the President signed an Executive Order to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to workers and communities. Chemicals and the facilities that manufacture, store, distribute and use them are essential to our economy. However, incidents such as the devastating explosion at a fertilizer plant in West, Texas in April are tragic reminders that the handling and storage of chemicals present serious risks that must be addressed.").

be considered an independent and competent "third-party." EPA also took the opportunity to impose numerous requirements on the audit itself that would increase the burden on affected facilities without any demonstrated safety benefit. For example, third-party audits would require having a licensed professional engineer on the audit team, retaining all draft audit reports, submitting draft and final audit reports to the implementing agency and the Board of Directors for the company, and generating a schedule for addressing all deficiencies identified in the audit report to be submitted to the implementing agency with a certification from a director of the company. Furthermore, neither the audit reports nor any "related records" were to be entitled to the protections of attorney-client privilege.

EPA also proposed to require safer technology alternatives analysis ("STAA") as part of the process hazard analysis ("PHA") for Program 3 facilities in certain NAICS code industries. Conducting an STAA would require these facilities to assess during the PHA whether any inherently safer technologies ("IST") or inherently safer designs ("ISD") might be available throughout the entirety of each covered process. For any IST or ISD identified, the facility would be required to conduct a feasibility analysis to determine whether the alternative could practicably be implemented. The Proposed Rule only vaguely alluded to how a facility might conduct such an analysis, without defining the relevant terms or adequately addressing how EPA might evaluate these analyses.

The Proposed Rule also addressed emergency response and disclosure obligations to local emergency planning committees ("LEPCs"), emergency responders, and the public. Among these provisions were separate but overlapping requirements for disclosing specific types of information to LEPCs and to the public. Facilities would be obligated to release extensive, highly sensitive, and detailed emergency response information—including STAA reports, compliance audit reports, accident histories, and incident investigation reports—to LEPCs upon request. EPA also proposed that information, including accident histories, be made readily available to the public at all times.

EPA's Proposed Rule was bereft of the basic details, diligent analysis, and procedural safeguards necessary for a major rulemaking. The Proposed Rule provided many questions but few answer on how to approach each topic and whether EPA should consider alternatives. As a result, the text read more like an advanced notice of proposed rulemaking than a proposed rule.

In the Proposed Rule, EPA failed to provide a rationale for certain changes. In the case of extending compliance audits to "each covered process," EPA not only failed to provide a rationale for the change but failed to even identify it as a proposed change to the regulatory text. More strikingly, EPA failed to conduct a proper cost-benefit analysis, declining to apportion benefits to particular provisions in the Proposed Rule or indeed even attempt to identify or quantify the expected benefits. Instead, EPA simply averred that it expected that some amount of the calculated costs of hazardous chemical accidents would be avoided due the proposed revisions. In describing each particular provision, EPA failed to connect the rationale of each provision to the costs and benefits of the proposal, much less consider costs or benefits of each provision at all. Finally, though OMB recommended a 90-day comment period, EPA allowed only 60 days to comment and refused to grant any of the many requests for an extension.

In its rush to finalize the rule before the new administration took office, EPA gave short shrift to the procedures mandated by the CAA and APA for promulgating new regulations. For example, EPA is required by statute to take the Proposed Rule's impact on small businesses into account through the Small Business Regulatory Enforcement Fairness Act ("SBREFA") process. However, EPA sent the Proposed Rule to the Office of Management and Budget ("OMB") for review just two weeks after EPA received the Small Business Advocacy Review ("SBAR") report, affording little time for EPA to thoughtfully consider and respond to the small businesses' concerns. This quick turnaround to OMB suggests that the Proposed Rule was already finalized when the SBAR report was issued. Moreover, EPA failed to provide for public comment supporting evidence for its proposed provisions. When EPA published its Proposed Rule, numerous documents were missing from the regulatory docket that EPA claimed it relied on, such as safety data from jurisdictions that require IST.

The comment period closed on May 13, 2016, despite multiple requests from Coalition members and others that EPA extend the comment period. After the close of the comment period, EPA added more than 100 new documents to the docket, several of which EPA cited to support its position on core provisions of the Final Rule, including the STAA and third-party audit provisions. Because the comment period had already closed, affected parties were denied the opportunity to review and provide informed comment on the additional materials EPA used to form its Proposed Rule. EPA signed the Final Rule on December 21, 2016, and published it on January 13, 2017, exactly one week before the inauguration of a new administration. The Final Rule goes into effect on March 21, 2017.

ISSUES MERITING RECONSIDERATION

EPA should reconsider its RMP Final Rule. Numerous procedural deficiencies deprived the public of a full and fair opportunity to comment. Among other shortcomings, EPA's comment period did not allow for thoughtful consideration of the many open-ended questions and technical regulatory provisions put forth in connection with the Proposed Rule. EPA significantly changed the Final Rule's required disclosures to LEPCs and the public in a manner that could not be anticipated from the proposed rule and threatens continued security of facilities. EPA also failed to conduct an adequate assessment of the costs and benefits of the various provisions of its proposed or Final Rule, as required by *Michigan v. EPA*[8] and Executive Order 13563, such that it could not demonstrate that the benefits exceeded the expected costs for any of its proposed requirements. EPA also failed to provide a rationale for its new requirement that compliance audits address "each covered process," preventing the public from being able to comment on the data and policy reasons underpinning this substantial revision to the RMP requirements.[9] Finally, data and documents supporting EPA's third-party audit and STAA

[8] 135 S. Ct. 2699 (2015).

[9] *See* AFPM, Comment on EPA's Proposed Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) (EPA-HQ-OEM-2015-0725), Docket # EPA-HQ-OEM-2015-0725-0579 and EPA-HQ-OEM-2015-0725-0580, at 39-42 (May 13, 2016) ("AFPM Comments"); API, Comments of the American Petroleum Institute on EPA Docket ID No EPA-HQ-OEM-2015-0725 Accidental Release Prevention Requirements: Risk

requirements were either added to the docket too late to practicably comment on the Agency's underlying support or are not publicly available at all. In accordance with the CAA, EPA therefore must reconsider its RMP Final Rule and remedy these procedural defects by providing adequate notice and opportunity to comment on the provisions, policy rationales, granular cost-benefit analyses of each new regulatory requirement, and record support it intends to rely on for any final rule.

In addition to EPA's failures and omissions that rendered the rulemaking process deficient, the revelation two days prior to the end of the comment period that the West, Texas incident was a criminal act caused by an intentionally set fire changed the circumstances that prompted the Executive Order that resulted in this rulemaking. It was impracticable for commenters to account for these changed circumstances in time to address them in their comments. EPA should reconsider the RMP regulations given this new information, potentially emphasizing limited and narrowly tailored information disclosures with protective procedures and improvements to facility security, rather than implementing onerous procedural requirements that are unlikely to lead to greater public safety and may in fact jeopardize it.

I. The Numerous Procedural Flaws in the RMP Rulemaking Precluded Effective Notice and Comment

Multiple procedural deficiencies in EPA's RMP rulemaking prevented Coalition members from being able to comment effectively on the provisions of and support for EPA's Final Rule. Because of these flaws, the Final Rule should be reconsidered.

A. New LEPC Disclosure Requirements Pose Significant Security Risks

In the Final Rule, EPA introduced a new provision for disclosures to LEPCs, requiring facilities to provide information that could severely compromise security. Had EPA proposed this broad requirement to allow LEPCs access to any sensitive information they deemed "relevant" for emergency planning, including information about the security vulnerabilities associated with a facility's hazardous substances, Coalition members would have raised strenuous objection to such unfettered disclosure and recommended measures to insure proper access and public safety. Instead, EPA included broad LEPC disclosure requirements only in the Final Rule, precluding public input on these provisions. In light of the unjustified and unanticipated expansion of LEPC disclosure requirements, EPA should reconsider disclosure obligations in the Final Rule.

Without notice to the stakeholders, the Final Rule drastically expanded the scope of information subject to LEPC disclosure. The Proposed Rule included a list of specific material that facilities would be required to disclose to LEPCs upon request.[10] Coalition members opposed this disclosure of unnecessary and potentially sensitive information as a whole but

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Management Programs Under the Clean Air Act, Proposed Rule, Docket # EPA-HQ-OEM-2015-0725-0536, at 14 (May 13, 2016) ("API Comments").

[10] Proposed Rule, 81 Fed. Reg. at 13,711-12.

generally focused their objections on disclosure of one or more particular types of information.[11] However, in the Final Rule, EPA changed course: it replaced the delimited list of categories of information facilities had to disclose to an LEPC upon request with a broad requirement to provide "any other information that local emergency planning and response organizations identify as relevant to local emergency planning" upon request by an LEPC.[12] This new requirement gives nearly unfettered discretion to an LEPC to request any information it thinks might be helpful. Notably, where the Proposed Rule only required facilities to provide summaries of information on hazardous chemicals—itself objectionable on security grounds—the Final Rule requires facilities to release any relevant information that an LEPC might request, potentially including full documents with extensive details of security vulnerabilities. Against this nearly unfettered discretion, EPA did not provide a facility owner or operator any authorization to refuse to provide requested information on security grounds. In fact, by moving the disclosure requirement from its own provision to a subsection of the "Emergency response coordination activities" provision, EPA also eliminated the CBI and classified information protections of the Proposed Rule. EPA also did not provide any limits or protections on the disclosure of information by LEPCs to the public.

EPA's initial proposal—an enumerated list of specific information to disclose to an LEPC on request—did not provide notice that EPA might alter its requirement in the Final Rule to allow an LEPC to request any information it wants. If EPA had given any indication that it would finalize such an open-ended disclosure provision with no discretion given to the facility when a request raises significant security concerns, the regulated community, including the Coalition members, would have commented differently and urged EPA to provide adequate safeguards and limited access for sensitive information. Had EPA reviewed comments from the regulated community on the breadth of this final requirement and the significant information security risks posed by releasing any and all information the LEPC wants, it likely would have included necessary safeguards to protect public safety in the Final Rule.

B. EPA Introduced a New Third-Party Audit Trigger

EPA also introduced a new provision in the Final Rule for triggering its third-party audit requirements. The Proposed Rule included two triggers for EPA's proposed third-party audit requirement: an accidental release, as defined by the existing regulations, or "an implementing agency requir[ing] a third-party audit based on non-compliance with the requirements of this

[11] *See* ACC, Comments of the American Chemistry Council on EPA Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule, Docket # EPA-HQ-OEM-2015-0725-0537, at 57-59 (May 13, 2016) ("ACC Comments"); AF&PA, Docket ID No. EPA–HQ–OEM–2015-0725, Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act (81 Fed. Reg. 13,638 (March 14, 2016)), Docket # EPA-HQ-OEM-2015-0725-0551, at 25 (May 13, 2016) ("AF&PA Comments") (summaries of compliance audit reports, STAA, audit reports); AFPM Comments at 72 (names and quantities of regulated substances at facilities); API Comments at 27 (accident history, compliance audit reports, incident investigation reports, and STAA).
[12] Final Rule, 82 Fed. Reg. 4667.

subpart."[13] In the Final Rule, EPA retained the first trigger but replaced the second with a new triggering circumstance: "An implementing agency requires a third-party audit due to conditions at the stationary source that *could* lead to an accidental release of a regulated substance."[14] As examples of such conditions, EPA points to "significant deficiencies with process equipment containing regulated substances, such as unaddressed deterioration, rust, corrosion, inadequate support, and/or other lack of maintenance;" "small 'pinhole' releases, that do not meet the criteria in § 68.42(a) for RMP-regulated releases;" and the "occurrence of several prior accidental releases that did not meet the reporting criteria."[15] EPA seems to contemplate that a fully-compliant facility with a non-reportable event may still meet the criteria of having "conditions . . . that could lead to an accidental release" such that a third-party audit could be required.

Though EPA claims that it only "modifie[d] the criterion," the Final Rule provision transformed a predictable trigger (non-compliance with specific regulations) into an unpredictable one that relies entirely on the implementing agency's discretion to determine which conditions "*could* lead to an accidental release."[16] The Proposed Rule had identified a specific condition EPA thought was problematic, namely noncompliance with regulations. The Final Rule provision is unrelated to legal compliance and subject to the whims and imagination of the implementing agency. Commenters had no opportunity to object to the incredible breadth of a requirement that covers any conditions that *could* lead, no matter how remote the chance of the condition resulting an accidental release.

Accordingly, EPA's response to comments in the Final Rule does not address this point. In response to commenters' concerns that "third-party compliance audits will become an overwhelming compliance function," EPA "disagree[d]" and claimed that it had "limited applicability" of third-party audits.[17] However, EPA only addressed the expected rate of audits resulting from the "accidental release" trigger.[18] It could not respond to comments about how frequently "conditions . . . that could lead to an accidental release of a regulated substance" would trigger third-party audits because commenters had no opportunity to consider the matter. In response to commenters' concerns about the potential frequency of third-party audits, EPA created an entirely new triggering circumstance. EPA should reconsider its Final Rule to allow for appropriate notice and comment on this new, discretionary triggering provision.

C. EPA Omitted Information on its Cost-Benefit Findings in Violation of *Michigan v. EPA*

While the CAA requires EPA to include cost findings in proposed rules, EPA failed to quantify benefits, link costs and benefits to specific provisions of the Proposed Rule, and include cost findings in the Proposed and Final Rules. These failures violate EPA's obligations under the

[13] Proposed Rule, 81 Fed. Reg. at 13,706.
[14] Final Rule, 82 Fed. Reg. at 4699 (emphasis added).
[15] *Id.* at 4616.
[16] *Id.* at 4699.
[17] *Id.* at 4615.
[18] *Id.* at 4615.

CAA and *Michigan v. EPA*, and deprived Coalition members of an opportunity to provide comments that would have impacted EPA's analysis. EPA should grant the petition to reconsider so that it may include the required cost findings and provide the public an opportunity to comment on the analysis.

1. Michigan v. EPA *requires EPA to provide an assessment of the reasonableness of its proposed provisions' costs for public comment.*

The CAA requires EPA to propose cost findings for most proposed rules, including the RMP rulemaking. Well before EPA issued the RMP Proposed Rule, the Supreme Court made clear in *Michigan v. EPA* that the CAA imposes a duty on the Agency to propose cost findings for public comment unless Congress expressly and unequivocally prohibits consideration of costs.[19] In *Michigan v. EPA*, the Court reviewed an EPA regulation addressing emissions from power plants, referred to as the Mercury and Air Toxics Standards ("MATS") rule. EPA had promulgated the MATS rule pursuant to Section 112(n)(1) of the Act, which requires EPA to determine whether such regulation was "appropriate and necessary" in light of the other requirements imposed on power plants in the statute.[20] The Court held that EPA had unreasonably refused to analyze costs when deciding whether it was "appropriate" to regulate hazardous air pollutants from power plants.

The Court considered "appropriate" a "broad and all-encompassing term" that required "consideration of all relevant factors."[21] The Agency cannot consider "all relevant factors" if it "entirely fai[ls] to consider an important aspect of the problem"—namely, cost.[22] The Court held that "[n]o regulation is 'appropriate' if it does significantly more harm than good."[23] It explained:

> Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions. It also reflects the reality that too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.[24]

Because EPA failed to weigh "the advantages *and* disadvantages of" regulation to ensure that its rule would not "do[] significantly more harm than good," the Court found EPA's assessment that regulation was "appropriate" unreasonable.[25]

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[19] 135 S. Ct. 2699 (2015).
[20] 42 U.S.C. § 7412(n)(1).
[21] *Michigan v. EPA*, 135 S. Ct. at 2707.
[22] *Id.*
[23] *Id.*; *see also id.* ("One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits.").
[24] *Id.* at 2707-08 (emphasis in original).
[25] *Id.* (emphasis in original).

The Court's rulemaking requirement in *Michigan v. EPA* applies equally to the RMP rulemaking. Section 112(r)(7) obligates EPA to consider costs when promulgating these RMP amendments. Specifically, Section 112(r)(7) requires "*reasonable* regulations and *appropriate* guidance to provide, to the greatest extent *practicable*, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases."[26] This statutory language closely tracks the "necessary and appropriate" framework that compelled EPA to consider costs under Section 112(n)(1) of the Act in *Michigan v. EPA*. Thus, to promulgate a "reasonable" and "appropriate" RMP regulation that is "practicable," EPA must adequately assess the costs of its Proposed Rule and determine whether they are disproportionate to the benefits the Proposed Rule would confer.

2. *EPA failed to assess costs as required by* Michigan v. EPA.

Without any explanation, the RMP rulemaking wholly ignored the dictate of *Michigan v. EPA* and failed to make cost findings that complied with the decision. While the Proposed Rule summarized annualized costs, in lieu of a true analysis of benefits, EPA quantified the damages from releases and accidents over the past ten years and summarily claimed that "some portion of future damages would be prevented through implementation of a final rule."[27] EPA stated that it was "unable to quantify what specific reductions [in damages] may occur as a result of these revisions."[28] Instead it flatly asserted that it "anticipates that promulgation and implementation of this rule would result in a reduction of the frequency and magnitude of damages from releases."[29] EPA did not even attempt to link the cost of the proposed provisions with the potential benefit, much less analyze the impact on industry and the public. Instead, with no detailed explanation, EPA simply claimed that, by reducing accidents and improving disclosure, the Proposed Rule would "provide benefits to potentially affected members of society."[30] The cost findings contained in the Proposed Rule were a far cry from the detailed analysis required by *Michigan v. EPA*.

EPA's perfunctory analysis of the costs and benefits of the Proposed Rule denied Coalition members the ability to participate in this rulemaking in a meaningful and informed manner. By providing no information quantifying the benefits and the costs of EPA's proposed revisions, Coalition members could not meaningfully provide alternative solutions that would have less of an impact on industry functions and specific cost data for EPA's consideration. Nonetheless, EPA received a number of comments critiquing EPA's low cost estimates in the Proposed Rule.[31] In response, EPA recalculated and revised some of the costs in the Final Rule.

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[26] 42 U.S.C. § 7412(r)(7)(B)(i) (emphasis added).
[27] Proposed Rule, 81 Fed. Reg. at 13,642, 13,694.
[28] *Id.*
[29] *Id.*
[30] *Id.* at 13,643, 13,694.
[31] Response to Comments ("RTC") at 226-27; ACC Comments at 32; API Comments at 13-14; American Forest & Paper Association, American Iron and Steel Institute, ILTA, National Association of Manufacturers, and U.S. Chamber of Commerce, Comment on EPA's Proposed Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air

However, EPA's limited analysis provided no basis to review and comment on EPA's summary conclusion.

Several commenters, including Coalition members, identified this glaring omission and requested that EPA issue a supplemental notice of rulemaking to explain how it intended to comply with *Michigan v. EPA*.[32] In response to these comments, EPA offered a general statement of its "belief" as analysis of the relationship of costs and benefits of the Final Rule:

> When considering the rule's likely benefits that are due to avoiding some portion of the monetized accident impacts, as well as the additional non-monetized benefits described previously, EPA believes the costs of the rule are reasonable in comparison to its benefits.[33]

In the cost and benefits section of the Final Rule, EPA attempted to make it appear that it had performed a quantitative analysis to comply with its obligations under *Michigan v. EPA*.[34] EPA's statement, however, simply concluded that the annual projected cost of compliance was half of the annual estimated damages from accidents and releases. This apples-to-oranges comparison reiterates EPA's statement in the Proposed Rule without providing any meaningful assessment of the relationship between costs to benefits of the Final Rule. Apart from these two conclusory statements, EPA attempted no further analysis of the cost findings. This overarching flaw in the RMP rulemaking warrants reconsideration.

D. <u>EPA Made a Stealth Change to the Scope of Compliance Audits</u>

Consistent with longstanding agency guidance and best practices, facilities typically audit a representative sample of covered process units to determine compliance with certain requirements when conducting an RMP or Process Safety Management audit. The Proposed Rule abruptly broke from this precedent. EPA revised the regulatory text in the Proposed Rule from the existing requirement for an owner or operator to evaluate "compliance with the provisions of this subpart at least every three years" to the proposed requirement to evaluate "compliance with the provisions of this subpart *for each covered process*, at least every three years . . . ."[35]

Act, Section 112(r)(7) (EPA-HQ-OEM-2015-0725), Docket # EPA-HQ-OEM-2015-0725-0559, at 12 (May 13, 2016) ("NAM, AF&PA, and Chamber Comments").

[32] *See, e.g.*, AFPM Comments at 56-59; NAM, AF&PA, and Chamber Comments at 12.

[33] *See* Final Rule, 82 Fed. Reg. at 4598; RTC at 219 ("EPA acknowledges that many of these provisions will require time and monetary commitments to implement. EPA also believes that many of these provisions are necessary updates to the existing RMP rule to ensure continued public safety concerning the operation of chemical facilities in and near communities.").

[34] "The 10-year RMP baseline suggests that considering only the monetized impacts of RMP accidents would mean that the rule's costs may outweigh the portion of avoided impacts from improved prevention and mitigation that were monetized. The annualized cost of the final rule (approximately $142 million annually) is approximately 52% of the average annual monetized costs in the 10-year baseline." Final Rule 82 Fed. Reg. at 4597-98.

[35] Proposed Rule, 81 Fed. Reg. at 13,704.

However, nothing in the preamble to the proposal alerted the public to this change, much less provided a discussion of the rationale for this revision and the significant impacts that would result from such a change. EPA provided neither notice of nor a justification for this regulatory amendment. Though a few commenters detected EPA's revision and questioned its inclusion,[36] most missed this buried revision.

In the Final Rule, EPA responded to those few commenters who noticed the change, providing a lengthy defense for extending the audit requirement to "each covered process," but never analyzing—let alone justifying—the extreme increase in auditing expenses associated with this change. Putting aside the merits of EPA's defense, stakeholders had no opportunity to review EPA's rationale. The Agency, for example, alleged that facilities arbitrarily designate covered process units to evade compliance audit obligations, an unsubstantiated allegation that the Agency had never aired in any RMP rulemaking proceeding.[37] With proper notice, everyone would have had a fair opportunity to comment on EPA's proposed revision, produce data on costs facilities would incur from this revision, and identify flaws in EPA's underlying rationale. EPA must therefore reconsider the "each covered process" requirement and initiate a new notice-and-comment period with the benefit of the Agency's factual support, policy rationale, and cost-benefit analysis in order to allow commenters to understand and address EPA's proposed regulatory amendment.[38]

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[36] AFPM Comments at 39-42; API Comments at 15.

[37] Final Rule, 82 Fed. Reg. at 4615 ("EPA has determined that further self-auditing may be insufficient to prevent accidents and ensure safe operation.").

[38] In response to comments that "each covered process" constituted a substantive change, EPA asserts in the Final Rule that this modification was simply a clarification to render the RMP regulations consistent with longstanding EPA interpretation. However, neither EPA's current General Risk Management Guidance nor OSHA's Appendix C to § 1910.119—Compliance Guidelines and Recommendations for Process Safety Management (Nonmandatory), cited by EPA in the Final Rule to support its contention, discuss auditing each covered process. EPA's original Proposed Rule for RMP regulations in 1993 would have required "that over each three-year period, all covered processes are audited." 58 Fed. Reg. 54,190, 54,199 (Oct. 20, 1993). However, the original RMP regulations underwent significant changes between the proposed and final rules, including to the auditing provisions, and EPA did not confirm this position. Moreover, based on EPA's past inspections and enforcement actions, it is clear that EPA has condoned industry's longstanding use of representative sampling in the RMP auditing context. Furthermore, auditing "all covered processes" is not preclusive of auditing a representative sample that represents all of the covered processes, as compared to "each covered process," which necessarily requires each covered process to have its own audit. Finally, even if EPA generally interpreted its regulations to require an audit of each covered process, such a policy or interpretation is a matter of agency discretion that could be changed without rulemaking and disputed in court. In contrast, as part of the regulatory requirements, facilities must now audit each covered process separately or be subject to enforcement action. EPA therefore had a duty to identify this clause as a substantive change and to provide factual support and policy rationale for the change in the proposed and final rules.

E. New Legal Rationales for Third-Party Audits and STAA Merit Reconsideration of the Final Rule

Reconsideration is warranted because EPA failed to explain its statutory authority for the RMP rulemaking, depriving the public of a fair and full opportunity to engage with the Agency on the legal basis for the rulemaking. In the preamble to the proposal, EPA merely quoted the statutory text of Section 112(r)(7)(B)(i) and referred the public to the original RMP rulemaking.[39] Nowhere did EPA explain these existing authorities, nor did EPA justify the numerous novel RMP obligations found in the proposal. When Coalition members raised issues concerning EPA's lack of statutory authority, the Agency revealed several new legal rationales in the Final Rule, none of which were provided to the public for comment.

Two examples below illustrate the need for EPA to propose for public comment the legal rationale for the RMP rulemaking.

First, none of the Agency's legal justification of third-party audits was ever made available for public comment. Coalition members pointed out in comments that the Administrative Conference of the United States ("ACUS") wrote a report recommending that agencies explain the legal basis for third-party audits before imposing such audits.[40] That recommendation was well-known to EPA, as the ACUS report was cited repeatedly in the preamble to the Proposal.[41] When commenters pressed EPA on its authority to enlist private parties to enforce the Act through third-party audits,[42] the Agency purported to rely on a 1989 Senate Committee report that makes a passing reference to "consultants." That Senate report was not part of any analysis in the Proposal. Nor does it explain how the statutory text of Section 112—as enacted in 1990—provides legal authority for third-party audits for RMP.

Besides the Senate report, EPA argues in the preamble to the Final Rule that "[t]hird-party audits do not constitute enforcement,"[43] and therefore third-party audits do not run afoul of the constitutional, statutory, and policy limits on EPA using private parties to enforce the CAA, none of which EPA contests as limitations on its authority. Yet in other parts of the preamble to the Final Rule and in the Response to Comment document, EPA states that third-party audits are an enforcement tool to push companies toward the Agency's view of "compliance."[44] None of this equivocating analysis appeared in the Proposed Rule.

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[39] Proposed Rule, 81 Fed. Reg. at 13,646.

[40] *See* L. McCallister, Administrative Conference of the U.S., Third-Party Programs Final Report, 5 (Oct. 22, 2012) ("In many cases, Congress provided legislative authority for the third-party program and set forth certain design elements in statute. In other cases, agencies have implemented third-party programs under existing statutory authority."); Proposed Rule, 81 Fed. Reg. at 13,655-56.

[41] Proposed Rule, 81 Fed. Reg. at 13,655-56.

[42] *See, e.g.*, AFPM Comments at 93-94.

[43] Final Rule, 82 Fed. Reg. at 4613.

[44] RTC at 59 ("EPA believes that conducting the third-party compliance audits .... is necessary to identify and correct existing non-compliance ...."); *id* at 83 (The "final rule will require the

Second, EPA's legal defense of STAA rested on a wholly novel invocation of Section 112(r)(7)(A) of the Act, a provision that, until the Final Rule, EPA had never interpreted in any prior rulemaking. Consistent with that regulatory history, EPA relied upon Section 112(r)(7)(B) as the authority for the proposal, citing that provision in the "Statutory Authority," "Compliance Dates," and "Paperwork Reduction Act" sections of the preamble to the proposal.[45] When Coalition members argued that the text of Section 112(r)(7)(B) provided no authority for STAA, EPA changed tack and invoked Section 112(r)(7)(A), providing a lengthy analysis of that provision in the Final Rule that no one had an opportunity to comment upon. Indeed, the only time EPA has considered its rulemaking authority pursuant to Section 112(r)(7)(A), EPA stated that it was "investigating whether regulations, other than today's proposed rule on risk management programs, are necessary to prevent and detect accidental releases."[46] EPA has not relied on or promulgated regulations in connection with that statutory authority since that time.

The RMP rulemaking raised novel and important legal questions, including the first ever third-party audit mandate and STAA related requirements in an EPA rule. Those questions deserve public input and comment.

F. EPA Added Numerous Supporting Documents After the Close of the Comment Period and Still Failed to Support Its Position on Core Issues

After the close of the comment period, EPA posted 129 documents to the docket after the close of the comment period, 119 of which were posted on January 13, 2017, the day the Final Rule was published in the Federal Register. This additional support and information—which spans thousands of pages—was not available for review during the comment period. These were more than mere peripheral materials. EPA claimed that the newly disclosed materials included documents that support its position on core issues such as third-party audits, STAA, and LEPC disclosures. During the comment period, Coalition members raised concerns about the lack of data supporting increased safety in jurisdictions with STAA or supporting increased safety from third-party audits.[47] While EPA contends that the newly disclosed documents address these concerns, they plainly fail to do so.[48] Rather than justify its contention that the new STAA and third-party audit provisions would enhance safety, EPA merely cites to three white papers on how third-party monitoring impacts compliance. EPA does not use these materials to analyze how third-party audits impact safety at facilities, but merely infers that requiring audits will result in greater safety. While EPA claims that the new documents also address STAA requirements impact on safety, it cites to no additional documents in the record. Rather, EPA consistently presupposes that the new STAA regulations will improve safety. Moreover, the late—and insufficient—addition of these documents prevented commenters from reviewing and analyzing EPA's justification for these provisions. Given these deficiencies, EPA should reconsider the Final Rule.

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owner or operator to certify in the findings response report that deficiencies are being corrected.").

[45] Final Rule, 82 Fed. Reg. at 4675, 4687.

[46] 58 Fed. Reg. 54,191-93 (Oct. 20, 1993).

[47] AFPM Comments at 100-07, 137-140.

[48] Final Rule, 82 Fed. Reg. at 4622-23.

II. Changed Circumstances Regarding the West, Texas Incident

EPA also should reconsider the entire focus of the RMP Final Rule in light of the revelation that the West, Texas, incident was an intentional criminal act of arson. In addition to the need for EPA to reopen this rulemaking based on the substantive flaws identified in this petition, EPA should open a new notice-and-comment period to allow commenters the opportunity to address this critical fact. Though both accidental release prevention and security are RMP goals that commenters had in mind during the comment period, the fact that the explosion that gave rise to this rulemaking was an act of arson would refocus commenters' thinking and likely would provide EPA with ideas and recommended approaches to try to prevent such an occurrence in the future.

This RMP rulemaking is the result of an Executive Order from President Obama that instructed agencies to consider revising the RMP and other regulations in order to prevent further incidents like the one that occurred in West, Texas, in 2013. When the Executive Order was issued and during the entire period EPA was crafting its Proposed Rule, it was believed that the West, Texas, incident was a terrible accident caused by carelessness and improperly managed hazardous materials. From this understanding, EPA formulated a Proposed Rule that was supposed to address those particular hazards early, identify any noncompliance with regulatory programs that might lead to an accident, more thoroughly investigate accidents that did occur to prevent future ones, explore new technologies that might prevent such accidents, and inform LEPCs and the public about past and potential accident scenarios. EPA's proposed regulatory revisions were based on the mistaken understanding that West, Texas, incident was a preventable accident.

On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") announced that it had determined the fire that triggered the explosion at the West, Texas, fertilizer facility had been intentionally set and was the result of a criminal act.[49] This revelation undercut the assumptions underlying the Proposed Rule for both EPA and commenters. Different measures are required to increase security and prevent criminal acts than those designed to avoid accidental releases. At times, the goals of security and accident prevention and a policy supporting the "public's right to know" are at odds with one another. The outcome of the West, Texas, investigation suggests the weighting of those goals against the broad dissemination of information to the public should come out differently. Different measures are required to address the concerns raised by the incident. However, EPA's Proposed Rule was already written, and the comment period ended two days later on May 13, 2016.

Though some commenters briefly mentioned ATF's determination in their comments, EPA's refusal to extend the comment period or request supplemental comments, made it impracticable to consider the implications for each of EPA's proposed provisions and revise the comments to account for those changed circumstances. Furthermore, though EPA referenced ATF's announcement several times in the Final Rule, it was constrained under the CAA in how much it could adjust the Final Rule based on its Proposed Rule. Fully accounting for these

[49] ATF Announces $50,000 Reward in West, Texas Fatality Fire, (May 11, 2016), *available at* https://www.atf.gov/news/pr/atf-announces-50000-reward-west-texas-fatality-fire.

changed circumstances requires reconsideration and a new Proposed Rule with notice and comment.

As the primary driver behind the Executive Order that inspired this rule, and the focus of EPA's introduction to the Proposed Rule, the circumstances surrounding the West, Texas, incident highlight the risks central to the Final Rule. Knowing that the incident was intentional would could have impacted the scope of the Executive Order, certainly have changed the comments EPA received, and likely would have caused EPA to construct its proposed and final rules differently had it known of these circumstances at the time of the proposed rulemaking. For example, EPA might have focused its proposal on enhanced security measures for facilities, strict scrutiny of the type of information that should be disclosed to LEPCs or the public, protections for that information, prohibitions against using any sensitive information from these facilities to cause harm to the public or the environment, or screening measures for third parties with access to the facility and its sensitive information. Reliance on the EO as the predicate for this rule, combined with the West, Texas, investigation results further merits reconsideration of the EPA's RMP Final Rule.

REQUEST FOR CAA 307(d) STAY PENDING RECONSIDERATION

While EPA is reconsidering a rule, Section 307(d)(7)(B) of the Clean Air Act permits EPA to stay the effectiveness of that rule "for a period not to exceed three months."[50] This stay gives the Agency time to reconsider its position and review the rule's requirements without imposing unnecessary compliance costs on regulated entities. EPA may also use a 307(d) stay to avoid any confusion in the regulated industry from the Agency implementing and then quickly revising its regulatory requirements. Staying the effective date of the rule until EPA completes its reconsideration process avoids any such regulatory whiplash.

The Coalition respectfully requests that EPA exercise this authority under the CAA to stay the effectiveness of the RMP Final Rule to the fullest extent permissible by statute pending reconsideration. Facilities with RMP covered processes will begin to incur significant compliance costs such as rule familiarization, training, revising manuals and operating procedures, and conducting compliance audits for "each covered process" soon after the Final Rule takes effect. Staying the rule during reconsideration will avoid imposing these compliance costs prematurely and avoid confusion among facility personnel from learning potentially unnecessary requirements imposed by the Final Rule. A stay would afford EPA the needed time to fully reconsider its Final Rule.

REQUEST FOR AN APA 705 STAY PENDING JUDICIAL REVIEW

In addition to this petition for reconsideration, the Coalition is filing a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the Final Rule on the grounds that EPA exceeded its statutory authority, failed to follow procedures required by the APA and CAA for agency rulemaking, did not adequately consider costs or assess benefits, and did not adequately respond to all significant comments. While judicial review is pending, Section 705 of

[50] 42 U.S.C. § 7607(d)(7)(B).

the APA allows EPA to stay the effective date of a final rule if it "finds that justice so requires."[51] The Coalition requests that EPA make such a finding here.

EPA may stay the effective date of the Final Rule, currently set for March 21, 2017, if it "finds that justice so requires." Both EPA and the courts have applied the four-part test for preliminary injunctions to determine whether "justice so requires" a stay of agency action pending judicial review. Under that standard, the agency must consider and moving parties must demonstrate: (1) a likelihood of success on the merits of the judicial challenge, (2) irreparable harm to the moving party if the stay is not granted, (3) the potential for harm to others if the stay is granted, and (4) whether the public interest weighs in favor of granting the stay. As explained below, each of these factors weighs in favor of staying this Final Rule until the resolution of judicial review.

A. The Coalition Is Likely to Succeed on the Merits

The Coalition's petition for review is likely to be granted on its merits. The Final Rule contains several provisions that exceed EPA's statutory authority to issue regulations under CAA Section 112, including the requirements regarding third-party audits and STAA. EPA failed to identify its statutory authority for requiring third-party audits in the Proposed Rule. In the Final Rule, the Agency only referenced Senate Reports about its general enforcement authority. EPA also did not identify its statutory authority to require STAA until the Final Rule. Finally, to the extent that EPA imposes regulatory requirements for exclusively on-site effects that impact only workers and facility property, it exceeds its statutory directive to address public health and the environment, and encroaches on OSHA's jurisdiction.

The information disclosure requirements of the Final Rule also run afoul and undermine DHS's Chemical Facility Anti-Terrorism Standards ("CFATS").[52] As described in the comments of various Coalition members, EPA would require disclosure of information to LEPCs and the public that CFATS prohibits from being disclosed in the interest of national security and safety.[53] Though AFPM and others raised this objection during the comment period, EPA simply disagreed in its response to comments without conducting an analysis of the statutory requirements or adjusting its regulatory provision to comport with that statute.

Finally, EPA also failed to conduct a proper analysis of the costs and benefits of the Proposed and Final Rules, as required by *Michigan v. EPA*, by refusing to even estimate or qualitatively describe the expected benefits. It did not even attempt to explain how each provision might provide a benefit to EPA's ultimate goals of accident prevention and mitigation. EPA also did not attribute any specific benefits to any particular provisions in the rule. As a

[51] 42 U.S.C. § 7607(d)(1) states that the "provisions of section 553 through 557 and section 706 of title 5 [the APA] shall not, except as expressly provided in this subsection, apply to actions to which this subjection [307(d)] applies." *See Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 23-26 (D.D.C. 2012).
[52] 6 C.F.R. Part 27.
[53] *See* ACC Comments at 26-27; AFPM Comments at 71-75; API Comments at 28; NAM, AF&PA & Chamber Comments at 7-8; UARG Comments at 12-13.

result, EPA could not evaluate the cost effectiveness of its proposed requirements and options because it did not know what, if any, benefits would flow from that provision in order to compare them to the relative costs.

For these reasons and others, the Coalition's petition is likely to succeed on the merits and be granted.

B. The Coalition's Members Will Suffer Irreparable Harm

Coalition member companies will suffer irreparable harm if the effective date of the Final Rule is not stayed.

1. Security Risks

New disclosure obligations in the Final Rule pose significant security concerns for facilities. For example, the Final Rule allows LEPCs to request information from facilities without limitation, including highly sensitive documents required by the Final Rule such as STAA analysis as part of the PHA process and third-party audits. These documents and others may contain detailed security information, the release of which may expose vulnerabilities and weaknesses in refineries, chemical plants, and other facilities. No background checks are required to serve on an LEPC. While LEPCs may act with the best of intentions and in good faith, once sensitive RMP documents are released to LEPCs, federal, state, and local Freedom of Information Act requirements or sunshine laws may allow their broader release to the public, including to terrorists and others groups that may wish to target facilities.

In addition, the public disclosure provisions of the Final Rule require facilities to provide on request the names of regulated substances, safety data sheets, five-year accident history information, first responder point of contact information, and other emergency response program information. During the interagency review process, multiple government officials identified security concerns with EPA's proposed public disclosures, which are still present in the Final Rule. Notably, other government agencies were concerned that the scope of disclosure and lack of standards for dissemination "could assist terrorists in selecting targets and/or increasing the severity of an attack by decreasing first responder capability."[54] Because of these concerns, the Attorneys General of several states objected to the RMP rulemaking.[55] The Final Rule failed to address these significant security concerns and the risks will continue if EPA does not stay the Final Rule.

2. Confusion Regarding Compliance Obligations

In the RMP rulemaking, EPA wrote that it "intends" to issue future guidance documents on (1) root cause analysis, (2) STAA, and (3) emergency response exercises, but only after the

[54] EO 13866 Interagency Review Risk Management Modernization RIN 2050-AG82 NPRM Proposal Rule 20160223 (Redline) 20160223 REV, Docket # EPA-HQ-OEM-2015-0725-0004, at 150 (Mar. 14, 2016).
[55] Letter from Scott Pruitt, Attorney General, State of Oklahoma et al. to Gina McCarthy, Adm'r, EPA, EPA Docket No. EPA-HQ-OEM-2015-0725-0624 (July 27, 2016).

rule is promulgated.[56] EPA also advises that OSHA will issue guidance on the root cause analysis.[57] None of these guidance documents have been released. OSHA, moreover, has yet to complete the PSM rulemaking process and the timeframe for that regulation is unclear. The statute requires EPA to "coordinate any requirements" under its RMP program with OSHA and its PSM program. In the meantime, the RMP regulations as revised by the Final Rule leave important gaps and create compliance uncertainties.

EPA has granted a Section 705 stay under similar circumstances. The Obama Administration repeatedly delayed the effective date of the New Source Review aggregation amendments promulgated by the prior administration. In the 2010 extension of the stay, EPA explained that a stay was warranted to avoid "confusion in the regulated community" and to allow the agency to consider the soundness of the policies underlying the aggregation amendments.[58] The same concerns are present here, justifying a stay.

3. Substantial Compliance Costs

Certain provisions, such as the requirement that compliance audits address "each covered process," become effective immediately with the Final Rule. That provision alone will require facilities to incur significant unrecoverable costs with no demonstrable corresponding benefit. Facilities with many processes will have to expend significantly more resources and time to prepare for and conduct an audit of each covered process. For example, they will need to hire additional auditors, lengthen the audit, provide additional documents to the auditors, and expand the final report to cover each process unit. Facilities with upcoming audits are already incurring these costs. Other provisions have a longer compliance deadline (*e.g.*, three or four years), but training and preparation must begin now in order to comply with the various requirements when they become effective. Indeed, some members have already started revising their compliance programs to address the Final Rule's requirements.

In the case of STAA, facilities must be *compliant* when the provision becomes effective in four years, but the regulations require facilities to update their PHAs every five years. Depending on the facility's PHA schedule, either a facility will have just conducted a PHA in the year before the Final Rule's effective date, or it will have a PHA scheduled in the four years between the effective date and the STAA compliance date. Any facility that conducted its PHAs in the last year will have to conduct its next PHA early in order to incorporate STAA by the compliance date. Facilities that have their PHAs scheduled in the next four years will have to

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[56] *See* Proposed Rule, 81 Fed. Reg. at 13,687 ("Lastly, EPA intends to publish guidance for certain provisions, such as STAA, root cause analysis, and emergency response exercises. Once these materials are complete, owners and operators will need time to familiarize themselves with the new materials and incorporate them into their risk management programs.").

[57] *See* Proposed Rule, 81 Fed. Reg. at 13,650 ("OSHA plans to develop a fact sheet on existing resources that explain how to conduct a root cause analysis so the regulated community can better understand the causes of incidents . . . .").

[58] 75 Fed. Reg. 27,643, 27,644 (May 18, 2010); *see also* 77 Fed. Reg. 64,908 (Oct. 24, 2012) (EPA granted Section 705 stay to provide additional time to consult with stakeholders on a Federal Implementation Plan, or FIP, under the CAA).

decide whether to include STAA in their next 5-year PHA update (which could occur immediately after the Final Rule takes effect, depending on the date of their last PHA update) or to conduct two PHAs in the next four years with the second one incorporating STAA—a significant expenditure of time and resources.

In the meantime, it is unclear exactly how EPA expects a facility to conduct an STAA. EPA acknowledged as much in both the Proposed and Final Rule by saying it "intends to publish guidance for certain provisions, such as STAA."[59] However, no timeframe was provided for this guidance and it is likely to arrive too late for facilities with PHAs scheduled soon after the effective date of the Final Rule. EPA itself recognized that "[o]nce these [guidance] materials are complete, owners and operators will need time to familiarize themselves with the new materials and incorporate them into their risk management programs."[60] In addition to this compliance uncertainty, the staff resource commitment and cost of conducting the STAA, particularly for existing processes, will be extremely high. Moreover, based on their engineering expertise, Coalition member companies expect that the likelihood of STAA identifying any practicable changes to existing processes is low.

The Final Rule should be stayed to avoid the irreparable harm of forcing Coalition member companies and other regulated facilities to comply with a legal standard that the agency is still working to complete.

C. Other Interested Parties Would Not Suffer Harm By Temporarily Staying the Rule

While Coalition member companies and other regulated entities will suffer irreparable harm if they must begin implementing the Final Rule's requirements while judicial review is pending, granting a stay would not cause substantial harm to any other parties. Many of the Final Rule requirements apply in reaction to specific events, such as accidental releases or incidents. Thus while the facility must prepare itself to address those criteria if the relevant circumstances arise, any alleged benefits from the new provisions would not accrue to the general public or environment until such an event occurred.

In addition, it is not clear—including apparently to EPA—how much or even whether the provisions of the Final Rule will in fact generate benefits. In both the Proposed Rule and the Final Rule, EPA explicitly stated that it could not quantify or even describe the benefits it expected to accrue from the proposed or final provisions. It instead resorted to quantifying and describing past harms to property and people from hazardous chemical incidents, including both on- and off-site impacts, and then asserting that it believed some undetermined amount of these damages could be prevented by implementing its proposed regulatory program as a whole. EPA thus has not, and presumably cannot, demonstrate that the provisions included in the Final Rule will generate benefits for the public or environment—as a whole or individually. Moreover, EPA's data shows that the RMP requirements in place over the past many years—before the Final Rule— have resulted in a significant decrease in accidental releases. As a result, staying

[59] Proposed Rule, 81 Fed. Reg. at 13,687; Final Rule, 82 Fed. Reg. at 4676.
[60] Proposed Rule, 81 Fed. Reg. at 13,687; Final Rule, 82 Fed. Reg. at 4676.

the implementation of those provisions temporarily while judicial review is pending cannot be shown to cause any harm to others.

D. A Stay Is in the Public Interest

Staying the effective date of the Final Rule is in the public interest. Allowing the Final Rule to remain in effect pending judicial review raises significant security concerns and imposes substantial costs on regulated entities that they will not recoup, while providing no demonstrable benefit to the general public or the environment. EPA has not demonstrated that any of its finalized provisions would improve safety or prevent accidents that harm American workers, citizens, or property. A stay is in the public interest to ensure that EPA does not jeopardize facility security. Similarly, the public interest would be furthered by ensuring that funds spent complying with regulatory demands in fact yield measurable benefits.

REQUEST FOR RECISSION UNDER SECTION 553(e) OF THE APA

As this Petition demonstrates, the Final Rule rests on a faulty foundation. The pre-existing RMP-PSM regulatory framework has proven to be a robust and effective process for improving safety and reducing accidental releases, as EPA's own data confirms.[61] Accordingly, the Coalition requests rescission of the 2016 Final Rule, leaving in place the effective pre-existing rule.[62] The Coalition commits to work with EPA, OSHA and other stakeholders on a new rulemaking in response to this Petition.

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[61] *See* EPA, *Regulatory Impact Analysis*, Docket # EPA-HQ-OEM-2015-0725-0037, at 16 (Dec. 16, 2016) ("[A]ccident histories submitted with RMPs have shown a reduction in the frequency of accidents since the beginning of the program . . . ."); EPA, *Regulatory Impact Analysis*, Docket # EPA-HQ-OEM-2015-0725-0734, at 16 (Dec. 16, 2016) (same); AFPM Comments at 64.

[62] Section 553(e) of the APA provides ample authority to rescind the Final Rule. *See* 5 U.S.C. § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."); *Nat'l Ass'n of Homebuilders v. EPA*, 682 F.3d 1032, 1037 (D.C. Cir. 2012) (denying petition for review of EPA's repeal of a recently amended rule because "[a]n agency's view of what is in the public interest may change, either with or without a change in circumstances.") (citation and internal quotation marks omitted). Rescission is also consistent with Section 307(d) of the CAA, which only limits reconsideration to the scope of objections raised upon reconsideration. Where, as here, several overarching and interrelated objections are made to a rule, EPA may properly entertain rescission of the entire rule as part of the reconsideration proceeding. *See* 42 U.S.C. § 7607(d)(7)(B) (When granting a petition for reconsideration, "the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed . . . .").

CONCLUSION

For the above reasons, the Coalition requests that EPA reconsider and rescind its RMP Final Rule and stay the effective date of the Final Rule for the duration of the administrative proceedings and judicial review.

February 28, 2017

Respectfully submitted,

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Message

From: Fern Abrams [FernAbrams@ipc.org]
Sent: 3/6/2017 9:12:19 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
CC: Huggins, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0314e81a1f4843fcbbe0910cfddd53f4-Huggins, Richard]; Johnson, Barnes [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c39e9338cbf04dc3b4b29f78e5213303-Johnson, Barnes]; John Hasselmann [JohnHasselmann@ipc.org]; 'Rozsa, Gabe' [Gabe.Rozsa@prime-policy.com]; Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: IPC meeting with OLEM
Attachments: Hazardous Waste Generators Final Comments 12-23-15.pdf

Dear Patrick,

I am writing to confirm our meeting on Wed March 8th at 2:30 pm. Can you provide a location for the meeting?

Our meeting attendees will be:
John Hasselmann, IPC VP Government Relations
Fern Abrams, IPC Director Regulatory Affairs
Leslie Hulse Assistant General Counsel, American Chemistry Council

Please let me know if you need additional information from us. May I ask who from EPA you expect will be attending?

For your reference and by way of background, I am enclosing the comments on the Hazardous Waste Generator Improvements Proposed Rule that were filed by IPC, ACC and other industrial generators organizations. During the meeting we hope to focus on the issue regarding Conditions for Exemption, discussion of which begins at the bottom of page 6 in the executive summary and in detail on page 14. I provide these only for your reference as we will discuss them during the meeting – please don't feel the need to read through them in advance.

We are looking forward to the meeting and thank you in advance for your time.

Sincerely,

Fern Abrams
Director of Regulatory Affairs and Government Relations
IPC- Association Connecting Electronics Industries
1331 Pennsylvania Avenue, Suite 910
Washington, DC 20004
Ex. 6
fabrams@ipc.org
www.ipc.org

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Thursday, March 2, 2017 1:18 PM
To: Fern Abrams <FernAbrams@ipc.org>

Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Hi Fern,

By all means, bring your colleagues. They are welcome at the EPA.

Thanks,
Patrick Davis

From: Fern Abrams [mailto:FernAbrams@ipc.org]
Sent: Thursday, March 2, 2017 12:13 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Dear Patrick,

Absolutely – we like fast moving balls.

If you are amenable, we would like to bring with us one or two colleagues from other trade associations with which we have been working on this rule. Please let us know if that is ok and we will send you a list of intended attendees.

Fern Abrams
Director of Regulatory Affairs and Government Relations
IPC- Association Connecting Electronics Industries
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From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Thursday, March 2, 2017 12:01 PM
To: Fern Abrams <FernAbrams@ipc.org>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Hi Fern,

Could we please meet at 2:30 p.m. on Wednesday, March 8 in order to keep moving the ball down the field quickly?

Thanks,
Patrick Davis

From: Fern Abrams [mailto:FernAbrams@ipc.org]
Sent: Wednesday, March 1, 2017 5:12 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>; John Hasselmann <JohnHasselmann@ipc.org>; 'Rozsa, Gabe' <Gabe.Rozsa@prime-policy.com>
Subject: RE: IPC meeting with OLEM

Dear Mr. Davis, Mr. Huggins and Mr. Barnes,

IPC appreciates the opportunity to meet with you to discuss our concerns with the recently issued Hazardous Waste Generator Improvements rule.

We are available next week on Wed, March 8th at 2:30 pm or anytime thereafter; on Thursday March 9th between 9am and 11 am or at 2:30pm or anytime thereafter; and on Friday March 10 after 2pm. If none of these times are convenient, we can look at the following week.

Additionally, please let us know if it would be ok if we included in the meeting one or two colleagues from other trade associations with which we have been working on this rule.

Regards,

Fern Abrams
Director of Regulatory Affairs and Government Relations
IPC- Association Connecting Electronics Industries
1331 Pennsylvania Avenue, Suite 910
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Ex. 6
fabrams@ipc.org
www.ipc.org

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Tuesday, February 28, 2017 5:00 PM
To: Fern Abrams <FernAbrams@ipc.org>
Cc: Huggins, Richard <Huggins.Richard@epa.gov>; Johnson, Barnes <Johnson.Barnes@epa.gov>
Subject: IPC meeting with OLEM

Hi Fern,

Thank you for coming by the EPA today. I was a pleasure to meet you. I have copied Barnes Johnson and Richard Huggins from our Office of Land and Emergency Management for the purpose of scheduling a meeting regarding the hazardous waste generator issue.

Please let us know when you and your team would be available to come over to the EPA for a visit.

Sincerely,
Patrick Davis

DECEMBER 23, 2015

Docket ID No. EPA-HQ-RCRA-2012-0121

COMMENTS OF THE "INDUSTRIAL GENERATORS" on the HAZARDOUS WASTE GENERATOR IMPROVEMENTS PROPOSED RULE

at

80 Federal Register 57918 (September 25, 2015)

THE "INDUSTRIAL GENERATORS" ARE THE FOLLOWING TRADE ASSOCIATIONS AND THEIR MEMBERS:

Prepared With The Assistance Of:

Kenneth M. Kastner
Hogan Lovells US LLP
555 13th Street, N.W.
Washington, D.C. 20004
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INTRODUCTION AND IDENTIFICATION OF COMMENTERS

Industrial Generators respectfully submit these comments on EPA's proposed rule entitled Hazardous Waste Generator Improvements, 80 FR 57918 (September 25, 2015). The Industrial Generators that are participating in these comments are the following trade associations and their members:

American Chemistry Council

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health, and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $812 billion enterprise and a key element of the nation's economy.

American Forest & Paper Association

The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative - *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately 4 percent of the total U.S. manufacturing GDP, manufactures over $200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately $50 billion annually and is among the top 10 manufacturing sector employers in 47 states.

American Fuel & Petrochemical Manufacturers

The American Fuel & Petrochemical Manufacturers (AFPM) (formerly known as NPRA, the National Petroleum & Refiners Association) is a national trade association whose members comprise more than 400 companies, including virtually all United States refiners and petrochemical manufacturers. AFPM's members supply consumers with a wide variety of products and services that are used daily in homes and businesses.

American Iron and Steel Institute

AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 125 associate members who are suppliers to or customers of the steel industry.

American Wood Council

The American Wood Council (AWC) is the voice of North American wood products manufacturing, representing over 75 percent of an industry that provides approximately 400,000 men and women in the United States with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC also advocates for balanced government policies that affect wood products.

Association Connecting Electronics Industries

IPC is a global industry association based in Bannockburn, Ill., dedicated to the competitive excellence and financial success of its 3,700 member companies which represent all facets of the electronics industry, including design, printed board manufacturing, electronics assembly and test. As a member-driven organization and

leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated $2 trillion global electronics industry. IPC maintains additional offices in Taos, N.M.; Washington, D.C.; Atlanta, Ga.; Stockholm, Sweden; Moscow, Russia; Bangalore and New Delhi, India; Bangkok, Thailand; and Qingdao, Shanghai, Shenzhen, Chengdu, Suzhou and Beijing, China.

Council of Industrial Boiler Owners

The Council of Industrial Boiler Owners ("CIBO") is a trade association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information about issues affecting industrial boilers, including energy and environmental equipment, technology, operations, policies, laws and regulations.

Motor & Equipment Manufacturers Association

The Motor & Equipment Manufacturers Association (MEMA) represents more than 1,000 companies that manufacture motor vehicle systems and parts for use in the light and heavy-duty vehicle original equipment and aftermarket industries. The motor vehicle parts manufacturing industry is the nation's largest direct employer of manufacturing jobs - over 734,000 workers are employed by suppliers in all 50 states. MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).

National Oilseed Processors Association

The National Oilseed Processors Association ("NOPA") is a national trade association that represents 12 companies engaged in the production of vegetable meals and vegetable oils from oilseeds, including soybeans. NOPA's member companies

process more than 1.6 billion bushels of oilseeds annually at 63 plants in 19 states, including 57 plants which process soybeans.

Rubber Manufacturers Association

RMA is the national trade association representing tire manufacturing companies that manufacture tires in the United States. RMA member companies include: Bridgestone Americas, Inc.; Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA's eight member companies operate 30 tire manufacturing plants, employ thousands of Americans and ship over 90 percent of the original equipment ("OE") tires and 80 percent of the replacement tires sold in the United States.

The Fertilizer Institute

The Fertilizer Institute (TFI) represents the nation's fertilizer industry including producers, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. TFI's members provide nutriesnts that nourish the nation's crops, helping to ensure a stable and reliable food supply.

After the Executive Summary that follows, each comment is presented generally in the order that its respective request for comment appears in the proposed rule. Citations in the comment subheadings are to the new rules that EPA proposes, as opposed to existing sections that are to be deleted or changed.

EXECUTIVE SUMMARY

Industrial Generators support EPA's objective in this proposed rule to clarify and consolidate the requirements that apply to each category of hazardous waste generator regulated under the Resource Conservation and Recovery Act (RCRA) rules. Currently, a generator must wade through multiple CFR parts and sections to find rules applicable to it. In addition, the meaning of many of the rules appear in numerous interpretations EPA has issued over the past 35 years in Federal Register notices, letters, memoranda and other guidance, which are not on, or not easily found on, EPA's website. EPA's proposal to reorganize the generator rules into a few CFR sections and to include in the rules some of the key interpretations should encourage a better understanding among generators of their regulatory obligations, which should enhance compliance and protection of human health and the environment.

In these Comments, Industrial Generators are addressing over 40 specific rules EPA has proposed or topics on which it has requested comment. To appreciate the full position of Industrial Generators, it is important that each of the Specific Comments that follow be reviewed. But in an effort to highlight some proposals we especially support or object to, and at the recognized risk of leaving some out, Industrial Generators note that we support the following proposals as well as others:

1. Allowing very small quantity generators (VSQGs) to send hazardous waste to large quantity generators (LQGs) under the control of the same person and to unrelated LQGs with agency approval. (See Comments #5 and #6);
2. Reduction in personal information of Emergency Coordinators, and identification of them by position instead of name. (See Comments #35 and #36);
3. Allowing emergency response equipment to be centrally located. (See Comment #37);
4. Allowing on-line personnel training. (See Comment #41);

5. Recognizing that there may be conditions when containers in satellite accumulation areas should not be closed. (See Comment #42); and
6. Allowing increased generation of hazardous waste from an episodic event without causing a change in generator status. (See Comment #47).

There are also some proposed rules and topics identified for comments to which Industrial Generators strongly object. One consistent theme in our objections is that EPA is using this proposed rulemaking, which it states is intended to reorganize and clarify existing rules, to impose new burdensome requirements on hazardous waste generators. This is especially troubling because generators of hazardous waste, unlike treatment, storage and disposal facilities (TSDFs), typically do not have the dedicated staff and resources that are needed to be well versed in the applicable regulations and their many nuances. Historically, EPA has recognized that difference between generators and TSDFs and attempted to limit the requirements placed on generators to those that are truly necessary in order to protect human health and the environment. Unfortunately, in this proposed rule, EPA would expand and extend the generator rules in many significant ways without fully considering the cumulative burden that will be placed on generators from these additional rules. EPA should re-evaluate the cumulative effect on generators of the proposed new requirements and limit the new requirements to those that are found to be absolutely necessary to protect human health and the environment.

Most objectionable are the following proposals or requests for comment:

1. EPA should not take the position that a violation of any one of the too-broadly-defined Conditions for Exemption would mean that the generator has violated the requirements that apply to a permitted TSDF or to the next level of generator. Under this interpretation, for example, if a VSQG were to fail to label a drum it sends to an LQG under common control, the VSQG could be considered not only to have violated that new labeling rule, but also to have violated up to the 24 rules that apply to a small quantity generator (SQG) that do not apply to a VSQG (or even more rules

that apply to a permitted TSDF). To avoid this draconian result and to be consistent with RCRA as reflected in 42 U.S.C. §6922, all Conditions for Exemption should be removed and made into independent requirements in the final rule. If EPA insists on maintaining some Conditions for Exemption, the Conditions for Exemption should be limited to just those few criteria that distinguish one category of generator from another, i.e., the amounts of hazardous waste that are generated by each category of generator and the accumulation times allowed for such hazardous waste. EPA should also leave to its enforcement office the discretion on how to charge violations and impose penalties if any one of these more narrowly defined Conditions for Exemption is violated. (See Comment #8).

2. EPA should not adopt the proposed rule that states that the waste determination must be at the *"point of generation"* and *"before any dilution, mixing, or other alteration of the waste,"* because such would contradict several rules and interpretations whereby the waste determination is to be made after *"dilution, mixing, or other alteration of the waste."* (See Comment #10).
3. EPA should not require waste determinations for individual wastewater streams that are comingled in the headworks of a wastewater treatment unit. (See Comment #11).
4. The proposed waste determination information that must be documented and maintained is overly-prescriptive and is more information than is necessary. (See Comment #14).
5. EPA should not require SQGs and LQGs to prepare and retain documentation when a solid waste is determined not to be a hazardous waste. (See Comment #15.A.). Further, EPA should explicitly state in this rule that the waste determination documentation is not required for the many hazardous secondary materials that are excluded from the definition of solid waste, or for the many solid or hazardous wastes that are exempted by rule from the requirement to conduct a hazardous waste determination or to document that determination. (See Comments #15.B. and 15.C.).

6. EPA should not require retention of waste determination documentation until a site closes. (See Comment #18).
7. EPA should not require container labels with the proposed multiple categories of information, but rather should convene all stakeholders to identify the best approach for labeling containers. (See Comment #22).
8. Logs identifying each addition of hazardous wastes into a tank are unnecessary and should not be required. (See Comment #25).
9. EPA should not require generators to notify of closure. (See Comment #30).

The cumulative burden of these objectionable proposed rules, as well as several others discussed in the following Specific Comments, is unreasonable for generators, and has not been justified as being necessary to protect human health and the environment as required by RCRA.

SPECIFIC COMMENTS

1. Definition of "Acute Hazardous Waste" (40 CFR §260.10)

EPA proposes a new definition of "acute hazardous waste" as *"hazardous wastes that meet the listing criteria in §261.11(a)(2) and therefore are either listed in §261.31 of this chapter with the assigned hazard code of (H) or are listed in §261.33(e) of this chapter."* Although Industrial Generators believe it is useful to have a definition in 40 CFR §260.10 of "acute hazardous waste," the proposed definition is misleading with regard to hazardous waste that would carry an acute waste code only by virtue of the mixture or derived-from rules at 40 CFR §261.3(a)(2)(iii) and §261.3(c)(2). Such mixtures and derivatives often will not *"meet the listing criterion in 261.11(a)(2)"* since they will be much less concentrated due to mixing with other less toxic materials, or the toxicity will be greatly reduced or removed through treatment, such as incineration. For example, when a concentrated P-listed acute organic hazardous waste is burned in an incinerator, the ash will still carry the P code under the derived-from rule, but because the organics would be destroyed in the incinerator, the ash would no longer have any

significant toxicity, and if evaluated then, would not "meet the listing criteria in §261.11(a)(2)." Therefore, we suggest that the definition of "acute hazardous waste" be changed to *"hazardous waste that is listed in §261.31 of this chapter with the assigned hazard code (H), or listed in §261.33(e) of this chapter."* This revised definition covers all acute hazardous waste without introducing into the definition the unnecessary and, in some cases, incorrect concept that all hazardous waste with an acute waste code is actually acutely toxic.

2. Definitions of Large Quantity Generator, Small Quantity Generator, and Very Small Quantity Generator (40 CFR §260.10)

Industrial Generators support EPA's plan to change the term "conditionally exempt small quantity generator" to "very small quantity generator," as this will be more intuitive and understandable by the regulated community.

Industrial Generators also support adding definitions to 40 CFR §260.10 for a "large quantity generator," "small quantity generator," and the new definition of a "very small quantity generator." These additions should make it easier for generators, particularly very small and small quantity generators who have limited experience with the RCRA regulations, to understand how their generation is categorized. In particular, we agree that with EPA's clarification at 80 FR 57926/column 3 that a generator cannot have two different generator statuses in any calendar month.

Nonetheless, we believe there is an unintended mistake in the proposed definitions of SQG and VSQG. As proposed, a SQG would have to generate in a calendar month greater than 100 kg but less than 1000 kg of non-acute hazardous waste, and less than or equal to 1 kg of acute hazardous waste, and less than or equal to 100 kg of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of acute hazardous waste. We assume EPA means that an SQG could generate any one of these types of hazardous waste and also not meet the criteria for an LQG.

Table 1 to proposed 40 CFR § 262.13 reflects the correct generator status under the various generation permutations. We suggest that the final rule simply refer to this Table 1 when defining a VSQG, SQG and LQG in 40 CFR § 260.10.

Finally, we urge EPA to slightly change the threshold for an SQG's generation of non-acute hazardous waste to "greater than 100 kg (220 lbs.) but less than or equal to 1000 kg (2200 lbs.) of non-acute hazardous waste." This change would be consistent with the "less than or equal to" approach in each of the other upper limits in these VSQG and SQG definitions, and therefore, is easier to remember and comply with.

3. Definition of "Central Accumulation Area" (40 CFR §260.10)

EPA should clarify in the final rule that it has used the term "central accumulation area" to distinguish the areas where SQGs and LQGs accumulate hazardous waste generally for up to 180 days and 90 days respectively from satellite accumulation areas or areas where VSQG hazardous waste is accumulated. The term "central accumulation area" might suggest that the area must be centrally located on a plant site, or that there can be only one accumulation area since only one would be geographically central. To address this ambiguity, EPA may want to change the term in the final rule to simply "accumulation area," "generator accumulation area," or some similar term.

4. Clarifications Regarding Mixing of Hazardous Waste for Small Quantity Generators and Very Small Quantity Generators (40 CFR §262.14(b) and §262.16(c))

Industrial Generators support the proposed clarifications regarding when mixtures of hazardous waste and non-hazardous waste will cause exceedance of the SQG and VSQG threshold amounts of hazardous waste generation that demarcate their status.[1]

---

[1] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

5. Allowing VSQGs to Send Hazardous Waste to LQGs Under the Control of the Same Person (40 CFR §262.14(a)(4)(viii))

Industrial Generators support EPA's objective to allow VSQGs to send their hazardous waste to an LQG under the control of the same person.[2] We are concerned, however, that the proposed language in 40 CFR §262.14(a)(4)(viii) *("[a] large quantity generator under the control of the same person as the very small quantity generator...")* might be interpreted narrowly to mean that both the LQG and the VSQG must be owned by a common parent corporation with the power to direct the policies of the LQG's and VSQG's sites. EPA should make clear that the VSQG can control the LQG, the LQG can control the VSQG, or both the VSQG and LQG can be controlled by another related entity. Thus, the VSQG and LQG sites can belong to the same corporation, one site could be the subsidiary of the other site, or both sites could be owned by a common corporate parent, grandparent, great grandparent, etc.

Please note that when EPA addressed this issue in its recent definition of solid waste rule, EPA concluded that so long as the two entities are *"within the same corporate structure"* hazardous secondary materials that are generated by one corporate entity and reclaimed by another related corporate entity would qualify for the "reclaimed under the control of the generator" exclusion from the definition of solid waste at 40 CFR §261.4(a)(23). See 73 FR at 64726/col. 1. EPA should clarify here that it will interpret proposed 40 CFR §262.14(a)(4)(viii) to extend to a VSQG and an LQG that are *"within the same corporate structure."*

Further, EPA should clarify that, common control for purposes of this new rule can include a situation where the VSQG is a joint venture of the LQG or vice versa, and the joint venture is controlled to a significant extent by the related venture party. For

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[2] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

example, it is common in the chemical industry for a company to create joint ventures for particular production operations that take place on or near one of the joint venturer's plants. Often the joint venture itself generates very little hazardous waste and would be a VSQG. That VSQG should be able to send its hazardous waste to one of the venture partners that is an LQG provided that venture partner has significant control over of the joint venture. In this case, we suggest that significant control be any ownership amount at or above 35%.

6. Allowing VSQGs to Send Hazardous Waste to Unrelated LQGs With Agency Approval

Industrial Generators also support strongly EPA's suggested variation at 80 FR 57933/col. 1 that would allow a VSQG to send its hazardous waste to a LQG that is unrelated by ownership, provided the VSQG gives EPA or the authorized state 60 days advance notice and obtains approval or no rejection within the 60 days. This option would be especially helpful in the common situation where contractors provide services to LQGs that occur off-site of the LQG's operations (e.g., contractors that conduct off-site remediation, renovate commercial buildings that involve removal of lead-based paint or mercury switches, or service cell towers, compressor stations, oil field drilling rigs, etc.) Contractors typically do not want to assume the responsibility of having to manage and arrange for disposal of the hazardous waste that is generated while providing their services beyond proper management of the hazardous waste while it is under their immediate control. They would much prefer to transport the hazardous waste to the LQG for whom they are providing services and have the LQG manage the waste from thereon, including arranging for disposal. The suggested flexibility would allow the contractors to generate small volumes of hazardous waste, manage it properly while it is in their possession, and then transport it to the LQG for further management and disposal.

This variation would also facilitate proper management of VSQG quantities of hazardous waste that are generated by a toll manufacturer under a tolling contract with an LQG. The toll manufacturer would properly manage the hazardous waste while it is

on its tolling site, but then transport it to the LQG for further accumulation, consolidation, and arranging for disposal.

The 60-day limit on the implementing agency to affirmatively approve or reject the request or else it is deemed approved is necessary and a very important component of this alternative. It will ensure that the management of the hazardous waste from cradle to grave is not delayed beyond 60 days awaiting agency approval. In addition, if the VSQG contractor and LQG can expect that authorization to send the hazardous waste to the LQG will occur within 60 days, they will more readily enter into contracts that result in better management and disposal of the hazardous waste by the LQG.

Industrial Generators would also not object to this option being conditioned on there being a direct or indirect contractual relationship between the VSQG and LQG. By direct contractual relationship, we mean where the VSQG and LQG are actual signatory parties to a contract which addresses in some respect how hazardous waste that is generated will be managed. By indirect contractual relationship, we mean a situation where the VSQG and LQG are not both signatories to a contract between them, but the VSQG is subject to a contractual commitment to send the hazardous waste to the LQG, or the LQG has a contractual commitment to receive the hazardous waste from the VSQG, or both. For example, suppose Company A has contracted a VSQG hazardous waste remediation contractor (Company B) to remediate property of an LQG (Company C), and the contract specifies that the LQG Company C will receive the hazardous waste from the VSQG Company B. In this case, there is no direct contractual agreement between the VSQG Company B and the LQG Company C, yet there is a contractual arrangement that addresses how the hazardous waste will be managed.

7. Biennial Reports for Owners and Operators of Facilities That Receive Hazardous Waste and Recycle It Without Storing It (40 CFR §261.6(c)(2))

EPA proposes to modify 40 CFR §261.6(c)(2) to require owners or operators of facilities that recycle hazardous waste without storing it prior to recycling to comply with

the biennial reporting requirements of 40 CFR §265.75. EPA's justification for this modification is that EPA needs to account for the hazardous waste that such entities receive from a hazardous waste transporter and under a hazardous waste manifest. See 80 FR 57933/col. 2.

The use of a hazardous waste transporter and manifest would involve a scenario where a generator sends recyclable hazardous waste to an off-site facility for recycling and that facility can recycle it without storage. In this scenario, it is not necessary that the recycling facility submit a biennial report to ensure that the recyclable hazardous waste is accounted for. Based on the Biennial Report Instructions, the generator already is required to report on all such hazardous waste it sends off-site to a recycler that does not store it prior to recycling. Form GM of the Biennial Report Instructions indicate that although *"waste recycled, without prior storage, only in an on-site process subject to regulation under 40 CFR §261.6(c)(2)"* is not required to be reported on the biennial report, there is no exception from reporting the amount of such recyclable hazardous waste when it is sent off-site. Because the generator will report the amount of recyclable hazardous waste it sends off-site to a recycling facility that does not store it, EPA should have the information it claims it needs. Thus, we do not see a need for requiring the recycling facility to report on the hazardous waste it receives in a biennial report, and requiring such reporting could lead to redundant accounting.

8. Effect of Non-Compliance With a Condition for Exemption (40 CFR §262.10(g)(2))

Industrial Generators strongly object to the proposed language in 40 CFR §262.10(g)(2) that would cause a generator that fails to comply with any one of the many "Conditions for Exemption" for its generator status to default to being *"an illegal TSDF"* that *"becomes subject to full regulation,"* and *"would be considered an operating TSDF without a permit and/or in violation of the storage facility operating standards in parts 264 or 265."* 80 FR at 57934/cols. 1 and 3 and 57935/col. 2. Under the proposed rule at 40 CFR §262.10(g)(2), such *"failure to obtain or maintain the exemption results in a violation of one or more applicable independent requirements in 40 CFR part 124,*

262-268 or 270, or of the notification requirement of section 3010 of RCRA. A generator's violation of an independent requirement is subject to penalty and injunctive relief under section 3008 of RCRA." EPA says that this means that a VSQG, SQG or LQG that violates any Condition for Exemption will be subject to all of the requirements that apply to a higher level generator or even to a TSDF that should have a RCRA permit, and that the generator can be penalized for violations of each one of those requirements with which it does not comply. See 80 FR at 57934-35.

The approach EPA has proposed in this rule is illegal because it is based on a premise that is contrary to the statute and congressional intent. EPA's premise is that a generator that stores hazardous waste would be subject to RCRA permitting if it fails to comply with any of the generator Conditions for Exemption for its purported generator category. The statute, however, makes clear that permitting was never intended to apply to generators. In the "Standards applicable to generators of hazardous waste" at 42 U.S.C. §6922, Congress instructed EPA to establish standards for generators regarding six areas of regulation, none of which involve permitting. In contrast, in the "Standards applicable to owners and operators of treatment, storage and disposal facilities" at 42 U.S.C. §6924, Congress directed EPA to establish standards respecting seven areas, the last of which is the requirement to obtain a permit for treatment, storage and disposal. 42 U.S.C. §6924(a)(7). Viewing these two statutory provisions together, it is clear that Congress expected permits for TSD facilities but not for generators. Yet this proposed rule is based on the proposition that "if [a generator] wants the benefits of an exemption from RCRA permitting...," the generator must comply with all of the identified Conditions for Exemption. 80 FR at 57933-34. That premise is not consistent with the RCRA statute.

Thus, the final rule should contain no Conditions for Exemption that, if not met, would subject the generator to having to obtain a RCRA permit. Rather, all requirements should be what EPA calls "independent requirements," and if one is not met, such would result in a violation of that standard alone; it would not trigger violations of all permit requirements.

Even if EPA decides to disregard this statutory language and intent, the proposed rule is ill-conceived and extremely harsh and should not be finalized, as the following reasons demonstrate.

One of the VSQG Conditions for Exemption at 40 CFR §262.14 is that the words "Very Small Quantity Generator Hazardous Waste" must be placed on every container of hazardous waste sent to an LQG under common control. See 40 CFR §262.14(a)(viii)(B)(1). What if the VSQG fails to mark its container exactly as stated and instead marks it "Hazardous Waste," or "Conditionally Exempt Small Quantity Generator," or does not mark it at all? Does that really mean that that VSQG must be in compliance with all of the RCRA regulations that apply to a permitted TSDF, and could be subjected to penalties for failing to comply with each of them? This would be dozens of RCRA violations, which at $37,500/day/violator, or even at the "minor-minor" lowest penalty cell level in the RCRA Penalty Policy, could easily result in six and seven figure penalty assessments for failing to meet a single Condition for Exemption. EPA cannot justify such extreme penalties that would be so greatly out of proportion to the magnitude of the violation.

Further, would the Agency then require this non-complier, and many other non-complying VSQGs, SQGs and LQGs, to submit a Part B RCRA permit application and become permitted, and also conduct facility-wide SWMU corrective action as part of the permit process under RCRA §3004(u)? Does EPA and the authorized state agencies have the resources to administer potentially several hundred more permits and corrective actions?

Even if EPA were only to conclude that the VSQG should be subject to the applicable requirements at the next most regulated level, i.e., as an SQG, the VSQG would have to meet the following 24 SQG requirements that do not apply to a VSQG:

1. Containers must be in good condition, or if leakage occurs, transfer contents to container in good condition. (§262.16(b)(2)(i)).
2. Waste must be compatible with container (§262.16(b)(2)(ii)).

3. Containers must be closed, except when adding…waste. (§262.16(b)(2)(iii)(A)).

4. Containers cannot be handled in a manner that could cause a release (§262.16(b)(2)(iii)(B)).

5. Inspect accumulation areas weekly (§262.16(b)(2)(iv)).

6. Special conditions for incompatible waste (§262.16(b)(2)(v)).

7. Mark each container with the words "Hazardous Waste" (§262.16(b)(6)(i)(A)).

8. Mark each container with the accumulation start date (§262.16(b)(6)(i)(D)).

9. Comply with all applicable land disposal restrictions (LDR), including determining if waste meets LDR treatment standard (§262.16(b)(7) and §268.7(a)(1)).

10. Comply with applicable LDR, including prepare and retain documents supporting determination that waste meets LDR treatment standard (§262.16(b)(7) and §268.7(a)(6) and (8)).

11. Comply with applicable LDR, including notify TSDF that will receive LDR-regulated waste (§262.16(b)(7) and §268.7(a)(2) or (a)(3)).

12. Operate site to minimize fire, explosion and releases (§262.16(b)(8)(i)).

13. Have equipment to respond to a hazardous waste emergency (§262.16(b)(8)(ii)).

14. Test and maintain emergency response equipment (§262.16(b)(8)(iii)).

15. Enable personnel access to communication or alarm system during handling of hazardous waste (§262.16(b)(8)(iv)).

16. Maintain aisle space around hazardous waste containers (§262.16(b)(8)(v)).

17. Make emergency response arrangements with Local Emergency Planning Committee (LEPC) (§262.16(b)(8)(vi)(A)).

18. Maintain records documenting arrangements made with LEPC (§262.16(b)(8)(vi)(B)).

19. Have full time emergency coordinator (§262.16(b)(9)(i)).

20. Post emergency information next to telephones or in areas where hazardous waste is generated and stored (§262.16(b)(9)(ii)).

21. Ensure employees are familiar with emergency response procedures (§262.16(b)(9)(iii)).

22. Respond to emergencies (§262.16(b)(9)(iv)).

23. Obtain EPA identification number (§262.18(a)).

24. Use a manifest when shipping hazardous waste (§262.20(a)).

Does EPA really mean that a violation of one VSQG Condition for Exemption, like an improperly marked drum, should result in finding violations of these 24 SQG requirements?

Similarly, an SQG Condition for Exemption is the requirement to keep containers holding hazardous waste closed at all times except when adding or removing hazardous waste. See 40 CFR §262.16(b)(2)(iii). What if one container of hazardous waste is found not to be completely closed during an inspection? Does that mean that the SQG is now subject to penalties for not meeting LQG requirements, or worse, for not having a RCRA permit and for not meeting the many TSDF requirements? Penalties that could be applied to these dozens of violations would not be remotely equivalent to the single penalty that appropriately could be assessed for not having a container properly closed.

With this proposed change, EPA appears to be addressing a situation whereby a generator routinely exceeds its monthly generation limit and operates at the next higher level of generator status without complying with the more stringent requirements of that higher level. In that situation, EPA believes the generator should be subject to violations for noncompliance with all requirements applicable to that higher level of generator status. But EPA's proposal goes well beyond this objective. It would also result in a VSQG that did not properly mark a container but truly is generating less than 100 kg/month of non-acute hazardous waste each month to be subject to the same penalties as a purported VSQG that routinely generates more than 100 kg/month.

EPA's proposal is draconian by any measure. It is not a clarification of the agency rules, but rather an attempt to dictate an enforcement policy through a rulemaking. Even more troubling, it mandates an enforcement result that even the most aggressive enforcement official likely would not take in most circumstances.

As noted earlier, the fundamental problem with EPA's proposal is that it is premised on a generator having to have a TSDF permit and meeting TSDF requirements if it violates any Condition for Exemption, even though Congress never intended to require a RCRA permit for a generator. See 42 U.S.C. §6922. To rectify this in the final rule, all Conditions for Exemption should be changed to "independent requirements," and EPA should clarify that a violation of an independent requirement neither results in the generator violating RCRA for not having a TSDF permit and meeting TSDF standards, nor for not meeting the standards of the next higher-level generator status.

If EPA decides to disregard this statutory backdrop, there are still three key problems with the approach EPA proposes, and three key adjustments EPA should make to the proposed rule. First, under EPA's proposal, whenever there is a violation of any one Condition for Exemption, multiple violations would occur and multiple penalties could be assessed. The main problem with this is that the Conditions for Exemption are much too broadly defined. The Conditions for Exemption are now proposed to be all of the requirements that appear in proposed §262.14 for VSQGs, §262.16 for SQGs, and §262.17 for LQGs. There are about 10 Conditions for Exemption for VSQGs, and over two dozen Conditions for Exemption each for SQGs and LQGs.

One way to address this problem is to limit the Conditions for Exemption to just those criteria that distinguish one status of generator from another. Specifically, the Conditions for Exemption for a VSQG should be limited to generation each month of hazardous waste below the VSQG thresholds, e.g., 100 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 100 kg of residue of acute hazardous waste. Similarly, the Conditions for Exemption for an SQG should be limited to generation each

month of hazardous waste below its threshold of 1000 kg a non-acute hazardous waste, etc. and removal of that waste within 180 days. The Conditions for Exemption for an LQG should be limited to removal of its hazardous waste within 90 days. All other requirements stated in 40 CFR §262.14, §262.16 and §262.17 should not be identified as Conditions for Exemption but rather as "independent requirements." These other requirements, such as how drums are marked, kept closed, or stored, are operational standards that prescribe how the generator should manage its hazardous waste. They are not conditions that differentiate one generator status from another.

Under our suggested approach, for example, if an SQG fails to close its drum of hazardous waste, but continues to generate between 100 and 1,000 kg of non-acute hazardous waste per month, it would still be considered an SQG, but one that has violated one of its operation standards. Thus, it would be out of compliance for this one SQG operation standard, but not for all of the operation standards that apply to an LQG or a TSDF. This result is reasonable because, in this example, the SQG has continued to generate less than 1000 kg of non-acute hazardous waste each month, and in that case, there is no basis for it being subjected to LQG or TSDF requirements.

In summary, each operational standard in §262.14 for VSQGs, §262.16 for SQGs, and §262.17 for LQGs should not be identified as a Condition for Exemption. Assuming EPA disregards the statutory intent not to require permits for generators, the only Conditions for Exemption should be those criteria that delineate the waste generation amount differences or removal requirements between a VSQG, SQG, LQG and TSDF.

Second, a violation of a Condition for Exemption (narrowly defined as suggested above) should not result in charges that the generator has failed to obtain a TSD permit and to meet the many TSDF permit requirements. If a VSQG exceeds 100 kg per month of non-acute hazardous waste but still generates less than 1000 kg per month of non-acute hazardous waste, it has not violated the requirements that apply to a permitted TSDF or to an LQG. It is operating at an SQG level, and should only potentially be responsible for meeting the SQG standards. Similarly, if an SQG

generates more than 1000 kg per month but the hazardous waste is removed within 90 days, the SQG has not violated TSDF standards, but rather is still meeting the LQG Conditions for Exemption, and at most, should be subject only to penalties for failing to meet any other applicable LQG standard.

Third, in this rulemaking, EPA should neither dictate that a violation of a Condition for Exemption (narrowly defined as suggested above) will result in violations of requirements at the TSDF or next level of generator status nor mandate penalty assessments for all such violations. How to charge a generator for violating RCRA and what penalty approach to take should be a matter left to the discretion of EPA and state enforcement officials. Thus, at most the final rule should state that violation of a Condition for Exemption (narrowly defined as suggested above) may be the basis for charging the generator with violating the next level of generator requirements, but EPA should make clear that this rule does not compel an enforcement official to charge all such violations or impose penalties for all such violations. EPA's programmatic rules, particularly those stemming from a rulemaking like this that purports to be a clarification and consolidation of existing generator rules, should not establish agency enforcement policy.

These suggested changes are especially important in light of EPA's stated intent to move forward with NextGen enforcement, which is based largely on transparency and data availability. A notice of violation letter that includes all of the violations cited above because, for example, a generator failed to properly label one container would mislead the public into thinking that a particular site presents a serious threat to public health, safety or the environment. This conclusion would be misinformed and inaccurate.

To summarize, Industrial Generators strongly urge EPA to revise proposed §262.10(g)(2) and §262.14, §262.16 and §262.17 to:

1. Consistent with the statute, re-characterize all Conditions for Exemption as operational standards/independent requirements such that

the violation of one would not trigger the violation of the RCRA permitting rules.

2. If EPA decides to disregard the relevant statutory backdrop, it should still:

a. Limit the Conditions for Exemption to those criteria that distinguish one generator status from another, e.g., exceeding the stated levels of acute and non-acute hazardous waste for VSQGs and SQGs, and not removing hazardous waste within 180 days for an SQG and 90 days for an LQG. EPA should also move all of the operating standards out of the §262.14, §262.16 and §262.17 and not identify them as Conditions for Exemption.

b. If a violation of one of these more limited Conditions for Exemption occurs, and an enforcement official decides to charge violations, it should not charge violations of the permitted TSDF rules, but rather only violations of the next higher level of generator status that reflects the actual amount of hazardous waste that was generated.

c. Program-initiated rules, like these generator rules, should not require enforcement officials to consider a violation of a Condition for Exemption to be a violation of the next level of requirements for a generator or trigger penalties for such multiple violations.

9. <u>"Accurate" Hazardous Waste Determinations (40 CFR §262.11)</u>

At the beginning of new sections 40 CFR §262.11, EPA proposes to explicitly require that a generator must make an "accurate" hazardous waste determination. For over 35 years EPA has implemented its generator rules without having to explicitly state

that a generator must make an accurate determination. It is clear from hundreds of enforcement actions that if a generator fails to make an accurate determination, it has violated the RCRA rules and EPA can and will impose penalties for the violations.

The concern Industrial Generators have with adding this concept of "accurate" to the rules is that it may be construed by an enforcement official to require a generator to fully and completely classify its wastestreams. For example, it is not unusual for a generator to "overclassify" what might be a nonhazardous waste as a hazardous waste when the generator is uncertain of the classification, or the management costs would not significantly increase by classifying the waste as hazardous. EPA has always allowed overclassification, yet requiring the waste determination to be "accurate" could be interpreted by an inspector as no longer allowing overclassification.

There are also situations where a generator knows that a hazardous waste exhibits one "D" code, but thinks it might exhibit another D code or have some listed codes, so it enters all of the possible codes. Would that be an accurate waste determination?

We are unaware of a single enforcement act case where the generator successfully defended itself by saying that it did not violate the rules requiring it to properly classify its waste because it conducted a waste determination, even though the result of that determination was inaccurate. Thus, there is no need to add the word "accurate" to proposed 40 CFR §262.11, and doing so will create confusion as to what the rule requires.

10. <u>Hazardous Waste Determination at Point of Generation (40 CFR §262.11(a))</u>

EPA proposes to add a new rule at 40 CFR §262.11(a) whereby a *"hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change*

the properties of the waste" (emphasis added). Industrial Generators do not question the fundamental RCRA requirement that a hazardous waste determination be made by the generator of a solid waste, and later, if the waste changes. However, the language EPA has proposed - - *"before any dilution, mixing or other alteration of the waste occurs,"* will create confusion and should be deleted, and the reference to *"at the point of waste generation"* should be avoided.

Over the years, EPA has issued specific interpretations of when a solid waste first should be evaluated to determine if it is a hazardous waste, and those interpretations may require evaluation after *"dilution, mixing or other alteration of the waste occurs."* As just a few examples show:

- Many listings that apply to residues, like sludges, wastewater, filters, ash, etc., from treating waste, have their point of waste determination after the waste is treated. For example, K001 is *"bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol."* The proposed language (*"before any...alteration of the waste occurs"*) suggests that these listings should be subject to an earlier point of generation and waste determination before the wastewater treatment occurs.

- Under 40 CFR §261.4(c), hazardous waste generated within a manufacturing process unit is not subject to regulation, including a hazardous waste determination, until it is removed from the unit or remains in the unit for more than 90 days after operations cease. The proposed language suggests that the hazardous waste determination will need to be made before removal, especially if the removal, such as with water, were to alter the composition of the waste.

- When an intact building that is intended for discard is demolished, the point of generation and hazardous waste determination is after the

demolition occurs and the construction debris is ready for removal. See letter M. Shapiro to K. Kastner (June 3,1994). The proposed language suggests that the point of generation and waste determination would be before the demolition.

- Even though cleaning out a power plant boiler will generate several distinct liquid washout streams, and the first or second stream by themselves might exhibit a hazardous waste characteristic, the waste determination can be made on the combined streams. See 62 FR at 26006-26007 (May 12, 1997). The proposed language suggests that the waste determination would have to be made on each separate washout stream before any dilution.

- Movement of contaminated media within an area of contamination (AOC) or within a designated corrective action management unit (CAMU) is not a new point of generation and does not require a waste determination even if the movement alters the composition of the media (See Management of Remediation Waste Under RCRA," pp. 3-4, EPA 530-F-98-026 (October 1998) (a/k/a Memo from T. Fields and S. Herman (Oct. 14, 1998). The proposed language suggests that such movement within an AOC or CAMU would trigger a waste determination.

The problem with the proposed language is that it goes too far by categorically saying that the point of generation and point of waste determination are always before any dilution, mixing or other alteration of the waste. Further, by stating that the hazardous waste determination must be made at the *"point of generation,"* EPA is both "begging the question" as to where the point of generation is and potentially opening up that concept to new interpretations that disregard EPA's prior nuanced interpretations. The point of generation and point of waste determination are difficult concepts. EPA should not try to codify these concepts in an overly-generalized rule that loses or confuses the nuance EPA has provided in its many interpretations. Thus, we suggest that either EPA delete altogether this proposed rule at 40 CFR §262.11(a), or limit it to

say, *"a hazardous waste determination for each solid waste must be made by the generator, and at any time in the course of its management when the waste has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste."* This language will alert generators to their obligation to make waste determinations, yet not interfere with the many point of generation and point of waste determination interpretations that EPA has issued over the years.

Further, EPA should clarify in the final rule that this requirement to make a hazardous waste determination only applies to materials that are generated as solid wastes. Materials that are excluded from the definition of solid waste, such as discharges to a POTW, or hazardous secondary materials that are reclaimed in a closed-loop, are not solid wastes under 40 CFR §261.4(a)(1)(ii) and §261.4(a)(8) respectively, and therefore, would not be subject to a hazardous waste determination.

11. Point of Waste Determination for Wastewaters Conveyed to a Wastewater Treatment System

Industrial Generators urge EPA to clarify that wastewaters that are directed via pipe or other enclosed means of conveyance from industrial operations into a wastewater treatment unit ("WWTU") as defined in 40 CFR §260.10 do not have to be classified as to whether they are hazardous and if so for what waste codes. Such classification serves no regulatory or environmental purpose.

A tank-based wastewater treatment system and its ancillary equipment that meet the definition of a WWTU are not regulated under RCRA. What the hazardous waste codes might be for such wastewater that is conveyed to the wastewater treatment system is of no consequence. Further, when the wastewater is discharged under an NPDES permit or to a POTW, the discharge is excluded from the definition of solid waste under 40 CFR §261.4(a)(1) and (2), and therefore, knowing the hazardous waste codes that attached to such wastewater before discharge is of no consequence.

We recognize that materials that are removed from a wastewater treatment system, such as sludges and filters, would have to be classified as to whether they are hazardous waste, and if so, which codes they carry. But that waste classification should occur at their points of generation when they are removed from the WWTU. The wastewater itself, which is treated and discharged, would qualify for the discharge exclusions from the definition of solid waste, and while in the WWTU, the WWTU is exempt from RCRA, so there really is no need for each wastewater stream to be classified and coded.

At a typical manufacturing plant that generates diverse wastewater streams, dozens if not hundreds of wastewater streams can be collected, directed to the headworks of the WWTU, and then treated in the WWTU. To have to identify whether each of these wastewater streams that are conveyed via pipe to a WWTU are hazardous at their points of generation when they are not subject to regulation under RCRA makes little sense. One objective of this rulemaking is to remove unnecessary regulations. In that spirit, the requirement to classify wastewater streams that are conveyed via pipe to a WWTU should be removed.

Some states have already recognized the wastefulness of requiring generators to classify their wastewater streams at the points of generation. For example, Tennessee Rule 0400-12-01-.03(2)(a)2 [page 3 of the Rule] states:

> *"(2) Notification*
> *(a) Applicability*
> *2. A person shall not be required to notify with regard to each individual hazardous wastestream generated which is piped along with other wastes to an on-site wastewater treatment facility or piped to a publicly owned treatment works (POTW) for treatment. However, if the conglomerate wastestream delivered by the collection system to the on-site wastewater treatment facility or to the POTW is a hazardous waste as defined in Rule 0400-12-01-.02, then the generator must notify with regard to that wastestream*

and file an annual report in accordance with subparagraph (5)(b) of this rule."

Tennessee Rule 0400-12-01-.03(5)(a)3 [page 22 of the Rule] also states:

"(5) Recordkeeping and Reporting
(a) Recordkeeping [40 CFR 262.40]
3. A generator must keep records as necessary to demonstrate compliance with subparagraph (1)(b) of this rule - to include any test results, waste analyses, or other determinations made in accordance with that subparagraph - for at least 3 years from the date that the waste was last sent to on-site or off-site hazardous or nonhazardous waste treatment, storage, or disposal facilities. Such record must document the basis for the hazardous waste determination, including those determinations based on the generators knowledge of materials and processes utilized rather than on laboratory analyses. Pursuant to Rule 0400-12-01-.03(2)(a)2, this requirement does not apply to individual wastewater streams in cases where the hazardous waste determination is made on the conglomerate wastestream."

Note that although these rules relieve the generator of waste determination and documentation at the point of generation for the many wastewater streams that typically are directed to a WWTU, the rules still require waste determination at the headworks. Although we would prefer not to have to do the waste determination and documentation at either the many upstream individual points of generation or at the downstream headworks, to the extent EPA believes some waste classification is necessary, it should require it only at the headworks to the WWTU where the combined streams would be classified according to whether they exhibit a characteristic and whether they carry any listed codes. In that case, this principle of not having to classify wastestreams at point of generation so long as they are classified at the headworks should also be extended to wastestreams that are directed to an elementary neutralization unit ("ENU") as defined

in 40 CFR §260.10. By classifying such wastestreams at the headworks, the ENU requirement that it receive only D002 corrosive wastewater can be assured, and unnecessary classification at potentially multiple upstream points of generation can be avoided.

12. Determination of Hazardous Waste Listings (40 CFR §262.11(c))

Industrial Generators have no objection to EPA identifying in 40 CFR §262.11(c) the factors a generator should consider in evaluating whether its waste is listed. We question, however, whether this rule should indicate that a delisting option is available. Although such an option should be available, since EPA delegated delistings to authorized states, in our experience delistings have been infeasible in most authorized states. Few states have the staff capable and available to oversee and rule on a delisting petition, and many states charge exorbitant fees for submission of a delisting petition, making delisting rarely economical. EPA should withdrawal the delisting program from the states and run the program itself, and in any event, not represent that delisting is a realistic option at this time.

13. Determination of Hazardous Waste Characteristics (40 CFR §262.11(d))

In proposed 40 CFR §262.11(d) EPA should delete the word "either" and replace the word "or" with "and/or" so as to read: "*by following the procedures in paragraph (d)(1) and/or (2) of this section.*" This will clarify that a generator may use either testing or process knowledge, or a combination of both, to classify a wastestream. For example, it is common to rely on some analytical data, perhaps of similar wastes, and one's knowledge of the potential composition of the target wastestream to conclude that the target wastestream is or is not a hazardous waste due to a characteristic. It is also very common to rely first on process knowledge to determine what are the appropriate analytes (e.g., RCRA metals, VOCs, SVOCs, etc.), and then to conduct testing only on those analytes.

Industrial Generators also suggest that the word "applicable" be inserted before "methods" in proposed 40 CFR §262.11(d)(1) so as to read: *"The person must test the waste according to the applicable methods set forth in Subpart C of 40 CFR Part 261 or according to an equivalent method approved by the administrator under 40 CFR 260.21 and in accordance with the following: . . ."* By adding the word "applicable," this rule will make clear, for example, that if a waste is being evaluated for the toxicity characteristic, a Method 1311 test should be used, as opposed to one of the test methods that must be used to evaluate whether a waste is ignitable due to its flash point.

14. Overly-Prescriptive Waste Determination Documentation (40 CFR § 262.11(e))

The proposed waste determination documentation rule at 40 CFR § 262.11 is overly-prescriptive and too broad in scope. In this Comment #14 and its subheadings, we address the overly prescriptive concerns. In Comment #15 and its subheadings, we address the overly broad concerns.

14.A. The rule ignores how generators make hazardous waste determinations (40 CFR § 262.11(e))

The proposed regulation includes numerous prescriptive activities that SQGs and LQGs must perform to generate waste determination documentation for each hazardous waste the site generates. The proposed recordkeeping requirements, in essence, will push SQGs and LQGs to having a site-specific Waste Analysis Plan (WAP) that follows EPA's expansive WAP guidance. This is because SQGs and LQGs will face so much compliance uncertainty meeting the numerous §262.11(e) requirements, and the best way to defend against an enforcement action regarding waste determination documentation would be to have a detailed WAP.

For instance, consider the proposed mandatory requirement that SQGs and LQGs must document the "validity" of all sampling and analytical methods used. EPA elaborates that "validity" means "quality assurance/quality control" when used in this context. See 80 FR 57942/col. 1. The only way a generator

could confidently comply with this quality assurance/quality control requirement for its sampling and analysis would be to have a WAP that includes a quality assurance/quality control section that addresses the use of duplicate samples, equipment blanks, field blanks, and trip blanks, and the associated quality assessments, such as audits and quality assurances, corrective actions and reports to management.

The rule's preamble in support of the proposed §262.11(e) recordkeeping requirements includes no mention of the important role commercial TSDFs play in assisting SQGs and LQGs in making hazardous waste determinations. The preamble does not discuss the "waste profile" forms that are currently universally used by commercial TSDFs to summarize sampling results and document each hazardous waste determination. The established use of waste profiles makes unnecessary the proposed extensive recordkeeping requirements.

Industrial Generators acknowledge the importance of making accurate hazardous waste determinations, and that existing regulations already require generators to maintain certain waste determination records, such as laboratory test results. The proposed new recordkeeping regulation, however, is too prescriptive and burdensome, and therefore, should not be adopted. Instead, EPA should solicit input from various stakeholders, such as commercial TSDFs, on appropriate waste determination recordkeeping requirements and then propose a rulemaking at a later time based on that dialogue.

Nonetheless, if EPA insists on adopting a waste determination documentation rule, the following changes, at a minimum, should be made to the information requirements in the proposed rule.

14.B. Waste determination documentation "must" include (40 CFR §262.11(e))

Industrial Generators are very concerned by the proposed language in 40 CFR §262.11(e) regarding the waste determination records:

> *"Records must include, but are not limited to, the following types of information; the results of any tests, sampling, or waste analyses; records documenting the tests, sampling and analytical methods used in demonstrating the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste, and records which explained the knowledge basis for the generators determination..."*

(Emphasis added.) As written, it would appear that a generator must include all of these types of information for every waste determination it makes. Because this requirement also requires records supporting a generator's process knowledge, and proposed 40 CFR §262.11(d)(2) identifies many different types of information that a generator may use as a basis for its process knowledge, together the list of information that would have to be documented under this proposed rule is quite extensive.

Generators are properly selective in the information they rely upon to make a waste determination on a particular wastestream. Sometimes a generator will need extensive information regarding the composition, test results, process information, etc., but other times a waste determination can be made on very little information simply because the waste is obviously hazardous or non-hazardous. To require the records to include all of the specified information, or even some of this specified information, would cause generators, in many cases, to go through the exercise of preparing the required yet unnecessary information.

If EPA adopts a final rule requiring waste determination documentation, EPA should change the language of this rule from *"must"* to *"may."* Alternatively, EPA should change this rule to read in pertinent part:

> *"...These records must comprise a generator's knowledge of the waste and support the generator's determination, as described at 40 CFR 262.11(c) and (d). If the generator relies on any of the following information for its determination, it must include in its records such information: the results of any tests, sampling, or waste analyses; records documenting the tests,..."*

Both of these alternative formulations of this rule would make clear that information that was not relevant to the generator's determination need not be documented.

14.C. Documentation of validity and relevance of analytical test methods (40 CFR §262.11(e))

EPA should delete the proposed language in 40 CFR 262.11(e) requiring that the documentation "*demonstrate the validity and relevance of such tests.*" For tests methods that are required under the regulations, there should be no need to document the validity or relevance of the test since that was done by EPA when it adopted those required tests. For other tests that the generator relies upon, such as a DOT explosive hazardous materials test to determine if a waste is D003 reactive, most generators will not have the technical expertise in analytical chemistry to "*demonstrate the validity and relevance*" of the test. Rather, the generator would have consulted a commercial laboratory and obtained a recommendation on what test to employ. Asking a generator to document the technical reasons for the recommendation asks for more information than a typical generator can reasonably provide, and is unnecessary and burdensome.

14.D. Waste determination documentation warning against comingling (40 CFR §262.11(e))

We question whether the proposed sentence, "*Generators may wish to segregate any of their municipal solid waste from other solid and hazardous waste to avoid potential comingling,*" is the best way of stating this point. We understand this point to be a warning to generators not to create additional hazardous waste by mixing their municipal solid waste with other listed hazardous waste or characteristic hazardous waste that could cause the entire mixture to be hazardous waste under the mixture rule. Perhaps the following makes the point more clearly: "*Generators may wish to segregate their municipal solid waste from hazardous waste as necessary in order to avoid each mixture becoming a hazardous waste under the mixture rule at 40 CFR §261.3(a)(2)(iv).*"

15. Overly-Broad Scope of the Waste Determination Documentation (40 CFR §262.11(e))

As noted above, Industrial Generators recommend that EPA, in a separate rulemaking, consider further the appropriate level of detail and scope of the waste determination documentation it should require of generators. If EPA, nonetheless, decides to adopt waste determination documentation rules in this rulemaking, the scope should be narrowed as explained below.

15.A. Documentation of determination that a solid waste Is not hazardous waste (40 CFR §262.11(e))

EPA proposes to require SQGs and LQGs to prepare and retain documentation of each determination that a particular solid waste is a hazardous waste as well as each determination that a particular solid waste is not a hazardous waste. This latter proposed requirement to document each determination that a particular solid waste is not a hazardous waste would be an extension of the current rules and a significant new burden.

Industrial Generators do not support a new requirement to document determinations that a solid waste is not a hazardous waste. This would be extremely burdensome for facilities that generate multiple solid wastes that in most cases are not hazardous wastes. For example, at a research and development (R&D) facility where prototype products are constantly being reformulated for development into marketable products, many slightly different solid wastes are generated within a typical week or month. The personnel involved in the formulation of these prototypes will have a good understanding of whether the wastes associated with each formulation would potentially be hazardous waste based on the ingredient mix that they are using in each formulation. Most of the formulations for a specific product will use ingredients that are within the same family of chemicals, maybe with slightly different percentages or with only one or two different ingredients. If the waste from formulation #1 of a prototype product is not a hazardous waste, it is likely that the waste from formulation #100 of that prototype product is also not a hazardous waste. Yet based on the rule as proposed, documentation would have to be created for the wastes from each one of those different formulations.

Similar burdens would result in a laboratory where numerous experiments occur on a daily and weekly basis with slight variations in the materials used. Again, the laboratory personnel will have a good idea as to which wastestreams might contain ingredients that could cause the waste to be hazardous, but there will be many, many wastes that they generate that they know will not be hazardous simply because of what the waste contains. Yet for each one of these laboratory wastes, documentation would have to be created and retained.

This is not just an issue for universities and hospitals, but is also an issue affecting many Industrial Generator members since we also have extensive R&D and laboratory facilities. Manufacturing operations themselves will also be very affected and burdened. Even if manufacturing operations regularly produce the

same family of products, every minor process or raw material change could require new waste characterization documentation.

This is also a significant additional burden for manufacturing facilities with regard to common solid wastes they generate that they know are not hazardous wastes, but an inspector may not know that and he/she may expect and demand waste determination documentation. Examples include inert plastics, non-contaminated wood, clean soil, non-painted metal, food waste, road repair waste, shrubbery and vegetative waste, raw water supply filter waste, packaging, office waste, and product trimmings. EPA suggests that documentation would not be required for common solid wastes, but unless EPA provides a complete list of such common solid wastes, plant owners and operators would risk non-compliance if they assume that an inspector will agree with them that a particular wastestream is a common solid waste not requiring waste determination documentation. Of course, this whole issue of what is or is not a common solid waste requiring waste classification documentation is avoided if EPA does not require waste determination and documentation of solid wastes that are not hazardous wastes, which we urge EPA to do.

Further, documenting why certain wastestreams do not meet hazardous waste listings or characteristics raises the difficult question of how much documentation is required to support the negative conclusion that a waste is not hazardous. For example, if a facility has generated a solvent wastestream, it may be appropriate to document whether the waste is D001 ignitable or carries any of the F-listed solvent codes, but will the inspector also expect some statement in the documentation that the stream is not D002 corrosive, D003 reactive, or D004-43 characteristic. These are “decision-tree boxes” that the inspector might claim need to be checked off and documented. There simply are inherent problems in proving and documenting that a wastestream is not X, Y or Z.

In addition to this requirement being quite burdensome, the proposed requirement to document each determination that a solid waste is not a hazardous waste is not necessary. Currently, if questioned by an inspector, a generator must provide the inspector with sufficient justification as to why a particular solid waste is not a hazardous waste. EPA is quite successful in bringing enforcement actions when the generator's justification is insufficient.

In summary, EPA should only require documentation when a solid waste is determined to be a hazardous waste. Specifically, proposed 40 CFR §262.11(e) should be revised to provide:

> *"(e) Recordkeeping for small and large quantity generators. A small or large quantity generator must maintain records supporting its determination that a solid waste, as defined by 40 CFR 261.2, is a hazardous waste, as defined by 40 CFR 261.3. Records must be maintained for at least three years from the date that the waste was last generated. . . ."*

15.B. Documentation of determination that a recycled hazardous secondary material is excluded from the definition of solid waste (40 CFR §262.11(e))

As proposed, 40 CFR §262.11(e) requires records supporting the generator's *"solid . . .waste determinations, including records that identify a material as a solid waste, as defined by 40 CFR 261.2. . ."* This language would appear to require an SQG or LQG to maintain records of whether a particular hazardous secondary material is a solid waste, not simply whether a particular solid waste is a hazardous waste. This is clearly contrary to EPA's stated intent. See, e.g., 80 FR at 57943/col. 3. *(". . . documentation will not be required for entities that do not generate a solid waste. . .").*

A requirement to document whether each hazardous secondary material that is recycled is a solid waste would also go well beyond the current

requirements in the "definition of solid waste" rules. In the January 13, 2015 Definition of Solid Waste rule, after much deliberation and debate, EPA decided to require documentation that a material is not a solid waste only for the "generator control" and "verified recycler" exclusions and the legitimacy factor four alternate showing of "no significant risk" at 40 CFR §261.4(a)(23)(ii)(C) and (E), §261.4(a)(24)(vii), and §260.43(a)(4)(iii), respectively. Thus, EPA should not include in the final rule the proposed language that a *"generator must maintain records supporting its solid . . . waste determinations, including records that identify a material as a solid waste."* As suggested in the prior comment above, 40 CFR §261.11(e) should be revised to provide:

> "(e) *Recordkeeping for Small and Large Quantity Generators. A small or large quantity generator must maintain records supporting its determination that a solid waste, as defined by 40 CFR §261.2, is a hazardous waste, as defined by 40 CFR §261.3. Records must be maintained for at least three years from the date that the waste was last generated. . ."*

15.C. Exceptions to waste determination documentation (40 CFR §262.11(e))

The proposed waste determination documentation language also needs to recognize important documentation exceptions that EPA has in its existing rules, and most of which, it acknowledges in this preamble. These exceptions are underlined below. Thus, if EPA adopts a waste determination documentation requirement in the final rule, it should state:

> "(e) *Recordkeeping for Small and Large Quantity Generators. A small or large quantity generator must maintain records supporting its determination that a solid waste, as defined by 40 CFR §261.2, is a hazardous waste, as defined by 40 CFR §261.3, <u>except that the documentation is not required for</u>:*

1. a hazardous secondary material that is excluded from regulation as a solid waste;

2. a solid waste that does not have the potential to be a hazardous waste, such as food waste, restroom waste, paper products, and similar materials;

3. a solid waste that is excluded or exempted from regulation as a hazardous waste; and

4. a hazardous waste that is otherwise exempt from the requirement to make a hazardous waste determination and/or to document such determination.

Records must be maintained for at least three years from the date that the waste was last generated. . ."

Exception #1 affirms that generators are not required to document their determination that a hazardous secondary material is excluded from regulation as a solid waste.

Exception #2 codifies EPA's intent at 80 FR 57944/col. 1 that commonly-generated solid wastes are not subject to the documentation requirement.

Exception #3 is especially important because there are many solid wastes in 40 CFR §261.4(b) that are not regulated as hazardous wastes, and are exempt from the hazardous waste determination requirement. EPA states in the preamble at 80 FR 57943/col. 3 that *"documentation will not be required for entities that . . . generate a solid waste that has been excluded or exempted from Subtitle C controls."* Exception #3 would codify this intent.

Similarly, for Exception #4, there are many hazardous wastes, e.g., universal hazardous wastes, scrap metal (not excluded under §261.4(a)(13)), household hazardous waste, spent lead acid batteries, etc. that are exempt by rule and/or interpretation from the waste determination and/or documentation requirement. See, e.g., 40 CFR §261.6(a)(3), 40 CFR Part 266, Subparts C, G, N, 40 CFR §261.9(a) and 40 CFR Part 273; see also 60 FR 25504 (May 11, 1995). EPA should add these explicit exceptions to any rule it adopts regarding waste determination documentation.

16. Monthly Determination of Generator Status (40 CFR §262.13)

The proposed language in 40 CFR §262.13(b) states that:

> *"a generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:*
>
> *(1) Counting . . .*
>
> *(2) Subtracting . . .*
>
> *(3) Determining . . .*
>
> *(4) Comparing . . .*

This mandates that each month the generator has a regulatory obligation to calculate precisely the amount of hazardous waste it generates.

Most generators will generate fairly constant levels of hazardous waste and will not need to perform calculations very often to ensure that they are in the correct generator category. Usually calculation is only needed when a generator expects that its generation in a particular month will be close to the limit for its generator category. In such a month, it would be prudent for the generator to go through the calculation steps identified in §262.13(b), but that step-by-step calculation is not necessary every month. Further, an LQG would rarely need to conduct this calculation since there is no upper quantity limit on LQG status, and there is little reason for or benefit from an LQG finding

that it is within the SQG range of generation (i.e., 100 to 1000 kg/month of non-acute hazardous waste) for a few months since the generator is already set up to operate as an LQG meeting LQG standards. Thus, this rule should be rewritten to make clear that when a calculation is conducted, it should account for wastes as specified in this rule, but that a monthly calculation is not required.

17. Counting Hazardous Waste Generation for Generator Status (40 CFR §262.13(c) and (d))

Although we recognize that EPA proposes to simply move its generators status counting rules from current 40 CFR §261.5(c)(d) to new section 40 CFR §262.13(c) and (d), EPA should use this opportunity to clarify some of those rules that have created problems and misunderstandings in the past. First, under proposed 40 CFR §262.13(c)(2), hazardous waste is not be counted if it is "managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10." EPA should clarify that "immediate" management does not mean that the actual neutralization or treatment activities must occur immediately, but rather that there can be "immediate" storage that precedes those processes and that storage is part of the exempt elementary neutralization unit, wastewater treatment unit or totally enclosed treatment facilities. In other words, EPA should clarify that the storage preceding the neutralization or treatment would be considered immediate management.

Second, EPA should clarify that the "spent materials" that it refers to in 40 CFR §262.13(d) are hazardous waste spent materials, which, we agree, are proper to count once even if they are subsequently reused. Spent materials that are excluded from the definition of solid waste, for example by being reclaimed in a closed loop and reused in the original process under 40 CFR §261.4(a)(8), however, are not hazardous wastes and should not be subject to or counted at all under this rule. Indeed, better than a clarification in the preamble, we suggest that EPA modify 40 CFR §262.13(d)(3) to read "hazardous waste spent materials that are generated, reclaimed . . . ." This will make

clear that only hazardous waste spent materials need be counted once, and it is consistent with how the preceding subparagraphs §262.13(d)(1) and (2) are expressed.

18. Maintaining Hazardous Waste Determination Records Until the Generator Site Closes

EPA requests comment on whether to require SQGs and LQGs to retain hazardous waste determination documents until the generator site closes. See 80 FR at 57945/col. 3. Industrial Generators oppose such a requirement, or for that matter, any retention period beyond the current three-year rule. This would be particularly burdensome at industrial plants that change their product line frequently, e.g., batch chemical plants, toll manufacturers, or manufacturing plants that, due to frequent product innovation, turn over a large portion of their product line every few years. At these "batch," "toll" and "innovative" manufacturing plants, it is not unusual for dozens of products to be produced for a few years and then no longer produced. It is also not unusual that each one of these products will have several solid wastestreams that would require, under the new proposal, waste determination documentation as to whether each stream is hazardous or nonhazardous. Moreover, it is not unusual that such plants will be in operation for many decades before they close. If waste determination documentation is required for each wastestream from every product until closure at these plants, many file drawers with reams of paper (or gigabytes of memory space) of outdated waste determination documents would have to be retained for many years after the generation of the wastes ceased. This also conflicts with the April 4, 2006 Burden of Reduction final rule (64 FR 16862) where EPA reduced recordkeeping requirements for TSDFs from the life of the facility to the current 3 or 5 year period. So for example, a TSDF only needs to maintain records of its waste analysis/determinations for 3 years in 40 CFR 264.73(b)(3). Yet here, EPA is proposing to require a generator to keep the same information for the life of the facility.

Indeed, under the applicable RCRA Statute of Limitations, EPA only has enforcement authority to challenge non-compliant waste determinations and waste determination documentation for five years after generation of the waste. Having to

retain waste determination documents until closure of a site, which could be decades after the waste generation ceased, would serve no useful purpose, and could greatly clutter a plant's files.

19. Waste Determination Documentation for Very Small Quantity Generators

EPA requests comment on a possible requirement that VSQGs prepare waste determination documents and retain them. See 80 FR at 57946/col. 1. Industrial Generators oppose such a requirement. VSQGs have historically been subject to minimal RCRA standards due to the limited quantity of waste that they generate and their lack of familiarity (relative to other generators) with the waste regulations. Most VSQGs rely on third-party intermediaries, brokers, and waste management companies to profile their wastes, and to assist the VSQG in ensuring that the hazardous wastes are properly handled and disposed. EPA has not justified the burden that a requirement to prepare and retain waste determination documents would place on VSQGs given that they generate such a minimal amount of hazardous waste. Further, the TSDFs that receive the wastes from VSQGs for treatment or disposal are already required to maintain records of these wastes, so requiring VSQGs to retain the same information would be largely redundant.

20. Hazardous Waste Determination Electronic Decision Tool

Industrial Generators would be interested in an electronic decision tool EPA discusses at 80 FR 57946 if it truly would be useful and reliable in making hazardous waste determinations. We question its feasibility, however. The fact that no commercial entity has attempted to develop such an electronic tool suggests that it may not be feasible. Hazardous waste determinations rest on many decisions, and often those decisions cannot be made on simple black-and-white rules. There are many waste determination issues that are grey: where is the point of generation; what is a representative sample; what does a listing description mean; what is a listed spent solvent; what do the characteristics cover that are not subject to prescribed tests, like the reactivity characteristics; and many others. We are doubtful that EPA could

successfully develop an electronic tool that would capture all of the waste determination nuances. Consequently, at most, it should be issued as a compliance assistance tool, i.e., as guidance, instead of as a mandated program that every generator must use and abide by. Very importantly, even if the tool were generally very comprehensive and accurate, the authorized states would need to accept its use by generators before generators would be able to confidently rely on it.

21. SQG and LQG Re-Notification (40 CFR §262.18(d))

EPA proposes to require SQGs and LQGs to re-notify every two years on Form 8700-12 and the biennial report respectively in order to update their generator site information. Industrial Generators believe that this new re-notification requirement is neither necessary nor justified.

Most states receive as part of the biennial or annual report the information EPA says it needs to obtain from SQGs and LQGs. In addition, current Form 8700-12 states in its Instructions that subsequent notification should be submitted for various changes that occur, which include a change in site contact, site ownership RCRA activity levels (VSQG, SQG, LQG, TSD, etc.), and for other reasons. See page 4 of instructions to EPA Form 8700-12. Therefore, it is not clear why EPA needs to impose a new regulation requiring re-notification when it should already have, or should be able to obtain from authorized states, the information EPA says it needs. If the problem is inadequate coordination between EPA regional offices and authorized states, that problem should be resolved directly between EPA and its authorized states, rather than EPA placing a new and largely redundant burden on generators.

22. Container Labels (40 CFR §262.14(a)(4)(viii)(B), §262.15(a)(1)(v), §262.16(b)(6), §262.17(a)(5), §262.32(c), §263.12(b), §268.50)

EPA proposes to require multiple markings/labels on hazardous waste containers. For example, under 40 CFR §262.14(a)(4)(viii)(B) for VSQGs, §262.16(b)(6) for SQGs, 40 CFR §262.17(a)(5) for LQGs, 40 CFR §262.32(c) for all generators, 40

CFR §263.12(b) for transfer facilities, and 40 CFR §268.50 for TSDFs,[3] containers would have to be labeled with:

1. the accumulation start date;
2. the words "Hazardous Waste";
3. other words that identify the contents of the containers, such as the name of the chemicals or the proper shipping name under DOT regulations;
4. an indication of the hazards of the contents, such as "ignitable;" and
5. the applicable hazardous waste codes, when the containers are shipped off-site.

Current RCRA rules require only the markings in #1 and #2 for containers in central accumulation areas. Under proposed 40 CFR §262.15(a)(1)(v), containers in satellite accumulation areas would require markings #2 and #3 above. Current RCRA rules only require markings #2 or #3 for containers in satellite accumulation areas.

Industrial generators urge EPA to give much more consideration before adding the marking requirements in #3, #4 and #5. Together, the markings in #1 through #5 (or in #2 and #3 for satellite areas) will provide more information than is necessary. The proposed additional information will work at cross-purposes with the DOT, OSHA and the Globally Harmonized System label requirements, and with the practices of generators and TSDFs, who are moving increasingly to bar coding. EPA's approach seems haphazard, i.e., put a lot of information on each container so that there might be something of value to employees, inspectors, emergency responders, waste handlers, generators, transporters and TSDFs. See 80 FR 57948-49. More consideration must be given to the negative aspects of providing more information: causing confusion; inconsistency with other applicable regulations; creating inefficiencies in work practices; greater risk from more container handling; etc.

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[3] As noted in Comment 8, these standards in §262.14, §262.16 and §262.17 should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

Below we identify many of the problems and issues EPA should consider before adopting container label requirements, but our main suggestion is that before EPA decides, it should convene all key stakeholders to evaluate, discuss and recommend what information is truly useful, feasible and will not conflict with the regulations of other agencies. These stakeholders should include all of the above-referenced groups as well as representatives from DOT and OSHA, whose rules could be directly affected or contravened if EPA were to finalize its proposed rules. Industrial Generators would be pleased to participate. We are confident that this effort would lead to wiser container labeling requirements than what has been proposed.

The following issues would need further consideration:

- Hazardous waste containers vary greatly in size (several milliliters, one gallon, 55 gallons, rail cars and tank trucks). The required information becomes particularly problematic for containers that are so small that the information will not legibly fit, and may be worthless if placed on large containers, e.g., tank trucks, using small print that cannot be easily seen.

- A LQG R&D facility may have up to thousands of small individual process laboratory fume hoods, ventilated enclosures, and other spaces each of which could be a satellite accumulation area. These satellite accumulation areas may contain many small vials, lab wipes, rinses, or used chemicals that will be placed in hazardous waste containers. The hazardous waste containers range in size from milliliters, to one gallon, to larger units. Wastes collected from these experimental activities are access controlled and "under the control of the operator." The contents, as well as the hazards associated with these wastes, are well known by the generator (typically the researchers), and this understanding is based upon their collective training and knowledge of the experimental processes, feedstocks, and testing, over which they have direct control. Data is recorded in their lab books, computers, and/or other integrated data management systems. It would be extremely burdensome and not practical

to require the researchers to constantly revise the "contents" labeling of this information on each individual container throughout the duration of the experiment as researchers place different materials into the container. These revisions would increase the risk for error. Additionally, there would be an increased risk to safety and more potential for exposure through the repetitive handling of these hazardous waste containers as revisions are made to identify different contents and hazard labeling information prior to the container being considered full.

- Because all hazardous waste shipments are regulated by DOT as hazardous materials, the containers will have to be labeled according to DOT standards when transported. The DOT labeling is sufficient to identify the hazard while the container is in transportation, and no additional hazard markings should be required for off-site shipments. Indeed, since most hazardous waste generators ship their waste off-site for treatment and disposal/recycling, the proposed new labeling requirements will likely have the negative unintended consequence of an SQG or LQG occasionally violating strict DOT labeling and marking regulations. This is because the generator's addition of other words that *"identify the contents of the containers"* and indicate *"the hazards of the contents"* as required by the EPA proposed rule cannot, under DOT rules, remain on the container if the *"marking or label, which by its color, design, or shape, could be confused with or conflict with a label prescribed by this part."* See 49 CFR §172.401. While it is possible that an SQG or LQG could place a label on a container and then remove or cover-up the label before offering the container for transport, this would be a laborious task since most labels will be designed to permanently stick to containers in all kinds of weather conditions, and there is a chance that a generator might miss removing a prohibited label or forget to cover it up. EPA should not promulgate new container labeling requirements that likely will cause conflict with an existing DOT labeling regulation and thereby result in an SQG or LQG violating DOT regulations.

- For containers that remain on-site, marking per OSHA standards should be considered as an alternative to what has been proposed.

- Labeling with a "waste profile number" or bar code should also be considered because of the efficiencies that results from using scanning equipment that increasingly is being used at TSDF and generator sites. Indeed, most TSDFs currently use unique drum identification systems in bar codes to track each drum once it is received.

- Since RCRA regulations have never required a specific format, size or color for the label, many Industrial Generator companies have created their own labels. Requiring more information on containers, which would be presented in non-standardized formats, sizes, colors, etc., will create confusion. Further, the companies would be forced to update and replace their existing label inventory to accommodate the information required in #3, #4 and #5 above. Also, all of the training, standard operating procedures, and job aids that instruct operators how to properly label a hazardous waste container would require update, and personnel would have to be retrained prior to the effective date of the new rule. This is an additional burden that the RIA did not consider in the cost to generators.

- The utility of adding hazardous waste codes to each container when it is sent off-site needs further consideration. Each container will already have complete DOT labeling and markings, and be accompanied by a hazardous waste manifest where up to six EPA hazardous waste codes must be identified. In addition, some wastestreams may have well over twenty or thirty different EPA waste numbers (e.g., ash from a hazardous waste incinerator). It seems unlikely that adding so many EPA waste code numbers to a container would be of any useful benefit. Further, as noted above, requiring an SQG/LQG to place four character long, alpha numeric, codes on a container, of arbitrary size, shape, text color, and label background color, will likely result in the SQG/LQG occasionally violating

DOT labeling/marking regulations at 49 CFR §172.401, which prohibits confusing or conflicting labels.

- Hazardous waste codes on containers do not provide usable information to the public or emergency responders. The hazardous waste codes are already identified on the shipping papers, to which emergency responders can refer.

- The TSDFs that receive the containers will have the waste codes identified in the accompanying manifest, in waste profiles that would have been provided before shipment, and in LDR documentation. They will not need waste codes on the containers themselves.

To summarize, Industrial Generators urge EPA to convene one or more sessions with all stakeholders, including DOT and OSHA, to address these issues and potentially other stakeholder issues before requiring more information to be placed on containers by generators.

23. Labels for VSQG Containers Sent to a Related LQG (40 CFR §261.14(a)(viii)(B))

For all of the reasons noted directly above, as well as the additional reasons noted in this Comment, Industrial Generators do not support the proposed very prescriptive requirements at 40 CFR §261.14(a)(4)(viii)(B) whereby a VSQG that ships containers of hazardous waste to an LQG under the same control would have to label each container with:

1. the words "Very Small Quantity Generator Hazardous Waste";
2. additional words that identify the contents (e.g., Spent Acetone");
3. words that identify the hazard (e.g., "Ignitable"); and
4. the applicable hazardous waste code (e.g., D001).

Importantly, VSQGs are not required to put any of these labels on hazardous waste containers today when sent to third-parties, like a RCRA permitted TSDF or a municipal

facility that is authorized to receive VSQG hazardous waste. See 40 CFR §261.5(g). EPA has not explained why all of these container labels are necessary when the VSQG sends its hazardous waste to a related (under the control of) LQG, but not required when the same containers are sent to an unrelated TSDF or authorized municipal facility. Indeed, by virtue of the control relationship between the VSQG and the LQG, the LQG can readily obtain whatever information it might need from the VSQG to facilitate proper management of the waste after the LQG receives it. EPA should not require container labels when the VSQG sends its very small amount of hazardous waste, normally one or two containers, to its related LQG.[4]

24. Notification for VSQG Containers Sent to a Related LQG (40 CFR §262.14(a)(4)(viii)(B)(1), §262.41(a) and §262.17(g)(11)

Industrial Generators respectfully note that EPA has gone too far with the notification requirements it proposes for VSQG hazardous waste that is sent to a related LQG. Any one of the three requirements would achieve the objective EPA identifies of providing notice of the VSQG hazardous waste that is sent to an LQG. Specifically, EPA proposes:

1. the containers be marked as "Very Small Quantity Generator Hazardous Waste" (proposed 40 CFR §262.14(a)(4)(viii)(B)(1));
2. the LQG notes in its biennial report that it receives hazardous waste from a VSQG (proposed 40 CFR §262.41(a); and
3. the LQG gives EPA notice 30 days before receiving hazardous waste from a VSQG (proposed 40 CFR §262.17(g)(1).

Any one of these three requirements would put EPA and/or its inspectors on notice that the LQG has received hazardous waste from a related VSQG; only one should be

[4] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

required. VSQG hazardous waste is a small volume of material generated by entities that have relatively limited familiarity with RCRA, and as such, it should not be subject to unnecessary regulatory burdens.[5]

25. Monitor and Log for Tank Accumulation (40 CFR §262.16(a)(6)(ii)(C) and 40 CFR §262.17(a)(5)(ii)(C))

The proposed rule to require SQGs and LQGs to monitor and keep records of each time hazardous waste is added into a tank is unworkable for the many tanks that receive a continuous flow of hazardous waste or receive frequent additions of hazardous waste, which is the nature of many hazardous waste tanks. For example, at a batch chemical manufacturing plant, it is common to have one or more tanks for receipt of compatible liquid hazardous waste from various batch production operations. At any time during the day and from any one of the batch operations on the plant, a small amount of liquid waste might be conveyed to a less-than 90-day tank for centralized accumulation of compatible hazardous wastestreams. These liquid hazardous wastes typically will originate from numerous, different places within a plant, and flow through multiple, different pipes until they reach the common collection tank. Typically, each conveyance and the amount of conveyed liquid are not monitored by humans or electronic monitors because there is no need to do that. The proposed rule would require monitors to be placed in the inlet(s) to each receiving tank to measure flow volume, and that information would then have to be logged or recorded, but for what purpose?

Such measuring and recordkeeping is not needed to comply with less than the 90-day or 180-day rules for LQGs and SQGs. Those rules require that an accumulation tank for a large quantity generator be emptied at least once every 90 days for an LQG and at least once every 180 days for an SQG. Those rules can be met with records showing that an LQG tank is emptied every 90 days and an SQG tank is emptied every

[5] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

180 days. Plants already have, or can readily create, records showing that a hazardous waste tank was emptied on a particular date. For example, it is common to have records that a transporter pumped out a hazardous waste tank and transported the waste off-site on a particular date, and that the same tank was again pumped out on a subsequent date. When viewed together, those two records can conclusively show that the tank was emptied within 90 days for an LQG or 180 days for an SQG. So long as it is shown that the tank was emptied every 90 or 180 days, it really does not matter when specific volumes of the hazardous waste were conveyed into the tank; the volume certainly was not residing in the tank for more than 90 or 180 days if shipping records show that those tanks were emptied within those timeframes.

Thus, there is no reason to create the extremely burdensome requirement to install expensive monitoring equipment, and then monitor and log the accumulation start date for every hazardous wastestream that is conveyed to a tank. This is particularly true for accumulation tanks that constantly are receiving small volumes of liquid wastes from various operations or receiving liquid waste on a continuous or near continuous basis. If a generator wants to monitor and log or record every time waste is added to a tank, that is fine, but it should not be required because the information is not needed to demonstrate that an LQG tank is emptied every 90 days or that an SQG tank is emptied every 180 days.[6]

26. Documentation of Waste Accumulation Unit Inspections (40 CFR §262.16(b)(2)(iv) and §262.17(a)(1)(v))

Industrial Generators do not object to the proposed language in 40 CFR §262.16(b)(2)(v) and §262.17(a)(1)(v) that would merely incorporate into the reorganized rules for SQGs and LQGs the existing requirements related to inspections

[6] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

and the remediation that should be taken if a release is found.[7] But EPA has also requested comment at 80 FR at 57952 on whether also to require a record of each inspection that documents other things, for example: (1) *"a description of any discrepancies or problem areas encountered in the inspection"* (unclear what that means); (2) *"corrective actions taken"* even though such corrective actions could be taken over months or years after an initial inspection; and (3) whether there is a "secondary containment system," even if secondary containment is not a regulatory requirement. In essence, EPA is attempting to expand through an overly-prescriptive inspection record the regulatory requirements regarding what must be addressed during an inspection. There is neither a record basis for nor a need to expand the inspection requirements or to mandate their documentation in the inspection records.

Finally, we do not think a signature should be required on the inspection forms. However, if required, the rule should allow the "signatures" to be any form of employee identification. Many plant inspection forms are completed by personnel electronically and they sign by entering employee identification numbers. EPA's rule should accommodate this common practice.

27. Location of Inventory Records for Tanks, Drip Pads, and Containment Buildings (40 CFR §262.16(b)(6)(ii)(D) and §262.17(a)(5)(ii)(D))

EPA proposes in 40 CFR §262.16(b)(6)(ii)(D) and §262.17(a)(5)(ii)(D) that SQGs and LQGs keep their inventory records and other records associated with tanks, drip pads and containment buildings "in close proximity to the tank, drip pad or containment building." This is not practical or common, particularly for records associated with hazardous waste tanks. Such records are typically kept in a control room or a central file location and those all often are not in close proximity to the tanks, drip pads and containment buildings. As with other records kept at a facility, EPA should allow them to

[7] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

be kept in a central location that makes the most sense from an operational standpoint. On an inspection, the generator would be readily able to produce those records regardless of them being kept in a central office location or next to the particular hazardous waste units. Further, keeping them near the hazardous waste units presents many more opportunities for them to be lost or damaged by the elements.

28. Consolidation of Closure Regulations (40 CFR §262.17(a)(8))

EPA proposes to consolidate its closure regulations for units used by LQGs in a new 40 CFR §262.17(a)(8). Industrial Generators support consolidation and simplification of these requirements into a single place in the regulations.[8] The concept in proposed §262.17(a)(8)(ii)(A)(1) that closure should be undertaken *"to the extent necessary to protect human health and the environment,"* however, should be moved up to subparagraph (A). That way, this important risk-based concept would more clearly apply to all of the requirements in §262.17(a)(8)(ii)(A), not just to its subparagraph (1). For nearly 20 years, EPA has recognized that decontamination during closure is to be done to risk-based standards and not to non-detect or background levels. See Memo from E. Cotsworth, "Risk Based Clean Closure" (March 16, 1998). Moving to subparagraph (A) this concept that closure decontamination should be done *"as necessary to protect human health and environment"* will help to clarify that the decontamination work done under subparagraphs (A)(1), (A)(2) and (A)(4) are all to be risk-based.

29. Closure Regulations for LQGs Accumulating Hazardous Waste in Containers (40 CFR §262.17(a)(8)(ii)(A)(4))

Under proposed 40 CFR §262.17(a)(8)(ii))(A)(4), an LQG that cannot achieve clean closure for a container storage area would have to manage that area as a landfill. This would mean that, among other things, the LQG would be required to: (1) install

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[8] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

groundwater monitoring wells upgradient and downgradient from the container area; (2) monitor the wells 30 years or longer during a post-closure care groundwater monitoring program; (3) obtain a post-closure permit to conduct the post-closure groundwater monitoring; (4) by virtue of the permit, conduct solid waste management unit (SWMU) facility-wide corrective action; and (5) maintain financial assurance for the post closure care.

When EPA adopted its initial regulations, it properly distinguished between generators that store small quantities of hazardous waste in containers and generators that store or treat hazardous waste in much larger quantities in tanks, landfills, surface impoundments, incinerators, etc. LQGs that store hazardous waste in containers should not be subjected to the most onerous aspects of RCRA, such as post-closure groundwater monitoring, site-wide corrective action, and RCRA permitting, especially through this rulemaking, which purports to merely consolidate and clarify existing regulations. This proposal is a major departure from existing regulations. Imposing these requirements on generators would go well beyond 42 U.S.C. §6922, wherein Congress identified only six categories of regulations that EPA should promulgate for generators. None of those six include closure, or any of the other TSDF programs that would be triggered. Thus, these closure regulations should not be adopted without full consideration of the legal and practical consequences, and a record that will support the significant consequences of this rule change.[9]

30. Notification by LQGs Upon Closure of the Hazardous Waste Accumulation Units (40 CFR §262.17(a)(8)(i))

EPA proposes to require LQGs to notify EPA no later than 30 days prior to closing any unit that is used to accumulate hazardous waste, and within 90 days after

[9] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

closure of the unit.[10] Although notification of closure of generator accumulation unit sounds simple, it would have widespread implications.[11]

Less-than ninety-day accumulation occurs not only in well-defined tanks and at a central container storage area, but there are many other areas on a plant site where temporary less-than ninety-day accumulation occurs for short periods of time. Plants routinely use less-than ninety-day hazardous waste container accumulation areas for use by contractors during maintenance activities. Examples include lead paint abatement, sandblasting of equipment and tanks so that repairs can be made, the application of industrial-strength coatings, the cleanout of process equipment and raw material and product tanks prior to repair. Short-term less-than ninety-day accumulation areas are also commonly used in R&D projects. Most of these short-term less-than ninety-day accumulation projects occur within buildings where there is full containment, or outside on concrete or asphalt pads at or near plant operations that include secondary containment and/or drainage and collection systems to capture any releases. Thus, although the likelihood of a release during these short term projects is very minimal, to the extent a release occurs, it will typically be contained. Moreover, RCRA-trained personnel will be around the hazardous waste accumulation activity when it is occurring. Further, any release into the environment of more than 100 pounds of hazardous waste would require RQ reporting under CERCLA, and any release may also trigger action under the site's contingency plan. Thus, it is very unlikely that there will be a release from these short-term less-than ninety-day activities, and if there is one, it will be promptly addressed by on-site personnel and be contained.

In addition to these short-term accumulation areas associated with plant operations, short-term less-than ninety-day accumulation areas are created in connection with RCRA corrective action, closure, plant construction and other on-site

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[10] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

[11] We assume that this notification requirement would not apply to satellite accumulation areas since they are not subject to a closure requirement. EPA should confirm this in the final rule.

projects which might result in the excavation of contaminated soil or debris. Typically near the area of excavation, a less-than ninety-day area will be created to place excavated contaminated soil, gravel, asphalt, concrete and debris into roll-off boxes, dump trucks or smaller containers. These less-than ninety-day areas are almost always within the area of contamination (AOC), and sometimes within the area of a previously-defined solid waste management unit (SWMU) that is subject to corrective action or a hazardous waste management unit (HWMU) that is otherwise subject to closure. When that less-than ninety-day accumulation area ceases to be used, it would not be necessary to give notice that it will undergo closure because the whole area is undergoing closure or some other remedial project. Nor would it be necessary to separately undertake remediation at less-than ninety-day area in most cases. The overall remediation will already be under the oversight of plant personnel and in many cases the agency pursuant to order requirements or other regulatory programs. This is why EPA has long recognized that accumulation of hazardous waste during remediation within an existing AOC is not itself a new accumulation unit and would not require a permit or closure. See "Management of Remediation Waste Under RCRA," EPA 530-F-98-026, p. 3 (Oct. 1998).

We estimate that at a typical LQG, there would on average be approximately three of these short-term discrete less-than ninety-day accumulation areas created each year for the type of plant operations or remediation related projects described above. Based on the latest 2011 data from the National Biennial RCRA Hazardous Waste Report, there were 14,262 LQGs in the United States. If each of these LQGs has to submit a closure notification for these temporary less-than ninety-day areas, over 40,000 notifications a year would have to be created and submitted by the LQGs and received by EPA or authorized states each year. Even if only half of the LQGs create an average three short-term less-than ninety-day areas, that is still 20,000 notifications. The RIA to this proposed rule did not include a calculation of the regulatory burden, much less the agency resources, that would be required by this notification requirement.

Regarding the 30 day prior notice requirement, in many cases, it is not feasible to give notice 30 days prior to closing these temporary less-than ninety-day units. These

temporary less-than ninety-day accumulation areas are created for specific project purposes. In most cases, the projects will last a few days or a few weeks. It is not practical for the project personnel, especially third-party contractors who often do these projects, to give the agency notice and wait around for the thirty days to expire before they begin the closure activities of removing the hazardous waste and contaminated soil and debris. Often these projects occur in tight spaces where the activity interferes with ongoing operations and may even require shutdown of certain operations. Many of the projects cannot tolerate a 30 day prior notice requirement because that will mean extended interruption of plant operations.

Industrial Generators are also concerned that the notification will result in agency officials directing closure operations in a manner that leads to unnecessary sampling, extended delays and excessive remediation with ill-defined endpoints. Industrial Generators understand that while they are conducting these less than ninety-day accumulation activities, if releases occur that could impact the environment, such as into underlying soil, they are responsible for recovering the released material and removing any impacted soil, and they will promptly do that. But such releases are rare, and because of the prompt response, do not require extensive remediation. In almost all cases the accumulation occurs in tanks or containers that are kept closed when not in use, personnel are around when hazardous waste is being added or removed from the tanks or containers, and there are no releases into the environment.

Nonetheless, inspectors might take the position that the site owner must prove the negative -- that there has been no release into the nearby soil. To prove this, the inspector may require samples to be taken, which often means drilling through secondary containment that will affect the future integrity of those structures. The unnecessary additional costs and delays associated with sampling, awaiting results, evaluating the results against various risk-based standards, and reporting to the Agency will make what was supposed to be just a short-term less-than ninety-day accumulation effort associated with a specific plant project, like a tank clean out, into a much bigger, longer and complex project.

For all the foregoing reasons, EPA should not require in a final rule that notification be given by LQGs of closure of less-than ninety-day accumulation areas.

31. Applicability of Preparedness, Prevention and Emergency Procedures for LQGs (40 CFR §262.16(b)(8)(ii) for SQGs and 40 CFR §262.250 for LQGs)

Regarding the specific proposed changes, Industrial Generators support the clarification that the Preparedness, Prevention and Emergency Procedures apply only to areas where hazardous wastes are managed.[12] We note, however, that the use of the phrase *"generated or accumulated on site"* in the proposed rules may be misinterpreted as including satellite accumulation areas. EPA should delete the words *"generated or,"* and make it clear these requirements do not apply to satellite accumulation areas.

32. Arrangements with Local Authorities (40 CFR §262.256 for LQGs and §262.16(b)(8)(vi) for SQGs

Industrial Generators support the clarification in the proposed rule that an *"SQG and an LQG must attempt to make formal arrangements within its Local Emergency Planning Committee (LEPC) unless there is no LEPC, the LEPC does not respond, or the LEPC determines that is not the appropriate organization to make an arrangement with, and in that case, the SQG and the LQG should attempt to make arrangements with the local fire department and other relevant emergency responders, such as police and hospitals."*[13] But Industrial Generators do not support the categorical language EPA has proposed whereby the SQG and LQG must make arrangements with the LEPC or other relevant emergency responders. Despite reasonable efforts, the LEPC or other relevant emergency responders may be unwilling to make arrangements with the SQG or the

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[12] As noted in Comment 8, however, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

[13] As noted in Comment 8, however, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

LQG. In that case, the SQG or the LQG could be liable for violating this proposed requirement even though it has done everything reasonably within its power to obtain agreement with the LEPC or other emergency responders regarding the response plan.

We suggest EPA change the regulatory language to state that the SQG and LQG must *"use all reasonable effort"* to make arrangements with the LEPC or relevant emergency responders. This is stronger language than the current rule, which states that there must be an *"attempt to make arrangements,"* but it does not penalize the SQG and LQG if, despite their best efforts, the LEPC or other relevant emergency responders refuse to respond to repeated requests to make arrangements or to agree to reasonable arrangements.

33. Documenting Arrangements with LEPC (40 CFR §262.16(b)(8)(vi)(B) for SQGs and §262.256(b) for LQGs)

These proposed rules would require an SQG and an LQG to maintain records documenting the emergency response arrangements that have been made with the LEPC or other emergency responders. EPA seems to believe that it needs this documentation to confirm that such arrangements exist. This is an unnecessary requirement, however, because the arrangements will be spelled out in the contingency plan. Because there is no need for additional documentation, Industrial Generators oppose finalizing this redundant requirement.[14]

34. Contingency Plan Executive Summary (40 CFR §262.262(b))

EPA proposes that a new LQG, i.e., one that first becomes an LQG after publication of these rules in the Federal Register, must submit an Executive Summary of

[14] As noted in Comment 8, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

the Contingency Plan to the LEPC or other appropriate emergency responders. The Executive Summary must contain information on eight different topics.

Creating an Executive Summary, particularly one in a highly factual document like a Contingency Plan, may cause the emergency responder who just reads the Executive Summary to miss important information. At a small plant, an Executive Summary would add pages with repetitive information to what is likely already a manageable contingency plan. At a very large plant, an Executive Summary would have to be extensive to cover the required information, thus defeating its purpose. For example, at an 800 acre plant, there could be hundreds of water supply points that would have to be identified in the Executive Summary.

We suggest that EPA simply require an LQG to have a Table of Contents or Index in its Contingency Plan if it is beyond an easily readable length, e.g., 20 pages. This will enable an emergency responder to easily find the relevant section of the Plan that bears on whatever issue the emergency responder needs to address.

Further, regarding the request for extending this proposed executive summary requirement to SQGs, just as we see no reason for LQGs to have to develop an Executive Summary, it is even less necessary for SQGs to develop an Executive Summary since their Contingency Plans are likely to be relatively shorter.

Finally, if EPA nonetheless decides to require an Executive Summary, it should change the proposed language in 40 CFR §262.262(b)'s last sentence to "The Executive Summary may include the following elements as agreed between the LQG and the LEPC." The LEPC, not EPA, should determine what information is important for it to have in an executive summary, if one is required at all.

35. Elimination of Employee Personal Information in LQG Contingency Plans (40 CFR §262.261(d))

Industrial Generators fully support EPA's proposal to minimize employee personal information from LQG Contingency Plans. Because each coordinator will surely have a mobile phone, identifying the names and emergency contact telephone number for all emergency coordinators is all that is needed. This approach also better protects emergency coordinators whose privacy and security could be infringed if their home address and telephone numbers are made public, as they would be in a Contingency Plan.

For the same reasons, Industrial Generators request that EPA also modify 40 CFR §264.52(d) and §265.51(d) to eliminate the need for unnecessary employee personal information to be in the Contingency Plans at permitted and interim status TSDFs. Making this change will eliminate many Class 1 permit modifications, and their corresponding administrative burdens to TSDFs and regulators.

36. 24-Hour Emergency Coordinator (40 CFR §262.261(d))

In a situation where the facility has an emergency coordinator on duty 24/7, EPA is also considering not requiring that the names of the individual emergency coordinators be identified in the Contingency Plan, but rather that only the name of the position of the emergency coordinator be identified. That way, LEPC entities will be able to contact the emergency coordinator that is on duty by asking to speak to the person who holds the identified position and is on duty. EPA requests comment on approach. See 80 FR 57960/col. 3,

Industrial Generators support this approach. Not only will the LEPC caller find the emergency coordinator who is on duty when he/she calls, this rule change would minimize a common area of current non-compliance. Plant emergency coordinators frequently change positions or contact information. Under the current rules every time a personnel change occurs, the Contingency Plan is supposed to be updated. Too often,

this "slips through the cracks," and an unintentional violation occurs. Because it is easy to reach the emergency coordinator by asking for him or her by title, the proposed rule change would still result in LEPC entities reaching whom they need to contact. Thus, Industrial Generators support the option to include the "staff position" rather than the name of the emergency coordinator where a facility operates 24/7.

37. Location of Emergency Response Equipment (40 CFR §262.16(a)(8)(ii) for SQGs and §262.252 for LQGs)

Industrial Generators agree with and support EPA's proposal to give SQGs and LQGs flexibility to determine the most appropriate locations within the site to locate emergency response equipment. Emergency response equipment and supplies do not need to be located everywhere hazardous waste is managed. One or more centralized locations can result in better response.[15]

38. Consideration of Alternative Evacuation Routes

EPA requests comment at 80 FR 57961 regarding the extent to which an SQG and LQG should consider alternative evacuation routes and sheltering in place as part of its Contingency Plan. Industrial Generators believe that a well-thought-out and effective Contingency Plan should include consideration of all feasible evacuation routes and sheltering in place in light of the multiple events that could trigger the Plan, as well as the effects of weather, traffic, and other contingencies on evacuation routes. It is not necessary, however, to identify every alternative in the Contingency Plan, but rather it is appropriate that the Plan confirm that alternatives have been considered, and identify those that are viewed as the most appropriate, including potentially shelter in place, under certain circumstances. Also, based on certain geographic locations and access

[15] As noted in Comment 8, however, these standards should not be identified in 40 CFR §262.16 as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

road limitations, there may be only one logical alternative evacuation route, and if that is the case, that should be stated.

39. Electronic Contingency Planning Application

EPA requests comment at 80 FR 87961 on the usefulness of an electronic contingency planning application. Industrial Generators do not support the Agency devoting significant resources to developing an electronic application for Contingency Plans or requiring that the Contingency Plan be provided to LEPCs electronically. During an emergency, power and communications may be lost or disrupted. If the information is only accessible electronically, this could be a real problem. Further, there are already commercial efforts to provide contingency response information electronically, so it seems unnecessary for EPA to devote its resources to this effort.

40. Applicability of Personnel Training

At 80 FR 57963, EPA requests comment on whether specific job functions should be identified in the regulations as requiring hazardous waste training and a written job description. Industrial Generators oppose EPA identifying through regulation which positions require training and a written job description. This would be an unwelcomed intrusion into facility business decisions, and the flexibility needed to appropriately staff and train employees depending on site specific circumstances. The personnel training requirement should be performance based, not prescriptive. Site specific management hierarchy and work role descriptions will determine appropriate personnel training needs. Prescriptive rules also would likely lead to confusion rather than clarity on what each employee is expected to do.

As to operators in satellite accumulation areas, they are very familiar with the hazards of the waste they generate due to safety training and regulation over the use of those same materials in the process that generate the waste. For example, a chemist completing bench top lab experiments is required to be aware of the hazards of the material used in the experiment per OSHA HAZCOM regulations at 29 CFR 1910.1200.

The training satellite accumulation area operators will need and their job descriptions are quite specific, and should not be prescribed by general rules.

41. Online Personnel Training (40 CFR §262.17(a)(7)(i)(A))

Industrial Generators strongly support EPA's proposal to add language to new 40 CFR §262.17(a)(7)(i)(A) that would allow training to occur online via a computer. This updates the personnel training regulations to reflect the way in which many employees are currently trained.[16]

42. Exceptions to Keeping Containers Closed in Satellite Accumulation Areas (40 CFR §262.15(a)(4))

Industrial Generators strongly support EPA's proposal to provide an exception to having to keep containers that are in satellite accumulation closed all times. The proposed new exception that allows venting a container when necessary for proper operation of the equipment or to prevent dangerous situations, such as build-up of extreme pressure, are important improvements that recognize that closing a container can, in some cases, increase safety hazards or interfere with the proper operation of manufacturing equipment.

This rule also should be extended to SQG, LQG and permitted storage areas (in addition to satellite areas) for cases where venting is necessary to prevent dangerous situations, such as extreme pressure or heat buildup. For example, wet incinerator ash must dry and cool after it is placed in roll-off dumpsters and before it can be landfilled. Tarps placed on these dumpsters would melt until the ash cools down and would prevent drying. Due to the volumes involved, and the time necessary for cooling down and water evaporation, this cannot be done in a satellite accumulation area.

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[16] As noted in Comment 7, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

43. Moving Containers Within Three Days From Satellite Accumulation Areas (40 CFR §262.15(a)(6)(i))

Industrial Generators urge EPA to allow three business days (Monday through Friday, except holidays) instead of three calendar days to remove the excess hazardous waste above the 55-gallon limit from the satellite accumulation area. A requirement to remove the excess within three calendar days presents problems when waste is generated and the next two or three days are weekends and/or holidays. In that case, plant personnel often will not be available to remove the excess from the satellite accumulation area until they return to work on day three (after a normal weekend) or day four (after a holiday weekend).

In addition, many generators that accumulate in the satellite accumulation area do not have less-than 90-day storage areas. They call in a third-party hazardous waste handler or transportation company to pick-up and remove waste when the 55 gallon limit is exceeded. These third-parties are also usually not working over weekends or holidays, and it may also take a few days to schedule a pick up.

Allowing some excess to remain for no more than three business days should not create any significant additional risk, because the hazardous waste in satellite accumulation areas will be properly identified, containerized, and the containers will be closed. Further, allowing three business days recognizes the situations where plant personnel or third-party vendors are unavailable to move the excess from the satellite area.

44. Meaning of "Under the Control of the Operator" (40 CFR §262.15(a))

EPA provides several examples of areas that would qualify as satellite accumulation areas where the operator controls access to the area with an access card, key or a locked cabinet. Although we agree that in these situations the satellite accumulation area is under the control of the operator, there are many other legitimate

satellite accumulation areas where access is not proximately gated or controlled by lock and key. For example:

- It is common to have a drum to receive waste residue at the end of a production line. Although that drum typically will be within a building that likely has keyed access, and the production process will be on a plant site that has keyed access, fencing and security, the area where the drum is located itself will not have separate keyed access or typically be surrounded by a fence.

- There are many scenarios where a satellite accumulation area is created for a specific maintenance activity, pilot project and R&D project, and then discontinued when the activity or project is completed. Requiring separate fenced, locked, etc., access defeats the intent of allowing safe, immediate containment of waste for these short-term activities and projects, and would not be practical.

- It is common for manufacturing buildings to be controlled by card access to all outside doors and the inside production facilities. The production facilities may have several different satellite accumulation areas. Not all the manufacturing operations are 24 hours a day, even though the access system is engaged 24 hours a day. When operations personnel are not present, janitorial, maintenance and security staff need access to the production areas in order to perform their duties. None of those duties involve handling the waste in the satellite areas, but they have access to the same space.

- Satellite accumulation containers in laboratories, R&D areas and maintenance shops are usually not controlled by access keys or lock and key. For example, entry to a laboratory and R&D project is

generally restricted to the lab technicians and chemists performing R&D or QA/QC evaluations. Maintenance shops typically have a satellite container for all mechanics and millwrights to place contaminated PPE and industrial wipes. These containers are secured with a lever-lock lid to keep containers closed, but all shop personnel can access the container(s).

EPA has discussed the term "under control of the operator" in guidance documents (see RO 11728). EPA states: *"The condition that wastes accumulated under the satellite provision 'be under control of the operator of the process generating the waste' is met provided the generator demonstrates that the personnel responsible for generating/or accumulating the waste have adequate control over the temporary storage of these wastes. The EPA recognizes that for many wastes, the person who first generates the waste may not be the same person responsible for the accumulation of all of these wastes; rather, another worker may have responsibility of overseeing the temporary storage of wastes."* The Agency goes on to state that *"the goal is that this temporary accumulation is performed responsibly and safely, with adequate oversight and control."* Requiring keyed access to satellite accumulation areas is not necessary to meet these objectives.

Further, Industrial Generators do not think that the current rule requires that the satellite accumulation container(s) be surrounded by a fence or controlled with keyed access. This is because the phrase "under the control of the operator of the process generating the waste" means not only an individual operator but also a company operator. Under 40 CFR §260.10, an *"operator"* is *"the person responsible for the overall operation of a facility,"* and a *"person"* means not only an individual but also a *"firm," "joint stock company," "corporation" or "partnership."* Under these definitions, a company that controls the entire operation of a process would be the operator of the process that is generating the satellite accumulation waste. In that case, the requirement in 40 CFR §262.15(a) that the containers be *"at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste"* would be met where the operator is the company

that is responsible for the process, and where that process either itself has restricted access or is part of a larger facility that has restricted access. We request that EPA confirm this interpretation in the final rule.

If, EPA does not agree with and confirm this interpretation that the operator can be the company, then the examples it has given simply do not reflect the many situations where satellite accumulation occurs in areas that are not themselves locked or keyed off separately with restricted access. In that case, the examples EPA provides create additional confusion and should be withdrawn, or other examples should be added where a satellite accumulation area exists even though there is no keyed, fenced or locked access control of the immediate area.

45. Daily Use Containers in Laboratories

In the final rule, EPA should allow for the use of a "daily use" container in laboratory and R&D operations. Typically, there are many laboratory or R&D stations within a building on an Industrial Generator's site. For example, there might be a four-story laboratory building with four laboratory offices/stations on each floor for a total of 16 laboratory stations. Also assume that at each station a small amount of hazardous waste is generated almost every day. One way of setting this up is to have 16 separate satellite accumulation areas, one at each station. A better way to handle the hazardous waste, however, is to have a small waste bucket with a cover at each station, and at the end of each day allow for the liquid waste to be poured from the buckets into appropriate satellite accumulation containers that are located within the building. When the total accumulation exceeds 55 gallons, the excess, and likely all hazardous waste in the containers, would be removed within three days. This daily consolidation would provide a safer work environment not only for the lab personnel, but also for janitorial and maintenance personnel who work in the laboratory or R&D facility after normal business hours. This approach would also save room within each laboratory station, and it would result in more efficient transfer of hazardous waste.

In the past, EPA has said that hazardous waste cannot be moved from one satellite accumulation area to another. EPA should use this rulemaking opportunity to modify that limitation and provide flexibility to use "daily use" containers in laboratories and R&D work stations, and allow the contents from such containers to be collected in one or more "central" satellite accumulation areas.

46. Prohibition on Disposal of Liquids in Municipal Solid Waste Landfills (40 CFR §262.14(d) and §262.35)

EPA has proposed a new rule that states *"the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited."* 40 CFR §262.14(d) and 262.35.[17] The language in the parentheses, *"(whether or not sorbents have been added)"* might cause confusion. This phrase might be interpreted to mean that even if sorbents are added and the liquid is absorbed so that there is no longer any free liquid, the hazardous waste still cannot be placed in the landfill. Of course, so long as there is no free liquid, placement of the hazardous waste is allowed in a landfill. We suggest simply striking the parenthetical phrase. Without it, it is clear that liquid hazardous waste or any hazardous waste containing free liquids cannot be placed into a landfill.

47. Changes to Generator Category as Result of an Episodic Event (40 CFR §262.230-232)

Industrial Generators strongly support EPA's proposed rule to allow a VSQG or SQG to manage hazardous waste it generates during an episodic event without causing the generator to change its status. We agree with EPA that episodic events occur that can cause an amount of hazardous waste that is larger than usual to be generated. For example, manufacturing facilities regularly have periodic shutdowns for maintenance.

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[17] As noted in Comment 8, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

While this may occur once per year, it is also not unusual for a second maintenance shutdown or some unplanned event to occur which generates hazardous waste. EPA should allow two episodic events per year with a petition for a third.

Allowing a second episodic exception to occur without changing the generator's status should also help to compensate for an inherent problem with compliance with the limits. It is common that a VSQG will not discover that it has exceeded its limit of, for example, 100 kg per month of non-acute hazardous waste until the end of the month or even after the end of the month. This may be because a generator does not count how much waste it generates each day as it is being generated, but rather at the end of the month when an inventory is performed for hazardous waste that has been shipped or will be shipped off-site. It may also result from a newly-generated waste having to be sampled and tested to determine if the waste exhibits a hazardous waste characteristic, and it takes about two weeks to receive the test results. Under the rules, it would appear that if a VSQG or SQG does not discover that it has exceeded its limit until the end of the month or later, the VSQG/SQG would actually have been out-of-compliance since the beginning of that month. Further, when the generator discovers that it has exceeded its limit, it is usually not possible to come into compliance immediately or even within a few weeks with all of the requirements of the next higher generator level. For example, obtaining a contingency plan arrangement with the LEPC can often take several months, but that would be required if a VSQG has to meet SQG standards.

EPA should confirm that the episodic exceedance exception is broad enough to cover these exceedances that cannot reasonably be determined until after the month has begun. This way, a generator would not be out of compliance on day one of the month when they could not reasonably know that they would exceed the limit until much later in the month or even into the following month. This is also another reason why EPA should allow generators two episodic exceedances a year with an opportunity to petition for a third instead of just the one that has been proposed.

Regarding the proposed requirement to complete management of the episodic hazardous waste within 45 days from the first date of generation, this is also often not

feasible. The waste must be classified and samples may have to be sent off-site for analysis. Then a TSDF that can receive the hazardous waste must be identified, and often a waste profile and/or sample of the waste must be sent to the TSDF for approval. Then transportation must be arranged. EPA should revise the regulation to allow 90 days to send off-site the hazardous waste generated in an episodic event.

Also, some events may last more than one day. For example, an extended maintenance shutdown period may last several days or even a month depending on the type of facility and extent of maintenance. For this reason, EPA should also allow for the time period to begin and the end of the episodic event (i.e., when the generation of hazardous waste has ceased), or consider this situation as another reason to extend the time period to 90 days after initial generation.

Finally, we note one minor typo; the proposed language in 40 CFR §262.232(a)(6) and (b)(5) that refers to a 30-day extension of the 45-day period should reference that the extension is granted pursuant to §262.234, not §262.233 as now written.

48. 50-Foot Setback for Ignitable and Reactive Hazardous Wastes (40 CFR §262.17(a)(1)(vi)(A))

Industrial Generators support EPA's proposal to allow LQGs to obtain a written waiver from the local fire department that would allow ignitable or reactive hazardous waste to be placed closer than 50 feet from the site's property line, which is the current setback requirement under 40 CFR §262.34(a)(1)(i) and §265.176.[18] EPA is correct that a site's dimensions may sometimes make this 50-foot setback requirement impossible or impracticable to meet. The local fire department will be in a good position to decide whether a waiver is appropriate on a case-by-case, site specific basis.

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[18] As noted in Comment 8, however, these standards should not be identified as Conditions for Exemption. These standards have nothing to do with delineating between VSQGs, SQGs, LQGs and TSDFs.

Regarding EPA's request for comment on whether this waiver should be allowed for TSDFs, Industrial Generators believe TSDFs are in as much need for this flexibility as an LQG, and therefore, EPA should extend the waiver option to them as well.

49. "No Smoking" Signs (40 CFR §262.17(a)(vi)(B))

EPA should provide an exception for tobacco free sites to the proposed rule to require LQGs to post "No Smoking" signs wherever there is a hazard from ignitable or reactive hazardous waste. Signs requiring "No Smoking" are unnecessary at a site that is entirely a non-smoking site.

CONCLUSION

Industrial Generators appreciate this opportunity to provide these Comments on these important RCRA regulations. We also appreciate and support the several proposed regulations that would provide needed flexibility in the generator standards. EPA, however, has also used this rulemaking to propose new burdensome and unnecessary requirements on generators. Given that generators are not staffed like TSDFs are on RCRA matters, and usually manage much less hazardous waste in much less complicated ways, we urge EPA to consider the cumulative effect of the many new requirements it proposes for generators, and to scale back those requirements to only those that are most necessary to protect human health and the environment.

For questions or additional information, please contact Brendan Mascarenhas at the American Chemistry Council, (202) 249-6423 and brendan_mascarenhas@americanchemistry.com.

Message

From: Samantha McDonald [SMcDonald@ipaa.org]
Sent: 5/5/2017 3:52:51 PM
To: Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: oil and gas production wastes

David and Patrick,

Thank you so much for meeting with us last week. David, thanks for attending the meeting with the Administrator yesterday.

A couple of follow up questions on our effort to get EPA to conclude that state programs are capable of managing oil and gas production wastes and that it does not need to develop federal regulations or state guidelines under RCRA Subtitle D.

1) Have you determined if EPA will be able to act in 2017?
2) What would be the mechanism by which this decision would be made?
3) Our members are interested in becoming engaged. What can we do to help advance our cause? Would you prefer we write a letter? Just let me know we can do to assist.

Kind regards,

Sam

Samantha McDonald
Director of Government Relations
Independent Petroleum Association of America
Ex. 6 / Visit IPAA / Visit ESA Watch

Message

From: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Sent: 4/24/2017 4:31:51 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: follow-up meeting with EPA on RCRA rule

Importance: High

Hi Patrick,

I hope all is well. I am writing to let you know that I (along with a few others) will be meeting with EPA staff tomorrow at EPA HQ to have another discussion of the regulated community's concern (which lead to our filing suit) with EPA's codification of its enforcement policy in the final RCRA Hazardous Waste Generator Improvements Rule. You may recall that this is the issue we discussed with Betsy Devlin (OLEM) and Katherine Nam (OGC) at the March 8 meeting you attended at the request of Fern Abrams from IPC.

Tomorrow's meeting is from 12:30pm -1:30pm and while I have not yet been sent the details by EPA (location, EPA staff attending, etc.), it would be helpful, and we would be most grateful, if you could attend. As soon as I get the meeting specifics, I will forward them to you. Thank you in advance for your consideration of this request.

Best regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
O: Ex. 6
www.americanchemistry.com

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Message

From: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Sent: 3/10/2017 3:59:18 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: RE: RMP DATA

Thank you for your kind words Patrick.
Wishing you a good weekend too (despite the dreary and cold weather).

-----Original Message-----
From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Friday, March 10, 2017 10:57 AM
To: Hulse, Leslie
Subject: RE: RMP DATA

Leslie,

Thank you for coming by the EPA yesterday. Your entire team was well prepared and represented their respective industries very well. I was impressed with your arguments.

Thank you for sharing these slides.

Have a nice week end.

Patrick Davis

-----Original Message-----
From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Friday, March 10, 2017 10:38 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: RMP DATA

Dear Patrick,

Thank you so much for taking the time to join in the RMP meeting yesterday. I hope you found our arguments for EPA's reconsideration of the RMP Rule persuasive.

Attached is an electronic copy of the slides that show ACC's analysis of EPA's 10-year RMP accidental release data. The first set of slides were shared with OMB (and EPA staff participating by phone in ACC's meeting with OMB) last Fall when the draft final rule was under OMB review; we did not try and submit the slides to the docket as the comment period was closed. The second set of slides had not been shared before with EPA, but we thought they might be of interest.

Please don't hesitate to call me in you have any questions.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council Assistant General Counsel leslie_hulse@americanchemistry.com
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Message

From: Berger, Andy [aberger@tristategt.org]
Sent: 1/10/2018 8:40:45 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: Automatic reply: Nice to meet you

Thank you for your email. I am out of the office January 10-11 and will respond to your message at my nearest opportunity.

Andy Berger
Mobile: Ex. 6

Message

From: Kramer, Drew [akramer@tristategt.org]
Sent: 12/12/2017 12:47:15 AM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
CC: Berger, Andy [aberger@tristategt.org]
Subject: Re: [EXTERNAL] RE: [EXTERNAL] RE: Nice to meet you

Great. See you then.

Thoughtfully composed on Drew Kramer's iPhone

On Dec 11, 2017, at 5:16 PM, Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>> wrote:

Lets just say the Wynkoop Brewery at 12 Noon on January 9.

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

-----Original Message-----
From: Kramer, Drew [mailto:akramer@tristategt.org]
Sent: Monday, December 11, 2017 3:30 PM
To: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
Cc: Berger, Andy <aberger@tristategt.org<mailto:aberger@tristategt.org>>
Subject: Re: [EXTERNAL] RE: Nice to meet you

Great - that works for us. Since you're local to that area, please feel free to pick a spot and let us know by that morning.

Thanks, Patrick. Looking forward to it.
Drew

Thoughtfully composed on Drew Kramer's iPad

On Dec 11, 2017, at 12:39 PM, Davis, Patrick
<davis.patrick@epa.gov<mailto:davis.patrick@epa.gov><mailto:davis.patrick@epa.gov>> wrote:

Hi Drew,

How about lunch in downtown Denver near Union Station on Tuesday, January 9?

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

From: Kramer, Drew [mailto:akramer@tristategt.org]
Sent: Wednesday, December 6, 2017 3:44 PM
To: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov><mailto:davis.patrick@epa.gov>>
Cc: Berger, Andy <aberger@tristategt.org<mailto:aberger@tristategt.org><mailto:aberger@tristategt.org>>
Subject: RE: Nice to meet you

Patrick,

Would you be interested in meeting for coffee, breakfast or lunch on Jan 8, 9 or 10? All three days are wide open for me and my colleague Andy Berger, who serves as our Senior Manager of Environmental Policy. We would welcome you to the Westminster area or be happy to meet you downtown if that's easier for you - though meeting downtown for lunch would be preferable to a breakfast for those commuting south from the northern suburbs (like Andy).

Please let us know what works best. We're eager to learn more about what sort of work you're doing for EPA and how we might be able to collaborate.

Best,
Drew

Drew Kramer
Senior External Affairs Advisor
Tri-State Generation and Transmission Association
Office: (303) 254-3086
Ex. 6
Email: AKramer@TriStateGT.org<mailto:AKramer@TriStateGT.org><mailto:AKramer@TriStateGT.org>
Web: www.TriState.coop<http://www.TriState.coop><https://urldefense.proofpoint.com/v2/url?u=http-3A__www.TriState.coop&d=DwMFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=OxwVf_OyiTQxNLARIkgpg67SG9jUG3T-YETRK8ATU-Y&m=FwkVT49FbUn5DajdAOkeLZ8Itba_CjUJw_mk6a_96cO&s=Hn2QZmFRjHCdSLuAbGpY2W4CtOBYcde3Grv6kQwrGtk&e=>?

From: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov><mailto:davis.patrick@epa.gov>>
Sent: Thursday, November 30, 2017 2:26 PM
To: Kramer, Drew
Subject: [EXTERNAL] Nice to meet you

Hi Drew,

It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202
Ex. 6

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 6/12/2018 9:03:16 PM
To: Randy Weimer [rweimer@sibanyestillwater.com]; Lynn Cardey-Yates (lcardey-yates@parsonsbehle.com) [lcardey-yates@parsonsbehle.com]; Shane LaCasse (shane.lacasse@chsinc.com) [shane.lacasse@chsinc.com]; Peder Maarbjerg (peder.maarbjerg@hq.doe.gov) [peder.maarbjerg@hq.doe.gov]; Ed Coleman (ecoleman@mt.gov) [ecoleman@mt.gov]; tlivers@mt.gov; Randall Richert (rrichert@trihydro.com) [rrichert@trihydro.com]; Mullins, Jerry [jmullins@nma.org]; Haley Schleppe (nschleppe@sandfireamerica.com) [nschleppe@sandfireamerica.com]; Peggy Trenk [ptrenk@tsria.net]; Alan Olson (alan@montanapetroleum.org) [alan@montanapetroleum.org]; Thielman, Jason (Daines) [Jason_Thielman@daines.senate.gov]; Nylund, Erik (Tester) [Erik_Nylund@tester.senate.gov]; Tripp McKemey (tripp.mckemey@mail.house.gov) [tripp.mckemey@mail.house.gov]
CC: Benevento, Douglas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=93dba0f4f0fc41c091499009a2676f89-Benevento,]
Subject: Billings Smart Sectors report
Attachments: Report from may 31 mining smart sectors meeting in Billings Montana.docx; May 31 Smart Sectors attendees.xlsx

Hello,

Thank you for participating in the EPA Smart Sectors Roundtable discussion on May 31 in Billings, MT. Attached is the report from the meeting and a list of the attendees. Please feel free to contact me with questions.

Sincerely,

Patrick Davis
U.S. Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

Name	Affiliation / Contact Info	Contact Info
Patrick Davis	US EPA	Davis.patrick@epa.gov
Randy Weimer		rweimer@sibanyestillwater.com
Lynn Cardey-Yates	AMEA	Lcardey-yates@parsonsbehle.com
Shane LaCasse	CHA Refinery	Shane.lacasse@chsinc.com
Peder Maarbjerg	DOE	Peder.maarbjerg@hq.doe.gov
Ed Coleman	DEQ	ecoleman@mt.gov
Tim Livers	DEQ	tlivers@mt.gov
Pepper Peterson	Coldwater Group	
Randall Reichert	Trihydro Corp	rreichert@trihydro.com
Jerry Mullins	National Mining Association	jmullins@nma.org
Haley Schleppe	Sandfire America Mining	nschleppe@sandfireamerica.com
Peggy Trenk	Treasure State Resources Association	ptrenk@tsria.net
Alan Olson	Montana Petroleum Association	alan@montanapetroleum.org
Joshua Sizemore	Sen. Steve Daines	
Sen. Steve Daines	US Senator	

US EPA and Montana Department of Environmental Quality

Mining Smart Sectors Meeting

Thursday, May 31 - 4:30 pm – 6:00 pm

Draft Meeting Summary

Welcome and Introductions

Environmental Protection Agency (EPA) Region 8 Director Doug Benevento welcomed attendees and introduced US Senator Steve Gaines and Montana DEQ Director Tom Livers.

Mr. Benevento's expressed a desire to understand, from stakeholders, ways to improve NEPA implementation, increase Good Samaritan Initiative implementation and permitting and regulatory impediments.

Stakeholder Input

Participants introduced themselves and provided the following comments.

- Nutrient Standard Variances. Numerous attendees indicated that it is challenging to meet the nutrient standard with wastewater treatment (nitrogen and selenium were noted). It is difficult to "prove" economic infeasibility and receive a variance. Montana Senate Bill 325 addressed the nutrient issue. (http://deq.mt.gov/Water/WQPB/standards/SB325Rulemaking)
- Toxic Release Inventory (TRI). The TRI annual reporting for chemicals released into the environment was criticized as not relevant and causing public misperceptions of dangers. Better metrics are need as the current requirements are "meaningless and not relevant." It was noted that TRI is viewed as punitive toward the extractive industry and inaccurately conveys the actual impact and risk of hard rock mining. It was noted that this issue applies to more than hard rock mining.
- Monitoring and air quality attainment issues were raised including the example of SO2 non-attainment in Laurel Montana.
- There is a need to coordinate policy direction and guidance across federal government agencies including EPA and DOI agencies.
- The issue of federal oversight of states that have assumed 404 responsibilities, like Montana, was discussed. There is a desire for both more flexibility and direction from EPA.
- Support for the Montana DEQ's work was expressed including the existing bonding program. An attendee noted that there is not a need for 'double bonding' based on the work of the state.

- Support for new coal fired power plants, maintaining existing coal fired power plants, and a desire for public financing for new coal plants and was expressed. The New Source Review (NSR) air quality permitting for coal fired power plants was discussed including the view that its application is flawed and inaccurate, like change of minor pipes. This is an issue that should be examined further.
- Department of Interior is rewriting oversite directives with states.
- It was stated that the lack of certainty is a thread which runs through concerns in the mining sector. Doug stated that extra guidance creates confusion.
- Communication with EPA that is more responsive and is 'back and forth' was encouraged. Having the right people and technical experts at the table for discussions is important to making timely progress, particularly in the air quality compliance arena.
- When the subject of Colstrip, MT was raised the discussion turned to the need for financing for coal plants. Doug talked about new source review.
- The Good Samaritan initiative was discussed including:
    - There is a lack of long-term certainty and guidance regarding cleanup for abandoned hard rock mines (Good Samaritan Initiative). A participant noted that the liability issue is 'chilling'.
    - One approach is to highlight Good Samaritan successes and articulate where, from EPA's perspective, additional opportunities and solutions may exist. The idea of 'cooperative federalism' and out-of-the-box thinking was discussed.
    - In regards to the Good Samaritan Initiative, attendees expressed an interest in doing more if there are protections from liability (particularly 3rd party lawsuits).
    - The example of Trout Unlimited and other non-profits was held up as a potential model to enhance abandoned mine clean up. Attendees expressed interest in examining whether a non-profit or foundation approach could provide umbrella protections and liability relief.
    - Other participants asked whether a legislative fix could help support of the clean up of abandoned mines.
    - Demonstration and pilot projects could also be used to explore expansion of this opportunity.
- The lack of capacity at copper smelter facilities in the U.S. results in the product going abroad. There is a need for incentives and a streamlined approval of new smelters and the development of such capacity. Copper was not included in the critical minerals act. It was noted that rare-earth metals are being mined from the Berkley Pit.
- The clean-up of metals-contaminated sites to background levels was discussed including a desire for more standardization, innovation and provision of a 'safe harbor' for use of new technological approaches.
- The rules surrounding 'secure storage' of CO_2 (storing carbon dioxide emissions underground) was discussed. An attendee expressed a desire for EPA support to include Class II wells, that have been properly plugged and abandoned, as well as Class VI mines

for geologic sequestration. A desire for a more limited monitoring timeframe for these wells was expressed.

- The National Environmental Protection Act (NEPA) as discussed. Participants expressed a desire for NEPA reviews at EPA to focus on relevant issues, conduct concurrent reviews across agencies, encourage project proponents to focus on realistic alternatives and encouraging non-deliberative communication and feedback with 3rd party contractors throughout the project development.
- AEMA suggested that the NEPA process should not address alternatives which are not technically feasible.
- Provide clarity regarding the definition of "Waters of the United States" including the review and potential revision to the definition.
- Use of new technology for abandoned mine clean-up was explored along with public/private partnerships that capitalize on the 'know how' close to the resource was expressed.

Next Steps

Mr. Benevento expressed appreciation to the attendees for the substantive input provided and summarized the key issues to explore further. These issues include additional examination on nutrient standards, pursuing opportunities to encourage more cleanup of abandoned mines (including non-profit model), improved agency responsiveness in communication and focus EPA's role on relevant NEPA issues.

Attendees

See attached list of participants.

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 1/10/2018 8:40:41 PM
To: Kramer, Drew [akramer@tristategt.org]
CC: Berger, Andy [aberger@tristategt.org]
Subject: RE: Nice to meet you

Drew and Andy,

I certainly enjoyed our conversation yesterday and will look for an opportunity to see your operations.

Sincerely,

Patrick Davis
Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

From: Kramer, Drew [mailto:akramer@tristategt.org]
Sent: Tuesday, January 9, 2018 4:43 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Berger, Andy <aberger@tristategt.org>
Subject: RE: Nice to meet you

Patrick,

Thanks again for taking the time to sit down with Andy and me over lunch today – we're grateful for your time and insights. To reiterate, please don't hesitate to contact either of us anytime you need something from Tri-State or have interest in touring our facilities, including our power plants, coal mines or the energy trading floor and transmission operations center at our headquarters in Westminster. We're happy to accommodate you and your colleagues anytime.

Hope to find opportunities to work together soon.
Best,
Drew

Drew Kramer
Senior External Affairs Advisor
Tri-State Generation and Transmission Association
Office: (303) 254-3086
Ex. 6
Email: AKramer@TriStateGT.org
Web: www.TriState.coop

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Monday, December 11, 2017 5:17 PM
To: Kramer, Drew <akramer@tristategt.org>
Cc: Berger, Andy <aberger@tristategt.org>
Subject: [EXTERNAL] RE: [EXTERNAL] RE: Nice to meet you

Lets just say the Wynkoop Brewery at 12 Noon on January 9.

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

From: Kramer, Drew [mailto:akramer@tristategt.org]
Sent: Monday, December 11, 2017 3:30 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Berger, Andy <aberger@tristategt.org>
Subject: Re: [EXTERNAL] RE: Nice to meet you

Great - that works for us. Since you're local to that area, please feel free to pick a spot and let us know by that morning.

Thanks, Patrick. Looking forward to it.
Drew

Thoughtfully composed on Drew Kramer's iPad

On Dec 11, 2017, at 12:39 PM, Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>> wrote:

Hi Drew,

How about lunch in downtown Denver near Union Station on Tuesday, January 9?

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

From: Kramer, Drew [mailto:akramer@tristategt.org]

Sent: Wednesday, December 6, 2017 3:44 PM
To: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
Cc: Berger, Andy <aberger@tristategt.org<mailto:aberger@tristategt.org>>
Subject: RE: Nice to meet you

Patrick,

Would you be interested in meeting for coffee, breakfast or lunch on Jan 8, 9 or 10? All three days are wide open for me and my colleague Andy Berger, who serves as our Senior Manager of Environmental Policy. We would welcome you to the Westminster area or be happy to meet you downtown if that's easier for you - though meeting downtown for lunch would be preferable to a breakfast for those commuting south from the northern suburbs (like Andy).

Please let us know what works best. We're eager to learn more about what sort of work you're doing for EPA and how we might be able to collaborate.

Best,
Drew

From: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
Sent: Thursday, November 30, 2017 2:26 PM
To: Kramer, Drew
Subject: [EXTERNAL] Nice to meet you

Hi Drew,

It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 9/12/2017 6:27:55 PM
To: Bridgeford, Tawny [TBridgeford@nma.org]
CC: Brooks, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f369a2ef33e4a87af349210a3915a57-BBrooks]
Subject: RE: Introductions and Request for Meeting

Hi Tawny,

Indeed, I remember being disappointed to have missed you when you came by last month. Thank you for restarting the conversation. Please coordinate with Becky Brooks to find a convenient time.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Bridgeford, Tawny [mailto:TBridgeford@nma.org]
Sent: Tuesday, September 12, 2017 2:20 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: Introductions and Request for Meeting

Mr. Davis:

Good afternoon! I am the Deputy General Counsel and Vice President of Regulatory Affairs at the National Mining Association (NMA). Last month we met with Barnes Johnson and members of the team to discuss NMA's concerns with and positions regarding the proposed CERCLA financial responsibility rule for the hardrock mining industry. Unfortunately, our scheduled member fly-in did not coordinate well with your schedule at the time and we asked to move forward with the meeting with the OLEM staff. We would like to correct that scheduling issue and hopefully find a time to introduce ourselves in person and provide a quick overview of who we are and our members' priority issues under OLEM. CERCLA financial responsibility is our number one priority, but we are involved in several other issues as well (e.g., coal ash, chemical security, etc.). Please let me know if you have time over the next few weeks to meet in person.

Look forward to hearing from you.

Regards,

Tawny

Tawny Bridgeford
Deputy General Counsel & Vice President, Regulatory Affairs
National Mining Association
101 Constitution Ave. NW, Suite 500 East

Washington, D.C. 20001
Phone: (202) 463-2600
Ex. 6
tbridgeford@nma.org

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 1/9/2018 6:53:22 PM
To: Kramer, Drew [akramer@tristategt.org]
CC: Berger, Andy [aberger@tristategt.org]
Subject: Re: [EXTERNAL] Re: [EXTERNAL] RE: Nice to meet you

Running 10 minutes late.

Patrick Davis
Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement (Region 8)
303-312-6855 office
Ex. 6

Emails sent to this address may be subject to FOIA.

Sent from my iPhone

> On Jan 9, 2018, at 11:41 AM, Kramer, Drew <akramer@tristategt.org> wrote:
>
> Gentlemen,
>
> I got to Wynkoop early and have a table in the back room on the main floor. See you when you get here.
>
> Drew
>
>
>
>> On Jan 9, 2018, at 8:55 AM, Davis, Patrick <davis.patrick@epa.gov> wrote:
>>
>> Yes, noon at wynkoop's
>>
>> Patrick Davis
>> Environmental Protection Agency
>> Senior Advisor to the Regional Administrator for Public Engagement (Region 8)
>> 303-312-6855 office
>> Ex. 6
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>>> Looking forward to it,
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>>> Drew Kramer
>>> Senior External Affairs Advisor
>>> Tri-State Generation and Transmission Association
>>> Office: (303) 254-3086
>>> Ex. 6
>>> Email: AKramer@TriStateGT.org
>>> Web: www.TriState.coop
>>>
>>> -----Original Message-----
>>> From: Davis, Patrick [mailto:davis.patrick@epa.gov]
>>> Sent: Monday, December 11, 2017 5:17 PM
>>> To: Kramer, Drew <akramer@tristategt.org>
>>> Cc: Berger, Andy <aberger@tristategt.org>
>>> Subject: [EXTERNAL] RE: [EXTERNAL] RE: Nice to meet you
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>>> Lets just say the Wynkoop Brewery at 12 Noon on January 9.
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>>> 1595 Wynkoop Street
>>> Denver, CO 80202
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>>> Sent: Monday, December 11, 2017 3:30 PM
>>> To: Davis, Patrick <davis.patrick@epa.gov>
>>> Cc: Berger, Andy <aberger@tristategt.org>
>>> Subject: Re: [EXTERNAL] RE: Nice to meet you
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>>> Thoughtfully composed on Drew Kramer's iPad
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>>> How about lunch in downtown Denver near Union Station on Tuesday, January 9?
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>>> Thanks,
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>>> Patrick Davis
>>> Senior Advisor to the Regional Administrator for Public Engagement
>>> 1595 Wynkoop Street
>>> Denver, CO 80202
>>> Ex. 6
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>>> From: Kramer, Drew [mailto:akramer@tristategt.org]
>>> Sent: Wednesday, December 6, 2017 3:44 PM
>>> To: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
>>> Cc: Berger, Andy <aberger@tristategt.org<mailto:aberger@tristategt.org>>
>>> Subject: RE: Nice to meet you
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>>> Patrick,
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>>> Please let us know what works best. We're eager to learn more about what sort of work you're doing for EPA and how we might be able to collaborate.
>>>
>>> Best,
>>> Drew
>>>
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>>> Drew Kramer
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>>> Web: www.TriState.coop<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.TriState.coop&d=DwMFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=OxwVf_OyiTQxNLARIkgpg67SG9jUG3T-YETRK8ATU-Y&m=FwkVT49FbUn5DajdAOkeLZ8Itba_CjUJw_mk6a_96cO&s=Hn2QZmFRjHCdSLuAbGpY2W4CtOBYcde3Grv6kQwrGtk&e=>?
>>>
>>>
>>>
>>> _____
>>> From: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
>>> Sent: Thursday, November 30, 2017 2:26 PM
>>> To: Kramer, Drew
>>> Subject: [EXTERNAL] Nice to meet you
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>>> Hi Drew,
>>>
>>> It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.
>>>
>>> Thanks,
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>>> Patrick Davis
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>>> Ex. 6
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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 11/30/2017 9:26:09 PM
To: Drew Kramer (akramer@tristategt.org) [akramer@tristategt.org]
Subject: Nice to meet you

Hi Drew,

It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

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Sent: 5/21/2018 4:29:18 PM
To: Laura Skaer [lskaer@miningamerica.org]; Katie Sweeney (ksweeney@NMA.org) [ksweeney@NMA.org]
CC: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Sachs, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=06f542f36c784d638b9eff5e64c56694-Rsachs]; Lynn Cardey-Yates (lcardey-yates@parsonsbehle.com) [lcardey-yates@parsonsbehle.com]
Subject: RE: Invitation: EPA Mining/energy roundtable discussion May 31 in Billings, MT

Hi Laura,

Thank you for the email. We will look forward to meeting Lynn in Billings next week.

All the best,

Patrick Davis
U.S. Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

From: Laura Skaer [mailto:lskaer@miningamerica.org]
Sent: Monday, May 21, 2018 9:53 AM
To: Davis, Patrick <davis.patrick@epa.gov>; Katie Sweeney (ksweeney@NMA.org) <ksweeney@NMA.org>
Cc: Letendre, Daisy <letendre.daisy@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Lynn Cardey-Yates (lcardey-yates@parsonsbehle.com) <lcardey-yates@parsonsbehle.com>
Subject: RE: Invitation: EPA Mining/energy roundtable discussion May 31 in Billings, MT

Patrick,

Sorry it took so long to respond. I was waiting to hear back from one of our officers who lives in MT. I heard back last night and Lynn Cardey-Yates, our Secretary and member of the executive committee will attend and represent AEMA. I have copied Lynn on this email.

We were represented at the roundtable with Administrator Pruitt and Matt and I discussed the program with Bob Sachs and Patty McGrath las week.

Thank you for this opportunity.

Best,

Laura Skaer
Executive Director
American Exploration & Mining Association
lskaer@miningamerica.org

From: Davis, Patrick <davis.patrick@epa.gov>
Sent: Monday, May 7, 2018 11:48 AM
To: Katie Sweeney (ksweeney@NMA.org) <ksweeney@NMA.org>; Laura Skaer <lskaer@miningamerica.org>
Cc: Letendre, Daisy <letendre.daisy@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>
Subject: Invitation: EPA Mining/energy roundtable discussion May 31 in Billings, MT

Hello Katie and Laura,

As part of the EPA's Smart Sectors effort, Senator Steve Daines (MT) has invited us to convene a mining/energy round table discussion on Thursday, May 31 at 4:30 p.m. at the conclusion of the Montana Energy Summit in Billings, MT.

You can see the agenda and registration details here: http://www.mtenergysummit.com/

Please let me know if you will be sending a representative from your office to participate in this round table.

Thanks,

Patrick Davis
Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 1/9/2018 3:55:49 PM
To: Kramer, Drew [akramer@tristategt.org]
Subject: Re: [EXTERNAL] RE: Nice to meet you

Yes, noon at wynkoop's

Patrick Davis
Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement (Region 8)
303-312-6855 office
Ex. 6

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> Senior External Affairs Advisor
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Ex. 6

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Sent: 12/12/2017 12:16:46 AM
To: Kramer, Drew [akramer@tristategt.org]
CC: Berger, Andy [aberger@tristategt.org]
Subject: RE: [EXTERNAL] RE: Nice to meet you

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Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
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-----Original Message-----
From: Kramer, Drew [mailto:akramer@tristategt.org]
Sent: Monday, December 11, 2017 3:30 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Berger, Andy <aberger@tristategt.org>
Subject: Re: [EXTERNAL] RE: Nice to meet you

Great - that works for us. Since you're local to that area, please feel free to pick a spot and let us know by that morning.

Thanks, Patrick. Looking forward to it.
Drew

Thoughtfully composed on Drew Kramer's iPad

On Dec 11, 2017, at 12:39 PM, Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>> wrote:

Hi Drew,

How about lunch in downtown Denver near Union Station on Tuesday, January 9?

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202
Ex. 6

From: Kramer, Drew [mailto:akramer@tristategt.org]
Sent: Wednesday, December 6, 2017 3:44 PM
To: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
Cc: Berger, Andy <aberger@tristategt.org<mailto:aberger@tristategt.org>>
Subject: RE: Nice to meet you

Patrick,

Would you be interested in meeting for coffee, breakfast or lunch on Jan 8, 9 or 10? All three days are wide open for me and my colleague Andy Berger, who serves as our Senior Manager of Environmental Policy. We would welcome you to the Westminster area or be happy to meet you downtown if that's easier for you - though meeting downtown for lunch would be preferable to a breakfast for those commuting south from the northern suburbs (like Andy).

Please let us know what works best. We're eager to learn more about what sort of work you're doing for EPA and how we might be able to collaborate.

Best,
Drew

Drew Kramer
Senior External Affairs Advisor

Tri-State Generation and Transmission Association
Office: (303) 254-3086
Mobile: (303) 681-1341
Email: AKramer@TriStateGT.org<mailto:AKramer@TriStateGT.org>
Web: www.TriState.coop<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.TriState.coop&d=DwMFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=OxwVf_OyiTQxNLARIkgpg67SG9jUG3T-YETRK8ATU-Y&m=FwkVT49FbUn5DajdAOkeLZ8Itba_CjUJw_mk6a_96cO&s=Hn2QZmFRjHCdSLuAbGpY2W4CtOBYcde3Grv6kQwrGtk&e=>?

From: Davis, Patrick <davis.patrick@epa.gov<mailto:davis.patrick@epa.gov>>
Sent: Thursday, November 30, 2017 2:26 PM
To: Kramer, Drew
Subject: [EXTERNAL] Nice to meet you

Hi Drew,

It was nice to meet you on Tuesday. Please let me know when you are in Denver and available for a cup of coffee.

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 12/11/2017 7:39:04 PM
To: Kramer, Drew [akramer@tristategt.org]
CC: Berger, Andy [aberger@tristategt.org]
Subject: RE: Nice to meet you

Hi Drew,

How about lunch in downtown Denver near Union Station on Tuesday, January 9?

Thanks,

Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

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Sent: Wednesday, December 6, 2017 3:44 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Berger, Andy <aberger@tristategt.org>
Subject: RE: Nice to meet you

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Best,
Drew

Drew Kramer
Senior External Affairs Advisor
Tri-State Generation and Transmission Association
Office: (303) 254-3086
Ex. 6
Email: AKramer@TriStateGT.org
Web: www.TriState.coop

From: Davis, Patrick <davis.patrick@epa.gov>
Sent: Thursday, November 30, 2017 2:26 PM
To: Kramer, Drew
Subject: [EXTERNAL] Nice to meet you

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Patrick Davis
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 5/24/2017 4:10:47 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: Re: proposed further stay of RMP Final Rule

To Barry only, please.

Sent from my iPhone

On May 24, 2017, at 10:57 AM, Hulse, Leslie <Leslie_Hulse@americanchemistry.com> wrote:

Hi Patrick,

I don't know if you have had a chance to read the ACC comments that I sent last Friday (attached again for your information), but we strongly support EPA's proposed stay of the effective date for the RMP rule until February 2019. We note that the existing stay of the RMP rule runs out on June 19th so it is critical that the Agency take final action on its proposal and publish that final action in the Federal Register before June 19. Would it be helpful if ACC were to send a letter to Barry Breen, and/or to Administrator Pruitt highlighting the need for quick Agency action on this issue?

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

From: Hulse, Leslie
Sent: Friday, May 19, 2017 12:54 PM
To: 'belke.jim@epa.gov'
Cc: Doster, Brian (Doster.Brian@epa.gov); 'Averback, Jonathan'; Davis, Patrick (davis.patrick@epa.gov); Erny, Bill
Subject: ACC comments on proposed stay of effective date of RMP Final Rule

Dear Jim,

Attached please find the comments of the American Chemistry Council on EPA's proposed stay of the effective date of the RMP Final Rule. I have just submitted these comments directly to www.regulations.gov but thought I would send you a copy of them as a courtesy. Thank you in advance for your consideration of our comments.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council

Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

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<ACC Final Comments on Prop Ext of RMP Effective Date May 19 2017.pdf>

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 5/24/2017 4:06:06 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: Re: proposed further stay of RMP Final Rule

Please send a letter.

Sent from my iPhone

On May 24, 2017, at 10:57 AM, Hulse, Leslie <Leslie_Hulse@americanchemistry.com> wrote:

Hi Patrick,

I don't know if you have had a chance to read the ACC comments that I sent last Friday (attached again for your information), but we strongly support EPA's proposed stay of the effective date for the RMP rule until February 2019. We note that the existing stay of the RMP rule runs out on June 19th so it is critical that the Agency take final action on its proposal and publish that final action in the Federal Register before June 19. Would it be helpful if ACC were to send a letter to Barry Breen, and/or to Administrator Pruitt highlighting the need for quick Agency action on this issue?

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

From: Hulse, Leslie
Sent: Friday, May 19, 2017 12:54 PM
To: 'belke.jim@epa.gov'
Cc: Doster, Brian (Doster.Brian@epa.gov); 'Averback, Jonathan'; Davis, Patrick (davis.patrick@epa.gov); Erny, Bill
Subject: ACC comments on proposed stay of effective date of RMP Final Rule

Dear Jim,

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Regards,
Leslie

Leslie A. Hulse | American Chemistry Council

Assistant General Counsel
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<ACC Final Comments on Prop Ext of RMP Effective Date May 19 2017.pdf>

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 5/7/2018 8:02:45 PM
To: Sweeney, Katie [KSweeney@nma.org]; Laura Skaer [lskaer@miningamerica.org]
CC: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Sachs, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=06f542f36c784d638b9eff5e64c56694-Rsachs]; Mullins, Jerry [jmullins@nma.org]
Subject: RE: Invitation: EPA Mining/energy roundtable discussion May 31 in Billings, MT

Thank you.

Patrick Davis
Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

From: Sweeney, Katie [mailto:KSweeney@nma.org]
Sent: Monday, May 7, 2018 1:48 PM
To: Davis, Patrick <davis.patrick@epa.gov>; Laura Skaer <lskaer@miningamerica.org>
Cc: Letendre, Daisy <letendre.daisy@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Mullins, Jerry <jmullins@nma.org>
Subject: RE: Invitation: EPA Mining/energy roundtable discussion May 31 in Billings, MT

Patrick,

Thanks so much for the invitation. Jerry Mullins (included as a cc on this email), National Mining Association's Vice President of Government Affairs and Coalitions, will participate in the roundtable discussion on behalf of NMA.

Katie

NMA
THE AMERICAN MINERALS

Katie Sweeney
Senior Vice President, Legal Affairs & General Counsel
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Ex. 6
KSweeney@nma.org

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Monday, May 7, 2018 2:48 PM
To: Sweeney, Katie <KSweeney@nma.org>; Laura Skaer <lskaer@miningamerica.org>

Cc: Letendre, Daisy <letendre.daisy@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>
Subject: Invitation: EPA Mining/energy roundtable discussion May 31 in Billings, MT

Hello Katie and Laura,

As part of the EPA's Smart Sectors effort, Senator Steve Daines (MT) has invited us to convene a mining/energy round table discussion on Thursday, May 31 at 4:30 p.m. at the conclusion of the Montana Energy Summit in Billings, MT.

You can see the agenda and registration details here: http://www.mtenergysummit.com/

Please let me know if you will be sending a representative from your office to participate in this round table.

Thanks,

Patrick Davis
Environmental Protection Agency
Senior Advisor to the Regional Administrator for Public Engagement
1595 Wynkoop Street
Denver, CO 80202

Ex. 6

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 10/5/2017 4:07:17 PM
To: Spencer Pederson [spederson@bockornygroup.com]
CC: Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Danny Fernandez [DFernandez@bockornygroup.com]
Subject: Re: Question

Hi Spencer,

I am available to visit with you next week.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Associate Administrator, Office of Land and Emergency Management
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

Sent from my iPad

On Oct 5, 2017, at 11:52 AM, Spencer Pederson <spederson@bockornygroup.com> wrote:

> Thanks for the quick response, Troy—you are awesome!
>
> I'm also Ccing my colleague Danny Fernandez who works on this as well.
>
> Kaitlyn, and Patrick—look forward to hearing from you. Thanks for the help.
>
> Spencer
>
> ---
>
> **From:** Lyons, Troy [mailto:lyons.troy@epa.gov]
> **Sent:** Thursday, October 5, 2017 11:49 AM
> **To:** Spencer Pederson <spederson@bockornygroup.com>
> **Cc:** Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
> **Subject:** Re: Question
>
> Thanks, Spencer.
>
> Kaitlyn, could you find time for Spencer and into get together?
>
> I've also copied Patrick Davis who would be your POC on the waste management.
>
> Patrick-please see Spencer's note below.
>
> _____

Troy M. Lyons
Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
Ex. 6

Sent from my iPhone

On Oct 5, 2017, at 9:37 AM, Spencer Pederson <spederson@bockornygroup.com> wrote:

> Hey man,
> I hope you are well and having fun over there! I guess we still need to grab coffee…
>
> I know you all are still a little short staffed but have a personnel question for you. We have CVS as a client, who surprisingly has some issues they'd like to discuss with EPA. Specifically, they'd like to talk to someone about some regulations surrounding nicotine replacement therapy and disposal of hazardous waste.
>
> Any help would be appreciated! Thanks!
>
> Spencer
>
> Spencer Pederson
> BOCKORNYGROUP
> 1350 I Street, NW, Suite 800
> Washington, DC 20005
> o: 202-659-9111
> Ex. 6
> www.bockornygroup.com

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 4/12/2017 7:31:18 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: Your Advice Requested: Regulatory Reform Underway at EPA

Thank you.

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Wednesday, April 12, 2017 3:30 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: RE: Your Advice Requested: Regulatory Reform Underway at EPA

Thanks Patrick. ACC will be participating.
Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Wednesday, April 12, 2017 3:28 PM
Subject: Your Advice Requested: Regulatory Reform Underway at EPA

Dear friends,

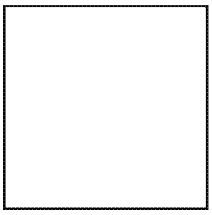
Please participate in YOUR EPA's regulatory reform efforts. Click on the link in this media release and share your ideas with us.

Sincerely,

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: U.S. EPA Media Relations [mailto:noreply-subscriptions@epa.gov]
Sent: Tuesday, April 11, 2017 5:55 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: Regulatory Reform Underway at EPA



CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
April 11, 2017

Regulatory Reform Underway at EPA

WASHINGTON -- As a vital step of EPA's implementation of President Trump's Executive Order, "Enforcing the Regulatory Reform Agenda," EPA's Regulatory Reform Task Force, led by the Office of Policy, submitted a Federal Register notice today to solicit public comments on EPA regulations.

"We are supporting the restoration of America's economy through extensive reviews of the misaligned regulatory actions from the past administration. The previous administration abused the regulatory process to advance an ideological agenda that expanded the reach of the federal government, often dismissing the technological and economic concerns raised by the regulated community and duplicating long-standing regulations by states and localities. Moving forward, EPA will be listening to those directly impacted by regulations, and learning ways we can work together with our state and local partners, to ensure that we can provide clean air, land, and water to Americans," said Administrator Scott Pruitt.

The notice will include a docket that all EPA program offices will use to collect comments specific to their issues. EPA's Regulatory Reform Task Force is simultaneously working with program offices to gather their recommendations for specific rules that should be considered for repeal, replacement or modification. EPA regional offices, program offices, and other officials will report back by May 15, 2017.

EPA also launched a new webpage with information related to the agency's regulatory reform efforts, which will include a list of upcoming meetings being held by the offices at: https://www.epa.gov/laws-regulations/regulatory-reform.The docket number for public input is EPA-HQ-OA-2017-0190.

R055

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States
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could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, www.americanchemistry.com

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 5/19/2017 8:56:21 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: Congratulations!

Hi Leslie,

It is an honor to serve the President and our country in this position. I am humbled by this responsibility. Thank you for your support.

Sincerely,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Friday, May 19, 2017 1:44 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: Congratulations!

Dear Patrick,

I was speaking with Larry Starfield of OECA yesterday at an ABA conference and I learned that you have been appointed Deputy Assistant Administrator for OLEM. Congratulations!! It's great to know that you are in that leadership position at EPA and will actualize the Administrator's various initiatives for that office.

Warm regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 4/6/2017 3:22:02 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: a favor to ask of you

Now would be best

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Thursday, April 6, 2017 11:21 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: RE: a favor to ask of you

Terrific, thanks. Would this afternoon at around 3pm be convenient for you?

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Thursday, April 06, 2017 11:19 AM
To: Hulse, Leslie
Subject: RE: a favor to ask of you

Sure thing. Desk number is 202-564-3103

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Thursday, April 6, 2017 11:04 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: RE: a favor to ask of you

Patrick,

So sorry to be late in replying to your email below. Thank you for contacting the Policy Office; hopefully it will advance the OSWRO settlement through the intra-agency review process.

May I call you by telephone on another matter? I just need 5 minutes of your time to ask your advice on something.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Monday, April 03, 2017 1:46 PM
To: Hulse, Leslie
Subject: RE: a favor to ask of you

Hi Leslie,

Thank you for this note. I have asked the Policy Office for a status check on the OSWRO rule.

Thanks,

Patrick Davis
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Friday, March 31, 2017 11:58 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: a favor to ask of you
Importance: High

Dear Patrick,

I hope you are well on this dreary, rainy Friday. Before getting to the reason for my email, I would like to thank you for the swift actions that EPA has been taking to address the 2016 RMP Rule. We appreciate the Agency undertaking a thorough review of the rule and staying the effective date of the rule during that time.

The purpose of my email is to ask if you could look into a matter that I believe is stuck in the Administrator's in-box. It is a final settlement (attached) between ACC and EPA for EPA to reconsider certain aspects of the Off-Site Waste Recovery Operations (OSWRO) rule, promulgated under Section 112 of the Clean Air Act. I believe that the settlement was sent to the Administrator about a month ago, but has not yet been signed and sent on to the U.S. Department of Justice. If there is anything you could do to nudge this along, I would be most grateful.

Please don't hesitate to contact me if you have any questions, and thank you in advance for any assistance you may be able to offer.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 4/6/2017 3:18:39 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: a favor to ask of you

Sure thing. Desk number is 202-564-3103

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Thursday, April 6, 2017 11:04 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: RE: a favor to ask of you

Patrick,

So sorry to be late in replying to your email below. Thank you for contacting the Policy Office; hopefully it will advance the OSWRO settlement through the intra-agency review process.

May I call you by telephone on another matter? I just need 5 minutes of your time to ask your advice on something.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Monday, April 03, 2017 1:46 PM
To: Hulse, Leslie
Subject: RE: a favor to ask of you

Hi Leslie,

Thank you for this note. I have asked the Policy Office for a status check on the OSWRO rule.

Thanks,

Patrick Davis
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Friday, March 31, 2017 11:58 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: a favor to ask of you
Importance: High

Dear Patrick,

I hope you are well on this dreary, rainy Friday. Before getting to the reason for my email, I would like to thank you for the swift actions that EPA has been taking to address the 2016 RMP Rule. We appreciate the Agency undertaking a thorough review of the rule and staying the effective date of the rule during that time.

The purpose of my email is to ask if you could look into a matter that I believe is stuck in the Administrator's in-box. It is a final settlement (attached) between ACC and EPA for EPA to reconsider certain aspects of the Off-Site Waste Recovery Operations (OSWRO) rule, promulgated under Section 112 of the Clean Air Act. I believe that the settlement was sent to the Administrator about a month ago, but has not yet been signed and sent on to the U.S. Department of Justice. If there is anything you could do to nudge this along, I would be most grateful.

Please don't hesitate to contact me if you have any questions, and thank you in advance for any assistance you may be able to offer.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 5/11/2017 5:44:13 PM
To: Samantha McDonald [SMcDonald@ipaa.org]
CC: Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]
Subject: Re: oil and gas production wastes

Hi Samantha,

I asked the program office looking into this rule to loop IPAA into the data gathering phase of this project. You folks have a bird's eye view of the myriad of state regs you already deal with.

Patrick

Sent from my iPhone

On May 11, 2017, at 6:13 AM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

> David and Patrick,
>
> Just checking in to see how we can best work together on this determination.
>
> Sam
>
> ---
>
> **From:** Samantha McDonald
> **Sent:** Friday, May 5, 2017 11:53 AM
> **To:** 'fotouhi.david@epa.gov' <fotouhi.david@epa.gov>; 'davis.patrick@epa.gov' <davis.patrick@epa.gov>
> **Subject:** oil and gas production wastes
>
> David and Patrick,
>
> Thank you so much for meeting with us last week. David, thanks for attending the meeting with the Administrator yesterday.
>
> A couple of follow up questions on our effort to get EPA to conclude that state programs are capable of managing oil and gas production wastes and that it does not need to develop federal regulations or state guidelines under RCRA Subtitle D.
>
> 1) Have you determined if EPA will be able to act in 2017?
> 2) What would be the mechanism by which this decision would be made?
> 3) Our members are interested in becoming engaged. What can we do to help advance our cause? Would you prefer we write a letter? Just let me know we can do to assist.
>
> Kind regards,
>
> Sam
>
> **Samantha McDonald**
> Director of Government Relations

Independent Petroleum Association of America

Redacted / **Visit IPAA** / **Visit ESA Watch**

<image001.jpg>

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 4/3/2017 5:45:44 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: a favor to ask of you

Hi Leslie,

Thank you for this note. I have asked the Policy Office for a status check on the OSWRO rule.

Thanks,

Patrick Davis
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Friday, March 31, 2017 11:58 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: a favor to ask of you
Importance: High

Dear Patrick,

I hope you are well on this dreary, rainy Friday. Before getting to the reason for my email, I would like to thank you for the swift actions that EPA has been taking to address the 2016 RMP Rule. We appreciate the Agency undertaking a thorough review of the rule and staying the effective date of the rule during that time.

The purpose of my email is to ask if you could look into a matter that I believe is stuck in the Administrator's in-box. It is a final settlement (attached) between ACC and EPA for EPA to reconsider certain aspects of the Off-Site Waste Recovery Operations (OSWRO) rule, promulgated under Section 112 of the Clean Air Act. I believe that the settlement was sent to the Administrator about a month ago, but has not yet been signed and sent on to the U.S. Department of Justice. If there is anything you could do to nudge this along, I would be most grateful.

Please don't hesitate to contact me if you have any questions, and thank you in advance for any assistance you may be able to offer.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 4/24/2017 7:27:13 PM
To: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Subject: RE: Information for tomorrow's meeting

Thank you. I have it on my calendar.

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

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From: Hulse, Leslie [mailto:Leslie_Hulse@americanchemistry.com]
Sent: Monday, April 24, 2017 2:29 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Subject: FW: Information for tomorrow's meeting

Patrick,

Further to my earlier email, below are the details for the meeting tomorrow, including the list of EPA attendees.

Regards,
Leslie

Leslie A. Hulse | American Chemistry Council
Assistant General Counsel
leslie_hulse@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted
www.americanchemistry.com

From: Rave, Norman (ENRD) [mailto:Norman.Rave@usdoj.gov]
Sent: Monday, April 24, 2017 2:00 PM
To: Hulse, Leslie
Subject: Information for tomorrow's meeting

Leslie, here is the information. Please let me know if your list of attendees changes. Norman

DATE and TIME: Tuesday, April 25 at 12:30-1:30 pm

LOCATION: EPA, William Jefferson Clinton North Building, Rm. 4304, Washington, D.C.

DIRECTIONS: Come to the 12th street entrance; it is the entrance that sits on top of the Federal Triangle Metro stop and across the street from the Trump Hotel; as you are facing the EPA building complex, start walking as though you are

going to the Fed. Triangle Metro station; you will see doors to your right and to your left; you should go to the doors on your right. That is the William Jefferson Clinton NORTH Building. (Do not go to the South Building).

SECURITY: Go through security; you will need photo ID and they will check your bags and you will have to go through the screening. When you are finished with security clearance and all the members of your group are present, please ask the guard to call Larry Rourke at 202-564-2525.

SPECIAL REQUEST: Please arrive at 12:15 to allow enough time for security clearance and so we can start the meeting at 12:30. Also, if all the guests could please wait until everyone in your group is congregated in the lobby, and then call up Larry Rourke to escort you, that would be great. We want to make sure he can take everyone upstairs in one visit.

Any problems on the day of, please call Kathy Nam on her cell phone: 240-401-0649. Thanks.

As requested, the list of EPA attendees (and DOJ attendee) is below:

EPA ATTENDEES:

Office of General Counsel (OGC):

- Katherine Nam (attorney)
- Cecilia DeRobertis (branch chief)

Office of Resource Conservation and Recovery (ORCR)/Office of Land and Emergency Management (OLEM)

- Jessica Young (branch chief)
- Kathy Lett (staff)
- Mary Beth Sheridan (staff)
- Kristin Fitzgerald (staff)
- Meghan Radtke (special assistant)

Office of Enforcement (OECA)

- Pete Raack (attorney)
- Mike McClary (attorney)
- Andy Crossland (branch chief)

DOJ ATTENDEE:

- Norman Rave (attorney)

Norman Rave
U.S. Dept. of Justice
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
(202) 616-7568

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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 4/24/2017 3:31:08 PM
To: Samantha McDonald [SMcDonald@ipaa.org]
CC: Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]
Subject: RE: RCRA Oil and Gas Issue

Please come to the North entrance just outside the Federal Triangle Metro stop. You will have to process through security. Please bring a photo ID. I will meet you at the North entrance security desk.

https://www.epa.gov/aboutepa/visiting-epa-headquarters

Thanks,

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

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From: Samantha McDonald [mailto:SMcDonald@ipaa.org]
Sent: Monday, April 24, 2017 10:50 AM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

We'll come to you. Where should we report?

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Monday, April 24, 2017 9:51 AM
To: Samantha McDonald <SMcDonald@ipaa.org>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

Yes, 2:30 p.m. on Friday works for me. Would you like to come by the EPA or speak on the phone?

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Samantha McDonald [mailto:SMcDonald@ipaa.org]
Sent: Monday, April 24, 2017 9:49 AM
To: Davis, Patrick <davis.patrick@epa.gov>; Brown, Byron <brown.byron@epa.gov>

Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

2:30PM works well for us if that works for you.

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Monday, April 24, 2017 9:30 AM
To: Samantha McDonald <SMcDonald@ipaa.org>; Brown, Byron <brown.byron@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

Hi Samantha,

The Afternoon of Friday, April 28 is open at this point. What works for you?

Thanks,

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

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From: Samantha McDonald [mailto:SMcDonald@ipaa.org]
Sent: Monday, April 24, 2017 9:26 AM
To: Davis, Patrick <davis.patrick@epa.gov>; Brown, Byron <brown.byron@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

Sorry for the delay in my response. I don't think we'll be able to make that work today, but will follow up with you after we meet with our members. We have a meeting with the Administrator on Monday, May 1st. Would you be available this Friday? I'd like to speak with you prior to that meeting, if possible. Thanks again for all of your help.

From: Davis, Patrick [mailto:davis.patrick@epa.gov]
Sent: Thursday, April 20, 2017 5:01 PM
To: Samantha McDonald <SMcDonald@ipaa.org>; Brown, Byron <brown.byron@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

Hi Samantha,

Thank you. I could meet you and Mr. Russell after 3:30 p.m. on Monday. Monday's are a total madhouse at the EPA!

Thanks,

Patrick Davis
EPA
Special Assistant to the Administrator
202-564-3103 office
Ex. 6

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From: Samantha McDonald [mailto:SMcDonald@ipaa.org]
Sent: Thursday, April 20, 2017 3:12 PM
To: Brown, Byron <brown.byron@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
Subject: RE: RCRA Oil and Gas Issue

Byron—thank you for the introduction.

Patrick and David, would you be available to meet Monday afternoon? I'd like to discuss the 3-year review of oil and gas production wastes under RCRA Subtitle D (see attached primer). I'd likely bring our President Barry Russell, who managed the RCRA issue as environmental counsel before becoming CEO.
Attached is a background paper for more information. Thanks in advance for your time.

Best,

Sam

From: Brown, Byron [mailto:brown.byron@epa.gov]
Sent: Thursday, April 20, 2017 2:47 PM
To: Samantha McDonald <SMcDonald@ipaa.org>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>
Subject: RCRA Oil and Gas Issue

Hi Sam – given my recusal, please follow up with David and Patrick about setting up a meeting. - Byron

Byron R. Brown
Deputy Chief of Staff for Policy
Office of the Administrator
U.S. Environmental Protection Agency

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 8/1/2017 3:03:41 PM
To: Koethe, Alice [Akoethe@aar.org]
CC: Young, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=26404c78d3dc441f810ac723cf8f9d49-JBIEGELS]; Mattick, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0e8c40b64ab94f29a31d5654299a2935-RMATTI02]; Faison, George [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5f98aa82bf4145d8b7d19edc44fbd7f6-GFAISON]; Johnson, Barnes [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c39e9338cbf04dc3b4b29f78e5213303-Johnson, Barnes]; Manley, Bret [BManley@aar.org]; Fronczak, Robert [rfronczak@aar.org]; Printz Bolin (pbolin@up.com) [pbolin@up.com]; Wormmeester, Justin T [Justin.Wormmeester@BNSF.com]; Kirmayer, Kathy [kkirmayer@aar.org]
Subject: Re: Railroad Ties as Non Hazardous Secondary Materials

Hi Alice and company,

Thank you for sending the letter. We will certainly give it the attention it deserves. Please don't hesitate to contact me if I can be assistance.

Sincerely,

Patrick Davis
Environmental Protection Agency
Deputy Associate Administrator, Office of Land and Emergency Management
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

Sent from my iPad

On Jul 31, 2017, at 2:17 PM, Koethe, Alice <Akoethe@aar.org> wrote:

> Dear Mr. Davis:
>
> Many thanks to you and your EPA team for meeting with railroad representatives on the issue of combustion of railroad ties treated with creosote and other wood preservatives. We greatly appreciated your time and attention to this important topic. As discussed, I have attached a letter from the Association of American Railroads outlining two alternative approaches to the current challenges.
>
> Please do not hesitate to contact me with any questions at Redacted
>
> Regards,
> Alice Koethe
>
> **Alice Koethe**
> Counsel- Environmental and Hazmat
> Association of American Railroads
> Suite 1000
> 425 3rd Street, S.W.

Washington, D.C. 20024
Ph: Redacted
E-mail: akoethe@aar.org

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<AAR Letter to EPA 07312017.pdf>

Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 6/7/2017 10:09:01 PM
To: Taylor, Jennifer [Jennifer_Taylor@americanchemistry.com]
CC: Risotto, Steve [Steve_Risotto@americanchemistry.com]
Subject: RE: Request to Schedule Meeting

Hi Jennifer and Steve,

I have asked Becky Brooks to coordinate a meeting for us to also include a program office staff.

Thanks,

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Taylor, Jennifer [mailto:Jennifer_Taylor@americanchemistry.com]
Sent: Wednesday, June 7, 2017 2:41 PM
To: Davis, Patrick <davis.patrick@epa.gov>
Cc: Risotto, Steve <Steve_Risotto@americanchemistry.com>
Subject: Request to Schedule Meeting

Dear Mr. Davis:

I am writing from the American Chemistry Council's Chemical Products and Technology Division (CPTD) to request a meeting with you to discuss the Office of Land and Environmental Management's policy memos on TCE remediation. On April 13, a letter was sent to the Office, by my colleague Steve Risotto, regarding those memos and their impact, and we think arranging a meeting to follow up on that letter would be beneficial.

Steve and I are available to meet next week, preferably on Wednesday – Friday, with the exception of Thursday morning, but would appreciate any time that you are able to meet with us; please let us know your availability at your earliest convenience.

Thank you for your consideration, and I look forward to hearing from you.

Regards,

Jennifer

Jennifer Taylor | American Chemistry Council
Chemical Products & Technology Division
jennifer_taylor@americanchemistry.com
700 2nd Street, NE | Washington, DC | 20002
Redacted : (202) 330-5646
www.americanchemistry.com

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Message

From: Davis, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7FCA02D1EC544FBBBD6FB2E7674E06B2-DAVIS, PATR]
Sent: 6/6/2017 5:07:17 PM
To: Birsic, Michael J. (MPC) [mjbirsic@marathonpetroleum.com]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Brooks, Becky [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f369a2ef33e4a87af349210a3915a57-BBrooks]; Cheatham, Reggie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c04c7b4fbf4d45108592282991c719cb-RCheatha]
Subject: RE: [EXTERNAL] RE: RMP

Hi Mike,

Thank you for your note. I have asked Becky Brooks to find a time when we can meet with Reggie Cheatham, Director of EPA Office of Emergency Management.

See you soon!

Patrick Davis
Environmental Protection Agency
Deputy Assistant Administrator, Office of Land and Emergency Management
202-564-3103 office
Ex. 6

Information sent to this email address may be subject to FOIA.

From: Birsic, Michael J. (MPC) [mailto:mjbirsic@marathonpetroleum.com]
Sent: Tuesday, June 6, 2017 12:56 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Davis, Patrick <davis.patrick@epa.gov>
Subject: RE: [EXTERNAL] RE: RMP

Thank you Brittany, I appreciate you connecting me with the appropriate person.

Patrick, I hope you are well. I have been talking with my safety folks quite a bit about RMP, especially as Congress still had an opportunity to pass a CRA for the rule. Now that we are beyond any CRA opportunities we wanted to see if you would have time later this month or early July to get together and talk about the stay, EPA's future plans and we have an idea that may interest the Agency.

Thank you in advanced for your consideration.

Mike

From: Bolen, Brittany [mailto:bolen.brittany@epa.gov]
Sent: Tuesday, June 06, 2017 10:56 AM
To: Birsic, Michael J. (MPC)
Cc: Davis, Patrick
Subject: [EXTERNAL] RE: RMP

Hi Mike - While RMP is issued under the CAA, it is developed by OLEM – not OAR. I'm connecting you with my colleague, Patrick Davis, who is the political deputy in OLEM.

Thanks,
Brittany

From: Birsic, Michael J. (MPC) [mailto:mjbirsic@marathonpetroleum.com]
Sent: Tuesday, June 6, 2017 9:40 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RMP

First off…progress! I got the right email this time! Pretty sad I need to be proud of myself for using email properly.

I wanted to see if you could help point me in the right direction. Do you know who is handling RMP for the Agency? We wanted to bring some of our folks in to visit in the next couple weeks, as we have some ideas that maybe helpful to the agency in regards to RMP.

Thanks in advanced for your help.

Mike

Michael Birsic
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mjbirsic@marathonpetroleum.com

Message

From: Hulse, Leslie [Leslie_Hulse@americanchemistry.com]
Sent: 3/10/2017 3:38:08 PM
To: Davis, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7fca02d1ec544fbbbd6fb2e7674e06b2-Davis, Patr]
Subject: RMP DATA
Attachments: RMP DATA.pdf

Dear Patrick,

Thank you so much for taking the time to join in the RMP meeting yesterday. I hope you found our arguments for EPA's reconsideration of the RMP Rule persuasive.

Attached is an electronic copy of the slides that show ACC's analysis of EPA's 10-year RMP accidental release data. The first set of slides were shared with OMB (and EPA staff participating by phone in ACC's meeting with OMB) last Fall when the draft final rule was under OMB review; we did not try and submit the slides to the docket as the comment period was closed. The second set of slides had not been shared before with EPA, but we thought they might be of interest.

Please don't hesitate to call me in you have any questions.

Regards,
Leslie

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EPA data show that a small number of facilities are responsible for the majority of accidents

- There are 12,542 facilities covered under RMP.
- Between 2004-2013, 1,008 (8.0%) of those facilities reported at least one RMP-reportable accident.
- Those 1,008 facilities reported a total of 1,517 accidents during that time.
- Of the 1,517 accidents, about half (48%) came from 224 facilities, i.e., 1.8% of the total number of facilities in the program.
- 92% of facilities covered under RMP had no accidents between 2004-2013.

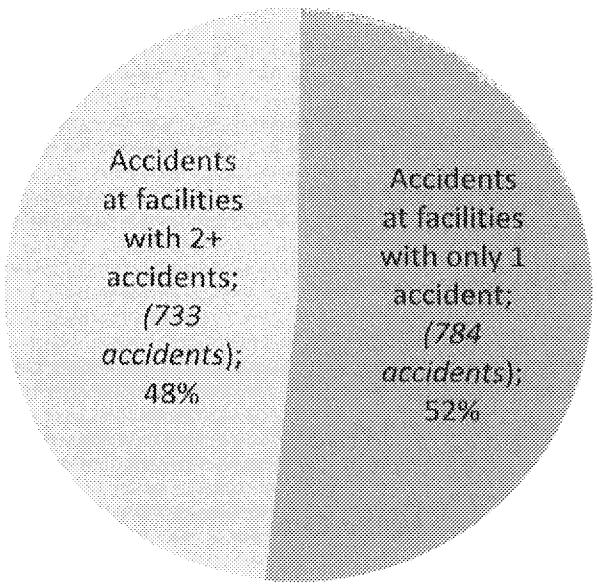
More than 90% of All RMP Facilities Had No RMP-Reportable Accidents

	Number of Facilities	% of Total Number of Facilities in RMP
Facilities with 1 or more accidents		
1 accident	784	6.2%
2 or more accidents	224	1.8%
Total facilities with accidents	1,008	8.0%
Facilities with no accidents	11,534	92.0%
Facilities in RMP	12,542	100.0%

Nearly half of all accidents occurred at 224 facilities

All Facilities with Accidents

	A Number of facilities	B Number accidents per facility	Number of accidents (A x B)
	784	1	784
	125	2	250
	46	3	138
	18	4	72
	8	5	40
	12	6	72
	3	7	21
	2	8	16
	3	9	27
	1	10	10
	1	11	11
	1	13	13
	1	14	14
	2	15	30
	1	19	19
Total	1,008	n/a	1,517



EPA data show that few facilities are responsible for the majority of accidents at chemical facilities.

- There are 1,465 chemical manufacturing (NAICS 325) facilities are covered under RMP.
- Between 2004-2013, 258 (17.6%) of those facilities reported at least one RMP-reportable accident. Those 258 facilities reported a total of 530 accidents during that time.
- Of the 530 accidents, the majority (70%) came from just 99 facilities, i.e., 6.8% of the total number of chemical facilities in the program.
- 82.4% of chemical facilities covered under RMP had no accidents between 2004-2013.

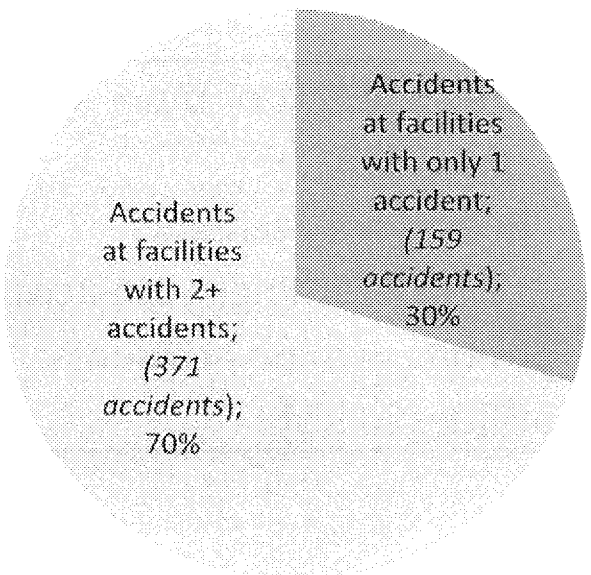
More than 80% of Chemical Manufacturing (NAICS 325) Facilities Had No RMP-Reportable Accidents

	Number of Facilities	% of Total Number of Facilities in RMP
Facilities with 1 or more accidents		
1 accident	159	10.8%
2 or more accidents	99	6.8%
Total facilities with accidents	258	17.6%
Facilities with no accidents	1,207	82.4%
Facilities in RMP	1,465	100.0%

The majority of accidents were at a handful (6.8%) of chemical facilities

Chemical Manufacturing (NAICS 325) Facilities with Accidents

	A Number of facilities	B Number accidents per facility	Number of accidents (A x B)
	159	1	159
	45	2	90
	24	3	72
	9	4	36
	5	5	25
	7	6	42
	1	7	7
	1	8	8
	2	9	18
	1	11	11
	1	14	14
	2	15	30
	1	18	18
Total	258	n/a	530



Notes and Sources

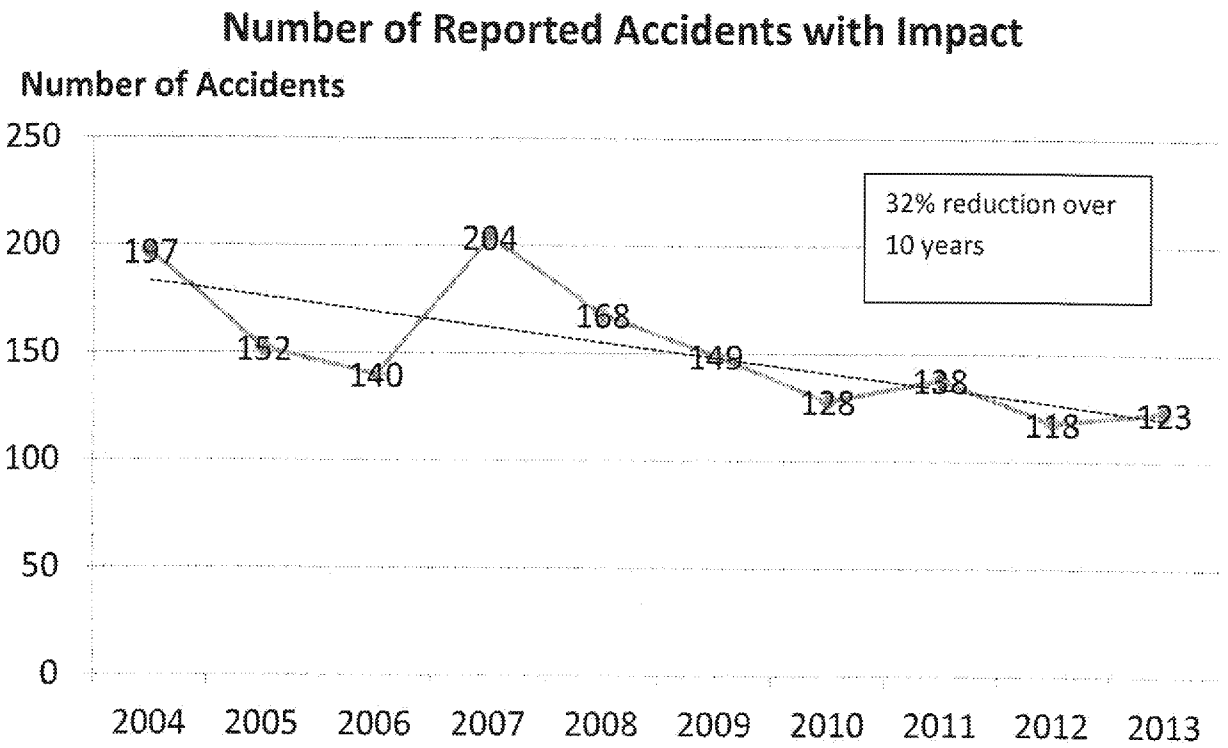
- This analysis expands on the data in Table 1-Accident Frequencies for RMP Facilities by Industrial Grouping, 2004-2013 in the Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) (January 27, 2016).
- Using the 10-year accident database provided by EPA, ACC tabulated the number of unique facilities that were involved in accidents and found that **a minority of facilities had a reportable accident over the 10-year period**.
- Consistent with EPA, this analysis includes only RMP reportable accidents (accidents with onsite or offsite impacts). The database provided by EPA included "voluntary submissions" of accidents with neither onsite nor offsite impacts, but these incidents are not included in the counts of RMP accidents.

RMP 10 Year Accident Data Results (2004-2013)

A.) Number of Accidents with RMP-Reportable Impacts

Includes: Onsite Deaths-Workers/Contractors, Onsite Deaths- Public Responders, Onsite Deaths-Public, Injuries-Workers/Contractors, Injuries-Public Responders, Injuries-Public, Onsite Property Damage, Offsite Deaths, Offsite Hospitalizations, Offsite-Other Medical Treatments.

Year	Total
2004	197
2005	152
2006	140
2007	204
2008	168
2009	149
2010	128
2011	138
2012	118
2013	123
Total	1,517



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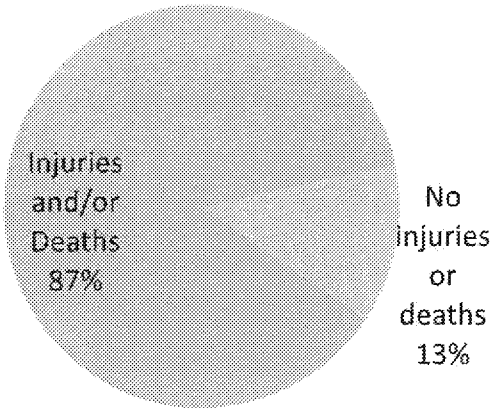
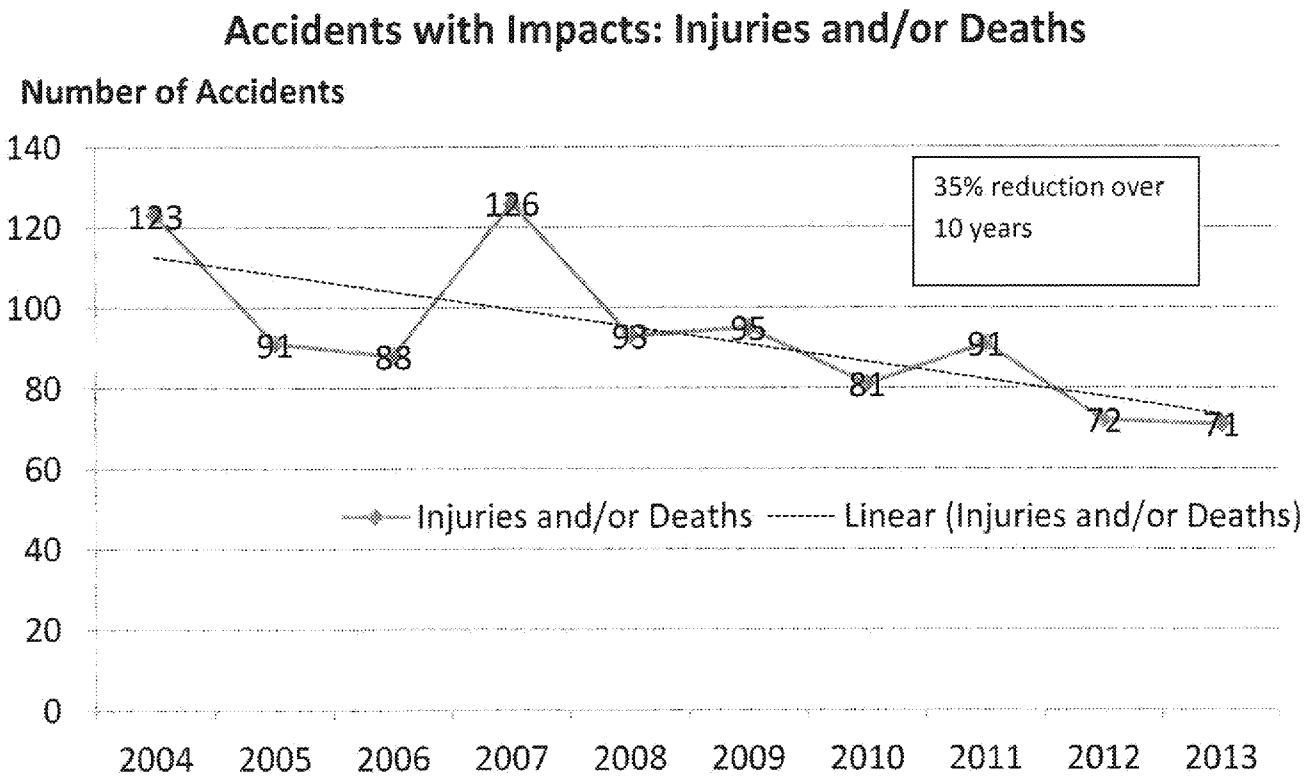
B.) RMP Impact Accidents with Injuries and/or Deaths

Includes: Onsite Deaths-Workers/Contractors, Onsite Deaths- Public Responders, Onsite Deaths-Public, Injuries-Workers/Contractors, Injuries-Public Responders, Injuries-Public, Onsite Property Damage, Offsite Deaths.

Not included: medical treatments or offsite hospitalizations

Year	Injuries or Deaths	No Injuries or Deaths	Total
2004	123	74	197
2005	91	61	152
2006	88	52	140
2007	126	78	204
2008	93	75	168
2009	95	54	149
2010	81	47	128
2011	91	47	138
2012	72	46	118
2013	71	52	123
Total	**931**	**586**	**1,517**





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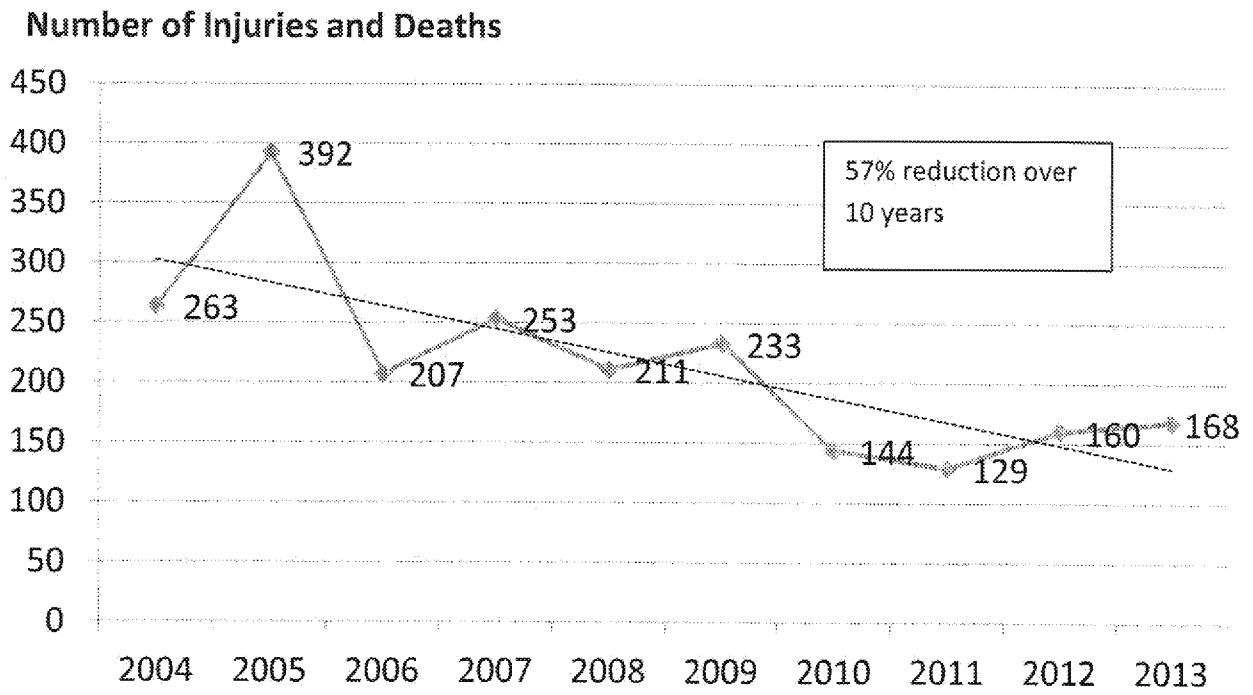
C) Number of Injuries and/or Deaths per year

Year	Total Number of Injuries and Deaths
2004	263
2005	392
2006	207
2007	253
2008	211
2009	233
2010	144
2011	129
2012	160
2013	168
Total	**2,160**



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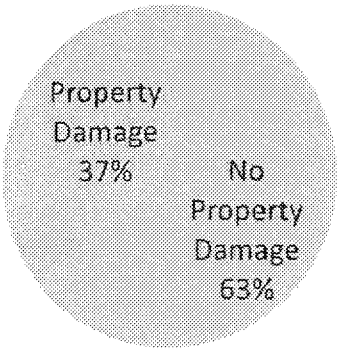
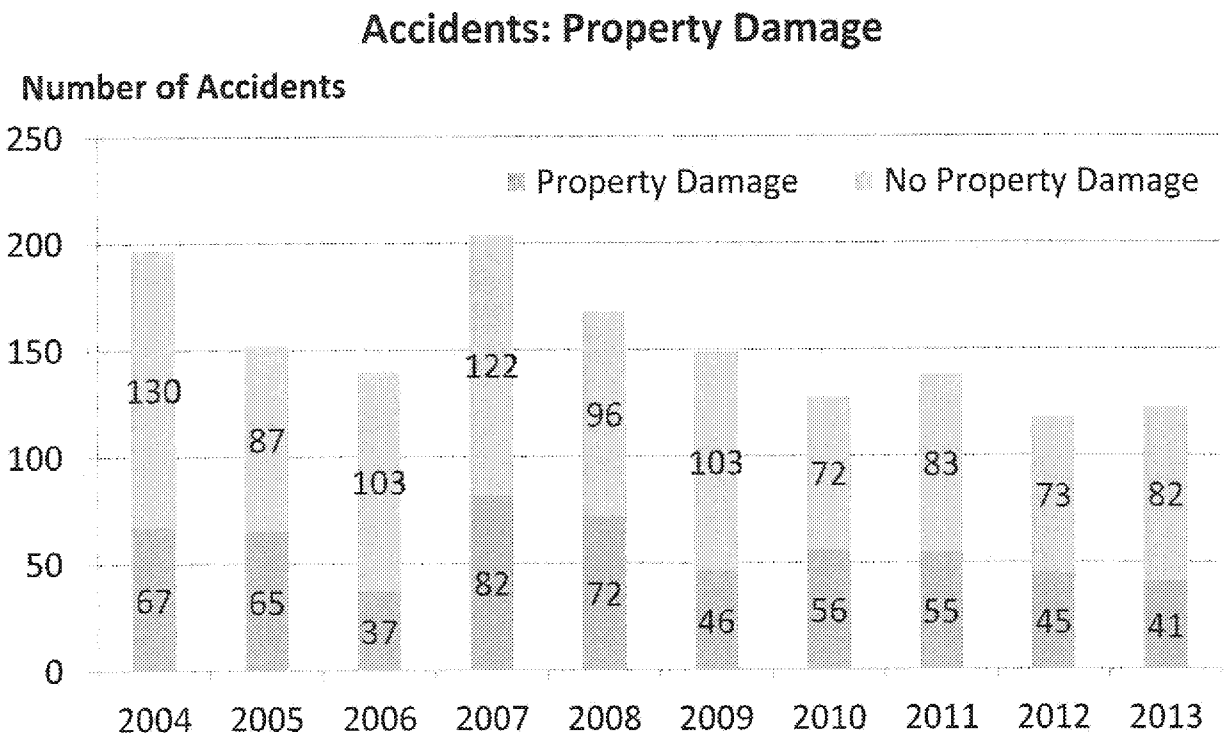
D) Property Damage- On and Offsite

Year	Property Damage	No Property Damage	Total
2004	67	130	197
2005	65	87	152
2006	37	103	140
2007	82	122	204
2008	72	96	168
2009	46	103	149
2010	56	72	128
2011	55	83	138
2012	45	73	118
2013	41	82	123
Total	566	951	1,517





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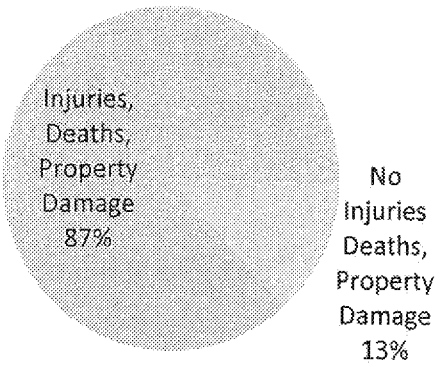
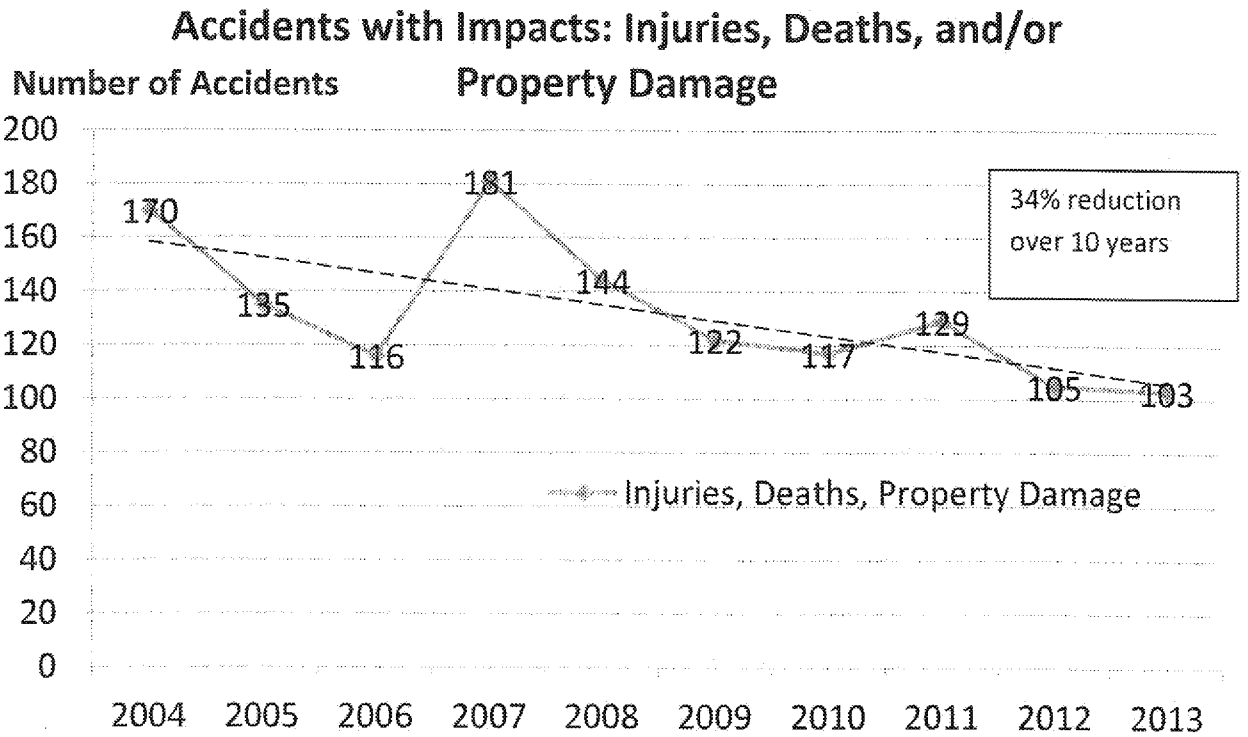
E) All Accidents with Injuries, Deaths, or Property Damage

Year	Injuries, Deaths, Property Damage	No Injuries Deaths, Property Damage	Total
2004	170	27	197
2005	135	17	152
2006	116	24	140
2007	181	23	204
2008	144	24	168
2009	122	27	149
2010	117	11	128
2011	129	9	138
2012	105	13	118
2013	103	20	123
Total	**1,322**	**195**	**1,517**





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