To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Dominguez, Alexander[dominguez.alexander@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Kime, Robin
Sent: Wed 8/23/2017 11:58:40 AM
Subject: FYI: Material for Today's 1:30 Meeting to Discuss the American Coatings Association Comment Letter on EPA Regulatory Reform
170823_ACA_BP.docx
ACA Comment.pdf

Good morning,

Attached is material for today's 1:30 meeting with the Coatings Association. They realize Nancy is unable to attend but have asked to meet with you today to touch base. Have a good day.

Memorandum

Re: American Coatings Association
Date: Wednesday, August 23, 2017
Time: 1:30 – 2:00 pm
Location: 3500 WJCN

Purpose
To discuss: (1) ACA's Policy Summit in October, (2) regulatory reform, (3) "Once-in, Always-in," (4) national VOC standards for aerosol coatings, (5) TSCA, (6) FIFRA, (7) flexible permits, and (8) EPA's Environmentally Preferable Purchasing Program Pilot and Ecolabels.

American Coatings Association
The American Coatings Association, Inc. (ACA) is a trade association representing the paint, coatings, and adhesives industry. ACA member companies operate nearly 1,300 manufacturing facilities, warehouses and distribution centers in all 50 states. More than 275,000 people in the United States are employed in the paint and coatings industry, including those who manufacture, distribute, store, sell, and apply our products. Product shipments by U.S. paint and coatings producers totaled an estimated $28 billion in 2015.

Participants
- Heidi McAuliffe, Vice President, Government Affairs
- Rhett Cash, Counsel, Government Affairs
- Riaz Zaman, Counsel, Government Affairs

Discussion

National Volatile Organic Compound Emission Standards for Aerosol Coatings
There are two primary regulating agencies that govern aerosol coatings: EPA and the California Air Resources Board (CARB). In 2008, EPA finalized a national rule for aerosol coatings that largely mirrored CARB's 1999 regulation. Since EPA's rulemaking in 2008, scientific research has resulted in a more accurate mechanism for calculating the reactivity of specific compounds. As a result, CARB amended its regulations in 2010. CARB's standards are now more stringent than EPA's standards. ACA claims there are no longer uniform standards for aerosol coatings throughout the country. This has complicated classification, formulation, calculation, and labeling for aerosol coatings manufacturers. ACA recommends that EPA update its standards.

TSCA Nanomaterials Reporting Rule
On January 12, 2017, EPA issued "Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements - Final Rule." The coating industry processes emulsions and dyes containing some particles in the nanoscale. ACA claims these materials are used during manufacture to produce a product with no inhalation risk for nanomaterials. Reporting from such downstream processors is duplicative, unnecessary, and costly. ACA recommends that EPA exempt processors from this reporting requirement. ACA also recommends that EPA exempt nanoscale materials that are incorporated into paint products.

FIFRA Requirement to Gain Approval for a Reformulated Registered Paint Product
Paint and coatings manufacturers sometimes modify a FIFRA registered paint product with an active ingredient registered under FIFRA, triggering an application for amended registration. Product reformulation does not alter the active ingredient. ACA recommends that EPA allow formulators to market or distribute a reformulated product that is substantially similar to an existing FIFRA registered paint product.

FIFRA Prohibition of Truthful Comparative Information on a Label
FIFRA prohibits the sale of misbranded pesticides, including pesticides with labels that are "false or misleading in any particular." EPA interprets this section to refuse approval of labels with truthful, non-misleading claims on a proposed label. ACA recommends that EPA modify language prohibiting safety claims in general to prohibit only "false or misleading" safety claims.

FIFRA Language Requirements for Export Labels
EPA requires that pesticides prepared for export include a label on the immediate product container in English, the language of the country of destination, and the official language of the importing country. EPA's language requirement is burdensome and unnecessary. ACA recommends that EPA repeal this requirement.

FIFRA Review of Label Elements upon Application for a Label Amendment
Amendments to labels of FIFRA-registered products require an application for EPA review. In the past, EPA has required changes to label elements that it had previously approved. ACA recommends that during the review of an application for an amended label, EPA should reserve any issues with previously approved label elements for a separate process.

FIFRA Regulation of Product Claims for Paint Products with Antimicrobial Agents
Under an exemption to FIFRA requirements, paints and coatings containing antimicrobial pesticides are not subject to registration when the antimicrobial agent is used to protect the article itself. However, where a product label includes claims that antimicrobial agents used to treat the article may also benefit the user, a manufacturer must register the paint or coating as a pesticide. Manufacturers that wish to indicate any ancillary public health benefit on a label are required to register their product as a pesticide. Registration can be costly and time-consuming while stifles innovation. ACA recommends that EPA should create a list of approved phrases for use with articles treated with specified antimicrobials. This approach would provide truthful public health claims for articles treated with antimicrobials where the article might have some ancillary public health benefit, but that benefit is not the main purpose of using the antimicrobial agent.

EPA Environmentally Preferable Purchasing Program Pilot and Ecolabels
In December 2016, EPA issued "Guidelines for the Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement." ACA is concerned that major changes were made to the guidance document after the public comment period closed and without participation from their industry, allowing for closed door, arbitrary standard development. ACA recommends that EPA consider abandoning the guidelines or amend them to provide manufacturers the

flexibility to accommodate the variety of approaches to and types of standards and ecolabels that exist in the marketplace today.

AmericanCoatings
ASSOCIATION

May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket Number EPA-HQ-OA-2017-0190;
Executive Order 13777, Enforcing the Regulatory Reform Agenda

Dear Associate Administrator Dravis:

The American Coatings Association, Inc. (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint, coatings and adhesives industry and the professionals who work in it. Our membership includes paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA membercompanies collectively produce some 95% of the total dollar volume of architectural paints and industrial coatings in the United States.

ACA member companies operate nearly 1,300 manufacturing facilities, warehouses and distribution centers in all 50 states. More than 275,000 people in the United States are employed in the paint and coatings industry, including those who manufacture, distribute, store, sell, and apply our products. Product shipments by U.S. paint and coatings producers totaled an estimated $28 billion in 2015.

ACA appreciates the opportunity to participate in this regulatory reform effort and provide the agency with the benefit of its experience regarding certain EPA regulations and requirements. We have participated in several of the public meetings, providing information about regulatory requirements that have been costly and problematic for our industry for many, many years.

ACA is hopeful that the regulatory reform effort will allow the agency to take a holistic approach to regulations and modernize requirements with an eye towards synergistic compliance. ACA urges EPA to examine those regulations and requirements that are unnecessary, costly and inconsistent with other requirements and do not further the mission of environmental protection. Below we highlight such requirements and provide cost data along with a specific recommendation for repeal, replacement or modification.

ACA is providing comments on the following regulations and requirements:

1. The 8-Hour Ozone Standard, EPA-HQ-OAR-2008-0699;
2. "Once-in, Always-in" Policy Under National Emissions Standards for Hazardous Air Pollutants for Source Categories;
3. National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA—HQ—OAR—2006—0971;
4. Triennial Reporting for Aerosol Coatings, EPA—HQ—OAR—2006—0971;
5. TSCA Nanomaterials Reporting Rule, EPA-HQ-OPPT-2010-0572;
6. TSCA, Section 5(e) Consent Orders: Regulation of Chemicals Pending Development of Information During the PMN Process;
7. FIFRA: Requirement to Gain Final Approval for a Reformulated FIFRA-registered Paint Product prior to Distribution or Marketing;
8. FIFRA, Prohibition of Truthful Comparative Information on a Label;
9. FIFRA, Language Requirements for Export Labels;
10. FIFRA, Review of Label Elements upon Application for a Label Amendment;
11. FIFRA, Regulation of Product Claims for Paint Products with Antimicrobial Agents; and
12. EPA Environmentally Preferable Purchasing Program Pilot to Assess Standards and Ecolabels for EPA's Recommendations to Federal Agencies

1. <u>The 8-Hour Ozone Standard, EPA–HQ–OAR–2008–0699</u>

Issue: In October 2015, the National Ozone Standard was lowered from 0.75 ppm to 0.70 ppm.

Implementation of the new standard requires U.S. states to identify whether they are in attainment or in non-attainment by February 2017. Reviewing the ozone standard is a recurring mandate under the Clean Air Act.

Concern: EPA's final rule on the ozone standard is forcing a significant number of states that are currently "in attainment" to "non-attainment" status, triggering a requirement to revise their State Implementation Plans and adopt even stricter volatile organic compound (VOC) emission regulations for coatings. This triggering event is being realized as ozone monitors across the country are demonstrating a marked improvement in air quality under the 2008 standard of 0.75 ppm. Indeed, the previous standard of 0.75 ppm was not yet fully implemented.

Cost to the Coatings Industry: EPA's final stringent ozone standards will limit business expansion in nearly every populated region of the United States. and impair the ability of U.S. companies to create new jobs. EPA's lowered range adds unnecessary red tape for companies seeking to expand even in areas that can attain those standards. Increased costs associated with restrictive and expensive permit requirements will likely deter companies from siting new facilities in a nonattainment area. ACA shares the practical concerns of

manufacturers regarding potential exorbitant costs this regulation would create for the paint and coatings industry without commensurate benefits to public health or the environment. *A study conducted by the National Association of Manufacturers (NAM) and NERA Economic Consulting, estimated this final rule could cost the economy $140 billion per year, result in 1.4 million fewer jobs, and cost the average household $830 per year in the form of lost consumption — making this the "costliest regulation in history" and threatening manufacturing.*

Recommended Solution: ACA urges a two-step solution to this problem: 1) EPA should revert to the 2008 standard of 0.75 ppm and fully implement this standard so that the forward progress already achieved can be extended without unnecessarily burdening the paint and coatings industry with increased standards and costs for many years to come; and 2) EPA should amend the Clean Air Act Regulations to extend the time for review of the ozone standard to every 10 years. Currently the law requires a review every five (5) years. Extending the review of the ozone standard to every 10 years will allow for more stability in the marketplace for formulators while still protecting human health and the environment.

2. **"Once in, Always in" Policy under National Emission Standards for Hazardous Air Pollutants for Source Categories**

This "regulation" is a May 16, 1995 EPA memorandum titled, "Potential to Emit (PTE) for MACT Standards – Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors — commonly known as the "Once in, Always in" memo — and may be found here: https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

Issue: A "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources."

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable Maximum Achievable Control Technology (MACT) standard (also referred to as National Emission Standards for Hazardous Air Pollutants or NESHAP). However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT *even if it subsequently reduces HAP emissions below major source levels at a later date.* In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

Note that that EPA published a proposed rule on January 3, 2007 to replace the "once-in always in" policy rule - (docket number EPA-HQ-OAR-2004-0094. https://www3.epa.gov/ttn/atw/gp/fr03ja07.pdf). However, this rulemaking was never finalized.

Concern: The coatings manufacturing industry has substantially reduced the use of HAPs since the 1990s. In fact, many facilities subject to the Miscellaneous Coatings Manufacturing (MCM) and Miscellaneous Organic Chemical Manufacturing MACT (MON) MACTs are now "area source" facilities, but still must comply with the MCM requirements even though they are not major source facilities. While many coating and resin manufacturing operations could reduce emissions prior to the first compliance date of the MCM and MON, other facilities could not. Facilities that could not reduce their emissions have since installed expensive thermal oxidation units.

This guidance is outdated and unnecessary and imposes a substantial burden on industry that well exceeds any benefits. This "policy" or "guidance" has been applied by EPA as a "rule," with binding effects on the regulated community, including very burdensome compliance costs. Industry resources spent on compliance could be used instead for R&D, or modernization activities. This policy also acts as a disincentive for industry, since facilities have no incentive to voluntarily reduce HAP emissions below major source thresholds.

Cost to the Coatings Industry: Thermal oxidation units require a significant capital investment (millions of dollars per facility) and annual operation and maintenance costs (several hundred thousand dollars per facility per year in fuel cost alone). These units consume large amounts of electricity and natural gas, which results in additional emissions of carbon dioxide, nitrogen oxides and carbon monoxide. *EPA has estimated that installation and operating of air pollution controls for the MCM and MON rules would require an overall energy demand increase of 5.83 trillion BTUs; a total capital expenditure of $184 million; yearly operating costs of nearly $91 million; and an increase in NOx, CO, SOx emissions of 987 tons per year.*

Recommended Solution: ACA recommends that EPA withdraw or rescind this policy.

3. **National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA—HQ—OAR—2006—0971**

Issue: The regulatory landscape for aerosol coatings has historically been relatively simple. There are two primary regulating agencies that govern aerosol coatings: the U.S. EPA and the California Air Resources Board (CARB). In 2008, EPA finalized a national rule for aerosol coatings that largely mirrored CARB's 1999 aerosol coatings regulation. Since EPA's initial rulemaking in 2008, scientific research has resulted in a more accurate mechanism for calculating the

reactivity of specific compounds. As a result, CARB amended its aerosol coatings regulations and updated its reactivity values in 2010. CARB's standards are now more stringent than EPA's standards.

Concern: There are no longer consistent, uniform categories or standards for aerosol coatings throughout the country. EPA's Table of Maximum Incremental Reactivity (MIR) Values are outdated and no longer align with CARB's Table of MIR Values. Thus, a significant compliance challenge exists as there are now two different MIR Values for a single compound: one that needs to be employed for compliance calculations in California and a different one that will apply for the EPA national rule. This has complicated classification, formulation, calculation, and labeling for aerosol coatings manufacturers.

Impact on Industry: The impact of CARB's amendments has been substantial on the aerosol coatings industry because EPA's standards are no longer consistent with CARB's standards. The most pressing concern for aerosol coatings manufacturers is calculating two different values for compliance purposes. The process takes more time, costs more money, and expends more resources. In addition, EPA's outdated standards are stifling innovation and not utilizing the most recent scientific research available. Under EPA's current regulations, it is not worth it for industry members to come up with different formulations using new compounds with lower VOC emissions because the trade-off is having to use a high default value. Overall, the inconsistencies between EPA and CARB's aerosol coatings regulations have created burdens with compliance that is costly for industry.

Recommended Solution: ACA recommends that EPA modify its aerosol coatings regulations by updating the reactivity values in MIR Tables 2A, 2B and 2C, adjusting the default value, amending the regulatory language to allow for changing the value of existing compounds, and adding new compounds to the tables. These slight modifications would align EPA's aerosol coatings regulations with the most recent scientific research available and promote uniformity and consistency throughout the country. ACA is not asking EPA to impose California's regulations across the country; rather, ACA is asking EPA to update its standards and reactivity values. Since EPA's aerosol coatings regulations are originally based on CARB's regulations, this harmonization seems to be natural and practical. Most importantly, it will resolve inconsistencies and reduce burdens and costs on the aerosol coatings industry.

4. **Triennial Reporting for Aerosol Coatings, EPA—HQ—OAR—2006—0971**

Issue: EPA's current aerosol coatings regulations require regulated entities to report certain information to EPA every three years (40 CFR § 59.511(i)). In these triennial reports, aerosol coatings manufacturers must report VOC formulation data, VOC amounts, individual product codes, and other identification information.

Concern and Impact on Industry: These triennial reporting requirements are not only burdensome and costly for aerosol coatings manufacturers, but they also provide little, if any, useful value or information to EPA. This additional reporting requirement costs the industry in time, money, and resources. Plus, if there are compliance issues, this same information can be requested by the Agency and manufacturers would then be required to provide it. So, this additional triennial reporting requirement is unnecessary.

Recommended Solution: ACA urges EPA to eliminate the triennial reporting requirements for aerosol coatings manufacturers. This same information can be requested by EPA at any time should compliance issues arise.

5. **TSCA Nanomaterials Reporting Rule, EPA-HQ-OPPT-2010-0572**

EPA's "Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements - Final Rule" was published on January 12, 2017.

Issue: Our industry consists of downstream processors of emulsions and dyes containing some particles in the nanoscale. These raw materials are used during manufacture to produce a final product with no inhalation risk for nanomaterials. Reporting from such downstream processors is duplicative, unnecessary, and costly

The final EPA "Nanomaterial Reporting" rule requires a one-time report and recordkeeping of existing exposure and health and safety information on nanoscale chemical substances in commerce. This rule requires companies that manufacture, import or process certain chemical substances already in commerce as nanoscale materials to notify EPA of certain information, including specific chemical identity; production volume; methods of manufacture; processing, use, exposure and release information; and available health and safety data. The compliance deadline for this report is August 14, 2018.

Impact on Coatings Industry: The use of emulsion polymers and the milling of pigments during the coating manufacturing process could fall below the 100 nanometers threshold and potentially trigger reporting under the final rule. Emulsion polymers and milling processes have been conducted for decades in the coatings industry and there is minimal opportunity for exposure to the nanoscale material after the film cures. Nanoscale materials which may be incorporated into paint products would not be available since they would be bound in the dry coating film. During the manufacturing process, existing OSHA requirements for engineering controls and PPE adequately control any risks. A requirement to report on these materials would be unnecessary and duplicative. Given the low exposure and low risk of these applications, EPA should exempt these substances from the reporting requirements.

ACA estimates that about 10 to 15 coatings companies would report under this rule. Using a conservative estimate, the reporting requirement alone would cost at least $3.5 million to the coatings industry. These figures are based on EPA estimates and information from ACA member companies. EPA estimates that across all industry sectors, about 823 companies will be affected by this rule, with a distribution of 80/20 of large to small companies.[1] The agency estimates 295 companies will report each year, at 4.7 reportable substances per company.[2] However, this is contrary to the information industry has provided. Companies estimate upwards of 50 reportable substances. EPA estimates each report would take up to 175 hours to complete,[3] at a cost of $10,533 just to complete the form, excluding other related activities.[4] A company with 30 to 50 reportable substances could easily spend $300,000 to $530,000 to comply, bearing in mind some companies will have more than 50 substances to report.

Recommended Solution:
ACA recommends that EPA exempt processors from this reporting requirement. Reporting imposes significant costs on processors and does not provide EPA with new information. Exemption of processors would allow EPA to more effectively gather relevant information by reducing the number of superfluous processor reports.

ACA is also recommending that EPA exempt nanoscale materials that are incorporated into paint products. These processes are known to be low risk and the final product has a low exposure risk because nanoscale materials are encapsulated in a dried paint film. Existing OSHA regulations provide adequate safety standards. The addition of this reporting rule would be overbearing on industry and is duplicative as OSHA requirements address this risk.

ACA also urges EPA to extend the compliance period from one year after the effective date to two years after the effective date. This extension would allow upstream and downstream users of nanomaterials an appropriate amount of time to prepare these reports, which EPA estimated will take 175 hours to complete.

6. TCA, Section 5(e) Consent Orders: Regulation of Chemicals Pending Development of Information During the PMN Process

Under the revised Toxic Substances Control Act (TSCA), EPA must render a determination after considering each Pre-manufacture Notice (PMN) submission. (TSCA, Section 5(a)(3)). Companies expect EPA to increase the number of

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[1] RIN 2070-AJ54, *Economic Analysis for the Final TSCA Section 8(a) Reporting Requirements for Certain Chemical Substances as Nanoscale Materials*, p. 2-8, prepared by: Economic and Policy Analysis Branch; Chemistry, Economics, and Sustainable Strategies Division; Office of Pollution Prevention and Toxics.
[2] *Id.* at p. 2-6
[3] *EPA Nanomaterials Reporting Form*, available at Docket No. EPA-HQ-OPPT-2010-0572 (EPA reporting form estimates 175 hours to complete).
[4] *Id.* at f.n. 1, p. 3-3.

consent orders under Section 5(e), allowing restricted use of a PMN substance after EPA determines information is insufficient for a final determination. A Section 5(e) consent order allows a company to use a chemical while developing information that assists EPA in coming to a final determination. EPA issues complex consent orders with a variety of requirements including:

- Testing requirements for environmental fate and toxicity;
- Personal protective equipment;
- New chemical exposure limits;
- Hazard communication requirements;
- Restrictions on releases to water, air and/or land; and
- Recordkeeping.

These requirements are detailed in consent orders that are often more than 70 pages.
ACA supports EPA's efforts to expeditiously evaluate the current backlog of PMN submissions and control risks with consent orders while companies develop test data. EPA can reduce duplicative and excessive requirements in consent orders while maintaining the same degree of protection to public health and the environment.

With revisions to TSCA, EPA will now issue an interim consent order or a final determination for every PMN filed by a company – compounding costs and administrative difficulties associated with compliance. Requirements in consent orders often address issues covered under other EPA programs or OSHA requirements. Industry is burdened with developing a secondary compliance program for consent orders. Requirements in consent orders may also vary from requirements in other programs, creating a patchwork of compliance obligations and sometimes irregular compliance dates, as explained below.

Such requirements do not advance protections to public health or the environment, but increase the regulatory burden and associated costs to industry. Companies that remain committed to environmental responsibility find certain requirements in consent orders unnecessary and burdensome. One such company maintains a staff of five of employees devoted to product compliance full time at the corporate level, with 75% of time devoted to TSCA compliance. At the facility level, one employee at each facility devotes about 10% of their time to TSCA compliance activities. This company estimates at least 11760 hours per year devoted to TSCA compliance. Reduction in duplicative and inconsistent requirements in consent orders would reduce the administrative burden on such companies.

ACA suggests the following improvements:

- Reduce the number of requirements imposed in consent orders by referencing other statutory programs where an issue is already covered. Water discharges could be regulated through National Pollutant Discharge Elimination System (NPDES) permits or Resource Conservation and Recovery Act (RCRA) requirements rather than a restriction in a Section 5(e) consent order.
- EPA could repeal duplicative EPA hazard communication and burdensome PPE testing requirements while maintaining references to OSHA hazard communication and PPE requirements in consent orders.
- EPA could also stop requiring reporting of production and/or processing volumes while companies develop test data required in consent orders.

Additional details are included below:

a. Limits to discharges into waterways

Issue: Restrictions on effluent discharges in consent orders may duplicate or sometimes impose additional restrictions not included in a facility's NPDES permit, although the chemical at issue does not pose an eco-toxicological risk. To comply, companies must implement new control and monitoring systems, beyond those used to comply with NPDES requirements. Although an NPDES permit may not cover discharges from new pollutants, NPDES permits restrict overall percent nitrogen and phosphorous discharged, including contributions from new pollutants. Hazardous waste requirements under RCRA require containment and disposal of effluent discharge with new chemicals where appropriate.

Concern: Limits to discharge in consent orders do not enhance protections to environment and public health while imposing significant costs to industry. These restrictions are interim measures while companies submit additional eco-toxicological data. Similar protections are included in a facility's NPDES permit or through RCRA requirements.

Impact/Cost to the Coatings Industry: Companies can incur significant costs with little to no additional protection to public health or the environment. One company reports additional costs of $600,000 per year to comply with discharge requirements in just one order. This estimate does not include employee hours. Costs are compounded since companies are now subject to multiple consent orders. One company reports that it anticipates about 40 consent orders where it previously only had to comply with one or two orders per year.

Recommended Solution: ACA recommends that EPA issue consent orders that reference NPDES permit requirements and RCRA requirements without imposing additional restrictions to discharge. EPA should also rescind existing discharge requirements in consent orders currently in effect.

b. Hazard Communication standards (HCS) in consent orders

Issue: Human health hazard and precautionary statements required on safety data sheets for PMN substances are not aligned with OSHA's HCS. Consent orders typically replicate hazard communication specified for chemicals subject to SNURs at 40 CFR 721.72(g) and (h). In addition to health hazard and precautionary statements, consent orders include basic information that must appear on SDS and labels, such as manufacturer's identity, exposure levels and chemical identity. Although EPA largely replicates OSHA's SDS and labeling requirements, requirements are not identical, placing companies in a tenuous position by requiring compliance evaluations under both EPA and OSHA requirements.

Concern:
ACA believes that the human health hazard and precautionary statements prescribed in consent orders pose duplicative and unnecessary burdens on the coatings industry and create confusion among the workers. Given that the intention of these requirements is to communicate hazards to employees, providing similar hazard statements to employees in two different verbiages (HCS statements vs EPA statements) creates unnecessary complexity for employers and simply confuses workers. EPA's data requirements for SDS add another layer of complexity, requiring companies to check for compliance with both EPA and OSHA data requirements.

Impact to the Coatings Industry:
Our members must develop two compliance systems for hazard communication requirements, while evaluating differences and similarities of both systems to comply. This seemingly benign dual hazard communication system has aggregate impacts for management. Written hazard communication programs must be aligned with EPA and OSHA requirements. Companies must also align management systems, train workers, and correct SDS and labels as necessary to comply.

Recommended Solution:
ACA recommends that EPA minimize hazard communication requirements in consent orders to those relevant to environmental hazards (not covered by OSHA); and that EPAinclude one sentence requiring compliance with OSHA's HCS for all other requirements.

c. PPE testing requirement in consent orders

Issue: Consent orders adopt two standards related to permeation tests for PPE not required by OSHA: 1) ASTM F739, "Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact," and 2) ASTM F1194-99(2010), "Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing Materials." Companies must test and maintain records as specified in these standards.

Concern: EPA creates a secondary permeability assessment that may vary from a company's current testing practice for compliance with OSHA's requirement. EPA's testing standards may not be the most current or effective test methods. In contrast to EPA's requirement, OSHA's PPE maintenance requirement gives companies flexibility in implementing appropriate and current tests.

Impact / Cost to the Coatings Industry: Companies must modify policies and practices designed for OSHA compliance to meet EPA testing requirements. The costs of EPA-specified tests are in the range of $5,000-$10,000.

Recommended Solution: ACA recommends that EPA modify consent order language to delete references to permeability testing standards while maintaining reference to OSHA requirements for PPE at 29 CFR 1910.38 (hand protection) and 29 CFR 1910.133 (eye and face protection).

d. Volume reporting in consent orders

Issue: Consent orders require companies to report cumulative manufacture volumes every six months from the date of commencing manufacture, while developing test data. Reports must be submitted every six months until the PMN submitter develops final submission of test data.

Concern: This reporting requirements is of marginal use to EPA, but imposes administrative costs on industry. Moreover, the requirement causes staggered reporting dates that can be difficult to track when attempting to comply with several consent orders. EPA presumably uses data to enforce production limits for PMN substances, but other methods of reporting could achieve the same result.

Impact/Cost to the Coatings Industry: Administrative costs to industry can be significant when tracking compliance dates and drafting multiple reports. This burden is compounded by irregular compliance dates set every six months from the date of manufacture of each PMN substance.

Recommended Solution: ACA recommends that EPA repeal this requirement. Reported information is of little to no value to EPA, but significantly adds to a company's administrative burden. EPA could require a one-time submission of production volumes with final test data, once developed. In the interim, companies could report to EPA, if they exceed production limits or anticipate excess manufacture. At a minimum, EPA should require annual volume reporting at one set time during the year, instead of requiring reporting every six months from the date of manufacture.

7. **FIFRA: Requirement to gain final approval for a reformulated FIFRA registered paint product prior to distribution or marketing**

Issue: Paint and coatings manufacturers sometimes modify a FIFRA registered paint product with an active ingredient registered under FIFRA, triggering an application for amended registration under 40 CFR 152.44. Product reformulation does not alter the active ingredient. Coatings manufacturers must obtain EPA approval prior to marketing or distributing the reformulated product, potentially leading to delays or temporary withdrawal from market, pending final approval.

Concern: EPA has already deemed the active ingredient in the reformulated product as safe for the use at issue. Requiring prior approval inhibits innovation and delays bringing new formulations to market.

Impact on the Coatings Industry: ACA member companies can lose profits from delays in bringing a reformulated product to market while waiting for final approval.

Recommended Solution: ACA recommends that after submitting an application for amended registration, but prior to final approval, EPA allow formulators to market or distribute a reformulated product that is substantially similar to an existing FIFRA registered paint product. EPA can implement this change by amending language in 40 CFR 152.44.

8. **FIFRA - Prohibition of Truthful Comparative Information on a Label**

Issue: FIFRA prohibits the sale of misbranded pesticides (FIFRA Section 12(1)(E)), including pesticides with labels that are "false or misleading in any particular" (FIFRA Section 2(q)(1)(A)). FIFRA details its prohibition on false or misleading claims on labels at 40 CFR 156.10(a)(5) with specific examples, including, "A false or misleading comparison with other pesticides or devices..." In practice, EPA interprets this section to refuse approval of labels with truthful, non-misleading claims on a proposed label.

Concern: Manufacturers of FIFRA-registered paint products and non-registered paint products containing antimicrobials are barred from providing accurate information about their product, due to EPA's broad interpretation of "false or

misleading" claims. Paint and coatings manufacturers carefully formulate products with antimicrobials to optimize performance. Accurate comparative information on a label can assist buyers in purchasing a paint product that best meets their needs. Comparative statements also encourage competition and drive down product costs. Moreover, the prohibition of "false or misleading" claims under FIFRA is duplicative of Section 5 in the Federal Trade Commission Act prohibiting unfair or deceptive practices.

Cost to the Coatings Industry: Paint and coatings companies may not be maximizing market share for certain high-performance products because, in practice, EPA prohibits even truthful comparative information on labels of paints and coatings containing antimicrobials.

Recommended Solution: ACA recommends that EPA modify language in 40 CFR 156.10(a)(5)(ix) and (x), currently prohibiting safety claims in general to prohibit only "false or misleading" safety claims, thereby allowing legitimate safety claims and comparative statements. EPA should also generate guidance for industry and EPA staff encouraging truthful statements in labels while discouraging EPA staff from misinterpreting FIFRA prohibitions against false and misleading statements to prohibit truthful comparison claims.

9. <u>FIFRA - Language Requirements for Export Labels</u>

Issue: EPA requires that pesticides prepared for export include a label on the immediate product container in multiple languages — namely, in English — the language of the country of destination, and the official language of the importing country. (40 CFR 168.69(c)). To place a product in a foreign market, exporters must comply with domestic labelling laws of the foreign country, including language requirements. In effect, EPA's language requirement is burdensome and unnecessary, requiring compliance with a U.S. label requirement for products placed in foreign markets.

Concern: EPA's requirement creates an unnecessary labeling requirement that can significantly increase costs when EPA requires a label in a language not required by the product's destination country. EPA's requirement also creates an additional administrative burden to evaluate compliance.

Cost to the Coatings Industry: Companies may be forced to design, print and place multi-language labels on a product. Associated costs can be significant.

Recommended Solution: ACA recommends that EPA repeal 40 CFR 168.69(c) in its entirety.

10. FIFRA - Review of Label Elements upon Application for a Label Amendment

Issue: Amendments to labels of FIFRA-registered products, including FIFRA-registered paint products, require an application under section 40 CFR 152.108. EPA review of applications often results in EPA re-evaluating and requiring changes to label elements that it had previously approved, beyond the text of the requested amendment. These changes are due to shifts or evolution of EPA policy or practice regarding existing claims made on the label.

Concern: Upon application to amend a label, a paint or coatings manufacturer may be disadvantaged in the marketplace when EPA requires a change to previously approved label elements beyond the requested amendment when competitors are not required to change labels at the same time. EPA's approach creates an unlevel playing field by reopening review of settled label elements only for an applicant seeking an amended label.

Cost to the Paint and Coatings Industry: Paint and coatings manufacturers may lose market share due to varying label requirements.

Recommended Solution: ACA recommends that during review of an application for an amended label, EPA should reserve any issues with previously approved label elements, beyond the requested amendment, for a separate process, while focusing evaluation of the application on requested amendments. EPA should then require all registrants comply at the same time with any decisions about the reserved label elements. To require this approach, EPA can amend text of 40 CFR § 152.108 to require a separate proceeding when it initiates changes to label elements not proposed by the applicant.

11. FIFRA - Regulation of Product Claims for Paint Products with Antimicrobial Agents

Issue: Under an exemption to FIFRA registration requirements at 40 CFR §152.25, articles — including paints and coatings — containing antimicrobial pesticides are not subject to registration when the antimicrobial agent is used to protect the article itself and any related claims on the label relate to protection of the article, rather than any benefit to the user. However, where a product label includes claims that antimicrobial agents used to treat the article may also benefit the user, a manufacturer must register the paint or coating as a pesticide.

Concern: A paint or coating treated with an antimicrobial agent reduces bacterial contamination in the paint or coating itself. The antimicrobial agent prevents contamination since water is a highly sensitive breeding ground for bacterial growth; minimizes additional transportation and refrigeration during the distribution stage; and increases the products' lifespan and minimizes waste. In addition, the antimicrobial agent may also provide an ancillary public health benefit. Yet, manufacturers that wish to indicate any ancillary public health benefit on a label are required to register their paint or coating product as a

pesticide. Registration can be costly and time consuming while adding a disincentive for manufacturers to reformulate products containing antibacterial agents, thereby stifling innovation.

Cost to the Paint and Coatings Industry: Paint and coatings manufacturers may not be maximizing market share by failing to fully describe benefits of paints containing antimicrobial agents, without registering the paint or coating as a pesticide.

Recommended Solution: EPA should create a list of standard approved phrases for use with articles treated with specified antimicrobials. This approach would provide truthful public health claims for articles treated with antimicrobials where the article might have some ancillary public health benefit, but that benefit is not the main purpose of using the antimicrobial agent. This approach would also relieve manufacturers from registering articles whose main function is not as a pesticide, thereby conserving both agency and manufacturer resources.

12. EPA Environmentally Preferable Purchasing Program Pilot to Assess Standards and Ecolabels for EPA's Recommendations to Federal Agencies

Issue: Executive Order 13693 directed the U.S. Government to specify federal standards and ecolabels, such as Energy Star, WaterSense, and Safer Choice -- labels that identify products meeting strict federal standards for energy efficiency, water efficiency, and safer chemicals. EPA developed "Guidelines for the Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement" to create a "transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels to support the agency's mission and federal sustainable acquisition mandates." The guidelines were developed and piloted with participation and comments from multiple stakeholders, including industry, and finalized in December 2016.

Concern: ACA supports the stated goals of the pilot, "to create a transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels that support the Agency's mission and federal environmentally preferable purchasing mandates." However, ACA is concerned that major changes were made to the guidance document after the public comment period closed and without participation and feedback from the interested and impacted participants on the paint panel. While the results of the pilot indicate that many Standards Development Organizations (SDOs) could not comply with certain criteria, we understood that those criteria would signal the SDO community to improve their standards in the future. Instead, it appears that where the SDOs were unable to achieve critical criteria, such as open, transparent stakeholder involvement in standard development, the bar has been lowered to allow for closed door, arbitrary standard development.

Impact on the Coatings Industry: By requiring select standards or certification for products specified and purchased by the federal government industry must expend time and money to achieve or certify products to these multiple, and in some cases, arbitrary standards and ecolabels.

Recommended Solution: ACA recommends that EPA consider abandoning the guidelines or amendments to provide manufacturers flexibility to accommodate the variety of approaches to and types of standards and ecolabels that exist in the marketplace today.

Conclusion

ACA is encouraged by EPA's efforts to solicit the opinions and comments from affected parties. Our members are constantly working to understand and comply with the environmental requirements imposed by the agency and are pleased to see this Administration undertake such a comprehensive effort. We believe that there is a significant number of modifications and changes that can be made to some of the regulations that will streamline compliance efforts without jeopardizing the environment or the health and safety of customers, employees and the public. We have provided twelve (12) examples of regulations that are ineffective, outdated and inconsistent with other more relevant requirements. Regulatory reform is desperately needed to ensure a competitive and sustainable coatings industry.

Thank you for the opportunity to submit comments on this very important matter; we look forward to talking with you further about efforts to modernize these specific requirements.

If I may answer questions or provide additional information, please do not hesitate to contact me at 202.719.3686 or hmcauliffe@paint.org.

Respectfully submitted,

Heidi K. McAuliffe
Vice President, Government Affairs

From: Kime, Robin
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Meeting with Kohler on EPA's Clay MACT Rule
Start Date/Time: Tue 5/16/2017 6:30:00 PM
End Date/Time: Tue 5/16/2017 7:00:00 PM
Comment.pdf

Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station**. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:

James (Buddy) Robinson – Senior Vice President, General Counsel & Corporate Secretary, Kohler Co.

Natalie Maciolek – Lead Attorney, Kohler Co.

Kristine Heine – Executive Vice President, Global Communicators

We will bring a copy of the comment we will submit to the docket on Monday, and leave you with a couple short documents that we will discuss with you during our meeting

Contact:

Natalie Maciolek

Lead Attorney

KOHLER.

Office: (920) 459-1685

Mobile: (920) 917-8948

Email: Natalie.Maciolek@kohler.com

444 Highland Drive | Kohler | WI | 53044

From: Dravis, Samantha
Location: 3513A
Importance: Normal
Subject: Check-in on Pending Reg Reform Task Force Draft Plans
Start Date/Time: Mon 4/24/2017 9:00:00 PM
End Date/Time: Mon 4/24/2017 9:15:00 PM

Hi

Will you add this from SD's calendar today please? Thanks

Date: Today

Topic: Check-in on Pending Reg Reform Task Force Draft Plans

Time: 5:00 – 5:15 p.m.

Location: 3513A

Required: Rees, Sarah <rees.sarah@epamail.epa.gov>; Nickerson, William Nickerson.William@epa.gov; Bolen, Brittany <bolen.brittany@epa.gov>

From: Dravis, Samantha
Location: 3513A
Importance: Normal
Subject: Call with the Independent Petroleum Association of America: Prep for the Administrator's 5/1 Meeting: Please call the EPA Polycom (202) 501-1854
Start Date/Time: Wed 4/26/2017 7:00:00 PM
End Date/Time: Wed 4/26/2017 7:30:00 PM

Attendees:

Lee Fuller, Samantha McDonald, Susan Ginsberg of IPAA

Contact: Lee Fuller, lfuller@ipaa.org

From: Lee Fuller [mailto:lfuller@ipaa.org]
Sent: Friday, April 7, 2017 4:30 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Regulatory Reform and Other Items

Brittany,

I read that one of your assignments is the regulatory reform task force. Consequently, I wanted to reach out on some issues of concern. I've attached an email that I sent to Ryan Jackson that raises several issues that we would like to discuss. (Separately, we are trying to arrange a meeting for Barry Russell, IPAA's President and CEO with Administrator Pruitt through Sydney Hupp.)

Obviously, events are moving quickly. I know that the Administration filed an abeyance petition on the Subpart OOOOa litigation today. There is an issue there that is related that I'd like to call to your attention. The Subpart OOOOa fugitive emissions program – with its costly Leak Detection and Repair (LDAR) requirements – is scheduled to take effect on June 3. It would be helpful if this requirement, at least, could be stayed while the Subpart OOOO and OOOOa requirements are being reconsidered since a different approach might be developed. I know there are other provisions that are already in effect that raise similar issues.

I also spoke with Dave Rostker from the SBA Advocacy office regarding LDAR in a small business context where the issues arises in both the Subpart OOOOa and VOC Control Techniques Guidelines context. He suggested reaching out to EPA as well.

Hopefully, we can discuss these issues soon given your schedule.

Thanks for your consideration,

Lee Fuller

From: Lee Fuller
Sent: Thursday, April 6, 2017 2:40 PM
To: Ryan Jackson (Jackson.Ryan@epa.gov) <Jackson.Ryan@epa.gov>
Subject: IPAA Issues at EPA; Possible Meeting

Ryan,

I'm reaching out to you but would be happy if you point me to a preferred contact person.

After the recent Energy Executive Order, IPAA would like to discuss a number of pending issues with EPA.

Barry Russell, IPAA's President and CEO, would like to meet with Administrator Pruitt to introduce himself and IPAA. Barry worked for EPA in the 1970s before coming to IPAA.

The issues that we'd like to discuss relate to several matters.

First, EPA's actions in response to the Energy EO with regard to the methane NSPS (Subparts OOOO and OOOOa) are most important to IPAA. While currently engaged in the litigation opposing the regulations, the pathway to reconsideration and possible revision is critical. IPAA wants to be involved as soon as possible and wants to offer its cooperation.

Second, IPAA strongly supports efforts to expand and enhance delegation of regulatory authority to states. We are looking for options to be helpful in identifying pathways, working with our state cooperating associations to encourage state actions and working with Congress if there are barriers that need to be addressed.

Additionally, following are several other items – mostly directly affecting independent oil and natural gas producers – that we would like to identify as issues that we would hope EPA could address:

1. Control Techniques Guidelines (CTG) – As a part of the Energy Executive Order, EPA is directed to reconsider the oil and natural gas methane New Source Performance Standard (NSPS) – Subparts OOOO and OOOOa. When the Obama Administration proposed the NSPS, it also proposed a CTG for existing sources of Volatile Organic Compounds (VOC) in Ozone nonattainment areas. The CTG was finalized in October 2016. It should be suspended or withdrawn until the NSPS issues are resolved and determinations can be made on the appropriateness of the technology being applied to existing sources. Otherwise, the CTG will be applicable in future State Implementation Plans (SIP).

2. RCRA Subtitle D Consent Decree – EPA agreed to a Consent Decree to settle litigation regarding mandatory duties under RCRA Subtitle D related to making determinations regarding the appropriateness of state oil and natural gas production wastes regulations. EPA has until March 2019 to respond but it should act quickly for two reasons. First, EPA's mandate to act does not require an extensive burden and the longer it takes to act, the more state programs appear to be viewed as inadequate. Second, the mandatory duties require action every three years. Action in 2017 would allow EPA to reconfirm its position in 2020 and establish a clear practice for the future.

3. Unconventional Oil and Gas (UOG) Extraction Effluent Limitations Guidelines (ELG) – EPA finalized UOG Extraction ELG for discharges to Publicly Owned Treatment Works (POTW) in June 2016. These ELG should be based on a technology standard – Best Available Technology Economically Achievable (BATEA). EPA concluded that all discharges to POTW should be prohibited based on the availability of underground injection wells and of recycling options. Neither of these are BATEA. EPA should not be making zero discharge determinations based on its perception of other options. It should determine BATEA requirements. If the BATEA requirements are too expensive, it should be the dischargers' choice to use alternative approaches.

4. Clean Air Act Enforcement Tactics – Over the past several years, EPA's Enforcement tactics have been excessively aggressive. For example, in North Dakota where the state did not have delegation of the NSPS program for oil and natural gas production, EPA Enforcement initiated direct actions against producers with regard to its interpretation of Subpart OOOO requirements for storage vessels. This interpretation differed from those EPA technical staff had initially indicated. Using its enforcement power, EPA filed proposed penalties against a privately held producer that exceeded the value of its assets. The purpose was clear and predictable. EPA wanted to use its enforcement power to compel a limited asset company to enter into a consent agreement that would require actions that met Enforcement's interpretation of the regulation and to commit to additional actions that were beyond EPA Clean Air Act authority to require. Not only did EPA use a gap in state delegation to step over North Dakota in its zeal, but these types of enforcement tactics reflect poorly on EPA and the federal government and should be ended.

5. Ozone National Ambient Air Quality Standards (NAAQS) Revisions – The 2014 revision to the Ozone NAAQS should be reconsidered. Implementation of the 2008 revision to the Ozone NAAQS had yet to be implemented and evaluated when the 2014 revision was finalized. NAAQS attainment should be the target, not promulgating new, unachievable revisions. EPA's own data showed that the same areas it projected to fail to attain the 2008 NAAQS would fail to meet the 2014 revision. In those areas, the regulatory requirements would not change but the 2014 revision would bring new areas into nonattainment regulation. Even though EPA predicted those new areas would reach the 2014 NAAQS without additional local controls, those areas would be subject to new source permitting requirements that hamper their economic development. Where there is no compelling health benefit from a NAAQS revision – like the 2014 action – EPA should devote resources to attainment of the prior standard.

Thanks for considering this request. Please let me know how to proceed from here.

Lee Fuller

From: Dravis, Samantha
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Regulatory Reform Discussion with Rebecca Rosen and Jeff Weiss
Start Date/Time: Mon 8/7/2017 3:00:00 PM
End Date/Time: Mon 8/7/2017 3:30:00 PM

Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station**. Please arrive 10 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees: Rebecca Rosen and Jeff Weiss, former Associate Administrator of OIRA under Cass Sunstein.

From: Dravis, Samantha
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Regulatory Reform Meeting
Start Date/Time: Tue 8/8/2017 2:30:00 PM
End Date/Time: Tue 8/8/2017 3:00:00 PM

From: Kime, Robin
Location: Marriott at Metro Center, Washington DC
Importance: Normal
Subject: Samantha to Deliver Remarks at the Coatings Industry Policy Summit - Ballroom C/D
Start Date/Time: Tue 10/10/2017 6:00:00 PM
End Date/Time: Tue 10/10/2017 6:30:00 PM
2017.06.28 - Summit - Invite Samantha Dravis to Speak.pdf

It is my pleasure to share with you and your team this letter of invitation from the American Coatings Association (ACA) to speak at the Coatings Industry Policy Summit on Wednesday, October 11, 2017 at the Marriott at Metro Center, Washington DC. ACA's member company executives are extremely supportive of the Administration's regulatory reform efforts and will be very interested in hearing your thoughts on this important issue.

Liz Roberts

Principal

Capitoline Consulting

571-243-4807

www.capitolineconsulting.com

From: Dravis, Samantha
Location: 3528 WJCN
Importance: Normal
Subject: Regulatory Reform Meeting with the American Iron and Steel Institute
Start Date/Time: Thur 6/29/2017 1:15:00 PM
End Date/Time: Thur 6/29/2017 1:45:00 PM
AISI -- EPA Evaluation of Existing Regulations Public Comment - Final.pdf

Directions: Please use the William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:

Mike Long, Cliffs Natural Resources

Patrick Bloom, Cliffs Natural Resources

Tom Miller, Nucor

Todd Young, U. S. Steel

John Stinson, Evraz North America

Tom Wesolowski, Evraz North America

Tom Dower, ArcelorMittal

Julianne Kurdilla, ArcelorMittal

Katie Larson, SSAB Americas

Brett Smith, American Iron and Steel Institute

Colin Carroll, American Iron and Steel Institute

Paul Balserak, American Iron and Steel Institute

Request: I would like to see if several AISI members and I could come in and give you an overview of the environmental issues that are key to the steel industry. Following on Administrator Pruitt's well-received address at our annual meeting last week, I think the timing is ripe for such a discussion. We would greatly appreciate the opportunity to brief you on our issues as you work to prioritize the comments received from your May 15 public information request on regulatory reform. We would also like to learn more about the potential revival of the something like the old Sectors Strategies program.

Contacts:

Paul Balserak <pbalserak@steel.org>

Thomas J. Gibson

President and Chief Executive Officer

American Iron and Steel Institute

25 Massachusetts Avenue, NW

Suite 800

Washington, DC 20001

Phone: 202.452.7146

Fax: 202.452.1039

Email: tgibson@steel.org

From: Kime, Robin
Location: 3500 WJCN
Importance: Normal
Subject: Regulatory Reform Meeting with Margaret Caravelli & Northern Star Generation
Start Date/Time: Thur 6/22/2017 6:00:00 PM
End Date/Time: Thur 6/22/2017 6:30:00 PM
ARIPPA Final Comments - Evaluation of Existing Regulations_5-12-16.pdf

Directions: Please use the William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station. Please arrive 10 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:

Margaret Caravelli and Karen Billups will be accompanying Mr. David Sims and Mr. Gary Merritt from Northern Star Generation to discuss regulatory reform.

Contact:

Margaret Caravelli, Partner, Balch & Bingham LLP
601 Pennsylvania Avenue, NW • Suite 825 South • Washington, DC 20004-2601
t: (202) 661-6342 f: (866) 237-7416 e: mcaravelli@balch.com
www.balch.com

From: Kime, Robin
Location: 3500 WJC-N
Importance: Normal
Subject: Regulatory Reform Meeting With 3M
Start Date/Time: Fri 6/16/2017 7:00:00 PM
End Date/Time: Fri 6/16/2017 7:30:00 PM
3M Input - Docket EPA-HQ-OA-2017-0190 5.15.2017.pdf
3M Comments on Dept of Commerce Request - DOC-2017-0001 - Impact of Fede....pdf
3M Follow-up to U.S. Dept Commerce - DOC-2017-0001 - Impact of Fed Regul....pdf

Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station**. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:

Tom Geier, Manager, 3M Government Affairs

Paul Narog, Manager, Environmental Operations

John F. Metzger, Sr. Environmental Specialist

Request: We would like to meet with you to discuss 3M's ideas for regulatory reform, which we provided to U. S. EPA in accordance with Executive Order 13777. A number of changes that we suggested should fit nicely the dual criteria of "timing" and "simplicity" that you spoke about during today's ACC meeting. We would especially like to discuss with you how a number of the New Source Performance Standards (at 40 C.F.R. Part 60) constrain research and development, which is the lifeblood of innovative companies such as 3M, and remedies that we believe EPA can readily put in place.

Contact:

John F. Metzger, P.E. | Sr. Environmental Specialist
3M Environment, Health, Safety and Sustainability
3M Center, 224-5W-03 | St. Paul, MN 55144-1000
Office: 651 737 3580
jfmetzger@mmm.com | www.3M.com

From: Inge, Carolyn
Location: DCRoomARN3500/OPEI
Importance: Normal
Subject: Rubber Manufacturers Association (RMA)
Start Date/Time: Tue 6/13/2017 3:00:00 PM
End Date/Time: Tue 6/13/2017 3:30:00 PM
Comments by the Rubber Manufacturers Association to Docket ID No. EPA-HQ....pdf

Directions: Please use the **William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station**. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:

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

Jesse Levine (Manager, Regulatory Affairs; TMA)

Sarah Amick (Vice President EHS&S and Senior Counsel; TMA)Courtney Titus Brooks (Director, Government Relations; TMA)

Mike Henry (Alpine Group)

Request: Any chance you have time in the next week or so to meet with me and a client, the Rubber Manufacturers Association (RMA). We would like to come in and discuss issues in your purview relative to the domestic tire manufacturers - including the nanomaterial reporting rule, residual risk and technology review, Phase 2 rule, biomass and TSCA implementation. Following are some bullets from a letter they transmitted in May, just to give you some color of what's currently on their radar.

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

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

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

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

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

Kohler Co. 444 Highland Drive Kohler, Wisconsin 53044 920-457-4441 kohler.com

KOHLER.

Submitted electronically through http://www.regulations.gov

May 15, 2017

U.S. Environmental Protection Agency
Docket Number: EPA-HQ-OA-2017-0190
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: *Evaluation of Existing Regulations*, Docket No. EPA-HQ-OA-2017-0190, FRL–9961–60–OP, 82 Fed. Reg. 17793 (April 13, 2017)

To Whom It May Concern:

Kohler Co. (Kohler) appreciates this opportunity to identify regulations that may be appropriate for repeal, replacement, or modification pursuant to the referenced docket. Kohler understands that the Environmental Protection Agency (EPA) has formed a Regulatory Reform Task Force pursuant to Executive Order 13777 (82 FR 12285 - March 1, 2017) that has been charged with, among other things, identifying regulations that:

- Eliminate jobs, or inhibit job creation;
- Are outdated, unnecessary, or ineffective;
- Impose costs that exceed benefits; or
- Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

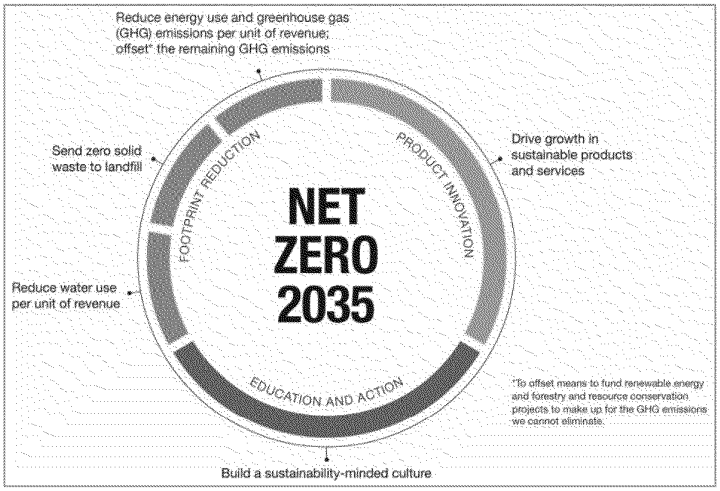
On March 24, 2017, EPA Administrator Pruitt issued an agency-wide memorandum on implementation of Executive Order 13777, which directed program offices to seek public input on existing regulations that might meet these criteria. As explained below, Kohler believes that EPA's Clay Ceramics National Emission Standards for Hazardous Air Pollutants rule, 40 CFR 60, Subpart KKKKK (Clay MACT Rule), and the regulation of emissions testing of non-road engines and generator sets as stationary sources, each meets one or more of these criteria. As such, both rules warrant consideration by EPA for repeal, replacement or modification under this initiative. Aspects of each rule contain requirements that impose significant expense with no discernable benefit, threatening Kohler's competitiveness in the global economy.

Background

Kohler, founded in 1873, is one of America's oldest and best known manufacturers. The Company is a leading maker of kitchen and bath fixtures and also manufactures small engines used in off-road equipment, generators and water pumps, as well as generators powered by KOHLER engines and other

leading engine manufacturers. Kohler competes in the global marketplace and therefore always must be mindful of the increasing burden of United States government regulation on Kohler's international competitiveness. As such, Kohler supports the Administration's effort to reduce the regulatory burden on American manufacturing companies while not undermining environmental protection. The latter point is critical to Kohler, as we firmly believe that integrating business and environmental practices is undeniably better for everyone — our company, our associates, our customers, and the environment.

Indeed, Kohler believes that better business and a better environment go hand in hand. Kohler works hard to reduce the Company's environmental impact. We have committed to a goal of sending no solid waste to landfills, reducing or offsetting 100% of our greenhouse gas emissions and reducing our water usage through a program called "Net Zero 2035" (see graph). Kohler has been driving growth and innovation by developing products that have lower environmental impacts over their entire life cycle, and we are systematically incorporating sustainability into the product development process itself.



Clay NESHAP Rule Background

The 1990 Amendments to the Clean Air Act (CAA) establish a fairly complex program to regulate emissions of Hazardous Air Pollutants (HAPs) from specific industrial source categories. The program requires EPA to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) that regulate HAP emissions emitted by discreet industrial source categories throughout the country.

NESHAPs apply to major sources of HAP emissions and also can apply "as deemed appropriate by EPA" to minor sources. Major sources are defined as those that emit 10 tons per year of any single HAP, or 25 tons per year of all HAPs combined. Minor sources (a/k/a "area sources") have HAP emissions below these major source thresholds.

As a general matter, major source HAP emission limitations are more stringent. For a major source category, EPA will impose technology-based emission standards requiring the maximum degree of reduction in emissions that EPA deems achievable, often referred to as "maximum achievable control technology" or MACT standards. 42 U.S.C. Sec. 7412(d)(1)-(2). Achievability is determined based upon a review of the best performing similar sources in the category using clean processes, emission control devices, work practices, or other pollution reduction methods. *Id*. These best performing emissions levels set a baseline, or "MACT floor," for creating the MACT standard. The floor differs for existing and

new sources, with new sources having stricter emission limitations. The more stringent a MACT floor, the more stringent the associated MACT limitation.

For area source categories, EPA may choose to promulgate emission standards that reflect "generally available control technologies or management practices" as a HAP emission limitation. 42 U.S.C. § 7412(d)(5). These standards can be – and typically are – less rigorous than those required for major sources under 42 U.S.C. § 7412(d)(1).

Kohler Co.'s Concerns with EPA's Co-location Interpretation of the Clay MACT Rule

Kohler currently employs approximately 9,000 associates at its three locations where it has sanitaryware manufacturing facilities impacted by the Clay MACT Rule (1,700 of whom are dedicated to sanitaryware operations). These sanitaryware facilities are located in Wisconsin, South Carolina and Texas and manufacture toilets, sinks and other ceramic kitchen and bath fixtures.

Kohler Co. is the only sanitaryware company affected by the Clay MACT Rule, which makes it cost-prohibitive for Kohler to expand its existing sanitaryware facilities at these locations because they are regulated as "major sources" due to EPA's co-location interpretation of the CAA. Kohler's sanitaryware facilities themselves are minor (area) sources based on the low HAP emissions levels associated with the sanitaryware manufacturing processes. However, solely because Kohler's sanitaryware facilities are co-located with other Kohler manufacturing operations, the sanitaryware units are now regulated by EPA as "major" sources. In other words, EPA's policy is to aggregate HAP emissions from the sanitaryware area sources with all other HAP emissions from unrelated co-located processes. This policy results in Kohler's sanitaryware facilities being regulated as major sources, with the attendant more stringent pollution control requirements, even though the HAP emissions from the sanitaryware facilities are below major source thresholds. The EPA's policy makes little sense since the HAP emissions from Kohler's sanitaryware operations are not any higher simply because the facilities are located next to other manufacturing operations. EPA's interpretation of the CAA essentially penalizes Kohler for having built sanitaryware operations next to other operations long before the CAA was in existence.

The Clay MACT Rule puts Kohler's sanitaryware facilities at a significant competitive disadvantage vis-à-vis foreign-owned competitors, which do not have to comply with the Clay MACT Rule as they operate only sanitaryware facilities, which are area sources themselves, and are not co-located with any other major sources. Foreign-owned competitors are not subject to the same compliance costs, including additional testing, monitoring, record keeping and reporting obligations, when operating their existing facilities, or when considering where to build and expand. This gives them a competitive advantage.

While it may not have been the intent of EPA to single out Kohler, the Clay MACT Rule does just that, with no measurable benefit to the environment, as Kohler's sanitaryware facilities do not emit HAPs at major sources quantities. Moreover, Kohler is placed at a competitive disadvantage by being subjected to more stringent and costly regulatory requirements even though its HAP emissions may be similar to, or lower than, those of its foreign-owned competitors.

The EPA's co-location policy for determining "major source" status for the various source categories should be revised or eliminated. The CAA identifies specific industrial source categories for a reason, and "major source" determinations should be based solely on emissions output from each source category in operation at any facility site, and not by a company's siting decisions made decades before the CAA was even enacted. This change would ensure a level playing field for all businesses in a given category, and would not impose and force us to waste "major source" compliance resources on sources with HAP emissions at the levels of a minor (area) source.

Kohler Co.'s Concerns with the MACT Floor Used to Establish the Clay MACT Limitations

Kohler maintains that EPA violated the CAA by using emission data that was not representative of an existing sanitaryware kiln operating at the time of the Agency's rulemaking to set the MACT floor for the Clay MACT Rule. Rather than collect emissions data from an existing sanitaryware kiln, in 2010 EPA directed Kohler to change the operational configuration of a sanitaryware kiln by operating an emission scrubber while testing the HAP emissions from that kiln. At that time, there was no federal or state requirement to operate the kiln with a scrubber, nor did Kohler operate its kiln with a scrubber. The EPA mandated testing measured artificially low HAP emissions from the kiln that did not reflecting real world emissions rates. Nonetheless, EPA used this scrubber-related emissions data to establish the existing source emissions floors in the Clay MACT Rule. As a consequence, many of the HAP limitations in the Clay MACT Rule are predicated upon an emissions floor that assumes existing sanitaryware facilities in the United States operate with scrubber technology – a premise that is simply not true.

On December 23, 2015, Kohler filed a Petition for Administrative Reconsideration of the Clay MACT Rule that raised this issue. See Docket EPA-HQ-OAR-2013-0290. By letter dated May 12, 2016, EPA denied the Petition with respect to this issue. Kohler also filed a Petition for Judicial Review of the Clay MACT Rule with the United States Court of Appeals for the District of Columbia, which challenges the manner in which EPA established the MACT floor. See *Sierra Club, et al. v. US EPA, et al.*, Case No. 15-1487 (and consolidated cases)(D.C. Cir.). The appeal has been fully briefed, but oral argument has not yet been scheduled.

Notwithstanding these other administrative and judicial proceedings, EPA should, at a minimum, revise the existing source floor analysis in the Clay MACT Rule without the data points generated by this fabricated "existing" kiln utilizing a scrubber.

Emissions Testing of Non-road Engines and Generator Sets as Stationary Sources

Kohler Co. manufactures and tests non-road engines and generator sets. Kohler believes the testing of these engines and generators is exempt from stationary source rules; specifically, 42 U.S.C. §§ 7602(z), 7543, and 7550, and 40 CFR § 1068.30. EPA Region 7 issued a guidance letter dated November 10, 2016, to the Air Quality Bureau of the Iowa Department of Natural Resources, stating this type of testing is exempt from stationary source rules. See https://www.epa.gov/nsr/john-deere-dubuque-works-stationary-or-mobile-source-determination. **Kohler requests EPA further clarify this in their rules and among all EPA regions, so that these operations are treated equitably across the U.S.**

Conclusion

Kohler believes the aforementioned rules warrant consideration for repeal, replacement, or modification. EPA should promulgate rules and establish policies consistent with the requirements under the CAA without unfairly singling out and penalizing a U.S. company, which provides good manufacturing jobs for thousands of Americans and contributes to our national economic growth. We would welcome EPA directing a staff member to work with our environmental team to find a way to make these rules workable.

Respectfully,

Kohler Co.

American Gas Association

Electronic Filing: www.regulations.gov

May 15, 2017

Ms. Samantha Dravis
Senior Counsel and Associate Administrator for Policy
Regulatory Reform Officer for Executive Order 13777
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Identification of Regulations for Repeal, Modification or Replacement under Executive Order 13777, 82 Fed. Reg. 17793 (April 13, 2017) (EPA Request for Comment) -
Docket No. EPA-HQ-OA-2017-0190

Dear Ms. Davis:

The American Gas Association (AGA) appreciates the opportunity to suggest how certain EPA regulations could be repealed, modified or replaced to better serve EPA's mission, while reducing unnecessary duplication and burdens that divert resources from infrastructure projects and ongoing maintenance and upgrades needed to ensure the safe reliable delivery of energy. A more efficient approach will help achieve EPA's environmental goals in a less burdensome manner, and it will allow our members to channel more resources to improve their systems and increase good-paying, career utility jobs that sustain middle class families in communities across the country.

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 73 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 69 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international

natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States' energy needs.

I. Air Office – Revise 40 C.F.R. Part 98 SubpartW and Repeal Subpart NN

A. Revise Subpart W to Reduce Unnecessary Burdens and Improve Accuracy:

The Subpart W Reporting Program is providing value to AGA members as a source of credible data to demonstrate their progress in reducing emissions. However, several revisions are needed to improve the accuracy of the data and to eliminate unnecessary cost burdens that divert resources from more productive, job-creating energy projects. We believe a few simple changes can achieve this goal.

1. Replace Unnecessary Leak Surveys with Emission Factors Based on Robust Data:

Companies in the natural gas industry have conducted annual Subpart W leak surveys of equipment since 2011, and now have a robust set of data that could be used to establish updated emission factors. While natural gas operators will of course continue to perform leak detection and repair to ensure safety - as required pursuant to Department of Transportation (DOT) pipeline safety regulations and related state requirements - there is no value or benefit in performing duplicative surveys using different timing and criteria for Subpart W. The surveys were originally required because EPA lacked data on certain emission sources. The costly Subpart W surveys can now be replaced with a simple arithmetic calculation using emission factors based on data collected to date. An emission factor approach for calculating GHG emissions is common for many sources in Subpart W, as well as other industries that report under the Part 98 reporting program.

This change should be made to eliminate, for example, Subpart W leak surveys under 40 C.F.R. 98.233(q) for natural gas Transmission to Distribution pressure reduction stations (T-D transfer stations), Liquefied Natural Gas (LNG) import-export terminals, peak-shaving LNG storage facilities, and transmission compression facilities. Instead of continuing these costly annual surveys, EPA should establish default emission factors based on the past six years of

reporting data, with an option for companies to use their own company-specific emission factors based on their own past Subpart W leak survey data.

Similarly, transmission compressor station and underground storage operators are required to conduct annual leak measurements under 40 C.F.R. 98.233(o) and (p) for reciprocating and centrifugal compressors, and under 40 C.F.R. 98.233(k) for scrubber dump valve leakage through condensate storage tank vents. These costly annual surveys should be replaced with default emission factors based on the past six years of reporting data, with an option for companies to use their own company-specific emission factors based on their own past Subpart W leak survey data. The leak survey requirement for other compressor station or storage facility components required under 40 C.F.R. 98.233(q) should also be replaced with emission factors.

2. Improve Accuracy by Updating Emission Factors to Reflect Current Practices:

To improve the accuracy of Subpart W data, EPA should update the default emission factors promptly as new, reliable scientific data becomes available. For example, Subpart W should use the same updated emission factors for natural gas distribution pipe as are already adopted for use for the annual EPA Inventory, based on the peer-reviewed study by Dr. Brian Lamb at Washington State University (WSU) published in the Journal of Environmental Science & Technology (March 2015). It is inaccurate and, frankly, misleading to continue overestimating natural gas emissions by using emission factors developed in a study conducted more than 20 years ago that evaluated a much smaller data set and reflected emissions from equipment and practices that have changed and improved dramatically since 1992. Additional robust data is expected to be available in 2018 from a series of studies co-funded by industry and Department of Energy (DOE). The Subpart W default emission factors should be updated as that new data becomes available.

As to the emission factor for metering and regulating (M&R) equipment in particular, there is also no legitimate reason to continue applying an outdated and highly-inflated emission factor to this equipment. At least in the past, EPA appears to have been under the impression that M&Rs emit more if they are located below grade rather than above grade. Modern

measurement data demonstrates this is not true. The same type of equipment is used in both above and below grade M&Rs and their emissions are far lower than the outdated default emission factor implies. EPA already allows up-to-date, company-specific emission factors for above grade M&Rs. The agency should allow the same updated emission factor for below grade M&Rs – based on the past six years of Subpart W emission surveys.

3. Eliminate Subpart W Throughput Reporting:

EPA should delete the recently added requirements in 40 C.F.R. Part 98, § 98.236(aa)(9) to report the quantity of natural gas received, delivered, stored, consumed and stolen. This provides no useful data for the purposes of Part 98 and duplicates natural gas throughput reporting under Subpart NN, which in turn already duplicates reporting to the DOE Energy Information Administration (EIA), as we note below.

B. Eliminate Throughput Reporting under Subpart NN:

EPA should review Subpart NN and consider, in a notice and comment rulemaking, whether to repeal it. At a minimum, Subpart NN reporting of natural gas deliveries to customers should be eliminated for natural gas distribution companies (LDCs), as this largely duplicates data companies are required to report to the DOE EIA and serves no useful purpose. The volume of natural gas delivered to customers in any year is mainly a function of annual weather fluctuations (i.e. colder or warmer winters), not commercial or industrial process changes.

II. Water Office

Review and Revise Waters of the U.S. Rule:

The Administration has already initiated a review of the federal rule defining the scope of waters of the United States (WOTUS). We want to emphasize the need for a revised rule that provides a clear dividing line between water features that are or are not subject to federal jurisdiction – without the need for subjective, arbitrary and unduly burdensome case-by-case

decisions that can delay natural gas utility and pipeline projects, impede job creation, impede economic development projects to be served by the pipeline, and increase costs.

III. OEM - Federal Standards for Aboveground Storage of Hazardous Substances

AGA is a member of the Utility Solid Waste Activities Group (USWAG), and we support USWAG's request that the Office of Emergency Management (OEM), within EPA's Office of Land and Emergency Response (OLEM), should avoid duplicative, unnecessary or proscriptive requirements in the pending federal standards for the aboveground storage of hazardous substances. This rulemaking is of interest to AGA because it could adversely affect operations for natural gas utilities. We agree with USWAG that any such regulatory program should allow for performance-based controls, as a more prescriptive approach could harm job creation, impose unnecessary burdens, and/or impose costs that exceed benefits.

IV. ORCR – Revise RCRA Generator Requirements for Remote Sites

AGA also agrees with USWAG that EPA should revise a recent final rule regarding hazardous waste generator requirements that imposed many stringent changes without commensurate improvements in environmental safety. The rule originated in OLEM's Office of Resource Conservation and Recovery (ORCR).[1] Of particular concern for natural gas utility operations is a provision in the preamble of the rule in which EPA "clarified" that states were not permitted to provide relief for the consolidation of hazardous wastes from remote or unstaffed sites. As USWAG notes, EPA provided limited relief for this type of consolidation in the final rule and then contended that state programs that had provided other types of commonsense relief for the same concerns were not permitted under the hazardous waste regulations.[2] This is highly disruptive for utility operations, particularly given that several states have already provided relief by allowing unknown wastes to be collected and consolidated from remote sites and postponing

[1] 81 Fed. Reg. 85732 (Nov. 28, 2016).
[2] *Id.* at 85776.

hazardous waste determinations until the waste is received at a staffed facility, or by authorizing the direct transfer of hazardous waste to central locations. A similar problem arises in the preamble where EPA suggests that the relief the rule offers is the only available for episodic generation events, when in fact, some states have used their enforcement discretion to address abnormal hazardous waste generation patterns. We urge EPA to acknowledge and encourage the availability of state programs, such as the ones mentioned above, that achieve equivalent environmental protections in a far more practical and cost-effective manner. This would be consistent with the role of RCRA-delegated states as the primary regulator for facilities located within their jurisdictions.

V. OPPT & ORCR - Revise and Simplify Federal PCB Regulation

EPA should review, revise and simplify certain provisions in the federal regulations governing the use, remediation and disposal of polychlorinated biphenyls (PCBs). The PCB regulations adopted in 1998[3] under 40 C.F.R. Part 761 were tailored to the agency's understanding of interstate pipelines, not natural gas local distribution systems, and are long overdue for modernization and simplification.

Under the Toxic Substances Control Act (TSCA) Section 6(e) (15 U.S.C. § 2605(e)), the use of PCBs other than in a "totally enclosed manner" was banned after 1977 except as authorized by EPA regulatory action. EPA included a use authorization with respect to PCBs in pipeline systems because an EPA-commissioned human health risk assessment in 1984 demonstrated the PCBs in enclosed pipelines do not pose an unacceptable risk to human health. PCBs were used in the last century as a fire retardant to improve safety in some products such as compressor lubricants and electric transformer fluid, but their manufacture and purchase ended in the last century. Their occasional presence and discovery makes it appropriate for EPA to maintain some form of "use authorization," but this can be

[3] The so-called "PCB Mega Rule" in 1998 was last significant amendment to the PCB regulations. See 63 Fed. Reg. 35384 (June 29, 1998).

accomplished in a less burdensome manner, especially for operators that did not originally introduce PCBs into their own systems, but rather received them from an upstream source.

The use authorization rule is now a relic of a former time, and the rule makes even less sense now than it did originally. EPA staff have recognized this and have suggested they may consider a new approach – replacing the old rule with a very simple authorization for the presence of PCBs in natural gas utility and pipeline systems, provided the operator follows reasonable requirements for managing and disposing of PCBs when they are discovered.

The use authorization rule for natural gas systems, administered by the Office of Pollution Prevention and Toxics ("OPPT") within EPA's Office of Chemical Safety and Pollution Prevention ("OCSPP") could be boiled down to a few words, eliminating significant and completely unnecessary cost burdens and complexity, as we explain below. The disposal and remediation rules in Part 761 are generally more risk-based and functional, but they too could be improved to eliminate some provisions that impose severe and unnecessary costs. Because the use authorization and disposal rules are interrelated but administered by two different offices at EPA, their revision should be coordinated. In fact, pursuant to Executive Order 13781 (March 13, 2017) establishing a comprehensive plan for reorganizing the Executive Branch, it would make sense to reduce confusion and duplication by consolidating the two functions and moving any remaining use authorization issues into one PCB use, remediation and disposal group within the Office of Resource Conservation and Recovery (ORCR) under the Office of Land and Emergency Management (OLEM).

A. Revise and Simplify PCB Use Authorization

Having a simple yet effective PCB use authorization is important to affected natural gas companies as they continue to rid their systems of PCBs over time. The existing use authorization rules governing PCBs in natural gas systems, however, are replete with vague, confusing, cumbersome, burdensome and irrational provisions, particularly for local natural gas distribution utilities. The confusion stems in part from trying to create natural gas regulations on a foundation of electrical equipment regulations developed 40 years ago, when in fact, the

use of PCBs in electric and gas systems was completely different. The confusion in the 1998 natural gas regulations also stems from the fact that EPA developed the regulations based on the agency's partial understanding of the interstate natural gas transmission pipelines where PCBs were discovered by EPA, and a complete misunderstanding about how local distribution systems operate. For example, the existing rule was drafted based on an incorrect assumption that both transmission and distribution systems are comprised of straight, level pipelines that flow in only one direction for many miles. Another misunderstanding that has caused serious confusion and excessive costs relates to the "source" of legacy PCBs in systems. A local distribution company that did not introduce PCBs into its own system, but rather received PCBs from an upstream interstate pipeline, does not have a source of PCBs in its system, yet it can become subject to the unduly burdensome use authorization requirements to eliminate "sources" that do not exist under such circumstances. These and other problems related to the use authorization rule have been compounded as local distribution systems have modernized and grown since 1998.

We encourage EPA to repeal the current use authorization regulations in 761.30 and replace them with a simple statement that liquid and non-liquid PCBs and PCBs in porous surfaces are authorized for use at any concentration in electric utility, natural gas distribution utility, storage and pipeline systems and operations, provided the operator complies with applicable requirements for PCB remediation, storage and disposal under Sections 761.60, 761.60, 761.61, 761.65, and 761.120 as PCBs are removed and eliminated from pipeline systems over time. We also urge EPA (1) to eliminate any reference to "potential sources,"[4] (2) clearly eliminate any flawed concept that devices designed to remove liquids (and PCBs if present) from natural gas systems somehow reintroduce them, and (3) eliminate extensive, unnecessary procedures for "characterizing" natural gas systems to look for PCB deposits today -- long after they were first introduced more than 50 years ago. Resources should instead be focused on responding appropriately and reasonably when any remaining PCBs are found.

[4] *See* 40 C.F.R. § 761.30(i)(1)(iii)(A).

Requirements for such response and disposal should be based on standard best practices that are self-implementing and clearly described in the rule, to eliminate the need for any EPA involvement in day-to-day operations.

B. Revise Certain PCB Analysis, Storage and Disposal Regulations

1. Change PCB Rules to Facilitate Gas & Electric Utility Operations

AGA agrees with USWAG that EPA should: (1) allow disposal of PCB remediation wastes at "as-found" levels <50 ppm in non-TSCA landfills; (2) modify the PCB analytical rules at 40 C.F.R. § 761.272 to expressly authorize the use of the automated soxhlet extraction procedure (Method 3541) for the chemical extraction of PCBs from individual and composite samples; and (3) amend 40 C.F.R. § 76165 to allow satellite accumulation of PCBs.

2. Change Storage and Disposal Rules to Facilitate Natural Gas Utility Operations

a. Reduce Costs by Allowing Rational Method to Identify Areas Not Subject to PCB Concerns and Disposal Restrictions

EPA's PCB disposal rules under Section 761.60 describe how to characterize and manage natural gas distribution and transmission pipelines from PCB-impacted systems when no longer fit for service, including restrictions on how pipe can be abandoned in place or disposed of, depending on PCB levels.[5] Pipe removal and replacement are becoming more common in response to DOT pipeline safety regulations, so the cost of complying with the PCB regulations for natural gas systems continues to rise while PCB levels continue to decline.

Natural gas companies strive to rid their systems of liquids in general and PCBs in particular to eliminate these added costs. However, it is not clear under the existing rules how an operator can "delist" a system or portion thereof from the costly and onerous pre-requisites for abandoning pipe in place. Nor are the rules clear regarding how and where to send pipe for disposal or recycling once PCBs are no longer found in the system or a portion thereof above the regulatory threshold. It is wasteful and very costly to continue applying restrictions designed for systems with PCBs in liquids to dry pipe that has salvage value and no longer poses a risk. Testing each section of pipe as it is taken out of service in such systems is also costly and

[5] See 40 C.F.R. § 761.60(b)(5).

wasteful. We would welcome the opportunity to work with EPA to develop a rational method for "delisting" systems or portions of systems that actually results in some incremental environmental benefit, so that resources can be focused on projects that improve safe and reliable energy delivery, create good paying utility jobs, and facilitate economic development.

b. Allow PCB Bulk Product Waste Storage or PCB Bulk Remediation Waste for Storage Up to 180 Days -- in a Roll-Off or Similar Container -- at Either the Site of Generation or Other Company-Owned Site

Pipe wrap and cathodic protection are two effective methods that have been used over the years for protecting metal pipe from corrosion. Coal tar pipe wrap was often used on steel and cast iron pipe for gas utility systems in the first half of last century. Sometimes oil containing PCBs was applied to the wrap to improve its flexibility. Gas utilities have been removing and replacing cast iron pipe over recent years as they modernize their systems, and they sometimes encounter sections of coal tar pipe wrap that contain PCBs at concentrations of $\geq$ 50 ppm. In such cases, utilities need a cost-effective method for managing this waste.

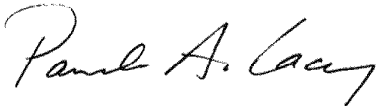
AGA agrees with USWAG that PCB-containing Coal Tar Wrap (CTW) material meets the definition of "PCB bulk product waste" under 40 C.F.R. § 761. 3. The existing PCB storage regulations at 40 C.F.R. § 761.65(c)(9) allow temporary storage of PCB bulk product waste or PCB bulk remediation wastes at the site of generation for up to 180 days , but only in a "pile" that meets several restrictive performance standards. A better, simpler and more cost -effective option in many circumstances would be to use a roll -off or similar container. AGA agrees with USWAG that the rule should be amended to allow the use of a roll-off or similar container.

Further, since the site of generation could be in a city street or utility right -of-way, it is often not feasible or the best environmental option to store bulk PCB remediation wastes or bulk PCB product wastes there. It is often more practical an d environmentally sound to bring such bulk wastes back to a utility service center or other company -owned central site. The existing regulations at 40 C.F.R. § 761.65(c)(1) allow operators to move PCB bulk product waste or PCB remediation waste from the site of generation back to a company -owned site for temporary storage before shipment off -site to a qualifying TSCA disposal facility – but such temporary storage at a company-owned central site (other than the site of generation) is limited to only 30

days. This short time period often does not allow adequate time for cost-effective storage prior to off-site shipment. For the reasons explained in USWAG's comments in this docket, extending this time period would not present an unreasonable risk of injury to health or the environment. EPA should amend its storage for disposal regulations at 40 C.F.R. §761.65 to expressly authorize operators to move PCB remediation wastes and PCB bulk product waste s such as CTW or pipe covered with CTW from remote sites to a central company-owned location for storage up to 180 days.

AGA appreciates the opportunity to comment. If you have any questions, please contact me.

Respectfully Submitted,



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May 15, 2017

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Re: Identification of Regulations for Repeal, Modification or Replacement Under Executive Order 13777, 82 Fed. Reg. 17793 (April 13, 2017) (EPA Request for Comment) - Docket No. EPA-HQ-OA-2017-0190

Dear Ms. Davis:

NGVAmerica appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's regulatory review effort announced on April 13, 2017.

NGVAmerica is a national trade association dedicated to creating a profitable, sustainable and growing market for compressed natural gas, liquefied natural gas, and renewable natural gas powered vehicles. NGVAmerica represents more than 200 companies, including vehicle manufacturers; natural gas vehicle component manufacturers; natural gas distribution, transmission, and production companies; natural gas development organizations; non-profit advocacy organizations; state and local government agencies; and fleet operators.

The United States is the world's largest producer of clean-burning natural gas. The abundance of this domestic resource means that it is a clean, low-cost, stable energy source that can secure America's energy needs for decades to come. Using more domestic natural gas results in expanded job opportunities for workers that produce this fuel and it also provides cost-savings for the consumers and businesses that consume this fuel. It also adds much needed revenue to the state budgets in areas of the country where natural gas is produced.

To expand the opportunities for using this domestic fuel here in the U.S., more should be done to ensure that the right types of incentives and common sense regulations govern its use in the transportation sector. Using compressed natural gas (CNG), liquefied natural gas (LNG), and renewable natural gas (RNG) in transportation can displace demand for imported energy and deliver the lowest emissions among all fuels.

NGVAmerica offers the following comments relating to the regulation of natural gas vehicles. The requested regulatory and policy changes are intended to remove unnecessary impediments to the increased use of natural gas vehicles and domestic natural gas resources and, if adopted, will promote job creation, clean air, reduced emissions of greenhouse gases, and improved energy security.

I. Amend the Driving Range Requirements for NGVs to provide fair treatment relative to other technologies, and to provide additional incentive for manufacturers to produce natural gas vehicles

EPA should remove the requirements in 40 CFR § 600.510–12, *Calculation of average fuel economy and average carbon-related exhaust emissions*, part (c)(2)(vii)(B) for fuel economy and (j)(2)(vii)(B) for emissions, that require NGVs to have a driving range on natural gas that is two times the driving range on gasoline or diesel fuel. This requirement is wholly impractical as it would require automakers to install significantly larger and more expensive natural gas fuel systems on dual-fuel vehicles, or alternatively require automobile manufacturers to reduce the size of gasoline fuel systems installed on dual-fuel NGVs, to access the utility factors available to other vehicles. This latter requirement would impose significant costs as it would require the design and manufacturer of smaller gasoline tanks and changes in the assembly production of base gasoline vehicles to fit vehicles with unique gasoline tanks.

NGVAmerica previously petitioned EPA to remove this requirement but to date EPA has not acted on this petition. We would again urge EPA to revisit this issue and amend its regulations accordingly by removing this burdensome and unnecessary requirement. Amending the rules as requested would level the playing field with other technologies and increase the incentive for manufacturers to offer more light duty NGVs. It also could be expected to encourage manufacturers to begin to commercial new low-pressure and absorbed natural gas systems.

NGVAmerica wishes to indicate its support for separate comments submitted by VNG.CO addressing this same issue, and would appreciate an opportunity to provide additional information in support of this request.

II. Amend the marine engine certification requirements for dual-fuel natural gas engines so that compliance is based on the intended use of these engines and recognizes that when operating on natural gas/diesel mixtures these engines comply with and exceed the Tier III requirements. 40 CFR Part 1042 – Control of Emissions from New and In-Use Marine Compression-Ignition Engines and Vessels.

Natural gas, including liquefied natural gas, holds significant potential to displace petroleum as marine fuel and reduce emissions of harmful pollutants. Today, there are over 200 LNG ships in operation and on order. About 15 percent of new orders for these ships will operate in the US waters. There is growing interest in using LNG because it is a virtually sulfur free fuel and offers a significant reduction in particulates and NOx emissions compared to conventional marine fuels. LNG also provides a reduction in greenhouse gas emissions. In addition to the environmental benefits, encouraging the use

of more LNG as a fuel for marine vessels will lead to new economic development as bunkering facilities, ships and other fueling infrastructure are built to support this market.

In the US, Tier III NOx requirements are in effect for all category 3 new built vessels (range in size from 2,500 to 70,000 kW (3,000 to 100,000 hp) – large engines that propel ocean-going vessels such as container ships, oil tankers, bulk carriers, and cruise ships). The more demanding NOx emission levels required by the Tier III regulation is readily met by ships when they operate on LNG. In fact, using LNG results in NOx emissions that are well below required levels. To use LNG, most marine vessels rely on dual-fuel operation, which here refers to operation on a mixture of LNG and diesel fuel in a diesel cycle or compression-ignition engine.

The problem today is that the Tier III emission regulations do not distinguish between fuel types, or provide any allowance for dual-fuel engines that operate on mixture of LNG and diesel fuel. The regulations therefore require that these vessels meet the NOx emission levels on both fuels including when operating on 100 percent diesel fuel even though that is not how the dual-fuel engines are intended to operate. The result is that manufacturers must equip their dual-fuel natural gas/diesel engines with expensive after-treatment equipment (Selective Catalyst Reduction – SCR – Technology) that is not necessary to achieve the required emission levels. Installing SCR systems on these vessels adds an additional cost of 1 - 2 million dollars per ship, even for ships utilizing diesel only for ignition purposes and whose fuel use is primarily LNG.

While the number of LNG powered vessels is growing, economies of scale are not yet reached, and the expertise and knowledge in building these ships is still fledgling, especially in the US/Jones Act vessels. The fact that ship builders must install costly SCR systems can and does discourage the development of the market for LNG ships and the use of natural gas in the marine market.

NGVAmerica requests that EPA amend it rules to allow a waiver for dual-fuel engines that operate the majority of the time on LNG and that have demonstrated through testing that they meet the Tier III NOx regulation when operating as intended (e.g., 70%NG/30% diesel or 90%NG/10% diesel). Providing this waiver will stimulate growth and jobs in shipbuilding in the US and encourage a faster paced adoption of cleaner-burning natural gas in this market.

III. Amend the DERA Program to remove scrappage requirement for replacement vehicles that exceed current federal standards by 50% or more for NOx emissions

This issue concerns EPA guidance for the Diesel Emission Reduction Act (DERA) Program. Current guidance provides additional funding (i.e. 35% instead of 25%) for the cost of new replacement vehicles that have been certified to optional low-NOx standards. Thus, the program provides a larger incentive for cleaner engines. NGVAmerica strongly supports this provision as it currently stands but also urges EPA to expand the incentive for low-NOx engines by providing a larger incentive, or by removing the scrappage requirement.

The DERA program seeks to ensure emission reductions by removing older, dirtier equipment from operation. The removal of more polluting equipment is ensured by requiring scrappage of vehicles and engines. Assuming equipment is retired earlier than it otherwise would be the case, this essentially locks in excess emission reductions. Scrappage however comes at a cost for businesses that lose the opportunity to sell their equipment and receive compensation for the remaining value. For new diesel vehicles, it can be argued that providing 25 percent incentive for the cost of new replacement vehicle is more than sufficient to offset the economic loss associated with scrappage, and still provide an incentive to encourage the purchase of new, cleaner vehicles.

For natural gas vehicles, however, the DERA incentive of 25 percent or even 35 percent for the cost of a new vehicle is not sufficient to cover the economic loss associated with scrappage and the added costs associated with new natural gas trucks, which, like other advanced technology vehicles, cost more than conventionally fueled diesel vehicles. To remedy this situation, we would urge EPA to consider providing an even larger incentive for natural gas low-NOx vehicles. This could include providing 50 percent of the purchase for low-NOx alternative fuel trucks, or removing the scrappage requirement for low-NOx trucks. Such a policy would align with the DERA intent by delivering additional emission reductions because low-NOx engines are 50 – 90 percent cleaner than required.

IV. Amend the testing and sampling requirements for cellulosic fuel produced in anaerobic digesters to be less burdensome and encourage increased production of qualifying cellulosic fuel

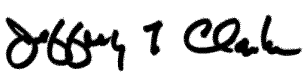
Renewable natural gas produced from a variety of feedstocks has proved to be a huge success story, and today accounts for a significant portion of natural gas used to fuel natural gas vehicles. This clean-burning, low-carbon fuel accounts for more than 20 percent of all on-road natural gas demand and is expected to account for more than 40 percent of on-road demand by 2018. The success of renewable natural gas is due in no small part to the inclusion of various incentives and regulatory programs that encourage the production of this fuel including the U.S. EPA's Renewable Fuel Standard (RFS) Program.

To expand the opportunity for renewable natural gas and remove burden on industry, NGVAmerica requests that EPA address the sampling and testing requirements required for anaerobic digesters (AD) that process crop waste to produce cellulosic fuel. AD producers have indicated that the testing requirements to demonstrate that 75 percent of the feedstock used in these facilities is cellulosic based are too burdensome and therefore discourage the production of more cellulosic qualifying fuel. Specifically, we request a change in the testing requirements found in 40 CFR 80.1426 so that instead of requiring the testing of every truck load that is delivered to an AD facility, that the testing is instead done quarterly and on random samples.

Conclusion

NGVAmerica appreciates the opportunity to provides these comments and would welcome the opportunity to discuss these issues further with EPA as it moves forward with its regulatory review. In addition to the comments offered here, NGVAmerica would like to offer its support for the comments submitted in the docket by VNG.CO, which address several other issues related to the certification of light duty vehicles that are not included in our submission but nevertheless we strongly support. We believe that the changes requested will provide more fair treatment for NGVs and level of the playing field with other transportation technologies, and thereby increase the use of domestic natural gas as a transportation fuel.

Sincerely,



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May15, 2017

U.S. Environmental Protection Agency
Washington, D.C. 20004

RE: Docket EPA-HQ-OA-2017-0190

American Farm Bureau Federation (AFBF), the nation's largest general farm organization, is pleased to submit these comments to the docket. AFBF represents agricultural producers in all 50 states and Puerto Rico; they are engaged in the production of crops and livestock and are directly affected by regulations promulgated and enforced by EPA. We commend the agency for inviting stakeholders to comment on regulations that can be modified, amended or repealed.

AFBF is signatory to a lengthy set of comments (appended to this letter) that are being filed today by a large number of agricultural organizations. We support those comments in their entirety. They address regulations that have an immediate, significant impact on farmers and we encourage the agency in the strongest terms to take up these matters swiftly. We are pleased that the agency is already addressing the 'waters of the US' (WOTUS) rule and we stand prepared to assist the agency in whatever way is appropriate in repealing the existing rule (80 Fed. Reg. 24043) and replacing it through a separate rulemaking. We also strongly emphasize the importance of the other initiatives highlighted by the agricultural community in these comments and wish to offer our assistance to the agency as it turns its attention to other policy areas that have a direct impact on farmers and ranchers – particularly its interpretation of the 'normal' farming exemptions in 404(f) of the Clean Water Act, the TMDL regulations and its interpretation of the prior converted crop (PCC) regulation.

We support Executive Order 13777, we commend EPA for its prompt efforts to implement the President's directive, and we offer our assistance to EPA in its efforts to remedy existing defects in its regulations.

Sincerely,

Dale W. Moore

Dale Moore
Executive Director
Public Policy

May 15, 2017

U.S. Environmental Protection Agency
Washington, D.C. 20004

RE: Docket EPA-HQ-OA-2017-0190

The undersigned organizations commend the Environmental Protection Agency [the agency] for opening this docket and are pleased to submit the attached comments in response to the agency's request.

Our organizations represent individuals engaged in agricultural production, both for crops and livestock. Requirements imposed by the agency through its regulations can have significant impacts on our members; many of these impacts can be felt in the areas outlined by the agency for review[1] In the attached comments, we have sought to meet the agency's request to be as specific as possible. In some instances, where information responsive to the agency's request for "supporting data or other information such as cost information" is not available, we have attempted to quantify the impact of the regulatory burden as concretely as possible and to "provide specific suggestions regarding repeal, replacement or modification." We welcome questions from your office or the Task Force if these comments need further amplification and will do our best to respond in as prompt and comprehensive a manner as possible. We greatly value this effort and hope the agency succeeds in alleviating unnecessary and costly regulatory burdens on the agriculture community.

[1] In its notice, EPA has specifically asked for recommendations that address regulations that, *inter alia,* "(i) eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard or reproducibility…"

In this context, we wish to make a brief preparatory remark. As of mid-May, the docket exceeded 17,000 comments, the overwhelming majority of them anonymous. These are presumably submitted from well-intentioned individuals but they preponderantly assume that the agency's initiative is to undo, weaken, rescind or otherwise impair the nation's environmental safeguards. We see nothing in the Federal Register notice that supports such an inference. We wish to state for the record that the undersigned organizations are not requesting that the agency engage in, nor would we expect the agency to pursue, an effort to impair, rescind, weaken or in any way retreat from health or environmental safeguards that have been authorized by Congress. Nothing in Executive Order 13777 would have the agency ignore its statutory obligations to administer the environmental laws Congress has passed. We are not asking the agency to weaken its commitment to health and the environment.

We have identified regulatory obligations that can be modified or repealed consistent with the laws Congress has enacted and we strongly encourage the agency to consider these recommendations.

We appreciate your consideration of these comments. If you have questions or wish to discuss any specific issue in this submission, please contact Paul Schlegel at the American Farm Bureau Federation at (202) 406-3687 or pauls@fb.org.

Sincerely,

Agri-Mark Dairy Cooperative, Inc.
American Dairy Coalition
American Farm Bureau Federation
AmericanHort
American Soybean Association
American Sugarbeet Growers Association
American Sugar Cane League
California Specialty Crops Council
Dairy Cares
Dairy Farmers of America
Dairy Producers of New Mexico
Dairy Producers of Utah
Exotic Wildlife Association
Federal Forest Resource Coalition
GROWMARK, Inc.
Idaho Dairymen's Association
Missouri Dairy Association
National All-Jersey
National Aquaculture Association
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Peach Council
National Pork Producers Council
National Milk Producers Federation
National Sorghum Producers
National Turkey Federation
Northeast Dairy Farmers Cooperatives
Panhandle Peanut Growers Association
Professional Dairy Managers of Pennsylvania
Select Milk Producers, Inc.
Society of American Florists
South East Dairy Farmers Association
Southwest Council of Agribusiness
St. Albans Cooperative Creamery

Upstate Niagara Cooperative, Inc.
US Apple Association
USA Rice
US Cattlemen's Association
Washington State Dairy Federation
Western Peanut Growers Association
Western United Dairymen

I. **'Waters of the US' (WOTUS) Rule (80 Fed. Reg. 37054, June 29, 2015)** On February 28, President Trump signed Executive Order 13778 directing EPA to review the WOTUS rule and to publish a proposal rescinding or revising it. We strongly support the President's EO and urge EPA to pursue this effort aggressively. *Recommendation:* We recommend that the agency:
(a) repeal the existing rule (80 Fed. Reg. 37054).
(b) in a separate rulemaking, propose a revised rule that more closely adheres to the language of the Clean Water Act and Supreme Court decisions in *Riverside Bayview*, *SWANCC* and *Rapanos.*
II. **Spill Prevention Control and Countermeasures (SPCC) Rule (40 CFR 112)** While EPA attempted to address concerns of the agriculture community raised by the SPCC rule, the program presents nearly insurmountable difficulties for agricultural producers. That assessment is borne out by the agency's own Regulatory Impact Analysis (RIA). EPA examined the Clean Water Act violation data from 2001 to 2006. In over 10,000 violations in that time period, only 292 involved oil spills of any type, and only **one** of those involved a farm. Many other estimates in the RIA were incorrect as well. EPA estimated an approximate figure of 152,000 affected farms based on USDA numbers. Nowhere did EPA mention the USDA numbers presented in the 2005 round of proposals that numbered potentially affected farms closer to 400,000. Yet despite these facts, EPA moved to place a costly and burdensome rule on the agricultural industry with no data to show a risk justifying the cost. EPA included other incorrect assumptions to bolster the cost-savings analysis. They estimated a savings of $3.6 million due to exempting pesticide application equipment but that cost was only based on a report from one state. They estimated $2,000+ savings from not regulating home heating oil tanks but those tanks were exempted in the original 1973 rule and no one has ever applied SPCC to those tanks anyway. While Congress granted the agency flexibility to address any concerns on farms, the agency rejected this approach and imposed the strictest limit possible.
Recommendation: The SPCC for farms should be repealed.

III. **CERCLA/EPCRA**
(a) On April 11, 2017 the US Court of Appeals for the DC Circuit issued a ruling in long running litigation that struck down a 2008 rule providing an exemption from federal reporting of emissions from livestock farms and providing a partial exemption from state/local reporting of such emissions. As a result of the DC Circuit ruling, in late May or early June 2017 livestock farmers will be responsible for calculating the rate of various chemical emissions associated with the storage of manure for use as a fertilizer, and treat and report these emissions as "emergency releases" to state and local authorities under 42 U.S.C. § 11004 (EPCRA § 304) and to the Coast Guards National

Response Center under 42 U.S.C. § 9603 (CERCLA § 103). These reports provide little emergency planning/response benefit to regulators or the public, and in fact could have a detrimental impact on emergency response programs (and the public's reliance on them) because the receipt of hundreds of thousands of reports of livestock odor will overwhelm a system designed for responding to true emergencies. Failure to file the reports will subject livestock farmers to expensive citizen suit litigation filed by eco and animal rights activists.

(b) In recent years, efforts have been made to extend the liability provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 and the Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986 to livestock and poultry operations for emissions or discharges from manure produced in those operations. Animal agriculture operations are already regulated under the Clean Water Act, the Clean Air Act, and various state laws to protect the environment; these statutes provide for permitting, enforcement and, if needed, remediation. Manure is not a superfund waste and was not intended by Congress to be regulated as such.
Recommendation: EPA should promulgate regulations confirming that manure is not regulated under CERCLA or EPCRA.

IV. **Worker Protection Standards (WPS) rule (40 CFR Part 170)**

(a) Designated Representative. In the WPS rule promulgated November 2, 2015, EPA included a provision that permits anyone claiming to be a 'designated representative' (DR) to gain access to a farmer's proprietary records relating to pesticide use.[2] This provision provides farmers with no protection from fraudulent or counterfeit claims; does not assure that records released by the farmer will actually be shared with workers; and imposes no constraints on what DR's may do with documentation once it is obtained. EPA has never cited any data or facts that demonstrate that such a provision would improve worker safety. Thus, the regulation imposes an unnecessary regulatory burden and cost, while exposing farmers to legal liability, with no discernible benefit.
Recommendation: EPA should repeal 40 CFR § 170.311(b)(9) and related provisions.

(b) Application Exclusion Zone (AEZ). In the final WPS, EPA inserted a final articulation of the Application Exclusion Zone (AEZ) that unduly burdens state agencies and the regulated community.[3] As finalized, the AEZ goes beyond the Agency's stated intent

2 The specific requirement is at 40 CFR 170.311(b)(9).
3 WPS provision at 170.405(a)(1) establishes the applicable AEZ distances, and WPS provision 170.405(a)(2) establishes a requirement for the agricultural employer not to allow any worker or other person in the AEZ within the boundaries of the establishment until the application is complete. Provisionat 170.505(b) establishes a requirement for the handler to suspend the application if any worker or other person is anywherein the AEZ. Thus,

the AEZ goes beyond the boundaries of the establishment in question and applies to any area on or off the establishment within the AEZ while the application is ongoing.

4 The Farm Regulatory Certainty Act would amend Section 1004(27) of the Solid Waste Disposal Act to codify EPA's existing regulations.

to create a one-hundred foot buffer surrounding the application equipment that, according to the regulations now in place, extends beyond the agricultural establishment, arguably jeopardizing a grower's ability to manage all his land and prohibiting appropriate pest mitigation activities if there is any kind of structure, permanent or otherwise, inhabited or vacant within one hundred feet of the agricultural establishment. Furthermore, any individual, structure, or a passing vehicle within one hundred feet of the property can effectively cease the grower's application activity. After the final rule was promulgated, EPA's Office of General Counsel (OGC) was working to issue interpretive guidance clarifying the Agency's intent under the final regulation; however, Agency guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity to assist state regulatory agencies or the grower community with compliance and enforcement activities. In short, both EPA and the state regulatory agencies are still uncertain on how to enforce or deliver compliance assistance on the AEZ. *Recommendation:* EPA should revoke the Application Exclusion Zone (AEZ), which goes beyond EPA's original intent and creates an unworkable and unenforceable provision that does not provide any additional regulatory protections beyond those already required under law.

V. **Resource Conservation and Recovery Act** In 1979, EPA promulgated regulations that reflect Congress' intent that the agency not regulate manure or crop residue under the Solid Waste Disposal Act (42 U.S.C. § 6903(27)). Certain court decisions, however, have injected uncertainty in this area of the law. Legislation is now pending in Congress (the Farm Regulatory Certainty Act) to provide legal certainty for farmers.[4] The legislation would also amend Section 7002 of the Solid Waste Disposal Act (42 U.S.C. § 6972(b)(1)) to clarify that farmers are not to be targeted twice if they are engaged in legal action with a federal or state regulatory entity to address identified issues. *Recommendation*: EPA should continue its policy of not regulating agricultural nutrients under RCRA. The EPA also should vigorously defend existing regulatory actions should a farming operation be targeted with a third-party lawsuit for an alleged violation that is already being addressed by a federal or state legal or administrative proceeding.

VI. **"Normal farming" activities under § 404(f) of the Clean Water Act (33 CFR § 323.4)** Sec. 404(f)(1) of the Federal Water Pollution Control Act (33 U.S.C. § 1344(f)(1)) provides an exemption from 404 "dredge and fill" permitting for a wide range of normal farming,

ranching and silviculture activities, including plowing, seeding, cultivating, harvesting for the production of food, fiber, and forest products as well as construction or maintenance of farm or stock ponds or irrigation ditches and for the maintenance of drainage ditches. Even though this broad language is written in the statute, the Corps' regulation (33 CFR § 323.4) and EPA's and the Corps' guidance and information interpretations have narrowed the scope of 'normal' farming, ranching and silviculture activity.[5] Thus, even some explicitly exempt activities (i.e., plowing) have come under enforcement action. Congress has included appropriations riders directing EPA and the Corps to eliminate funding for the so-called "recapture" provision at Sec. 404(f)(2), which the agencies use to sweep otherwise exempt activities back into the regulatory program, yet EPA and the Corps have ignored Congress' directives. *Recommendation:* EPA and the Corps should undertake a rulemaking that supersedes the Corps' existing regulation as well as prior guidance from the agencies and codifies the normal farming, ranching and silviculture exemption under § 404(f)(1) of the Clean Water Act consistent with the text of the statute.

VII. **Total Maximum Daily Loads (TMDLs) (40 CFR Part 130)** EPA has used guidance and informal interpretation of sparse statutory text (Clean Water Act Sec. 303(d)) and ambiguous decades-old regulations to create a regulatory mechanism that puts EPA bureaucrats and technocrats in the role of land use planners. This has blurred the lines of authority between the Federal and state governments and robbed state environmental agencies of the ability to devise and adapt their own plans to most effectively and efficiently achieve water quality standards. This EPA overreaching raises the cost of achieving water quality goals, inhibits adaptive management and unlawfully puts EPA in the role of regulating farming practices. EPA's existing rules also fail to ensure that established water quality goals are in fact *achievable* before burdensome or even economy-breaking implementation measures are imposed. This is of particular concern where water quality impairment results largely from naturally occurring "pollutants.". *Recommendations*: EPA should revise its TMDL regulations to provide clarity and certainty to the regulated community and state and local governments by assuring that:

(a) States, not EPA, have the authority to set pollutant "allocations" for waters within their borders and incorporate the allocations into state implementation plans. This provides states and localities with the flexibility they need to change allocations when needed.

(b) EPA's TMDL authority is limited to approving or setting the *total* maximum load for a particular pollutant, as required by the statutory term "*total* maximum daily load."

[5] For example, while the Act itself does not restrict the exemption, the agency has seemingly used the recapture provision in 404(f)(2) to claim that the exemptions for normal activities only apply to 'established, ongoing' operations. It has further extended this interpretation to claim that changing an operation from one agricultural activity (e.g., grazing cattle) to another (e.g., planting, cultivating and harvesting crops) constitutes a 'change in use' and therefore negates the exemption provided in the law. See https://efotg.sc.egov.usda.gov/references/public/NM/CWA_404(f)_Ag._Exemptions.pdf

VIII. **Prior Converted Cropland (33 CFR § 328.3(b))** In 1993, EPA and the Army Corps of Engineers promulgated a regulation that clarified that wetlands converted before 1985 into farmland were 'prior converted croplands' (PCC) and therefore, not "waters of the US." The preamble to the rule clearly provided that land remains as PCC regardless of the use to which the land is put. Yet, in 2005, the Army Corps of Engineers issued guidance eroding this exemption by proclaiming that land is no longer PCC if it is put to a non-agricultural use. A federal court found the guidance is unlawful because it conflicts with the 1993 rule,[6] but the Corps ignored the court's decision and continues to implement the guidance in order to re-regulate land. *Recommendation:* EPA should undertake a rulemaking to clarify the 1993 rule that PCC lands are not subject to CWA regulation as jurisdictional wetlands regardless of the use to which the land is put.

IX. **Army Corps of Engineers 1987 Wetlands Delineation Manual and Regional Supplements** In 1993, Congress prohibited the U.S. Army Corps of Engineers from using appropriated funds to delineate wetlands under the 1989 Wetlands Delineation Manual.[7] Congress further stated that no funds shall be used to implement *any subsequent manual adopted without the public notice and comment* procedures of the Administrative Procedure Act (APA). In the meantime, Congress authorized the Corps to use the 1987 Wetlands Delineation Manual, but only until the adoption of a final delineation manual. Almost 25 years later, the Corps has failed to propose, much less adopt, a final wetlands delineation manual. Instead, the Corps continues to use the 1987 Manual, adding regional "supplements" to modify the very same delineation criteria Congress disallowed in 1993. Rather than placing the Manual and regional supplements through the rulemaking process, the Corps has used the supplements to avoid the Congressional directive to formally promulgate a final Manual. *Recommendation:* We recommend that EPA clarify that no regional supplements should be used in making determinations of what constitutes "navigable waters" and/or initiate a joint

[6] *New Hope Power Company and Okeelanta Corporation v. U.S. Army Corps of Engineers and Stockton* 2010 WL 3834991 (S.D. Fla. September 29, 2010)

[7] See Energy and Water Development Appropriations Act, Pub. L. No. 102-377, 106 Stat. 1315: "None of the funds in this Act shall be used to identify or delineate any land as a "water of the United States" under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 or any subsequent manual adopted without notice and public comment. Furthermore, the Corps of Engineers will continue to use the Corps of Engineers 1987 Manual, as it has since August 17, 1991, until a final wetlands delineation manual is adopted. PUBLIC LAW 102-377—OCT. 2, 1992 106 STAT. 1325 None of the funds in this Act shall be used to finalize or implement the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in Federal Register, Vol. 55, No. 197, Thursday, October 11, 1990."

rulemaking with the Corps that subjects the wetlands delineation manual through the rigors and transparency of the APA's public notice and comment process.

X. **EPA's proposed revision regarding objection to administratively continued permits (40 CFR § 123.44) (Docket ID No. EPA-HQ-OW-2016-0145c)** EPA has proposed granting to itself the power to object to administratively continued permits by providing EPA Regional Administrators the discretion to change the status of an administratively continued permit to "proposed permit," an outcome that would trigger the robust federal review process outlined in 81 Fed. Reg. 31344, 31372 (May 18, 2016). This proposed revision marginalizes a valuable tool afforded to states with authorized NPDES permit programs – the ability to administratively continue an existing NPDES permit in lieu of permit reissuance. This tool is important because it allows states to prioritize limited resources and limited personnel to ensure the most efficient management of their state NPDES program. This revision, if finalized, further erodes State authority to manage their own programs and will discourage unauthorized states from assuming NPDES authority. Denial of an administratively continued permit, which this rule revision entails, would leave agricultural producers who hold NPDES permits without permit coverage and vulnerable to citizen lawsuits. It also raises a constitutional concern due to the lack of due process considerations given that there is no procedure to challenge the EPA's decision to change a permit's status to "proposed." The revision raises additional concern because it exceeds EPA's statutory authority. Clean Water Act § 402(d) grants EPA the authority to review proposed permits and to object to them, which if objected to prohibits the permit from issuing. The revision here would replicate this administrative power and apply it to administratively continued permits, a step that goes beyond the power Congress granted to EPA in the Clean Water Act. Finally, this effort by EPA is not needed because EPA already manages a largely successful effort that resolves the underlying issue. The Priority Permit Measure provides an avenue for EPA to target state-issued NPDES permits to undergo the reissuance process by designating them as "priority permits". *Recommended:* EPA withdraw its proposed revision regarding objection to administratively continued permits (40 CFR § 123.44) (Docket ID No. EPA-HQ-OW-2016-0145c)

XI. **National Ambient Air Quality Standards (NAAQS) for Coarse Particulate Matter (PM_{10})** The NAAQS and definition for coarse particulate matter are overly broad and do not take into account naturally occurring sources like dust found on farms.

Recommendation: EPA should clarify its NAAQS regulations to ensure that agricultural producers are not found to be in violation of the Clean Air Act for conditions beyond their control when operating under general farming practices.

American Forest & Paper Association

May 15, 2017

Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

RE: Input on Evaluation of Existing Regulations for Regulatory Reform (82 Fed. Reg. 70, 17793, April 13, 2017)

The American Forest & Paper Association ("AF&PA") appreciates the opportunity to provide information in response to EPA's April 13, 2017 Federal Register Notice (82 Fed. Reg. 70, 17793) seeking input on regulatory reform pursuant to Executive Order 13777, "Enforcing the Regulatory Reform Agenda." AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue 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* - which comprises one of the most extensive quantifiable sets of sustainability goals for a U.S. manufacturing industry and is the latest example of our members' proactive commitment to the long-term success of our industry, our communities and our environment. We recently set a new 20% greenhouse gas reduction goal for 2020, having already achieved our 15% goal. We also have reduced our water use by over 6.5%, and improved our purchased energy efficiency by 8.1%, all accomplished voluntarily without federal government intervention.

The forest products industry accounts for approximately 4 percent of the total U.S. manufacturing GDP, manufactures approximately $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 45 states. The forest products industry not only is one of the largest manufacturing segments in America, but also is a critical source of high-paying jobs in rural communities across America and an economic driver for surrounding regions. In fact, more than 75 percent of U.S. pulp and paper mills are located in rural counties, and every job in the paper industry supports 3.25 more jobs in supplier industries and local communities, while every job in the wood products industry supports another 2.25 jobs.

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Paper and wood products manufacturing facilities also are very heavily regulated, but must operate efficiently in a fiercely competitive global market. The ever-growing cumulative regulatory burden has become an acute challenge to industry competitiveness. The cost, volume and complexity of regulations is greater than ever. Each year, the Federal Government issues about 3500 new rules, and the cumulative regulatory burden on the U.S. economy by some estimates is over $2 trillion. Industry facilities have met many costly regulatory challenges over the years, spending billions of dollars as part of their environmental stewardship. Unfortunately, the industry still faces challenges from new and existing regulations that could impose more than $10 billion in additional capital costs over the coming decade.

EPA Regulations Appropriate for Repeal, Replacement, or Modification

EPA's regulatory reform task force is charged with identifying regulations that:

1. Eliminate jobs, or inhibit job creation;
2. Are outdated, unnecessary, or ineffective;
3. Impose costs that exceed benefits;
4. Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
5. Rely on data, information, or methods that are not publicly available or that are insufficiently transparent; or
6. Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

There are many air quality and water policies and regulations that meet the first four criteria. Overly restrictive permitting and modeling policies and regulations can inhibit job creation by making it impossible for companies to get permits for projects that expand or modernize manufacturing facilities. Policies related to National Ambient Air Quality Standards (NAAQS) analyses that were established at a time when the NAAQS was not close to the background are outdated and require too many layers of conservatism in air dispersion modeling. Several Prevention of Significant Deterioration (PSD)/New Source Review (NSR) permitting and modeling policies and some changes to the NSR regulations that were either stayed or never finalized impose costs that exceed the benefits because they increase the cost of permit application preparation and can result in no additional environmental controls than would otherwise have been required with a more streamlined permitting process. Similarly, EPA's new approach to Clean Water Act Human Health Water Quality Criteria (HHWQC) can result in permit limits that are unachievable even with the expenditure of billions of dollars on the latest technology, yet those limits would not result in measurable human health protection.

Detailed Comments

We appreciate that EPA is requesting comment on regulations that may be appropriate for repeal, replacement, or modification. We are attaching comments detailing problems and proposed solutions regarding 64 regulatory challenges and permit problems across the Agency.

a. Carbon Neutrality of Biomass

Prior to 2010, the U.S. clearly recognized forest-based biomass energy as carbon neutral. In EPA's May 2010 Greenhouse Gas (GHG) Tailoring Rule, for the first time, no such designation was made, subjecting biomass energy used in stationary sources to Clean Air Act permit program requirements to reduce GHG emissions. This made EPA's regulatory regime inconsistent with other GHG regulatory programs around the world (including states of California and Washington, Canada, and the European Union, none of which regulates biogenic CO_2 emissions at the source of combustion). In response to the outcry created by this dramatic change in policy, in 2011 EPA issued a rule deferring regulation of biogenic CO_2 emissions while it studied the issue and pledged to resolve the issue and complete an accounting framework for biogenic CO_2 emissions from stationary sources by July of 2014. EPA referred the matter to its Science Advisory Board, which still has not completed its work. After seven years of regulatory uncertainty, there is no timetable for resolution. Until EPA completes the rulemaking excluding these carbon neutral emissions, they are subject to regulation under the Clean Air Act.

Paper and wood products manufacturers are the largest producers and users of bioenergy of any industrial sector and have long-standing operations in the U.S. The creation and use of biomass energy in paper and wood products mills is integral and incidental to the manufacture of products such as pulp, paper, packaging, tissue and wood products. Pulp mills, integrated pulp and paper mills and wood products mills convert biomass residuals to energy while manufacturing bio-based products that are useful to society. This sustainable use of forest products manufacturing residuals for energy provides enormous greenhouse gas benefits by avoiding the emission of about 181 million metric tons of CO_2 equivalent. This is equivalent to the emissions of about 35 million cars.

Numerous EPA documents and policy memos have validated the positive benefits from forest biomass and biomass manufacturing residuals use, including EPA's original draft accounting framework (September 2011) and revised draft framework (November 2014). Both documents recognize the GHG reduction benefits of bioenergy from forest product mill residuals and byproducts, including black liquor. In addition, EPA indicated that biogenic energy from the use of sustainably derived timber also may be carbon neutral.

More recently, in Section 428 of the Consolidated Appropriations Act of 2017, Congress directed EPA, the U.S. Department of Agriculture, and the U.S. Department of Energy, to work together to, among other things, "establish clear and simple policies for the use of forest biomass as an energy solution, including policies that reflect the carbon-neutrality of forest bioenergy . . ."

EPA's rule establishing the Significant Emissions Rate for Greenhouse Gas Emissions under the PSD Program (also called the "GHG Threshold Rule" in our detailed comments) specifically should reflect the carbon neutrality of forest-derived bioenergy. In this way, EPA appropriately can implement the carbon neutrality amendment in Section 428 of the Consolidated Appropriations Act.

b. Air Permitting Gridlock

EPA air permitting policies and regulations impose significant burdens and delays on our manufacturing facilities. Our members are required to obtain air quality permits from EPA-delegated state/local permitting agencies and are subject to many complex federal air quality regulatory programs. Each of our member companies devotes significant time to understanding and complying with these programs. As the stringency of air quality regulatory requirements has increased, it has become more difficult and more time consuming to obtain air quality permits for modifications and expansions of facilities and to comply with the various applicable air quality regulatory programs. Accordingly, these comments contain detailed suggestions on streamlining the air permitting process and reducing air quality related regulatory burdens, while still protecting public health and air quality, which has markedly improved over the past 30 years.

The most onerous part of our permitting process is attempting to use the overly conservative processes for projecting compliance with ambient air quality standards. Although ambient monitors near our facilities are well within compliance, the mathematical modeling techniques and requirements that include layer upon layer of conservatism ("compounded conservatism") can make it nearly impossible to demonstrate compliance on paper. Frequently, changes that would result in emission reductions are put on hold or shelved, or the continued viability of specific manufacturing facilities is called into question, due to onerous permitting requirements. One way to advance beneficial projects is to develop standards through a "probabilistic risk assessment" approach, as opposed to the current "deterministic" approach, which results in unnecessarily stringent permit requirements.

As a group, the multiple conservative and burdensome set of air quality regulations surrounding NSR and PSD permitting are a deterrent to manufacturing facility modernization and expansions. The permittee must assume that all emission units (including those at potentially dozens of nearby facilities) emit simultaneously and continuously at the maximum allowable rate. This is added to background concentrations that are continuously at a peak measured value. And on top of this, a person is placed at that location continuously (even if that is not realistic or legal) during worst-case meteorological conditions. The resulting model output is compared to a NAAQS that was developed for a person who is most susceptible to the possible health effects (e.g. elderly, children). It is hard to quantify the lost opportunity costs and lost jobs associated with projects that are not built, but they are substantial and undermine the ability of mills to remain globally competitive and bring new products to market. This is a prime example of regulation inhibiting job creation.

EPA should address the rapidly developing air permit gridlock by committing sufficient resources and adopting more flexible policies to allow use of more realistic emissions

and modeling data.[1] In addition, states should be given more discretion in running their permitting programs, including advancing new tools, models and permitting approaches through guidance to the states and Regional Administrators.

c. Risk and Technology Reviews

EPA is obligated to perform risk and technology reviews (RTR) of its 40 CFR 63 MACT standards to determine if updates are necessary to address technology improvements and risk concerns. EPA recently conducted its RTR of 40 CFR 63, Subpart MM, which covers chemical recovery combustion sources at our members' pulp mills. We provided detailed comments on the December 30, 2016 proposal to Docket EPA–HQ–OAR–2014-0741. The $200 million in capital and operating costs that would result from the proposed changes are not justified, especially given the conclusion that risks meet the ample margin of safety criteria.

EPA reached the correct conclusions that risks from the source category are acceptable, no additional emissions reductions are necessary to provide an ample margin of safety, and that there have been no advances in practices, processes, or controls since promulgation of Subpart MM. We concur that these results support that there should be no changes to the emission standards. However, we also believe that the results of the RTR mean that EPA should not make the changes it proposed for the opacity operating parameter limit and monitoring exceedance levels. EPA has provided no evidence that operating practices have changed since promulgation of Subpart MM to support the proposed changes. The proposed changes may cost $200 million in additional capital and are clearly not cost-effective (EPA estimates the cost of the proposed opacity changes at >$5.5 million/ton HAP, which is likely an underestimate). EPA's estimated cost of $36,800/ton PM would not be cost-effective in a BACT analysis and should not be considered cost-effective in an RTR rulemaking where there is no risk or technology-related basis for the proposed change. EPA proposed to incorporate other additional monitoring, recordkeeping, and reporting requirements into the revised rule that also serve to add cost without creating environmental benefit. The Subpart MM RTR rule is a prime example of where the principles set out in recent executive orders should be applied.

d. Human Health Water Quality Criteria

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[1] In the future, EPA also should not revise current NAAQS unless evidence shows a significant public health concern and previous NAAQS revisions have been fully implemented. Moving these multiple regulatory goal posts every five years creates significant business investment uncertainty when the air quality in the U.S. is among the best in the world and will continue to improve under current programs and trends. A ten year review cycle would be much more appropriate.

EPA has imposed new, ultra-conservative risk policies in the calculation of certain water quality standards that could cost industrial facilities billions of dollars in some states. Many of these industrial facilities provide high-paying manufacturing jobs in rural communities that cannot afford to lose them. If EPA's new policies are extended to other states and programs (e.g., Superfund, Clean Air Act), private parties and federal agencies would be faced with similar misalignment of costs and benefits.

Under the Clean Water Act (CWA), states have the primary responsibility to develop water quality standards. States begin that process with EPA's Human Health Water Quality Criteria (HHWQC), but can use other criteria, as long as they are adequately protective of human health. States also have the discretion to set the excess lifetime cancer risk (ELCR) level and the Fish Consumption Rate (FCR) — two of the variables used to calculate the HHWQC. Based on a new legal theory that tribal treaty rights require more protective criteria, EPA has removed the states' discretion and imposed extreme risk management policies. EPA also is taking conservative and unscientific approaches to other values in HHWQC derivation (the "Relative Source Contribution" and "Bioaccumulation Factors").

EPA is making three radical changes to its risk policy that has existed since 2000. First, the Agency is requiring states to adopt HHWQC based on a new ELCR level policy that one in a million (10^{-6}) and only one in a million is adequately protective of high consuming subpopulations, such as Native American tribes consuming higher amounts of fish. This is contrary to existing policy, which recognizes that states have discretion to choose other risk levels, which are adequately protective and add de minimis incremental risk.

Second, EPA is requiring that HHWQC be derived based on protection of the most highly-exposed individuals, instead of populations, which is the established basis for most risk-based standards. This makes the standards so stringent that they are guarding against risks more remote than the risk of dying from a lightning strike or getting hit by an asteroid; they also are much more stringent than other health and safety standards. For example, the Occupational Safety and Health Administration (OSHA) standard for ethylene oxide is based on an ELCR of 1 in 500 -- over 2000 times less restrictive than EPA's requirement for HHWQC.

Finally, EPA is requiring states to adopt FCRs taking into account tribal populations' reduced fish consumption based on their fear of contamination; and also using tribal populations' FCR as a proxy for the general public, resulting in much more stringent and unattainable permit limits. If applied to other programs, these policies will determine "how clean is clean" for Superfund cleanups and make other standards more stringent and expensive, without a commensurate improvement in human health.

Based on these policies, EPA: 1) imposed federal rules in Washington and Maine rejecting those states' HHWQC and imposing federal criteria; 2) threatened to reject Idaho's new HHWQC that it had developed after EPA rejected its existing criteria; 3) pressured Florida into adopting criteria with faulty Relative Source Contribution values and Bioaccumulation Factors; and, 4) adopted fish consumption survey guidance that perpetuates EPA's FCR policy.

EPA's HHWQC are based on exposures represented by one value on the high end of the range of possible values. In contrast, a Probabilistic Risk Assessment (PRA) approach gives policymakers an understanding of the central tendency of estimated risk and the probability that actual risk will be on the high end of the range. PRA is more scientifically advanced; links risk targets with environmental concentrations; improves transparency; and makes greater use of available data. Numerous offices and bodies within EPA have endorsed or used a PRA approach for several years.

EPA should approve the Washington and Maine HHWQC and withdraw the federal rules in those states; allow states such as Idaho and Florida to establish their own HHWQC without federal interference as long as they are consistent with the Clean Water Act and applicable regulations; and withdraw the survey guidance. EPA also should begin deriving its own HHWQC recommendations using a PRA approach, encourage states to do so, and then approve the resulting criteria.

e. Government Policies Regarding Paper Product Procurement

In March 2015, President Obama's Executive Order 13693 directed agencies to plan for federal sustainability for the next decade. Specifically, Section 3(i) required federal agencies to be consistent with statutory mandates for purchasing preference, and then consider sustainable products with specifications, labels or standards recommended by EPA.

Several agencies, including the Department of Defense, General Services Administration, and the National Aeronautics and Space Administration have decided to implement the E.O. by following or exceeding the guidance available on the EPA Greener Products website. The EPA has not provided an opportunity for public review and comment on their guidance. Additionally, federal procurement policies that require certain preferences, standards, or labels, and which mandate recycled content in paper products, unnecessarily add costs for U.S. paper manufacturers, and restrict the market-based flow of materials.

Closing

We greatly appreciate your careful consideration of these important issues, and we would be happy to address any questions you might have or to provide further information. If you have any questions, please feel free to contact Tim Hunt at (202) 463-2588.

Best regards,

Paul Noe
Vice President for Public Policy
American Forest & Paper Association

Enclosure

American Forest & Paper Association

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TAB 1

Air Attachment to EPA Comments

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1.0 Exclude Biogenic CO_2 Emissions from Greenhouse Gas (GHG) Regulations

40 CFR 51.166(b) and 52.21 (b)

Broadly, policymakers should reassess the need for Greenhouse Gases (GHG) regulations in light of ongoing, market-driven GHG reductions, and any regulations should ensure least-cost compliance and electricity reliability as well as reaffirm the carbon neutrality of biomass. At a minimum, EPA should defer proposing any new GHG regulation until Congress establishes direction on GHG regulatory approaches and authority.

1.1 GHG Threshold Rule

On October 3, 2016 EPA published a proposed rule that addresses the way the Prevention of Significant Deterioration (PSD) and Title V programs must handle GHG emissions, "Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program," (RIN 2060-AS62) (81 FR 68110), known as the "GHG Threshold Rule." Aspects of this proposed rule generally would reduce regulatory burdens that are faced by the regulated community, but most importantly, a much-needed clarification is needed in this rule to resolve that biogenic CO_2 emissions are carbon neutral and should not be counted toward the PSD BACT applicability analysis. Unfortunately, despite the comments of AF&PA and others, EPA's proposed rule failed to directly address biogenic CO_2 emissions, and thus by default they would not be exempt if the rule is finalized as proposed. Nonetheless, there is ample support in the record for this rulemaking for EPA to determine that biogenic CO_2 emissions are carbon neutral, as discussed below, and the appropriate language should be added to the rule.

1.1.1 Treatment of Biogenic Carbon Emissions

Background: Prior to 2010, the U.S. clearly recognized forest-based biomass energy as carbon neutral. In EPA's May 2010 Greenhouse Gas (GHG) Tailoring Rule, for the first time, no such designation was made, subjecting biomass energy used in stationary sources to Clean Air Act permit program requirements to reduce GHG emissions. This policy shift made EPA's regulatory regime inconsistent with every other GHG regulatory programs in the world (including California, Washington State, Canada, and the European Union, none of which regulates biogenic CO_2 emissions at the source of combustion). EPA's failure to recognize the combustion of biomass as carbon neutral put the U.S. paper and wood products industry at a significant disadvantage in the highly competitive global markets for our products.

In response to the outcry created by this dramatic change in policy, in 2011 EPA issued a rule deferring regulation of biogenic CO_2 emissions while it studied the issue and pledged to complete an accounting framework for biogenic emissions from stationary sources by July of 2014. EPA referred the matter to its Science Advisory Board, which did not complete its work. After more than six years of study, there still is no timetable for resolution. Meanwhile, these carbon neutral emissions are subject to regulation under the Clean Air Act.

Justification for Carbon Neutrality of Biomass: The carbon neutrality of biomass harvested from sustainably-managed forests has been recognized repeatedly by an abundance of studies, agencies, institutions, legislation and rules around the world, including the guidance of the Intergovernmental Panel on Climate Change and the reporting protocols of the United Nations Framework Convention on Climate Change.

When measuring carbon neutrality, it is important to focus on broad regions rather than specific plots of land. Some have argued that if a plot of land is harvested, it will take many years for the regrowth of trees on that particular plot of land to re-sequester the lost carbon. While that may be true for a single plot of forest, that is not how biomass sustainability should be assessed because in the same year that particular plots of land may be harvested, many other plots are growing, thus offsetting the loss of carbon from the harvested plot. In other words, carbon stocks across the region are continuing to increase even if several individual plots may have been harvested that year.

A report by the World Business Council for Sustainably Development (WBCSD) recommends that wood coming from a forest that has stable or rising carbon stocks should be deemed carbon neutral. In particular, the report defines carbon neutrality as "a property of wood or other biomass harvested from forests where new growth completely offsets losses of carbon caused by harvesting. Under these conditions, as carbon is released from harvested wood back into the atmosphere, usually as biogenic CO_2, growing trees are removing CO_2 from the atmosphere at a rate that completely offsets these emissions of biogenic CO_2, resulting in net biogenic CO_2 emissions of zero or less." (See World Business Council for Sustainable Development, "Recommendations on Biomass Carbon Neutrality," p. 3, forest solutions).

Certain environmental advocates have raised concerns that recognizing the carbon neutrality of biomass and providing incentives for biomass use to achieve GHG reduction goals will harm the sustainability of the forest resource. These advocates

ignore the fact that one of the most significant threats to forest carbon stocks is the shifting of forest lands to development or agriculture. Robust demand for wood products, including using biomass to generate energy, provides economic incentives to keep forest land forested.

A Journal of Forestry article prepared by a panel of experts from academia, the U.S. Forest Service and private environmental organizations observed that "[t]he demand for wood keeps land in forest, provides incentives for expanding forests and improving forest productivity, and supports investments in sustainable forest management that can help offset the forest carbon impacts of increased demand." (See "Forest Carbon Accounting Considerations in US Bioenergy Policy, *Journal of Forestry*, Volume 112, Number 6, November 2014, pp. 591-606, prepared by Reid A. Miner, Robert C. Abt, Jim L. Bowyer, Marilyn A. Buford, Robert W. Malmsheimer, Jay O'Laughlin, Elaine E. Oneil, Roger A. Sedjo, and Kenneth E. Skog) Link:
http://www.ingentaconnect.com/content/saf/jof/2014/00000112/00000006/art00007

Forest Products Industry Sustainable Use of Biomass: The forest products industry is the largest producer and user of bioenergy of any industrial sector and has long-standing operations in the U.S. The creation and use of biomass energy in forest products mills is integral and incidental to the manufacture of products such as pulp, paper, packaging, tissue and wood products. Pulp mills, integrated pulp and paper mills and wood products mills convert biomass residuals to energy while manufacturing bio-based products that are useful to society. This sustainable use of forest products manufacturing residuals for energy provides enormous greenhouse gas benefits by avoiding the emission of about 181 million metric tons of CO_2 equivalent. This is equivalent to the emissions of about 35 million cars.

The forest products industry has created a highly efficient, market-based system of managed forest use with significant carbon benefits including:

- Providing biomass power by utilizing forest and mill residuals;
- Efficiently using biomass residuals through combined heat and power systems
- Reducing the industry's and our nation's reliance on fossil fuels and reducing GHG emissions while simultaneously meeting society's needs for forest products;
- Reducing potential GHG emissions that otherwise would result from residual disposal (e.g., methane from decomposition);

- Balancing forest supply and demand through market-based systems for biomass due to forest planting and re-growth, as evidenced by net increases in forest carbon stocks over most of the last 50 years; and
- Robustly recycling paper to reuse valuable biomass resources.

These carbon benefits can be perpetuated as forests continue to remain abundant and well managed, with forest use and growth balancing supply and demand.

Numerous EPA documents and policy memos have validated the positive benefits from forest biomass and biomass manufacturing residuals use, including EPA's original draft accounting framework (September 2011) and revised draft framework (November 2014). Both documents recognize the GHG reduction benefits of bioenergy from forest product mill residuals and byproducts, including black liquor. In addition, EPA indicated that use of sustainably derived timber also can be carbon neutral.

Most recently, in Section 428 of the Consolidated Appropriations Act of 2017, Congress directed EPA, the U.S. Department of Agriculture, and the U.S. Department of Energy to work together to, among other things, "establish clear and simple policies for the use of forest biomass as an energy solution, including policies that reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable resource, provided the use of forest biomass for energy production does not cause conversion of forests to non-forest use."

Requested Regulatory Change: Language should be included in EPA's GHG Threshold Rule to recognize the carbon neutrality of biomass, consistent with the carbon neutrality amendment in Section 428 of the Consolidated Appropriations Act of 2017. Specifically, EPA should establish a clear and simple policy that reflects the carbon neutrality of forest bioenergy.

In addition, as users of tire derived fuel (TDF), we believe EPA should remove the burden of ASTM testing to determine the biogenic fraction of TDF (see comments of the Rubber Manufacturers Association for more details).

1.1.2 Significant Emission Rate (SER) for GHGs

EPA recognized in the original Tailoring Rule[1] that attempts to regulate emissions of GHGs below 75,000 tpy CO2e would impose substantial administrative burdens on

[1] "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule", 75 FR 31514, June 3, 2010

the Agency, the states and the regulated community without gaining significant protection of the environment. **We concur that the threshold for application of BACT to GHGs should be at least 75,000 tpy CO2e and preferably 100,000 tpy, in order to help mitigate the adverse impacts of triggering PSD and Title V permitting requirements for sources of GHGs with potential emission rates below this level.** We also concur with EPA's arguments in the preamble language of the proposed rule outlining their authority to establish a *de minimis* regulatory cutoff for GHGs. Since the Supreme Court has already determined that EPA should not apply the 100 or 250 tpy "potential to emit" (PTE) levels that apply to other New Source Review-regulated pollutants to GHGs, we believe that it is incumbent upon EPA to set an alternative *de minimis* level for GHGs that is as high as possible.

As explained in the preamble, approaches that have been used to determine *de minimis* levels for other pollutants cannot be applied to GHGs. There is no NAAQS for GHGs so EPA cannot establish a *de minimis* level that is based on a percentage of the NAAQS. Nor are the current climate modeling tools be used, because they cannot definitively establish a correlation between facility-specific GHG emissions, ambient CO_2 concentrations and climate impacts.

Nonetheless, EPA has a brief administrative record that identifies the correlation between new "anyway" PSD permits since 2011 and the proposed 75,000 tpy emissions threshold. According to EPA's analysis, a majority of GHG emissions correlate to large combustion sources that would have triggered PSD anyway for other NSR regulated criteria pollutants. EPA's detailed reviewed of 55 permits that include BACT for GHG complement these findings. Given these findings, the SER for GHGs should ideally be 100,000 tpy CO_2e.

A SER level between 30,000 and 74,999 tpy CO_2e would provide no additional environmental benefit and would only result in making smaller combustion systems subject to new permit restrictions under the PSD and Title V programs. We believe it was never EPA's intention for these smaller sources to be burdened with these programs. There are no GHG capture or control technologies that can be applied to small combustion units. Typically, facilities purchase new combustion units or modify existing combustion units to enable them to combust different fuels in order to realize a reduction in energy cost. Such changes generally involve the purchase of newer and more efficient equipment or burners, regardless of whether a requirement to conduct a GHG BACT analysis is triggered.

Therefore, a requirement to require smaller units to undergo a BACT analysis will not result in GHG emissions reductions and will only serve to slow the process of

making energy efficiency improvements at smaller facilities and add to the regulatory burden faced by these facilities.

1.2 Clean Power Plan

The Clean Power Plan (CPP) federal regulation of GHG emissions from existing electric utilities under the Clean Air Act (CAA) was stayed by the Supreme Court in February 2016. The stay removes the states' obligation to submit compliance plans to EPA until after litigation is resolved. **This federal regulation is flawed and should be abandoned.**

We are concerned the CPP seeks emissions reductions that are beyond the U.S. Environmental Protection Agency's legal authority and could increase our energy costs, decrease the reliability of the electric system and set adverse precedent for potential GHG regulation of our industry. The forest products industry manufacturing sector spent over $10 billion on electricity and purchased fuels in 2014. Because we operate in a highly competitive global market, increases to our energy costs can significantly harm the competitiveness of our industry and harm our ability to provide high paying manufacturing jobs in the many rural communities in which we operate. In addition, AF&PA is concerned about the potential adverse precedent that could be set if the final rule retains the "beyond the fence line" measures that seek emission reductions at unreasonable costs and at the expense of reliability.

Some states are continuing to develop and implement greenhouse gas reduction plans. AF&PA believes states should not move forward with greenhouse gas regulations until the CPP litigation is resolved. Any states that nonetheless do move forward should ensure they are adopting least-cost approaches.

2.0 Air Permit Streamlining and Implementation Improvements

The U.S. air permitting and regulatory requirements are out of date, rigid, and time-consuming. The air quality permitting process results in unnecessary delays for American business growth. Air quality in the U.S. has improved markedly over the past 30 years, even as the population has grown. Implementing the changes suggested in this section will allow for the continued improvement of air quality while at the same time allowing American business to move forward with projects allowing them and the economy to thrive and grow. Our members have indicated that the changes we are suggesting would positively impact a significant number of their projects and permitting actions.

This section of the comments describes actions that we believe that the EPA could take in order to debottleneck and improve the process that regulated entities must go through in order to secure air permits and comply with federal air quality regulations. Our comments touch on three regulatory programs: New Source Review (NSR), National Ambient Air Quality Standards (NAAQS), and State Implementation Plans (SIP). Our suggested changes would promote growth in the domestic manufacturing industries while still protecting against actual risks to the environment and public health.

The permitting program under the Clean Air Act needs a substantial re-examination from top to bottom since it has evolved over time in a rather haphazard and incremental manner. First, EPA needs to access how it can reduce the number of facility investment projects that need to go through the cumbersome process at all. Changing various applicability criteria could reduce unnecessary workloads on permitting agencies and create business certainty and incentives without jeopardizing air quality. Second, once a project triggers a higher level of regulatory review, EPA needs to simplify and streamline the PSD and NSR programs to reflect realistic air quality conditions and use modern tools including probabilistic approaches. Finally, a permitted facility can face additional uncertainty and unnecessary costs if new National Ambient Air Quality Standards (NAAQS) are not implemented in a cost effective and timely manner.

The table below outlines specific air permitting regulatory fixes that EPA can make. These regulatory changes would improve the permitting process, address outdated policies, reduce the cost of complying with regulations and obtaining permits, and lead to additional growth in the manufacturing sector.

Rule or Policy Item	Air Permitting Regulatory Fix Requested
Debottlenecking	Finalize a more flexible approach to determining whether a proposed project results in "debottlenecking" as outlined in September 14, 2006 proposal.
Netting	Rescind the 2011 policy memo that requires the Actual-to-Potential emissions test for contemporaneous increases in Step 2 netting transactions, and promulgate changes to the appropriate definitions within the PSD regulations. EPA should finalize the September 14, 2006 proposal to allow project netting in Step 1 for PSD applicability analyses.
PSD Applicability Test	Major NSR/PSD permitting should be triggered based on a simpler applicability test.
Offset Policy	EPA should develop and implement flexible offset policies that local agencies can use in rural areas to generate offsets to allow for economic expansion, such as allowing facilities to pay fees to fund emission reduction programs.
Emissions Aggregation	EPA should codify less constraining interpretations of "aggregation" of emission units for projects as well as "sources."
Plant-wide Applicability Limits	EPA should eliminate PAL provisions, such as ratcheting down levels after 10 years or periodic reviews, which are disincentives for sources to establish PALs and add little benefit. This change would encourage more use of PALs by facilities.
"Clean Unit" Exemption	EPA should craft a new permit exemption process for "clean units" consistent with the case law that accounts for actual emission changes.
Pollution Control Project Exemption	EPA should allow PCPs to be quickly implemented while addressing legal issues from case law.
Major Source Thresholds and Significant Emission Rates	EPA should determine if the current applicability thresholds for PSD pollutants can be raised to avoid unnecessary permitting reviews.
Best Available Control Technology (BACT) Issues	EPA should clarify that the application of BACT does not require any redefinition of the source. Carbon Capture and Storage should not be part of BACT reviews.
Ambient Air	EPA policy for ambient air should be modified to evaluate modeled impacts consistent with reasonably anticipated exposures for which the NAAQS are designed to protect (i.e., exclude model receptors at locations where exposure is highly unlikely such as roads, streams, tracks, and steep terrain).
Probabilistic Approaches to Account for Emissions and	EPA should embrace probabilistic methods that allow knowledge of emission variability to be incorporated into the NAAQS assessments as well selecting background concentrations.

Rule or Policy Item	Air Permitting Regulatory Fix Requested
Background Variability	
Background Pollutant Concentrations	❑ EPA should update regulations concerning the treatment of background pollutant concentrations in permitting, and rely on actual conditions rather than peak background levels that are assumed to occur continuously. ❑ Guidance should be issued stating that background concentrations – based on monitors representative of sources being modeled – may be paired in time with the meteorological conditions during which they occurred. ❑ EPA should go beyond interpreting international transport as exceptional events and use section 179B provisions for evaluating international transport beyond just border regions. ❑ EPA should consider the achievability of potential standards during the NAAQS review process in light of international transport of pollutants and naturally occurring background concentrations.
Treatment of $PM_{2.5}$ Emission Sources	❑ EPA should reinstate the PM_{10} Surrogacy Policy until test methods for all types and sizes of PM are validated. ❑ EPA should allow applicants to exclude fugitive and area sources with minimal potential to generate $PM_{2.5}$ emissions from NAAQS assessments (Easier). ❑ EPA should exclude CPM from $PM_{2.5}$ and PM_{10} definitions until CPM measurement method issues are resolved.
Intermittent Sources	Sources that operate no more than 500 hours per year should be exempt from being required to conduct air dispersion modeling to establish compliance with NAAQS and PSD increments.
Updates to Dispersion Modeling Platform	EPA should make development, evaluation, and approval of improved modeling tools a higher priority by allocating more funding for model development.
Photochemical Grid Modeling for Ozone and Secondary $PM_{2.5}$ Formation	Requirements to model ozone and $PM_{2.5}$ precursors should be deferred for 3 years to allow for simplified and adequately demonstrated and approved dispersion modeling techniques to be developed. Application of these proven methods should then not require review by the Model Clearinghouse, a process which can complicate and unnecessarily extend the permit application process
Dispersion Model Technical Fixes	❑ EPA should make technical changes to LOWWIND3 that it deems necessary and expedite its approval through the Model Clearinghouse. ❑ EPA should incorporate a more realistic NO to NO_2 conversion limitation into AERMOD. ❑ Modeling should not include emission units with allowable or potential emissions below the "practical quantitation limit" (PQL) or at least some fraction of the "maximum detection limit" (MDL). ❑ AERMOD's performance should be reevaluated in light of recent modifications with special attention to 1-hour design concentrations.
Significant Impact Levels (SILs)	❑ EPA should utilize a higher confidence interval in its SIL such as the 95% which is commonly applied in other programs. ❑ Alternatively, a more transparent and straight-forward approach that ties the SIL to health criteria, such as setting SILs to 4% of the NAAQS.

Rule or Policy Item	Air Permitting Regulatory Fix Requested
	❑ The form of the SIL, which is currently the highest concentration, should be made consistent with the form of the pollutant NAAQS (e.g., 4th highest 8-hour average for ozone and eighth highest daily average for $PM_{2.5}$).
Ozone and $PM_{2.5}$ Precursors:	EPA should also establish a pre-approved modeling platform for ozone and $PM_{2.5}$ modeling allowing MERPs to be developed and model impact assessments to be carried out covering all areas of the country.
Dispersion Model Clearinghouse Approval	When EPA finds that it cannot identify a broadly-applicable model for use, it should allow the state or local regulatory agency to select the most appropriate model to be used.
Improvements to Characterization of Pollutant Emission Rates	❑ Guidance providing more realistic treatment of emission rates used in computer dispersion modeling should be issued promptly to provide more accurate predictions of ambient concentrations. ❑ Facilities should be allowed to use the best available emission factors even if EPA has not formally approved them under the AP-42 program. ❑ PM2.5 emission factors should be revised by removing old biased Method 202 data and only use data obtained using current test methods. ❑ EPA should allocate resources to develop appropriate emission factors and/or promptly review and incorporate updated emission factors developed by industry. ❑ EPA should update its emission test methods, codified in 40 CFR Parts 51 and 60, to account for artifacts and other factors that distort emissions estimation. ❑ EPA should immediately approve the use of "zero bias" corrections for PM, develop OTM-036 and CTM-039 as regulatory methods, and fix artifact and other bias issues with current test methods.
Revised NAAQS Timing	NAAQS should not go into effect for permitting of new sources until the accompanying implementation guidance is promulgated. The effective date for a new NAAQS should be either three years from promulgation OR when state designations have been approved by EPA. The NAAQS review cycle requirement should be changed to every ten years.
International Emissions and Non-Attainment Area Designations	EPA needs to allow for well-controlled new sources to be developed within the United States while addressing transboundary emissions that cause exceedances through international negotiations.
Ambient Monitoring Improvements:	EPA should uniformly develop and advance criteria to verify new ambient monitoring technology before used in any regulatory or enforcement context.

One of the areas requested for comment is permitting practices that should be widely implemented. Several of the state agencies that our members work with have fee-based expedited construction permitting programs. For an extra fee, construction permit applications can be processed by dedicated permitting staff according to an expedited schedule that typically depends on the complexity of the permit application and whether modeling is included. One of our member companies spent more than $10,000 on consultants and over a 100 hours of staff time to get approval for a project with minor emissions that already was within its existing approved emission limits – and it took 6 months to get approved and 117 pages for the permit application. With expedited permitting programs the simplest of permits may be processed in less than 60 days, while permit applications that trigger PSD and include modeling may be processed in 180 days. U.S. manufacturing needs to be able to respond quickly to market demand, and these expedited permitting programs allow facilities to reduce the time it takes to get an expansion or modification permitted. South Carolina and George are two states with exemplary programs.

As a group, the complicated and burdensome set of air quality regulations surrounding NSR and PSD permitting are a deterrent to manufacturing facility modifications and expansions, even those proposed projects that if allowed to go forward, would reduce emissions and/or enhance energy efficiency. Part of what makes implementing these regulations so difficult is the thousands of pages of guidance that exist. EPA should establish a new permitting process and adjust its modeling criteria to be more reflective of actual impacts. Regulatory air quality models have the capability to calculate ambient air concentrations based on variable emissions, background, and meteorological conditions; however, long-standing policies that are obsolete considering present-day standards preclude their use. Simply stated, regulatory implementation of stringent new standards has outpaced reliable implementation tools and appropriate guidance which remain years behind current knowledge. EPA should address the rapidly developing air permitting gridlock by committing sufficient resources and adopting more flexible policies to allow use of more realistic emissions and modeling data.[2] In addition, states should be given more discretion in running their permitting programs including advancing new tools, models and permitting approaches through guidance to the states and Regional Administrators.

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[2] In the future, EPA also should not revise current NAAQS unless evidence shows a significant public health concern and previous NAAQS revisions have been fully implemented. Moving these multiple regulatory goal posts every five years creates significant business investment uncertainty when the air quality in the U.S. is some of the best in the world and will continue to get better under current programs and trends. A ten year review cycle would be much more appropriate.

Timing for EPA Guidance
Timing for EPA Proposed Rule
Timing for EPA Final Rule

Timing and Relative Benefit of Improvement

Air Permitting Regulatory Reform Item	2017	2018	2019	2020
GHG Threshold Rule Fixes	$$$			
PSD/NSR Fixes (Debottlenecking, Applicability, Aggregation, PAL)	$$	$$		
Netting - Actual increases and project netting	$$ $$			
Flexible Offset Policy		$$		
Clean Unit Exemption and Pollution Control Projects		$	$	
NSR Major Source Thresholds and Significant Emission Rates			$$	$$
Better BACT Guidance/Policy	$			
Definition of Ambient Air	$$ $$	$$		
Revisions to NAAQS Modeling Requirements (Variability, Background, PM2.5, Intermittent Sources)	$$	$$	$$	
Dispersion Model Fixes and Updates	$$ $$	$$	$$	$$
Photochemical Grid Modeling for Ozone and Secondary PM2.5 Formation - Withdraw	$$	$$		
SILs and MERPs	$$			
Dispersion Model Clearinghouse Approval	$			
Improvements to Characterization of Pollutant Emission Rates	$$			
International Emissions and Non-Attainment Area Designations		$$	$$	
Ambient Monitoring Improvements		$		

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2.1 Updates to Prevention of Significant Deterioration (PSD)/ New Source Review (NSR) Regulations and Policies

EPA previously developed proposed rules[3] – some were even finalized but indefinitely stayed and never implemented – that would add common sense tests for determining which projects would actually cause significant emissions increases. Such projects are subject to major source/modification permitting and their exclusion would eliminate resource-consuming reviews for routine projects and those that would not cause a significant emissions increase.

2.1.1 Debottlenecking

EPA proposed a more flexible approach to determining whether a proposed project results in "debottlenecking" on September 14, 2006; the proposal should be finalized. EPA proposed to change the requirements for determining which emissions increases from existing units that are debottlenecked by a project elsewhere at the source must count towards NSR applicability. The purpose of this change was to remove barriers that the NSR program can impose that prevent owners and operators of major stationary sources from operating their facilities in the most efficient manner and to address concerns that the PSD regulations were too complex and burdensome. For purposes of clarity and greater certainty for affected parties, EPA proposed that only those emissions increases at debottlenecked units that are ''caused'' by the physical change or change in the method of operation be included in the modification analysis. The debottlenecking regulations can be improved if the causation requirement of the NSR rules is more appropriately tailored to circumstances where emissions increases clearly result from a proposed change. It is appropriate to revisit the causation requirement for determining when an emissions increase at a debottlenecked unit is caused by a particular change elsewhere at the source. Including emissions increases from debottlenecked units, without first establishing causation, is consistent with Congress' intent in establishing the major NSR program.

2.1.2 Actual Emissions Increase

Current EPA policy calls for the emissions impact of contemporaneous projects in netting transactions to be quantified using the actual-to-potential (ATP) test. This is required under this policy even if those projects relied on the actual-to-projected actual (ATPA) emissions comparison for their initial PSD applicability determination.

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[3] https://www.epa.gov/nsr/nsr-regulatory-actions#general.

EPA explains[4] that this restriction on the use of the ATPA comparison for netting purposes is mandated because the amended definition of "actual emissions" in the 2002 NSR Reform rule does not apply when assessing whether a significant net emissions increase has occurred or will occur for PSD purposes.

This policy is overly conservative and restrictive. The definition of a "net emissions increase" under PSD requires that an assessment be made of the increases and decreases of contemporaneous "actual emissions"; the plain language of "actual" emissions would suggest that the emission changes (if any) that have actually occurred are to be the basis of this determination. We recognize that there are some instances where a contemporaneous project has not begun normal operations, and in those instances it seems clear that the actual increase in emissions cannot yet be defined. For these situations, the definition of "actual emissions" at 40 CFR 52.21(b)(21)(iv) (i.e., the presumption that a unit's post-change actual emissions are equal to its potential-to-emit) would appropriately apply.

In most instances, however, the increases in emissions that actually occur as a result of projects are less than what is estimated during preconstruction review. It is overly restrictive and it does not seem to serve any compelling purpose to require an ATP emissions comparison for projects where the actual-to-actual emissions history can be established. Accordingly, **we encourage EPA to rescind the 2011 policy memo that requires the ATP emissions test for contemporaneous projects in netting transactions, and to promulgate changes to the appropriate definitions within the PSD regulations.**

In addition, **EPA should finalize the September 14, 2006 proposal to allow project netting for PSD applicability analyses.** This proposal stated that all emissions changes, both increases and decreases that occur within the scope of the project would get counted under "step 1" of the applicability analysis. The current EPA policy is that only project increases are counted under step 1 and any decreases get evaluated with all contemporaneous increases and decreases under a full netting analysis in step 2 of the analysis. Project netting calculations are more straightforward and the resulting regulatory change to explicitly allow project netting would let facilities receive credit for emission reductions that are achieved as part of an overall project, without introducing complexity into the program.

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[4] Letter from Cheryl L. Newton, EPA Region V Air and Radiation Division Director, to Keith Baugues, Indiana Department of Environmental Management, April 4, 2011.

These changes would affect a large percentage of permit applicability analyses and reduce the time for development and processing of permit applications. Our members have indicated that changes to netting procedures would result in a significant reduction in permitting burden.

2.1.3 PSD Applicability Test Should be Simplified

Major NSR (PSD) permitting should be triggered based on a simpler applicability test. For example, similar to the NSPS applicability test, if the maximum hourly emission rate of a source will not change as a result of a modification to an existing source, then major NSR/PSD review should not be triggered. This would essentially mean that PSD applicability would be established by comparing pre-project to post-project potential emissions. A similar approach was allowed in a 1993 memo from EPA Region 5 to Michigan DNR regarding General Motors' desire to permit existing boilers to burn natural gas[5]. The memo states that because the emission factors for natural gas are lower than the emission factors for the current fuels (coal and fuel oil) and the project was not intended to increase boiler utilization, then the project was not a major modification. This type of common sense approach would greatly simplify PSD applicability and reduce the need for extensive delays in the permitting phase of many types of projects, including those that will reduce emissions.

2.1.4 Offset Policy

The requirement for facilities located in non-attainment areas to obtain emission offsets for increases in emissions is one of the key features of EPA Non-Attainment New Source Review (NA/NSR) program. This requirement will provide substantial challenges to sources in the next few years as new non-attainment areas for PM2.5 and SO_2 are designated. At present, existing EPA regulations and policies provide little flexibility in terms of the availability of offsets, particularly for sources that are located in rural areas. Offsets are required to be obtained from within the same geographic area as the source and must provide a net air quality benefit. The lack of availability of suitable offsets can constitute a significant barrier against facility expansion in some situations.

Consequently, **EPA should develop and implement flexible offset policies in rural areas where few facilities exist to generate offsets as necessary in order to allow for economic expansion in these areas.** Alternatives such as allowing for applicants to pay fees to the state regulatory agency in order to fund emission reductions elsewhere in the state or region should be considered.

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[5] https://www.epa.gov/sites/production/files/2015-07/documents/autoprod.pdf

2.1.5 Emissions Aggregation

EPA proposed changes to the PSD regulations on September 14, 2006 involving aggregation. **EPA should finalize regulatory changes that codify less constraining interpretations of "aggregation" of emission units for projects as well as "sources."** Currently, whether projects are aggregated for purposes of permitting is not established by regulation, but is a matter of interpretation based on previous EPA guidance. The guidance is not uniformly interpreted or applied among permitting agencies.

2.1.6 Plant-wide Applicability Limits (PALs)

Provisions for Plant-wide Applicability Limits (PALs) were established in order to provide facilities a simplified process for approval of projects under the NSR rules, as long as facility-wide emissions remain below the PAL after the modification. The PAL provisions were included in the 2002 NSR Reform rules as a way for facilities to quickly respond to changes in market conditions while still achieving a set level of environmental protection. To date, however, the regulated community has not taken advantage of the flexibility afforded by these provisions because of unnecessary safeguards that were included in the PAL regulations.

Manufacturing facilities can be expected to expand their operations under conditions that promote regulatory certainty. As promulgated, the PAL provisions were viewed as attractive because they provide a means to obtain clarity and certainty in the regulatory approval process. EPA should further improve the utility of these provisions and make them more attractive to the regulated community by eliminating the requirements for periodic review of a facility's PAL levels, and potential ratcheting down of these levels after a 10-year period. The PAL expiration provision is another factor that thus far has prevented facilities from greater utilization of the PAL provisions. **EPA should undertake a review of the PAL provisions and eliminate those that, for little or no environmental benefit, constitute disincentives for sources to establish PALs.**

2.1.7 "Clean Unit" Exemption Should be Restored

As part of the New Source Reform provisions promulgated by EPA in December 2002, EPA included a new permitting applicability test for Clean Units. This provision allowed any emission unit that had been through a permitting process that resulted in Best Available Control Technology (BACT) or Lowest Achievable Control Technology (LAER) emission control levels (or the state equivalent) being imposed would trigger NSR only if the facility was seeking an increase in its permitted allowable emissions. At the time of its promulgation, EPA stated that this exclusion

"…protects air quality, creates incentives for sources to install state-of-the-art controls, provides flexibility for sources, and promotes administrative efficiency".[6]

However, the Clean Unit exemption was vacated by the DC Circuit Court of Appeals in June, 2005[7]. The Court found that the exclusion was contrary to the Clean Air Act because it exempts certain emission units from NSR permitting on the basis of their status, rather than on the basis of changes in their actual emissions.

Nonetheless, the Clean Unit concept represents an important development for the regulated community, because when an existing facility that operates such state-of-the-art emission control systems triggers new source review, the permitting process invariably results in minimal (if any) improvements to either existing air quality or the efficiency of the emission control systems installed on the source.

We encourage EPA to revisit the Clean Unit concept and craft a new permit exemption process for such units that, consistent with the DC Circuit Court of Appeals findings, takes actual emission changes from these units into account. If an appropriate solution cannot be made under the current Clean Air Act, then the Administration should seek a legislative solution.

2.1.8 Pollution Control Project Exemption

The 2002 New Source Reform provisions also exempted certain specific Pollution Control Projects (PCPs) from having to undergo preconstruction NSR permitting in specific situations where installation of controls targeting reduction of a specific type or family of pollutants causes a collateral and significant emission increase of an NSR regulated pollutant. The rule defined a PCP as "…any activity, set of work practices or project undertaken at an existing emissions unit that reduces emissions of air pollutants from the unit." EPA stated that one of the purposes of promulgating this PCP exemption was to remove the disincentive for industrial sources to undertake pollution control and prevention measures.

The General Provisions to EPA's New Source Performance Standards (NSPS) program specifically allows pollution control projects to be exempted from the definition of a "modification" to an existing source that might otherwise trigger the need for the source to meet new source emission standards. As the NSR and NSPS programs both utilize a fundamentally similar definition for modification, it is

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[6] 67 Federal Register 80190 "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Final Rule and Proposed Rule. December 31, 2002.

[7] New York v. EPA, 413 F. 3d 3, DC Circuit, June 24, 2005.

inappropriate for EPA to allow pollution control projects to be considered exempt for NSPS purposes yet at the same time trigger preconstruction review under the NSR program.

The PCP exemption included in the 2002 NSR Reform provisions was intended to codify in the NSR rules a very similar exclusion that EPA had made available by interpretive policy in 1994[8]. The interpretive policy was in turn based on the explicit PCP exclusion afforded by EPA to electric utility units in 1992 (i.e., the "WEPCO rule"). The 2002 NSR Reform rule made the PCP exemption available to all source categories but at the same time contained safeguards that were intended to ensure that such projects would, on balance, be environmentally beneficial and would achieve the goals of minimizing regulatory burdens and reduce procedural delays for such projects.

The PCP exclusion was vacated by the DC Circuit of Appeals in 2005 along with the Clean Unit Exclusion. At that time, the Court reasoned that EPA lacked the authority to create blanket PCP exemptions from NSR, essentially because EPA was unable to demonstrate to the Court's satisfaction that Congress originally intended pollution control projects to be exempted from preconstruction review when the Clean Air Act was implemented.

The vacatur of the PCP exclusion discourages prompt implementation of projects whose primary purpose is either the reduction of air emissions or pollution prevention. It also creates an absurd situation for sources that are required to install emission controls in order to comply with other parts of the CAA such as Maximum Achievable Control Technology (MACT) standards under Title III and operation of the MACT control causes collateral increase in criteria pollutant emissions regulated under Title I and subject to preconstruction NSR permit requirements. As the regulations are currently configured, such collateral increases are required to be compared against PSD significant emission rates to determine whether the installation of the mandated emission controls constitutes a major modification subject to PSD review. This absurdity is both counter-productive and administratively burdensome to the regulated community.

The original WEPCO rule, the 1994 PCP policy, and the 2002 PCP exemption all included safeguards that served to ensure that pollution control projects would, on balance, be "environmentally beneficial". These included establishing a list of

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[8] "Pollution Control Projects and New Source Review (NSR) Applicability", John. S. Seitz, Director, EPA OAQPS, July 1, 1994.

projects that were presumptively environmentally beneficial, requiring case-by-case evaluation of other prospective PCP projects, and requiring a review of each proposed PCP to ensure that it does not cause or contribute to a NAAQS or PSD increment violation or adversely impact an Air Quality Related Value. The validity of these safeguards was not addressed by the vacatur of the exclusion, and in our view they represent reasonable environmental protections.

Accordingly we encourage EPA to develop a regulatory solution that will allow for PCPs to be quickly implemented in a straightforward way that addresses the legal issues that were raised by the DC Circuit Court findings. If an appropriate solution cannot be made under the current Clean Air Act, then the Administration should seek a legislative solution.

2.1.9 Major Source Thresholds and Significant Emission Rates

If more projects can avoid being subject to PSD through revisions to the PSD applicability procedure, the lengthy permitting process for modifications and expansions of existing facilities and new manufacturing sources could be avoided. **EPA should determine if the current applicability thresholds for PSD pollutants can be raised to avoid unnecessary permitting reviews.**

2.1.10 Best Available Control Technology (BACT) Issues

Current EPA policies with respect to certain aspects of the requirement that new sources or major modifications install Best Available Control Technology (BACT) are confusing and hinder economic growth.

The degree to which carbon capture and sequestration (CCS) is required to be addressed in BACT reviews represents another area of uncertainty for the regulated community. Under current policy, emission control alternatives that are both "available" and "applicable" represent suitable candidates for BACT. EPA has established that alternatives which can be obtained through commercial channels are considered to be "available", and that an available alternative is "applicable" if it can reasonably be installed and operated on the source.[9]

There remains considerable debate, however, as to whether CCS is available and applicable as a BACT alternative for the vast majority of source types. Capture technologies are commercially available for only a narrow range of sources, and many questions remain as to the applicability of these technologies. One principal issue that remains unresolved is how similar an existing source with CCS must be

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[9] Draft NSR Workshop Manual, p. B-17 (October 1990).

to a BACT candidate source in order for CCS to be considered transferrable. Also, the physical and legal availability of sequestration capacity and whether or not the BACT process can be used to consider changing the location of the source when there is no reasonable sequestration sink in the vicinity of the source are principal concerns for the regulated community.

EPA has historically not utilized the requirement for BACT as a way to redefine what constitutes the emission source. The scope of a BACT analysis has been limited to an emission unit's "basic design" and that a determination of BACT should not require a change to a unit's "fundamental business purpose". To date, however, clear guidance on the degree to which it would be appropriate to modify a unit's design or purpose has not been issued. It is certainly not appropriate for regulatory agencies to evaluate an applicant's decision to proceed with a particular type of emission unit or project, or to require applicants to evaluate alternative manufacturing or power generation methods as part of the BACT process. Accordingly, EPA should clarify that the application of BACT does not require any redefinition of the source.

2.2 Streamlining the Air Permitting Program and Policies

EPA has lowered the $PM_{2.5}$, NO_2, and SO_2 National Ambient Air Quality Standards (NAAQS) in the last few years. States have responsibilities to evaluate air quality data, determine which areas of their states are in non-attainment and adopt State Implementation Plans (SIPs) requiring emission reductions needed to attain the relevant standards. In addition, SIPs establish and implement regulatory programs such as New Source Review permitting programs to ensure that areas currently meeting the NAAQS continue to do so. In addition to requiring best available control technologies to be applied at sources seeking approval to significantly increase emissions, the SIP permitting regulations require applicants to conduct an Air Quality Analyses involving application of mathematical models to predict how the proposed emission increases could potentially affect ambient pollutant levels. Modeling results are relied on as the technical basis for judgments on whether a proposed project will protect or threaten the NAAQS. Separately, facilities must model attainment of the NAAQS through the Prevention of Significant Deterioration (PSD) process or under state-specific programs when making a modification or building a new source that increases emissions in attainment areas. Forest Products Industry (FPI) facilities are located predominantly in attainment areas but subject to thorough air quality reviews for projects and sometimes upon permit renewal. Air emissions from our industry have been regulated for many years and our sources are subject to multiple types of air quality standards that typically require emissions controls.

In the past, when the NAAQS were higher, there was plenty of margin or "headroom" between the NAAQS and the facility emissions plus the ambient background and offsite source impacts. With that headroom and for expediency the Agency built multiple layers of conservatism into a NAAQS analysis. This approach was not problematic in most cases. Now, however, the headroom has shrunk or disappeared as standards approach background levels (the background concentration we are required to use is typically up to 75% or more of the level of the NAAQS) so facilities are looking carefully at the conservative assumptions and procedures required in the permitting and modeling processes. Industry is finding that many of the current policy approaches – which were initially formulated and implemented approximately 40 years ago - and modeling tools significantly over-predict impacts from their facilities, especially when results of making conservative (and often unrealistic) assumptions get compounded so they produce model results that are far from the reality of actual local air quality impacts and public exposure.

The technical and policy concerns and solutions identified in these comments assume the various NAAQS remain at current levels and focus instead on the significant discretion EPA (and ultimately the permitting agencies) has in improving policy and NAAQS implementation tools. Finally, states should be given more discretion in running their permitting programs including advancing new tools, models and permitting approaches through guidance to the states and Regional Administrators.

Many of the following suggestions have been provided to EPA previously and we welcome the opportunity to reengage efforts to modernize the permitting system at a quicker pace and more comprehensively.

2.2.1 Ambient Air

The CAA does not specifically define "ambient air," but long-standing EPA policy requires that ambient air impacts be evaluated anywhere the general public could access. However, this policy unrealistically requires evaluation of ambient air impacts at locations where individuals would not reasonably be exposed (e.g., on a waterway, roadway, railway, or steep slopes), for the duration or averaging time (e.g., 24-hour or longer time periods), and frequency (e.g., 4 or 8 days per year) of the current probabilistic NAAQS. Ideally, state permitting agencies should be given freedom to make decisions regarding implementation of their own regulatory programs. However fear of being second guessed by EPA results prevents states from making common sense judgments consistent with the broader overarching purpose of protecting public health.

EPA policy for ambient air should be modified to make modeled impacts consistent with reasonably anticipated exposures for which the NAAQS are designed to protect. Modeling should not be required if human exposure at a site is unrealistic or even hazardous for the period addressed by a NAAQS. In other words, modeling should not be required for places such as a steep hillside as if a person would be there for a year, or on a road, railroad, or river as if a person would stay there for hours without moving. Language in 40 CFR §50.1(e) concerning "exposures to pollutants" should be clarified or interpreted taking into consideration the averaging period and form of the NAAQS. In the short term, Appendix W should be modified by adding the following: "Site-specific circumstances may be taken into account and receptors may be excluded from areas where natural, man-made or jurisdictional barriers or hazards preclude the potential for public exposure at a given location with the frequency or averaging time specified for the NAAQS or PSD increment that is under evaluation."

2.2.2 Probabilistic Approaches to Account for Emissions Variability

Policies implemented by EPA, such as the promulgation of probabilistic NAAQS for 1-hour SO_2, NO_2, and daily $PM_{2.5}$ and the removal of allowances for startup, shutdown, and malfunction emissions have led to the need to accommodate short-term emission peaks in modeling. However, in a recent response[10] to Appendix W public comments advocating the use of probabilistic modeling approaches, EPA noted:

"The emissions variability approaches and exclusion of highly intermittent sources would be a significant departure from long-standing EPA policy in the NSR program and are not addressed in the Guideline. If there are future revisions to the NSR program that would allow for such considerations, then appropriate revisions to the Guideline would be considered at that time."

It is now time for EPA to embrace the advantages of probabilistic methods that allow knowledge of emission variability to be incorporated into the NAAQS assessments. Probabilistic methods have been embraced in other EPA programs[11] to address human exposure and risk and are equally applicable to

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[10] EPA, 2017. Response to Comments on Appendix W. Docket item EPA-HQ-OAR-2015-0310-0156, page 91.

[11] See "Risk Assessment Forum White Paper: Probabilistic Risk Assessment Methods and Case Studies" July 2014; Office of the Science Advisor, EPA/100/R-14/004; *www.**epa.gov**/sites/production/files/2014-12/.../**raf**-pra-white-paper-final.pdf*. For example: "Overestimation may occur because of the inclusion of unrealistic or irrelevant situations (e.g., assuming continuous exposure to an intermittent airborne contaminant source rather than accounting for mobility throughout the day)."

establishing compliance with air quality standards. An example of a regulatory program where EPA already uses probabilistic approaches is the Superfund, where the 95th percentile upper confidence limit is used to evaluate soil concentrations at a contaminated site[12].

Rather than assuming that sources continuously and simultaneously emit at the highest possible short-term emission rate, as is often EPA practice, a probabilistic approach can be used to model compliance with the NAAQS with a high degree of confidence, such as 95%. Probabilistic modeling tools such as EMVAP[13] or EPA's "Randomly Reassigned Emissions" approach[14,15]can be used in conjunction with air dispersion modeling to conservatively account for emission variability. The same type of probabilistic considerations could be applied when selecting background concentrations. Implementation of probabilistic concepts into air quality compliance demonstrations for permitting can be accomplished through changes in existing regulations or agency guidance.

2.2.3 Background Pollutant Concentrations

Ambient monitors are purposefully placed in areas where high concentrations are expected and are frequently not in the vicinity of industrial facilities. Because the monitors are located in heavily populated areas, many of them show concentrations that are quite close to the level of the standard. These monitors are impacted by nearby industrial sources as well as non-industrial point and non-point sources, so it is important to carefully select, and adjust if necessary, the appropriate background concentration for use in a model that includes conservative representations of primary and offsite source emissions. **EPA should update regulations concerning the treatment of background pollutant concentrations in permitting, and rely on actual conditions rather than peak background levels that are assumed to occur continuously.** The regulated community has demonstrated (and it should be intuitively obvious) that the current policy of assuming that peak background concentrations occur continuously is unrealistic.

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[12] EPA,1992. Supplemental Guidance to RAGS: Calculating the Concentration Term. Office of Solid Waste and Emergency Response Publication 9285.7-08I, May.

[13] Paine, R., C. Szembek, D. Heinold, E. Knipping and N. Kumar, 2014. Emissions Variability Processor (EMVAP): Design, evaluation, and application, Journal of the Air & Waste Management Association, 64:12, 1390-1402.

[14] EPA, 2014. Guidance for 1-Hour SO2 Nonattainment Area SIP Submissions, Appendix B. Available at https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

[15] Kaplan, M. and R. Paine, 2017. How to Model NAAQS Compliance with EPA's Removal of SSM Exemptions. Presentation A3.3, EUEC conference, February 9, 2017, San Diego, CA.

EPA's insistence on implementing NAAQS using overly-conservative background data is increasingly less appropriate as standards move closer to background concentrations. Effective implementation of new more stringent NAAQS requires a more unbiased and realistic characterization of background concentrations, emissions inputs, and modeling physics.

Guidance should be issued stating that background concentrations – based on monitors representative of sources being modeled – may be paired in time with the meteorological conditions that produced them, and used for modeling. Alternatively, a probabilistic approach using a Monte Carlo process could be used to characterize variable background. Furthermore, as the NAAQS become more stringent and approach background levels, there needs to be a process to ensure ambient monitors located near sources to be modeled are not already including the source's emission in the background values developed from those ambient monitors.

Consistent with the approach to use an unbiased estimate of regional background that represents distant sources or very small nearby sources not being modeled, the modeling of nearby sources should use actual emissions from those sources rather than assuming continuous peak emissions.

Background levels of criteria pollutants are a growing challenge to implementing NAAQS. Throughout the nation, the gap between background concentrations and the NAAQS is shrinking, leaving little space for reasonable economic growth and increasing the likelihood that emissions outside of the control of states and stakeholders play a determinative role in some NAAQS regulatory decisions. International transport, particularly the transport of ozone emissions from Asia, is a major component of these background pollutant concentrations.

As the challenge of international transport grows under increasingly more stringent NAAQS, so should EPA's willingness to implement NAAQS utilizing the maximum degree of flexibility afforded by statute. EPA claimed when finalizing the 2015 ozone NAAQS that provisions existed to mitigate background concerns.[16] While statute constrains the effectiveness of those tools, we nevertheless believe that they should be used as broadly as possible to address international transport (see section 2.3.3 for further discussion relative to designations). For example, where meteorological conditions play a pronounced role in transporting extra-jurisdictional emissions, those emissions should be excluded from regulatory consideration as

[16] 80 Fed. Reg. 65436

exceptional events. Furthermore, **EPA should not constrain Clean Air Act 179B international transport provisions to border regions.** More broadly, EPA should consider the achievability of potential standards during the NAAQS review process in light of international pollutant transport and other background emissions.

2.2.4 Treatment of $PM_{2.5}$ Emission Sources

Emission rates are important model inputs but can often be based on unreliable or uncertain data, due to either lack of representative information or technical issues associated with test methods**. EPA should reinstate the PM_{10} Surrogacy Policy (which provides for conducting dispersion modeling based on PM_{10} emissions rather than $PM_{2.5}$ emissions) until test methods for all types of PM are validated.** Otherwise, EPA should allow applicants to exclude fugitive and area sources with minimal potential to generate $PM_{2.5}$ emissions from NAAQS assessments, since emission rates from such sources cannot reasonably be accurately quantified and the impacts are localized. Moreover, in many instances fugitive and area source emissions are *de minimis* compared with $PM_{2.5}$ emissions from stacks. Finally, **EPA should exclude CPM from PM2.5 and PM10 definitions until CPM measurement method issues are resolved – or revise the PSD threshold levels to reflect addition of CPM into the definition.**

2.2.5 Intermittent Sources

EPA should recognize intermittent sources as a special class in terms of their impact on short-term standards. These sources generally do not typically operate with sufficient frequency to affect compliance with the statically-based short-term or annual NAAQS or to materially affect annual average concentrations. EPA has already provided flexibility for modeling of intermittent sources that considers the probability of adverse exposure above the NAAQS. This exemption for intermittent sources should also be extended to $PM_{2.5}$.

Sources that operate no more than 500 hours per year should be exempt from being required to conduct air dispersion modeling. Alternatively, sources that operate less than a small fraction of the time consistent with the form of the NAAQS and the likelihood of winds in any one direction should be exempt from modeling. For example for SO_2 (with a 99th percentile form of the standard) and for a case where the winds in any 10-degree sector do not blow more than 20% of the time, the occurrence of emissions less than 5% of the time would generally not be expected to affect NAAQS compliance (1% for the form of the standard coupled with blowing in that direction up to 1/5 of the time). Note that EPA's March 1, 2011

guidance[17] provides the rationale for excluding intermittent emissions that would not affect NAAQS compliance.

2.2.6 Updates to Dispersion Modeling Platforms

EPA should commit to evaluate for updating its air dispersion modeling platform every three years to account for the latest science on air dispersion, influence of building downwash, adjustments for wet plumes, and other "BETA" models and techniques. Between updates, EPA should allow "BETA" fixes to become default tools when peer-reviewed research indicates that such fixes are better than existing models.

EPA has repeatedly recognized that problems exists with its preferred computer dispersion models, but treats designated fixes to those problems as "non-default BETA option." Use of "BETA" fixes requires Model Clearinghouse approval, which substantially limits the utility of a fix. While fixes may require some period of technical assessment, prolonging non-default BETA designation of proven fixes does not foster the balance between the economy and environment called for by the Clean Air Act's PSD provisions.

EPA should make improved modeling tools a higher priority, including through allocating more funding for model development. Furthermore, EPA should conduct rulemakings to update Appendix W more frequently. Before the recent revision released in late 2016, EPA had not revised Appendix W since 2005. In comparison, EPA has revised the NAAQS for nearly every criteria pollutant in that same period. At a minimum, EPA should review Appendix W when it reviews NAAQS, since conducting such revisions concurrently with identification of improvements to models would better achieve the PSD program's explicit statutory purpose of ensuring economic development while protecting air resources. No matter what, revisions to Appendix W need to be more frequent than once a decade.

2.2.7 Photochemical Grid Modeling for Ozone and Secondary $PM_{2.5}$ Formation

EPA has adopted a new requirement that, in the absence of an analysis allowing a source to screen out of new modeling, applicants seeking PSD permits must use dispersion modeling to estimate the impacts from emissions of ozone and $PM_{2.5}$

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[17] EPA, 2011. Clarification memo available at http://www.epa.gov/ttn/scram/guidance/clarification/Additional_Clarifications_AppendixW_Hourly-NO2-NAAQS_FINAL_03-01-2011.pdf.

precursors on ambient air quality using an unspecified chemical transport model such as a photochemical grid model. Photochemical grid modeling is capable of modeling these general interactions, but is expensive and time-consuming, and could be cost-prohibitive when applied to an individual permit application. The Interagency Workgroup on Air Quality Modeling Phase 3 notes that "at this time, it is not clear that a robust reduced form model exists for either O_3 or secondary $PM_{2.5}$ for the purpose of assessing single source downwind impacts of these pollutants.[18]"

Requirements to model ozone and $PM_{2.5}$ precursors should be deferred for 3 years to allow for adequately demonstrated and approved dispersion modeling techniques to be developed that do not require lengthy Model Clearinghouse approval. If EPA insists on such requirements, it should provide a viable pathway towards project development by implementing measures that adequately screen out lower emitting sources from excessively expensive modeling requirements. More broadly, rather than relying on resource- and data-intensive models, EPA should instead increase research efforts into finding a single-source alternative.

To that end, EPA should direct more funding to research on dispersion modeling of secondary pollutant formation for a single source or small group of sources at an industrial facility. Developing models to economically model single-source ozone and $PM_{2.5}$ development would substantially reduce burdens on preparing the modeling demonstrations that are necessary to obtain a PSD permit. This research should include refined methods as well as conservative "streamlined" screening methods.

2.2.8 Dispersion Model Technical Fixes

The previous regulatory-default versions of AERMOD and the associated AERMET meteorological model significantly over-predicted short-term ambient pollution levels at low wind speeds, as shown by peer-reviewed model evaluation studies. EPA proposed in its Appendix W Proposal to make default two fixes for this problem, one that it called ADJ_U* and the other that it called LOWWIND3. In the final rule revising Appendix W, EPA has included a revised, less conservative, version of ADJ_U* in AERMET, but did not finalize LOWWIND3, or its proposed predecessors LOWWIND1 and LOWWIND2, as a regulatory default option in AERMOD. Furthermore, applications to the Model Clearinghouse for use of the LOWWIND tools require substantial justification and are difficult due to the considerable field work needed for support.

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[18] https://www3.epa.gov/ttn/scram/11thmodconf/IWAQM3_NFI_Report-07152015.pdf

EPA should work with the modeling community to make any necessary technical changes to LOWWIND3 and expedite its availability as an approved Guideline option for AERMOD through the Model Clearinghouse. EPA would then work to specify through an Appendix W rulemaking when its use would be appropriate.

The current AERMOD modeling for NO_2 significantly over predicts the conversion of NO to NO2 for short travel times (generally, within the first minute of travel), but such impacts can be limiting at nearby fencelines. The conversion is limited due to the finite time required for the titration of NO in the presence of ozone to form NO_2, as documented by Hanrahan[19] in his description of the PVMRM procedure. **EPA should incorporate this conversion limitation into AERMOD as soon as practicable.**

AERMOD significantly overstates the modeled impacts of fugitive particulate matter emissions from sources such as roadways, materials handling and storage facilities, roof vents, and slag pits. **Modeling should not include emission units with allowable or potential emissions below the "practical quantitation limit" (PQL) or at least some fraction of the "maximum detection limit" (MDL).**
Finally, **AERMOD's performance needs to be reevaluated in light of recent modifications, as well as for its performance of 1-hour concentrations.** EPA should dedicate funding for new data sets and reevaluate AERMOD performance.

2.2.9 Significant Impact Levels (SILs)

While the regulated community generally supports the use of SILs as a legally-justifiable component of the PSD program, EPA's methods for calculated SILs have been overly conservative.

EPA received comments on its August 2016 proposed SIL guidance to better achieve the programs goals by raising the thresholds to 4% of the respective NAAQS. **EPA should increase its proposed modeling thresholds to be more realistic so many more projects can proceed without the expense and delay of unnecessary regulatory steps while still protecting air quality.**

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[19] Hanrahan, P.L. 1999. The plume volume molar ratio method for determining NO2/NOx ratios in modeling—Part I: Methodology. *J. Air Waste Manage. Assoc.* 49:1324–31. doi:10.1080/10473289.1999.10463960

2.2.9.1 Ozone and $PM_{2.5}$ SILs

EPA's recently-issued draft guidance on ozone and $PM_{2.5}$ SILs utilizes a SIL calculation approach that results in SILs that are substantially lower than for other criteria pollutants, relative to their respective NAAQS. This approach looks to see if an impact is less than a level of statistical noise in air quality data. However, EPA utilizes a low confidence interval (50%) for this approach rather than the commonly-used 95% confidence interval. This results in the low SILs found in the draft guidance.

EPA should utilize a justifiable higher confidence interval in its SIL calculation approach or, at a minimum, utilize a more transparent and straight-forward approach like the 4%-of-the-NAAQS approach it has used for other SILs.

2.2.9.2 SILs vs. the Form of the NAAQS

The form of the SIL, which is currently the highest concentration, should be adjusted to be consistent with the form of the pollutant NAAQS (e.g., 4th highest 8-hour average for ozone). Use of the highest concentration inappropriately results in outlier events controlling the analysis and minimizes the utility of SILs as an effective screening tool.

2.2.10 Ozone and $PM_{2.5}$ Precursors

Development of appropriate Modeled Emission Rates for Precursors (MERPs) could provide a means for permit applicants to avoid expensive, time-consuming, and unnecessary photochemical modeling for single-sources. EPA's guidance should provide a clear path for using this type of tool to satisfy the requirement to address precursor emissions.

MERP development would benefit from a clear path for approval of the use of EPA's modeled location's MERPs for an applicant's site. For example, although EPA provides example MERPs based on the drafts SILs, EPA needs to explain exactly how the background concentrations of NOx and VOCs and meteorological factors should be used to demonstrate suitability to a particular site. **EPA should also establish a pre-approved modeling platform for ozone and $PM_{2.5}$ modeling allowing MERPs to be developed covering all areas of the country.** The proposed system has the potential for inconsistency and confusion, resulting in permitting delays and uncertainty. The same platform could be used for states to develop MERPs and for site-specific ozone or $PM_{2.5}$ modeling if required.

As stated in section 2.2.7, requirements to model ozone and $PM_{2.5}$ precursors should be deferred for 3 years (similar to the CALINE3 phase-out that EPA agreed

to) to allow for development of adequately demonstrated approved modeling techniques that do not require lengthy Model Clearinghouse approval.

2.2.11 Dispersion Model Clearinghouse Approval

With implementation tools and policies increasingly falling behind standards, the regulated community must increasingly rely on more realistic non-default models to make permitting demonstrations. Yet EPA now requires formal consultation with the Modeling Clearinghouse and documentation of that consultation whenever an alternative model is used. This requirement will encumber applicants seeking PSD permits. Moreover, elimination of CALPUFF as a preferred model and a requirement to use photochemical grid models for permitting without designating any preferred model will increase the number of alternative model approvals that will be required. Requiring formal approval from the Model Clearinghouse for all such actions will delay the already burdensome alternative model approval process.

EPA should work to make the alternative dispersion model approval process more efficient, rather than add additional red tape to the process. **Specifically, when EPA finds that it cannot identify a broadly-applicable model for use under a set of conditions such as long-range transport or the impact of secondarily-formed pollutants attributable to a single source of precursor pollutants, it should allow the state involved (or other involved regulatory authority) to determine what model should be used.** This approach should speed permitting and SIP development and encourage development and demonstration of appropriate models.

2.2.12 Improvements to Characterization of Pollutant Emission Rates

2.2.12.1 More Accurate Representation of Emission Rates

The regulated community understands that certain of the assumptions that EPA utilizes when conducting permit applicability assessments, permitting, and compliance assessments are unreasonably conservative. In particular, the assumption that a source's emission rates are continuously held at high levels is unrealistic and undermines successful compliance demonstrations.

Guidance providing more realistic treatment of emission rates used in computer dispersion modeling should be issued promptly to provide more accurate predictions of ambient concentrations. Modeling of actual (versus allowable) emissions should be allowed, especially for background sources. Such guidance would become more imperative if EPA insists that emissions from startup and shutdown activities be quantified and evaluated for short-term (i.e., 1-hour to

24-hour average) standards. This would lead to a change in Section 8 of the Appendix W guidance that is overdue. The only sources for which allowable emissions might be required should be sources for which there is no record of actual emissions. The Electric Power Research Institute (EPRI) has developed and has made publically available[20] a methodology for more realistically estimating variable emission rates. Known as the "Emissions Variability Processor" (EMVAP), this methodology conservatively estimates short-term NAAQS design concentrations for variable source emissions using a robust Monte Carlo approach. The application of EMVAP or similar conservative statistical tools could avoid the application of unnecessarily conservative emission estimates, even for sources lacking continuous emissions monitoring data, such as new sources.

A variation on the EMVAP approach is EPA's "Randomly Reassigned Emissions" (or RRE) application described in Appendix B of the 2014 SO_2 nonattainment guidance.[6] This approach is more "brute force" than EMVAP in that instead of post-processing the modeling of just 1 to 5 years with hundreds or thousands of emission variations, the RRE approach requires the modeling (AERMOD) to be exercised for 100 runs. The flexibility of RRE is that discrete peak emission events can be designed for case-specific durations and magnitudes, along with a prescribed emission rate sequence.

Facilities should be allowed to use the best available emission factors even if EPA has not formally approved them under the AP-42 program, which is understaffed and underfunded. EPA should issue clear guidance on the use of emission factors that encourages use of the latest emissions data for air permitting.

2.2.12.2 Primary $PM_{2.5}$

The current emission factors for $PM_{2.5}$ contained in EPA's principal compendium of pollutant emissions data[21] utilize data collected with the old version of Method 202 which has been revised due to its known positive bias. **EPA should remove all such biased data from its emissions data compilation and replace them with data obtained using current test methods.**

Additionally, EPA's emissions data compilation lacks reliable primary $PM_{2.5}$ emission factors for emission activities such as vehicle traffic on roadways, materials handling and storage facilities, roof vents, and slag pits. **EPA should allocate resources to**

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[20] Available at https://sourceforge.net/projects/epri-dispersion/files/EMVAP/.

[21] EPA's AP-42: Compilation of Air Pollutant Emission Factors

develop appropriate emission factors and/or promptly review and incorporate updated emission factors developed by industry.

2.2.12.3 Improvement of Particulate Matter Measurement Methods

Using current EPA test methods, emissions from sources with wet control devices and low emitting sources like gas-fired boilers are consistently overstated by as much as a factor of ten.

EPA should update its emission test methods, codified in 40 CFR Parts 51 and 60, to account for artifacts and other factors that distort emissions estimation. In the interim, EPA should allow, through guidance, approaches to either minimize or compensate for artifact biases. Alternatively, EPA should exclude CPM from affected sources known to create positive artifact biases (combustion sources with sulfur dioxide (SO_2) and free ammonia (NH_3), for PSD applicability analyses or demonstrating compliance with permit limits.

EPA has been presented with information sufficient to allow "zero bias" corrections for all measurements. **EPA should immediately approve the use of this correction technique.** EPA should continue to work with industry to further develop OTM-036 ($PM_{2.5}$ wet test method) and CTM-039 ($PM_{2.5}$ dilution method), with an ultimate goal of promulgating versions of these as regulatory methods. In the longer term, EPA should allocate resources to fix the remaining method artifact and bias issues with current test methods.

2.3 NAAQS Implementation Improvements

2.3.1 Background

Every five years, EPA must decide whether the National Ambient Air Quality Standards (NAAQS) are sufficiently protective of public health. In the absence of clearly recognizable and quantifiable adverse health threshold levels of NAAQS pollutants, EPA must clearly recognize and embrace its responsibility for making risk management policy decisions to determine appropriate levels and not abdicate as a scientific decision to be answered by the CASAC. Further, the role and responsibilities of the CASAC as science advisors should be clarified to assure that recommendations are science based facts to inform EPAs decision but not the committee's policy preferences. The time allowed between such reviews is too short for adequate analysis of the current science, current or expected improvements in air quality and implementation of any new changes, and **the Clean Air Act review cycle should be changed to every ten years**. In addition, tremendous work load is placed on states with every NAAQS revision including reviewing air quality data

and modeling, reviewing and understanding the changes and implementation procedures, considering and submitting non-attainment designations to EPA, responding to their questions, and ultimately developing very detailed State Implementation Plans with involvement of many stakeholders. This work takes limited state resources away from more routine but very important permitting reviews that can delay investments and hurt global competitiveness.

Over time, NAAQS (for particulate matter, ozone, sulfur dioxide and nitrogen oxides) have steadily dropped closer to background levels (or arguably below background levels in some cases, such as ozone) and it has becoming increasingly difficult to demonstrate that air quality standards will continue to be achieved with the current permit and air quality modeling process that must be followed. As discussed in depth previously, the challenges with the ever-tighter NAAQS are exacerbated by a lack of (or inappropriate) emission measurement methods, poor estimates of emissions and inappropriate use of air dispersion models where performance has not been validated.

2.3.2 Revised NAAQS Timing

EPA has been promulgating lower air quality standards without developing a clear plan for their implementation. This disconnect creates permitting difficulties for manufacturing and inhibits job growth. EPA should issue implementation rules, guidance, and technical updates concurrent with a newly-revised NAAQS. This would encourage a NAAQS process that is informed by the challenges created by a more stringent NAAQS and would position EPA to address issues that emerge throughout implementation. In order to effectively analyze and address implementation concerns, **NAAQS should not go into effect for permitting of new sources until the accompanying implementation guidance is proposed, subjected to public comment, and then promulgated.**

If contemporaneous action on implementation is not possible, EPA should issue implementation rules, guidance, and technical updates soon after a revised standard is promulgated and before new or revised requirements become effective for any purpose. EPA's Ozone Implementation Memo recognized that "the owners and operators of emissions sources need clarity and certainty about regulatory requirements, especially when there are changes in air quality standards that may affect their construction and operations."[22] To eliminate delays in processing of PSD permit applications that are under review when a new NAAQS is established, **the**

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[22] *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements*, 80 Fed. Reg. 12264 (March 6, 2015).

effective date for a new NAAQS should be either three years from promulgation OR when state designations have been approved by EPA.

2.3.3 International Emissions and Non-Attainment Area Designations

EPA's latest ozone NAAQS implementation proposal does little to address the challenge posed by internationally-transported ozone. Although EPA says that most modeled ozone air quality values that exceed the NAAQS are due primarily to emission sources within the US (see 81 Fed. Reg. 81303), EPA's own data indicate that background ozone significantly contributes to modeled ozone design values throughout the country.[23] The current tools provided by EPA will not effectively address the implementation difficulties caused by the near-background NAAQS, and additional flexibility is needed. **In instances where emissions only outside the United States result in a monitored non-attainment situation, EPA needs to allow for reasonable new source development within the United States while addressing through international negotiations the cause of the high monitored levels.**

2.3.4 Ambient Monitoring Improvements

Advancements in monitor technology are expected to substantially reduce the costs of deploying and operating ambient monitors. This could offer potential new opportunities for more efficient NAAQS implementation processes. However, new monitor technology must be verified and the results verified in order to prevent regulatory decisions from being made based on inaccurate data. **EPA should uniformly develop and advance criteria to verify new ambient monitoring technology before used in any regulatory or enforcement context.**

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[23] According to the NAAQS Implementation Coalition's review of EPA's December 15, 2015 White Paper: Implementation of the 2015 Primary Ozone NAAQS: Issues Associated with Background Ozone, 18-24, Tables 2(a) and (b) show that emissions other than those from manmade US sources comprise 40-50% of modeled 2017 design values in numerous counties across the country. Those contributions increase to as much as 70-80% of modeled 2017 design values in counties throughout California and the Intermountain West.

3.0 Boiler MACT Remand

EPA has spent over 20 years working on promulgating the Industrial, Commercial and Institutional Boiler MACT rule. Industry was readying to comply with the 2004 rule only to have the court overturn it in 2007 after the vast majority of facilities had taken necessary steps to be ready to meet the rule as the compliance date neared. This resulted in over $200 million in stranded costs in the forest products industry alone. The forest products industry has provided significant emissions, control, and economic information to EPA over the years including during the comment periods as new versions of the rule were proposed and finalized. In fact, we conducted emission tests on best performing boilers to augment EPA's data set for setting MACT floors[24]. The 2013 rule, as subsequently amended in 2015, is generally achievable and affordable. And the courts have largely upheld the framework EPA used for setting the MACT limits and subcategories with one exception. In July 2016, the D.C. Circuit Court found that EPA had inappropriately excluded certain best performing boilers from their MACT floor analysis and vacated those limits.

EPA has identified about a dozen existing emission limits that may be impacted by the exclusion of certain data sets. However, it appears that some of the adjustments will be relatively modest.[25] Examining EPA's record suggests that most of the changes also should be modest with perhaps a couple of exceptions.

With support from industry parties, the D.C. Circuit Court changed the remedy from vacatur to remand in December suggesting a more straightforward "mechanical" recalculation of effected limits should be done. It is time for EPA to conclude this 20-year rulemaking saga and provide regulatory certainty to manufacturers who have already invested over a $1 billion to comply. **Within the next six months, EPA should use the data set that was available to it when the final rule was promulgated and propose revisions to the Boiler MACT emission limits that are cost-effective and meet the court obligations.**

Doing so will help ensure that our members will not be penalized for the capital and operational steps already taken to comply with this MACT rule. Our goal is to avoid additional capital expenditures to meet yet even more stringent standards that might otherwise occur if EPA were to instead reopen the MACT floor analysis using the

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[24] EPA sets MACT floors based on the average of the best performing 12% of units in a subcategory of boiler types.

[25] See Panagiotis E. Tsirigotis September 12, 2016 declaration to DC Circuit Court; USCA case #11-1108, document # 1635275, page 10.

most recently completed upgraded and added emission control systems installed to meet the current rule.

4.0 Pulp Mill Risk and Technology Review Rule

EPA is obligated to perform risk and technology reviews (RTR) of its 40 CFR 63 MACT standards to determine if updates are necessary to address technology improvements and risk concerns. EPA recently conducted its RTR of 40 CFR 63, Subpart MM, which covers chemical recovery combustion sources at our members' pulp mills. We provided detailed comments on the December 30, 2016 proposal to Docket EPA–HQ–OAR–2014-0741. The $200 million in capital and operating costs that would result from the proposed changes are not justified especially given the conclusion that risks meet the ample margin of safety criteria.

EPA reached the correct conclusions that risks from the source category are acceptable, no additional emissions reductions are necessary to provide an ample margin of safety, and that there have been no advances in practices, processes, or controls since promulgation of Subpart MM. We concur that these results support that there should be no changes to the emission standards. However, we also believe that the results of the RTR mean that EPA should not make the changes it proposed for the opacity operating parameter limit and monitoring exceedance levels. EPA has provided no evidence that operating practices have changed since promulgation of Subpart MM to support the proposed changes. The proposed changes may cost $200 million in additional capital and are clearly not cost effective (EPA estimates the cost of the proposed opacity changes at >$5.5 million/ton HAP, which is likely an underestimate). EPA's estimated cost of $36,800/ton PM would not be cost effective in a BACT analysis and should not be considered cost effective in an RTR rulemaking where there is no risk or technology-related basis for the proposed change. EPA proposed to incorporate other additional monitoring, recordkeeping, and reporting requirements into the revised rule that also serve to add cost without creating environmental benefit. The Subpart MM RTR rule is a prime example of where the principles set out in recent executive orders should be applied.

5.0 Plywood and Composite Wood Products (PCWP) MACT and Risk and Technology Reviews (RTR)

In 2004, EPA set PCWP MACT limits for most presses and dryers at wood product mills. In 2007, a court ruled that EPA must set limits for additional smaller miscellaneous emission sources at wood product and saw mills. In addition, EPA must determine eight years after a MACT is issued whether any significant risks remain and whether control technology has changed. The deadline for this risk and technology review has passed. EPA was sued for missing the deadline, and a court recently issued an order that puts EPA on an accelerated rulemaking schedule regardless of other priorities.

Fortunately, last year EPA began the first step in the rulemaking process by developing a draft information collection request (ICR) for the wood products sector. While the American Wood Council believes good regulations need to be based on sound information, the draft ICR is unnecessarily burdensome including a proposed industry emission testing plan which could cost almost $10 million. In November, AWC identified the following concerns and suggestions:

- The estimated burden is substantial and can be reduced in a manner that still provides EPA the information necessary to conduct the risk and technology review.
- More than 90 days are needed to provide quality responses to the proposed ICR.
- The survey should be limited to operating major sources.
- Requested emissions data should be limited to recent site-specific test data. Operating parameter data that is not concurrent with emissions test data should not be required. Information on work practices that have been established to reduce HAP emissions is more informative than snapshots of operating parameter data.
- The Phase II test plan should be dropped since capture and measurement of HAP emissions for identified sources is not practicable at the listed sources. It will be challenging, if not impossible, to completely separate emissions from different types of sources that are located in close proximity to one another within the same building. We are concerned about the meaningfulness of any new data collected under the proposed test plan, especially at the high estimated cost of testing
- A resin or adhesive-based work practice is an appropriate standard for many of the remanded sources which could be grouped together for regulatory simplicity.

EPA should reduce the burden of its upcoming mill survey (EPA ICR No. 2552.01) by focusing on essential information to the RTR process and avoid unnecessary emission testing. EPA should utilize information collected by NCASI which represents the vast majority of emissions data collected for these sources.

The original 2004 PCWP source category was defined to include a long list of process equipment, but the original rule set emission standards only for the largest emission sources that had been controlled in practice; the presses and dryers. The remaining pieces of equipment are relatively small HAP emitters and not configured in such a manner that capture and control of emissions is practical or cost effective. In addition, many of these sources are co-located in such a way that it would be impossible to distinguish HAP emissions from each type of process. A work practice standard approach would be the best solution and allowed under the Act. Any strict numeric requirements such as limitations on process times and temperatures could constrain production and make it impossible to produce certain products or limit new product development. **EPA should set reasonable work practice standards for equipment that is part of a MACT source category but not technically or economically feasible to capture and control.** In addition, we should use the discretion under the Act to exclude emissions that do not present a significant risk or are de minimis contributors to the overall emissions profile of the source category.

Finally, PCWP MACT is premised on costly energy-intensive controls, such as thermal oxidizers that while reducing HAPs by 90% also emit ozone-forming NOx and greenhouse gases. As part of the RTR process, **EPA should consider ways to encourage newer, lower emitting control technologies like biocontrol devices that use less energy even though their performance may be somewhat less than the current 90% destruction efficiency requirement.** Furthermore, EPA should not consider increasing the destruction efficiency of currently required controls because of the additional energy usage and the additional NOx and CO_2 emissions associated with additional energy usage. Increasing the destruction efficiency could severely limit the ability to use controls, such as catalytic oxidizers that significantly reduce energy usage.

6.0 Startup, Shutdown, and Malfunction (SSM) Policies

EPA's recent trend in RTR rulemakings to require sources to meet the same emission limitations during periods of startup, shutdown, and malfunction represents an unauthorized change to existing MACT standards. Absent any new or improved technologies, there is no basis for EPA to revise standards to indicate that they apply at all times. EPA's SSM approach is not the product of the technology review described in CAA section 112(f), it is not required by case law, and it is inconsistent with decades of EPA practice and judicial interpretations of NESHAPs and NSPS. Rather, the approach reflects an incorrect interpretation of legal precedent and an EPA policy preference to ignore the incapability of MACT control technology to meet the numerical emission limitations during some periods of operation, even at the best-performing facilities.

Section 112(d) standards based upon the performance of the best-performing facilities are supposed to represent "the emissions control that is achieved in practice" by the best performers, which means that the best-performing mills would not violate the standards, which "only results if 'achieved in practice' is interpreted to mean 'achieved under the worst foreseeable circumstances.'" *Sierra Club v. EPA*, 167 F.3d 658, 665 (D.C. Cir. 1999). The courts (and EPA) have recognized that there is variability in the performance of control technologies, which needs to be accounted for in establishing emission limitations based on the MACT floor. See, e.g., *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 862-865 (D.C. Cir. 2001). For over 30 years, EPA had recognized that technology-based emission standards need to address the fact that even the best available control technology may not be able to meet emission limitations, derived from data on steady-state performance, during SSM periods. See, e.g., *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 432 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974); *National Lime Ass'n v. EPA*, 627 F.2d 416, 430-31 (D.C. Cir. 1980).

The portion of the General Provisions that provided an exemption during SSM periods was vacated by the D.C. Circuit in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), and EPA asserts that the 2008 *Sierra Club* decision requires EPA to remove the concept of exemption from emission standards and use of an SSM plan from individual MACT standards. That decision does require EPA to make corrections to the individual MACT regulations but it does not, however, either require or justify EPA restricting or eliminating provisions addressing the effect of SSM events on the ability to meet emission limitations.

The only holding of the 2008 *Sierra Club* decision was to reject the General Provisions' blanket, open-ended exemption for emissions during startup, shutdown, and malfunction periods, finding it to be inconsistent with Congress's intention that "there must be continuous section 112-compliant standards" for sources subject to MACT standards, rather than periods where no standard of any kind applies. See 551 F.3d at 1027. The problem with the General Provisions SSM exemption, in the Court's eyes, was that it allowed sources to be exempt from any standard at all, and that it was not derived (by EPA's admission) applying the factors in CAA section 112(d) or 112(h).[26] See *id.* at 1027-28, 1030. The opinion in the 2008 *Sierra Club* case does not say that the same standard must apply at all times; in fact, it says specifically that the CAA does not require that. See 551 F.3d at 1021, 1027. And the decision also recognized that work practice standards that apply during SSM events could (if they meet the substantive criteria of section 112) result in a set of section 112-compliant standards for the source that apply at all times. See 551 F.3d at 1027. In other words, the judicial opinion that EPA cites as justification for eliminating recognition of the effect of SSM events in individual MACT standards explicitly allows EPA to address those effects, through alternative numerical limitations that apply during SSM events or through work practice standards that apply during such periods.[27] In fact, the approach EPA is proposing would not establish "continuous section 112-compliant standards" that the *Sierra Club* decision concluded are required, since CAA section 112 requires that MACT emission standards must be "achievable" (112(d)(2)), and, under section 112(d)(3) (the MACT "floor"), those limitations must on average be "achieved" by the best performers – neither of which is true of emission limitations that ignore the effect of SSM events on compliance with the numerical limits contained in the standards.

The Court of Appeals decision last year in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579 (D.C. Cir. 2016), does not require EPA to abandon its previous technical determinations about what standards are achievable and represent the best performers, in favor of EPA's latest policy preference of ignoring emissions that can be anticipated to occur during malfunctions. That decision merely held that EPA's

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[26] EPA told the Court that the General Provisions SSM exemption struck down in *Sierra Club* was not an alternative standard based on the work practice standard authority. See 551 F.3d at 1028. Indeed, EPA argued in that case that section 112(h) was irrelevant to its authority to exempt excess emissions during SSM events. *Id.* at 1030 (Randolph, J. dissenting).

[27] AF&PA is not suggesting, as EPA implies at 81 Fed. Reg. 97076, that accounting for malfunctions in the standards means EPA has to set numeric emission limitations, applicable at all times, that sources could meet during malfunction events. To the contrary, AF&PA is merely arguing that EPA can promulgate emission standards that apply to normal, steady-state operations and that reflect the performance of MACT technology during such periods, providing for alternative standards that apply during other operating (SSM) periods.

interpretation of section 112(d) as allowing it to base section 112(d) standards on emission control performance without regard to malfunctions is a permissible one, not that it is required. See 830 F.3d 606-608. EPA is free in the current rulemaking to stick with its previous technical determinations and policy preferences, and provide that the numeric emission limitations contained in the individual MACT rules, which were based on steady-state operation, do not apply during startup, shutdown, or malfunction events. Emissions during that time could be controlled by "design, equipment, work practice, or operational standard[s]" under CAA sections 112(h) and 302(k).

In fact, as part of the Subpart MM RTR review, EPA arguably has already proposed such alternative standards. EPA proposed a new "general duty" requirement, applicable at all times, in section §63.860(d). EPA does not explain the legal authority for such a provision, however. See 81 Fed. Reg. 97077. Such a provision, if it is an emission standard that EPA would promulgate under CAA section 112, would provide a 112-compliant emission standard that applies during malfunction events. Thus, if Subpart MM sources were exempt from compliance with the numerical emission limitations included in revised Subpart MM (as EPA determined appropriate in promulgating the Subpart MM standards in 2001, and as they should be, since those emission limitations do not reflect available technology or the performance of best-performing sources during malfunction events), then the revised Subpart MM standards would in fact contain a set of 112-compliant emission standards that apply at all times, as the 2008 *Sierra Club* decision requires. If, on the other hand, EPA were to claim that section §63.860(d) is not promulgated pursuant to EPA's rulemaking authority in CAA section 112, then EPA would not have identified any statutory authority for it to include section §63.860(d) in the revised subpart MM standards.

EPA should withdraw the SSM SIP call as unnecessary to meet air quality standards and not act on any of the recent SIPs that have been submitted. In addition, EPA should adopt interpretations of SSM that allow work practice emission standards that account for the limits of control technology and implemented on a site specific basis.

7.0 Improvements to the Na tional Ambient Air Quality Standards (NAAQS) Setting Process

7.1 Cohesive Approach to NAAQS Implementation

A cohesive NAAQS strategy that pairs standards development with commensurate attention to standards implementation is becoming increasingly important to meet the purpose of the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. That purpose is to "insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources." The multiple layers of conservatism that EPA has historically built into its NAAQS implementation policies and tools have long been known to significantly over-predict ambient air impacts, particularly where compounded by multiple layers of conservative assumptions. Prior to recent NAAQS changes for NO_2, SO_2, $PM_{2.5}$, and ozone, there was sufficient "headroom" between NAAQS and facility emissions, plus ambient background and offsite source impacts. Thus, this conservativism was not generally problematic.

However, with the margins between the NAAQS and ambient impacts shrinking or disappearing as more stringent standards approach background levels, the regulated community has found that over-prediction resulting from these conservative policies and tools can be a significant, even determining factor, in project permitting demonstrations. EPA exacerbates these challenges by issuing implementation guidance for revised NAAQS years after the standards go into effect, guidance which often fails to address permitting concerns. Because EPA does not address implementation concerns early in the standards review process, it instead inefficiently and inconsistently develops tools and policies in response to, rather than anticipation of, implementation challenges (e.g., three clarification memos for 1-hour NO_2/SO_2 NAAQS, necessary reliance on non-default model options, and multiple case-by-case approvals). This leads to the general, overarching, and perpetual challenge of NAAQS implementation increasingly falling behind the NAAQS themselves.

EPA's attention to implementation issues must match its efforts to revise standards. EPA should incorporate implementation planning early in the standards review process so that the Agency has a clear plan to issue updated implement programs when it sets a new NAAQS, not years later. Addressing implementation issues before standards become effective would resolve many of these concerns. Implementation tools and policies should be issued concurrently with revised standards. EPA should apply the previous standard to permitting analyses until these tools and policies are fully developed.

Finally, the applicability of a new NAAQS for PSD (attainment areas) should coincide with when the new air quality designations are approved by EPA. Aligning the PSD and NSR timeframes for attainment and non-attainment areas is more equitable and allows the regulated community and states to better plan for permitting changes due to a lower NAAQS and understand the implications of latest NAAQS implementation guidance.

7.2 Standards Review Process

7.2.1 Policy Assessment Phase

Policy recommendations are created by career staff who control the summaries of science and policy options that are presented to the senior administration staff that are in charge of setting policy. We recommend that EPA establish a position within Deputy Administrator's office to be filled by someone from outside the Agency with the necessary scientific background to provide policy advice to senior management.

The Clean Air Act does not require, or even discuss, preparation by EPA's career staff of a Policy Assessment (formerly known as a Staff Paper) that contains regulatory recommendations. As a practical matter, these extra-statutory documents, which are prepared without the involvement of senior agency officials, limit the regulatory policy options available to EPA management. EPA should either return to the process outlined in the "Peacock Memo[28]," which replaced the staff assessment document with an Advance Notice of Proposed Rulemaking, or go straight from the Integrated Science Assessment (the air quality criteria required under section 108 of the Act) to a rulemaking proposal, allowing an extended comment period on the proposal. If EPA insists on retaining the Policy Assessment Document, then it should be prepared by the policy advisor recommended above.

Evidence reviewed when setting a NAAQS has significant limitations, is highly uncertain, and is not appropriately quantified within the Integrated Science Assessment or Regulatory Impact Analysis. These limitations apply to all the scientific and risk evidence, but are particularly applicable to epidemiological evidence and resulting risk estimates. An Integrated Uncertainty Analysis, as recommended by the National Academy of Sciences, would enhance understanding of the adequacy of the evidence as a basis for further regulation. Because some level of risk above zero is acceptable and there are multiple important uncertainties with the epidemiologic evidence, EPA needs a clear framework for determining both

[28] https://www3.epa.gov/ttn/naaqs/pdfs/memo_process_for_reviewing_naaqs.pdf

the level of effects that is sufficient to imperil public health and how certain the evidence of those effects should be.
An Integrated Uncertainty Analysis presents an improved method for dealing with uncertainty and improving the quality of public comments EPA receives. Therefore, EPA should be required to include an Integrated Uncertainty Analysis within any Risk/Exposure Assessment or cost-benefit analysis that is done, including the Regulatory Impact Analysis looking at confounders such as other pollutants, lifestyle choices, etc. "Co-benefits" should not be considered in the conclusions of these analyses, particularly if those "co-benefits" are associated with pollution exposures not otherwise deemed to present an unacceptable health risk. The analyses should be compared to projected background levels rather than contemporaneous background.

7.2.2 Clean Air Scientific Advisory Committee (CASAC)

CASAC should be comprised of well-qualified experts representing diverse perspectives to provide balanced guidance to the EPA Administrator on the full range of issues, including NAAQS implementation, outlined by the Clean Air Act for CASAC review. However, CASAC has in recent years been composed of members with generally similar backgrounds in terms of geography, background, and research interests. Subject matter panels under CASAC have likewise lacked diversity.

EPA should be encouraged to seek out new voices that represent varying perspectives on the scientific, policy, and standard implementation issues that the Clean Air Act charges CASAC to address. There should be a better balance of representation on CASAC between academia, environmental non-governmental organizations, states, and industry. Members with experience addressing uncertainty analysis should be included. Consideration should be given to policies regarding rotating terms that are staggered to allow for members to rotate on and off CASAC in a structured manner and term limits, as well as retirement of members who have served several terms. CASAC panels should be similarly reformed and augmented with new members to provide greater diversity in perspective.

The Clean Air Act defines CASAC as an "independent scientific review committee." A significant number of members of both CASAC and its panels, however, conduct research that is funded by EPA. While CASAC rules prohibit it, there have been instances where members have discussed studies conducted by themselves or their research teams. Moreover, EPA funding may influence the perspective of those receiving such funding on studies in which they are not personally involved.

EPA should review and revise CASAC's conflict of interest standards, particularly on receiving EPA funding, in order to promote increased transparency in CASAC's review process. Moreover, diverse membership on CASAC and its panels will help counteract any latent conflicts that may exist.

In the past, CASAC's response to EPA would provide for various positions. For example, final reports would include a minority response or capture divergent views. However, the process more recently has been to drive CASAC members towards a consensus on a single response. This serves to hide the full range of interpretation that can be supported by the scientific evidence in the final response.

CASAC should be encouraged to include in the public record letters that reflect the full range of viewpoints by CASAC members, including reporting minority views and the reasoning behind them. The Clean Air Act directs CASAC to advise the EPA Administrator not only on NAAQS adequacy and associated research, but also on issues critical to the regulated community, including background pollutant concentrations and "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards." However, CASAC has yet to take substantial action to assess such impacts. CASAC has indicated that it is prepared to conduct such analysis, but that EPA has yet to direct it to do so through charge questions.

8.0 Risk Management Plan Rule Improvements

8.1 General – update or replace given reconsideration petition to EPA

In December 2016 the EPA Administrator signed revisions to the requirements for Risk Management Programs (RMP) under the Clean Air Act (i.e., 40 CFR Part 68). These revisions contain numerous changes that substantially impact regulated facilities. On March 29, EPA published in the Federal Register recognition of our coalition petition for reconsideration of the RMP Amendments. We acknowledge and appreciate the further delay of the effective date of the final rule to February 19, 2019 to allow the Agency time to revise the RMP amendments.

EPA's approach to revising the RMP Program did not include a sufficiently thorough evaluation of how effective the program has been. EPA's review of accidents indicated that many have been associated with processes and chemicals that are not even regulated under the RMP Program, and also that others are associated with circumstances under which the requirements of the current rule were not completely followed. Thus, many of the recent program changes would not have been effective in preventing or limiting the consequences of these events.

8.2 Better Coordinate RMP Rulemaking with OSHA PSM Rulemaking

EPA did not coordinate the recent changes to the RMP Rule with the commensurate changes that OHSA is required to make to its Process Safety Management (PSM) Rule. This is expected to cause duplication of effort and regulatory misalignment between the two programs.

Changes to both the RMP and PSM programs were triggered in 2013 by the issuance of President Obama's Executive Order 13650 (entitled "Improving Chemical Facility Safety and Security.") Section 6(c) of that Order directed EPA and OSHA to determine whether the scope of the RMP Regulation and the OSHA Process Safety Management (PSM) Standard should be expanded for the specific purpose of addressing additional substances and types of hazards. In order to adopt an amendment to its PSM Standard, OSHA must establish, through substantial evidence in the record as a whole, that the risk of concern is not merely a significant risk of harm, but a risk of catastrophic harm. This means that every significant risk that may be posed by chemicals does not pose the type of catastrophic risk that would justify coverage under the PSM standard.

Furthermore, even a significant catastrophic risk with respect to a particular chemical not currently covered by the PSM standard does not justify expanding the standard to be applicable to all covered chemicals. Given the rulemaking requirements applicable to OSHA, it was not appropriate for EPA to (in effect)

circumvent the rulemaking requirements that Congress determined were appropriate for OSHA through the recent amendments to the RMP Rule.

Historically, EPA has coordinated its RMP rulemaking with the PSM process as OSHA has authority over workplace safety. Coordinating PSM and RMP rulemaking helps to ensure that the regulatory requirements of both programs complement one-another and are not in conflict. EPA emphasizes this point in the preamble of the proposed changes to the RMP Program:

> "The EPA RMP regulation closely tracks the accident prevention measures contained in the OSHA PSM standard because Section 112(r)(7)(D) of the CAA requires EPA to coordinate the RMP regulation with "any requirements established for comparable purposes" by OSHA. Consequently, the OSHA PSM standard and EPA RMP regulation are closely aligned in content, policy interpretations, Agency guidance, and enforcement. Since the inception of these regulations, EPA and OSHA have coordinated closely on their implementation in order to minimize regulatory burden and avoid conflicting requirements for regulated facilities."[29]

However, EPA's decision not to align the recent revisions to the RMP Rule with OSHA's PSM rulemaking process has created a number of issues for the regulated community, as described further below.

In essence, any change that EPA makes to the RMP Program 3 Accidental Release provisions affects their corresponding PSM element. It is unreasonable to have two sets of rules on how to address the same element that is required by PSM and RMP. The two major changes to EPA's RMP Rule that effectively alter the PSM elements are 1) requiring a Safer Technology and Alternatives Analysis (STAA) as part of the Process Hazards Analyses (PHA) and 2) requiring root cause analyses when conducting an Incident Investigation for all incidents. One confusing aspect of these additional requirements is that they would apply only to some of the PSM regulated processes at a covered facility. While the PSM program allows facilities to consider conducting a root cause analysis when investigating incidents or evaluating inherently safer technology in the Process Hazards Analysis, OSHA appropriately makes such considerations the discretion of the owners and operators of the facility.

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[29] 81 Federal Register at 13697

In addition, it is possible that OSHA may propose other changes to PSM that would materially alter a facility's approach to Program 3 RMP Prevention Program elements. Thus, EPA and OSHA should coordinate RMP rulemaking changes and OSHA PSM program amendments in order to allow the regulated community to consider both actions in the same context and avoid duplicative and burdensome requirements that would not increase workplace safety.

8.3 Limit Scope of Root Cause Analysis

Root cause analyses are labor intensive. Given realities of needing to establish priorities for the limited number of safety staff at facilities, some companies use a hazard rating so that efforts in conducting root cause analyses can be focused on incidents that have resulted in a catastrophic release. The recent changes to the RMP rule that extended the requirement that a root cause analysis be conducted for all near misses represent a significant challenge for little potential benefit. The additional time needed to conduct a root cause analysis for all near misses unnecessarily delays the findings of the incident investigation and associated changes to the process, procedures, or training/communication of lessons learned. It is more appropriate for a root cause analyses to be required whenever a catastrophic release occurs, as was previously the case under the RMP Program. A less rigorous and more streamlined incident investigation process is appropriate for near misses.

Given that a root cause analysis takes considerable effort to complete and associated solutions may require a substantial time frame to develop and implement, EPA should provide clarification that the RMP Program allows for process operations to continue after the immediate causes for the incident have been fully remedied and corresponding Management of Change requirements have been met, even as the root cause analysis continues.

8.4 Third Party Audit Requirements

A poor accident history record at facility could be an indicator that appropriate accident prevention program measures do not exist at a facility. A regulatory audit could be an important tool to identify and initiate necessary changes. Nonetheless, there are several issues associated with the third-party audit requirements under the RMP Program that should be carefully considered. The recent Program revisions included changes to the third-party auditing requirements that will have significant consequences for the regulated community without necessarily reducing potential exposure risks to the public.

EPA should reconsider the recent changes to the Program's third-party audit requirements in light of the following:

- The vast majority of reported RMP-reported incidents do not result in serious injury or an off-site consequence. As such, a single reported incident is unlikely to be indicative of either inadequate audits or an inadequate prevention program at a facility. EPA revise the criteria that triggers the need for a third-party audit using a more appropriate threshold, such as multiple releases in a given timeframe or the seriousness of the incident.
- The changes to the third-party audit requirements of the RMP Program will significantly increase the demand for qualified audit professionals, and the need for these professionals is likely to outstrip the supply. This will undoubtedly lead to an increase in the use of less qualified third-party auditing staff and ultimately increase the cost of audits with potentially a decrease in their effectiveness.
- Requiring facilities to exclusively use third-party auditors will change the nature of the audit process, and add significant additional cost and time to the audit process (without justifiable benefit). Owing to fear of potential liability for errors and omissions, third parties will add unnecessary complexity to the auditing process, potentially loading audits with trivial findings and causing unnecessary delays in developing audit findings and recommendations and their ultimate implementation. The learning curve associated with third party auditors becoming familiar with the process, the process hazard analysis and previous audits can be avoided; such specific details are typically already known to corporate or in-house personnel.

Waiting until after an accident has occurred, and potentially for harm to have been done, is not an effective way to improve public safety. A more effective alternative is to make use of collected accident history data to identify the regulated facilities that are likely to need immediate attention. Those facilities could be asked to submit their two most recent audits to EPA (or a qualified third party selected by EPA) for review. EPA could then require a third party audit to be conducted or conduct its own audit. This type of approach could actually help prevent the next major incident rather than waiting for the incident to occur. By taking a reactive rather than a pro-active approach in deciding when to require third-party audits, EPA is effectively allowing worker and public safety to be at risk before taking appropriate action.

The establishment of special requirements for sources that have releases is essentially a way of making the regulation self-enforcing, thus alleviating EPA of the responsibility of making sure that regulated facilities comply with the regulation. Like PSM, the RMP Program was designed to be self-implementing, and its

provisions are intended to assist facilities operate safely. However, the Program contains no provision that states that a reported release by itself represents a violation or should trigger an enforcement action.

It is already the practice of many facilities to contract RMP/PSM auditing to qualified, independent third parties or to have third parties lead or participate in the audit. The revised requirement for third-party audits makes the unfounded assumption that all incidents can be prevented if the RMP/PSM accident prevention program elements are met. While it has been clearly demonstrated that the provisions of RMP and PSM can greatly improve process and public safety, their intention is to evaluate best practices and it cannot be guaranteed that meeting program requirements will be sufficient to eliminate hazards. That regulatory programs are not infallible is reflected in the General Duty Clause of Section 112(r) of the Clean Air Act that indicates a facility needs to endeavor to protect workers and the public regardless of regulatory requirements.

The most effective audits do not simply identify deficiencies but identify opportunities for improvement. The methodology used by many firms who specialize in audits helps facilities identifying what RMP or PSM prevention program elements are missing or incomplete. Typically, however, this methodology falls short in terms of helping a facility with making changes that can improve safety and instill a safety culture. This is why audits that are conducted by or overseen by corporate staff or staff from other facilities within a company with similar processes can be more effective than strictly third-party audits. The Program's audit requirements should provide flexibility so that audits can be conducted by individuals who thoroughly understand complex processes, whether they work for the company being audited or not.

The new requirement that the audit report and response document must be submitted to the company's board of directors subverts company policy established under RMP's management provisions. This change essentially requires that facilities modify their risk management systems and they specify that a short-cut to the top be established for this specific provision. In order for the RMP Program to be effective it should be up to each company to determine the appropriate chain of command and reporting. This change sets a dangerous precedent that infringes on the rights of companies to manage their business. Given that any RMP-reported incident will trigger this requirement, boards of directors will be deluged with technical information that few members are likely to be in a position to interpret. The implication of these changes is that EPA does not trust that companies will share their regulatory performance with management. This requirement should be

removed and replaced with a requirement that companies certify that a summary of audit findings have been provided to corporate management.

The program changes require facilities to maintain draft third-party audit reports for the last five years and produce them to the implementing agency upon request. Draft audits often contain erroneous, incomplete, or misinterpreted information. Thus, it is standard auditing practice that only the final audit and supporting information be retained. By requiring that draft work products be saved and submitted, EPA infers that the final audits contain falsified information or forced interpretations. This raises the specter of EPA's mistrust in both the management of regulated facility and the auditor.

9.0 Expand Rail Tie NHSM Listing

EPA has proposed a rule that would list, as a categorical non-waste fuel under 40 CFR 241.4, three types of treated wood railroad ties: creosote-borate, copper naphthenate, and copper naphthenate-borate rail ties (see 81 Fed. Reg. 75781 (Nov. 1, 2016)). These "other treated railroad ties" (OTRTs) are legitimate alternative fuels, similar in all relevant respects to the creosote treated railroad ties (CTRTs) that EPA classified as a categorical non-waste fuel in its final rule[30]. We support the listing of OTRTs as categorical non-waste fuels under section 241.4, a determination that is fully warranted, based on the statutory requirements of the Resource Conservation and Recovery Act (RCRA), applicable case law, and the record before the Agency. This categorization also furthers public policy objectives in RCRA that encourage environmentally responsible recycling of a valuable renewable resource for energy recovery.

However, some limitations that would be imposed under the proposed rule are unwarranted and, if adopted, would frustrate EPA's stated goals of encouraging resource conservation and energy recovery, as well as reducing greenhouse gas emissions through the use of environmentally preferable alternatives to fossil fuels. OTRTs as well as the rail ties listed in the 2016 final rule, burned in biomass boilers should be considered fuels and not wastes, no matter whether the boiler was designed to burn fuel oil or not.

From a financial perspective, allowing more rail ties to be considered non-waste fuel results in significant savings. We understand that others in the rail tie industry are providing data to EPA that show the significant economic benefit to allowing additional rail ties to be burned as legitimate fuel. We have previously provided EPA with data demonstrating that burning OTRTs and creosote ties provide significant Btu value to our biomass boilers, especially when other biomass tends to be wetter, hence less fuel is required and combustion conditions improve.

EPA has the discretion under RCRA and the Non-Hazardous Secondary Material (NHSM) program to consider various factors when making a listing determination. EPA should move quickly to finalize the determination that OTRTs are fuel and to incorporate the changes proposed in the January 3, 2017 comments of the Treated Wood Council (see Docket ID No. EPA-HQ-OLEM-2016-0248).

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[30] Additions to List of Categorical Non-Waste Fuels, published at 81 Fed. Reg. 6688 (Feb. 8, 2016).

10.0 Regional Haze Rule Implementation Improvements

In Section 169A of the 1977 amendments to the Clean Air Act (CAA), Congress established a program for the improvement of visibility in 156 national parks and federal wilderness areas, known as Federal Class 1 areas. Section 169A directs EPA to promulgate regulations which, among other things, require States to create implementation plans (SIPs) aimed at reducing man-made "haze" to improve visibility in Class I areas. Pursuant to its statutory mandate, EPA promulgated a Regional Haze Rule in 1999 (See 40 C.F.R. § 51.300) and revised the rule in 2005 and 2006.

On January 10th EPA amended the Regional Haze Rule (RHR) by making significant changes that removes State decision making authority and limits a state discretion and flexibility with its SIPs by invoking a vague "reasonableness" standard. . EPA would disapprove State plans and replace reasonable and lawful state determinations with more costly emission control requirements in an EPA FIP.

A petition for reconsideration of this final rule was filed on March 13, 2017 by the Utility Air Regulatory Group. We encourage the EPA Administrator to promptly grant the reconsideration request and initiate proceedings to revise the rule consistent with the recommendations in the reconsideration petition.

The objective of the Regional Haze program is to return visibility in Class 1 areas to "natural conditions" by 2064. Implementation of the program provides States with 10-year milestones to progress linearly towards the natural condition goal. EPA has been excessively aggressive with the Regional Haze program as noted in the areas below.

10.1 Baseline Visibility Estimate Corrections Needed

Relieving the burden for states to account for international contribution to haze in the United States is very important because the United States has no enforcement mechanism to effectively control or reduce emissions from sources beyond our borders. With the increase in global population and industrialization over the 60-year period of the Regional Haze Rule, it can be expected that the international contribution to regional haze could increase over current and historical levels. To avoid or deny this fact places an unfair and unnecessary burden on sources of air emissions pollution in the U.S. In essence, because EPA cannot require our neighbors and the rest of the world to collectively reduce emissions, global contributions to haze need to be accounted for in the "natural background". A suggested modeling procedure to allow for this accounting is discussed below.

EPA notes that they do not require states to make up for internationally-caused or naturally-caused haze, but EPA then does nothing to back up this assertion. EPA puts the burden on the states to fix this important problem, indicating that only if the EPA Administrator agrees, then the state may implement an adjustment to its Uniform Rate of Progress (URP) estimates. Texas tried to institute a reasonable approach to address both Mexican-caused haze and haze due to wildfires and windblown dust, and EPA did not accept this approach due to a need for "further justification". This attitude continues the ongoing EPA approach that the states are given no deference, and that EPA will simply impose a Federal Implementation Plan any time it disagrees with what a state proposes.

The days for which Class I areas are affected by international emissions or naturally-cased haze (e.g. windblown dust and wildfires) should be removed from the baseline worst 20% days. This can be and should have been done by an inspection of meteorological data or using back trajectory analyses. EPA needs to update its baseline visibility for Class I areas affected by international emissions and naturally-caused haze before finalizing its URP estimates for these areas.

10.2 Alternative Test for the Uniform Rate of Progress

Haze caused by natural emissions and international emissions is beyond the reach of the RHR, and states should not have to deal with these uncontrollable sources. Haze caused by those sources cannot be assumed to decrease or somehow just go away, and these effects could very well increase as the world population increases. According to the United Nations 2015 update[31], the world population will increase from about 6.5 billion people in 2004 (the beginning of the 60-year RHR implementation period) to about 10.3 billion by 2064, an increase of nearly 60%. "Natural emissions" that need to account for normal human activity will increase accordingly due to the increased population. The increase in population will, in combination with increased insolation caused by the RHR implementation, cause further global warming effects, as noted already by independent investigators[32,33].

There are uncertain components of uncontrollable natural haze and international emissions in both the EPA-proposed adjusted baseline and 2064 RHR endpoint visibility conditions for each Class I area. Accordingly, it is necessary to have a

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[31] United Nations, "World Population Prospects", 2015 Update. Available at https://esa.un.org/unpd/wpp/Publications/Files/Key_Findings_WPP_2015.pdf.

[32] Acosta Navarro, J. C., V. Varma, I. Riipinen, O. Seland, A. Kirkevag, H. Struthers, T. Iversen, H.-C. Hansson, A.M.L. Ekman, 2016. Amplification of Arctic warming by past air pollution reductions in Europe. *Nature Geosci.* 9, 277–281. http://dx.doi.org/10.1038/ngeo2673.

[33] Mauritsen, T., 2016. Arctic climate change: Greenhouse warming unleashed. *Nature Geosci.*, 9, 271–272. http://dx.doi.org/10.1038/ngeo2677, available at http://www.nature.com/ngeo/journal/v9/n4/full/ngeo2673.html.

sanity check on the amount of deciview improvement that is possible under the RHR that occurs by removing most anthropogenic emissions from a given state between the baseline period (2002 inventory) and what is still "allowed" in 2064 for "natural conditions" (see separate comments on this issue). This amount of improvement, which results in a reasonable alternative estimate of the URP, must be computed by photochemical grid modeling. The modeling approach used should be the same procedure used to determine whether the progress made in the reduction of emissions for each implementation period (starting with 2028) will achieve the required haze reduction.

For this approach, suppose that the modeled deciview reduction possible by reducing USA-only anthropogenic emissions is 8.0, to be compared to an alternative reduction value determined from achieving an estimated "natural conditions" target. The lower of these two deciview changes would be adopted to determine the progress needed for the specific Class I area of interest. A modeling analysis could then be done for a given state's emissions, in that the progress needed by 2028 (40% of the time period between 2004 and 2064) is 40% of the way between the predicted conditions for the baseline period emissions and that for the allowed 2064 emissions.
This procedure appropriately results in a completion of the goals of the RHR when the 2002 USA emissions inventory is reduced to the level associated with natural conditions; this is all that a state can be expected to do.

10.3 Anthropogenic Emissions Associated with Natural Conditions Should Not be Assumed to be Zero

It is important to note that it is illogical to interpret "natural conditions" as devoid of existence of humanity, the eliminating of all human activity, including respiration and other bodily functions. EPA should provide for a reasonable allowance for emissions needed for basic human existence in a civilized society, including the right to visit and enjoy "natural visibility" in Class I areas. For this exercise to be legitimate, these basic emissions must be accounted for in the computation of the URP.

Given that haze measurements were not available prior to the European settlement of North America, "natural conditions" cannot be presumed to be known based upon recent measurements, even in the 20th century. Measurements of particulate species prior to 1990, when the Trijonis guidance[34] for the natural conditions was

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[34] Trijonis, J.C., Pitchford, M.L., Malm, W.C., White, W., Husar, R., 1990. Characterization of Natural Background Aerosol Concentrations. Appendix A in Acidic Deposition: State of Science and Technology. Report 24.

devised, were taken during a period when wildfires were aggressively (and unnaturally) suppressed. Even if measurements were available before the modern era, there is growing evidence that global warming and associated frequency and severity of droughts will further increase the extent that wildfires will contribute to regional haze. Furthermore, the effects of the RHR (and other environmental programs) in reducing the concentration of atmospheric particulate has and will further exacerbate global warming by reducing solar reflectivity, thereby allowing more sunlight to penetrate the atmosphere and heat the earth. Thus, we can anticipate possibly dryer conditions, with an associated greater importance in the contribution of windblown dust and wildfires to natural conditions in future years than have been experienced in recent history. These sources of haze have not been completely eliminated in EPA's adjusted baseline conditions for the 20% worst haze days.

It is discouraging that past efforts by states such as Texas to revise natural conditions have been rebuffed by EPA (e.g., in its Federal Implementation Plan ; see 81 FR 296, January 5, 2016), even though a justifiable line of reasoning has been provided and thoroughly documented. This example demonstrates that although EPA has delegated this challenging program to the states, EPA needs to also provide the states a greater degree of deference regarding their judgements as how to address the various aspects of the RHR implementation.

10.4 Incorporate Visibility Progress Into Each Decadal Review

EPA has focused its efforts under the RHR to requiring emission controls on as many sources as possible without checking to see if the controls achieve the required visibility progress. In some cases, the controls over-achieve the required progress, and EPA still requests additional emission reductions. EPA's plans for the second decadal review do not even have a check for visibility improvements – once a quota of sources is identified for possible engineering review (because they are close enough to a Class I area with sufficiently-high emissions), then a rigorous 4-factor review of emission controls is planned. EPA needs to refocus their efforts to determine the emission reductions needed to meet URP goals (adjusted as noted above) and not go further.

Visibility: Existing and Historical Conditions -- Causes and Effects. J. C. Trijonis, lead author. National Acid Precipitation Assessment Program: Washington, DC.

10.5 Provide More Deference to States in Their SIP Planning

EPA has often failed during the first decadal review period under the Regional Haze Rule to adhere to the state primacy principle when it has reviewed regional haze SIPs. EPA instead often invoked a vague "reasonableness" standard that it used to second-guess state policy decisions and to substitute its own policy choices. EPA frequently did this by resorting to narrow readings of the RHR and the BART Guidelines. For instance, it repeatedly insisted on state adherence to EPA's Control Cost Manual ("Manual") even though the Manual is not a rule, it usually understates the costs for site-specific retrofits, and the RHR and Guidelines properly make clear that the Manual is simply one option for states to use when they evaluate costs of emission controls. EPA also repeatedly insisted on its preferred approach to assessing visibility impacts, favoring a cumulative deciview ("dv") assessment and ignoring a more reasonable "dollars per deciview" metric that shows how cost-ineffective many of EPA's imposed rules are. By improperly claiming that these and other analytical methods are regulatory requirements and not merely options for states to consider, EPA has determined that numerous regional haze SIPs are, in its view, "unreasonable" and, on that basis, disapproved them, replacing what in fact were reasonable and lawful state determinations with more costly emission control requirements in EPA-imposed federal implementation plans ("FIPs"). EPA should revise the Regional Haze Rule to clearly emphasize the primacy of state decision-making authority and to eliminate practices that EPA has improperly used to limit state discretion.

11.0 MACT and Risk and Technology Reviews (RTR) Improvements

11.1 Procedures for Conducting Risk and Technology Reviews

Guidelines should be established that allow for a more practical approach to RTRs. For example, the review should not result in ratcheting down the standards based on a statistical re-analysis of the emissions from the lowest emitting 12 percent of sources; this is the one-time obligation when the first MACT is established. Eight years later, EPA must conduct a review of residual risks post-MACT and determine if technology has changed significantly. If risk is acceptable, with an ample margin of safety, then a re-calculation of the MACT floor that would effectively result in a MACT-on-MACT situation should not be performed. If the technology review shows no developments in technology since promulgation, then regulatory provisions should not be made more stringent. In addition, if EPA concludes under section 112(f) that the remaining risks from HAP emissions are safe, that there is "an ample margin of safety" then no further technology reviews under section 112(d)(6) in the future should be necessary. The only exception might occur if the health benchmark for one of the HAPs changed significantly necessitating a reexamination and determination if previous findings still hold true. EPA should not make the RTR process more complicated than necessary especially when public health risks are found to be acceptable. EPA should also develop a streamlined approach to conducting subsequent technology reviews, focusing on whether there have been any changes in technology that may be appropriate for new sources and confirming that there are no necessary changes to requirements for existing sources.

11.2 Eliminate Compliance and Emissions Data Reporting Interface (CEDRI) and Electronic Reporting Tool (ERT) Electronic Reporting

EPA is attempting a piecemeal implementation of electronic reporting requirements in NESHAP and NSPS rules that is poorly thought out and is resulting in duplicative reporting because state agencies have their own reporting and submittal requirements. CEDRI and ERT requirements add thousands of dollars to the cost of even the simplest of emissions tests.

EPA should eliminate CEDRI and ERT reporting requirements from NESHAP and NSPS until state and local permitting agencies modify their regulations to adopt EPA's electronic system as their standard. A well-planned, well-executed, one-time implementation of a robust, stable electronic reporting platform that results in the submission of direct emissions data to both the EPA and the states via easy-to-use templates will result in the highest probability of success from both data quality and compliance perspectives and will allow EPA to achieve its stated objectives.

One of our primary concerns is the required duplicative reporting to both delegated agencies and the EPA. Continuing to have to report via both hardcopy to the permitting agency and electronically to EPA is burdensome and adds one more compliance step to already overburdened facility staff. Duplicative reporting creates room for errors when a primary goal of the proposal is exactly the opposite. We do not view it as an undue burden upon states to access the reports from the EPA's CEDRI; states already access electronically submitted reports like the Toxics Release Inventory (TRI) from EPA's system instead of requiring separate hard copy or electronic submittals.

Most states currently have their own prescribed reporting formats for stack test reports and other reports such as emissions inventories; it would reduce burden on industry (especially those with facilities in multiple states) if all states were to accept reports in the same format. EPA uses data from state and facility submittals to perform studies, prepare reports for public consumption, and update regulations, so beyond the inefficiencies in this piecemeal approach, the data needs to be submitted by facilities in a consistent manner, not transcribed from paper by state agencies that could manipulate data according to their own preferences or introduce error. Additionally, this process wastes agency resources better spent on more value added activities.

The amount of time to learn new reporting systems like the ERT/CEDRI system is not trivial, and there are multiple staff at each facility that must learn the requirements of the system. Electronic uploading of the data is a major departure from the way the regulated community has reported environmental data for the last several decades. Moving to a new automated upload system like ERT/CEDRI requires a significant modification to internal processes and procedures, new staff training, and an additional layer of review and checking (to ensure the electronic system has accepted the data as entered).

In the interest of managing a vast set of reporting requirements in an efficient manner, many facilities have electronic data management systems that produce reports electronically. When EPA's electronic reporting system is implemented, time is needed to reprogram facility systems to align with EPA's system so that data from facility systems can be automatically ported into EPA's system. Up to two years should be allowed for compliance with any newly required electronic reporting segment, as many companies will need to re-program and test company systems in order to interface with the EPA system. Facilities should be allowed to submit data electronically prior to the compliance deadline but should not be required to do so.

EPA must allow adequate time for any new component of the system to be fully vetted by a diverse set of industry users. Any templates or reporting systems put into place by EPA must be fully tested by users other than EPA and the contractor that develops the software. We believe this to be a key recommendation to assure smooth implementation of electronic reporting.

The ERT entry process is burdensome, the tool still does not accommodate all test configurations, and the system is prone to errors and crashes. If EPA retains the ERT tool, it should be modernized and made available as a web-based tool, similar to EPA's other reporting programs for GHG and TRI. The ERT should also be improved to include all test methods that are used by regulated facilities to submit required emissions test data. Until the ERT includes all test methods, EPA's efforts to develop improved emission factors will be stymied.

11.3 Reciprocating Internal Combustion Engine (RICE) MACT (subparts ZZZ) and NSPS (subparts IIII and JJJJ)

The current set of RICE regulations, both the MACT and NSPS, have evolved over several rounds of rulemaking and are very complicated. The iterative rulemaking process failed to produce a reexamination of earlier provisions so requirements got layered on top of previous requirements without making sufficient effort to simplify. It is challenging to understand the requirements for gas, diesel and emergency engines since obligations depend on age of engine, horsepower and use. If an emergency engine is below the specified usage and/or horsepower thresholds, then the user should not have any further requirements other than demonstrating the engine meets the criteria. For example, the only obligation required for emergency engines would be to demonstrate they were not used more than the allowable time. All the maintenance requirements and recordkeeping for emergency engine users, other than hours of operation, should be dropped. These make- work requirements have no environmental benefit and just add unnecessary burdens. Alternatively, limit the requirements to those applicable to the manufacturer and drop all the requirements applicable to the user.

11.4 EPA's Once-In-Always-In Policy Should be Revoked

The "once-in-always-in" policy[35] has been the subject of controversy since its inception, and unfairly establishes a permanent compliance burden on the operation of manufacturing facilities, even if they take action to reduce emissions. The policy

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[35] See, "Potential to Emit for MACT Standards--Guidance on Timing Issues" Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS) to EPA Regional Air Division Directors, May 1995.

requires major sources of HAP to comply with applicable maximum achievable control technology (MACT) standards in perpetuity, even when emissions have been reduced below major thresholds. On January 3, 2007, EPA proposed regulatory amendments that would reverse its decade-old "once-in-always-in policy."[36]

The proposed rule allowed a major source to become an area source (and thus, not subject to MACT standards) at any time by obtaining a permit limiting its potential to emit (PTE) hazardous air pollutants to below major source thresholds. In support of its policy change, EPA noted that the "once-in-always-in" approach was an initial and "transitional" interpretation until a formal policy could be established through rulemaking. EPA also noted that its long-standing policy is not required by the language of the statute. EPA should revise its policy first through a new policy memo as soon as possible and then finalize the rule and eliminate the once-in-always-in policy.

11.5 Probabilistic Risk Assessment

For acute assessments the default worst-case assumption is that all sources at a facility emit HAPs at a rate that is 10 times the annual average and the maximum modeled 1-hour concentration is used. Given that the likelihood of coincident peak emissions and worst-case meteorological conditions is remote, a refinement that EPA should consider is a probabilistic modeling approach that more realistically accounts for emissions variability.

For the evaluation of risks due to long-term exposure EPA applies conservative worst-case assumptions are applied such as continuous exposure to outdoor concentrations at fixed locations for 70 years and absolute worst daily ingestion rates of contaminated food, especially fish. These worst-case assumptions can compound the conservatism of the analysis by several orders of magnitude. The can result in the false identification of risk. EPA should consider applying probabilistic approaches in the selection of model parameters to provide more realistic but still conservative risk estimates.

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[36] 72 Fed. Reg. 69, https://www3.epa.gov/ttn/atw/gp/fr03ja07.pdf

TAB 2

Water Attachment to EPA Comments

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1.0 Water Quality/Human He alth Water Quality Criteria

EPA has imposed new, ultra-conservative risk policies in the calculation of certain water quality standards that could cost industrial facilities billions of dollars in some states. Many of these industrial facilities provide high-paying manufacturing jobs in rural communities that cannot afford to lose them. If EPA's new policies are extended to other states and programs (e.g., Superfund, Clean Air Act), private parties and federal agencies would be faced with similar misalignment of costs and benefits.

Under the Clean Water Act (CWA), states have the primary responsibility to develop water quality standards. States begin that process with EPA's Human Health Water Quality Criteria (HHWQC), but can use other criteria, as long as they are adequately protective of human health. States also have the discretion to set the excess lifetime cancer risk (ELCR) level and the Fish Consumption Rate (FCR) — two of the variables used to calculate the HHWQC. Based on a new legal theory that tribal treaty rights require more protective criteria, EPA has removed the states' discretion and imposed extreme risk management policies. EPA also is taking conservative and unscientific approaches to other values in HHWQC derivation (the "Relative Source Contribution" and "Bioaccumulation Factors").

EPA is making three radical changes to its risk policy that has existed since at least 2000. First, the Agency is requiring states to adopt HHWQC based on a new ELCR level policy that one in a million (10^{-6}), and only one in a million, is adequately protective of high consuming subpopulations, such as Native American tribes consuming higher amounts of fish. This is contrary to existing policy, which recognizes that states have discretion to choose other risk levels that are adequately protective and add de minimis incremental risk.

Second, EPA is requiring that HHWQC be derived based on protection of the most highly-exposed individuals, instead of populations, which is the established basis for most risk-based standards. This makes the standards so stringent that they are guarding against risks more remote than the risk of dying from a lightning strike or getting hit by an asteroid; they also are much more stringent than other health and safety standards. For example, the Occupational Safety and Health Administration standard for ethylene oxide is based on an ELCR of 1 in 500 -- over 2000 times less restrictive than EPA's requirement for HHWQC.

Finally, EPA is requiring states to adopt FCRs taking into account tribal populations' reduced fish consumption based on their fear of contamination; and also using tribal populations' FCR as a proxy for the general public, resulting in much more stringent and unattainable permit limits. If applied to other programs, these policies will determine "how clean is clean" for Superfund cleanups and make other standards far more stringent and expensive, without a commensurate improvement in human health.

Based on these policies, EPA: 1) imposed federal rules in Washington and Maine rejecting their HHWQC and imposing federal criteria; 2) threatened to reject Idaho's new HHWQC that it had developed after EPA rejected its existing criteria; 3) pressured Florida into adopting criteria with faulty Relative Source Contribution values and Bioaccumulation Factors; and, 4) adopted fish consumption survey guidance that perpetuates EPA's FCR policy.

As discussed in the next section, EPA's HHWQC are based on a deterministic approach to risk assessment. EPA instead should use a Probabilistic Risk Assessment (PRA) approach.

- **EPA should repeal the federal rule for Washington (RIN: 2020-AF59), and rescind the approval/disapproval letter, and issue in its place a letter fully approving the Washington standards.**
- **Similarly, EPA should repeal the Maine rule (RIN 2040-AF56), and rescind the approval/disapproval letters, and issue in its place a letter fully approving the Maine standards.**
- **EPA should approve the Idaho HHWQC.**
- **EPA should allow Florida to establish its own HHWQC without federal interference as long as they are consistent with the Clean Water Act and applicable regulations.**
- **EPA should begin deriving its own HHWQC recommendations using a PRA approach, encourage states to do so, and then approve the resulting criteria.**
- **EPA should withdraw its December 2016 guidance to states on conducting fish consumption surveys that perpetuates EPA's flawed approach to calculating the fish consumption rate.**

2.0 Probabilistic Risk Assessment ("PRA")

Many EPA standards (see, e.g., Human Health Water Quality Criteria and Permit Gridlock entries) are based on an ultra-conservative approach to risk assessment, called a deterministic approach. Under this approach, exposure characteristics are represented by one value on the high end of the range of possible scenarios. This approach can result in standards and permit limits that are extremely expensive or impossible to comply with, yet provide little health protection improvement. For example, a study of Washington's population found that imposing HHWQC consistent with EPA's ultra-conservative approach results in a theoretical annual incidence rate of cancer that is predicted to increase from 38,230 to 38,230.01. Yet, these standards place undue burden on manufacturing facilities and can impede their ability to continue operating or expand. In contrast, a PRA approach gives policymakers an understanding of the central tendency of estimated risk and the probability that actual risk will be at the high end of the range. PRA is more scientifically advanced, links risk targets with environmental concentrations, and improves transparency and makes greater use of available data. Numerous institutions and offices within EPA (e.g., the National Research Council, the then-EPA Office of Emergency and Remedial Response) have endorsed or used PRA for years. PRA-based standards can result in much better alignment of costs and benefits and avoid the imposition of permit limits that would unduly harm facilities' competitiveness.

- **EPA should direct the head of the Office of Research and Development to develop and quickly implement a plan to transition to a probabilistic risk assessment approach for assessing exposures, approving models, and deriving environmental standards.**

3.0 NPDES Permit Update Rule

EPA has proposed to update a number of the provisions pertaining to water permits. The agency characterizes the proposals as “streamlining” or “updates” to the existing rules that would not make substantive changes. However, several would result in unnecessarily stringent water permits. Moreover, EPA included a provision to take over and issue as a federal permit certain state permits that had been administratively extended. Taking over such state permits has no legal basis, likely would delay and complicate the permit issuance process, and is contrary to the principle of cooperative federalism that is the foundation of the Clean Water Act.

- **EPA should withdraw the proposed NPDES Permit Update Rule (RIN 2040-AF25) and work with stakeholders before issuing a final rule. In any event, any final rule should not include a provision for EPA to take over administratively extended state permits.**

4.0 Waters of the U.S. (WOTUS) Rule

After an extremely contentious rulemaking, EPA issued a final WOTUS rule that was supposed to provide clear lines on which waters were and were not subject to federal Clean Water Act jurisdiction. The final rule has been the subject of numerous lawsuits brought by states, environmental organizations and industry. Currently, the rule is stayed on a nationwide basis, and the Supreme Court is considering the proper venue for the challenges. President Trump recently issued an Executive Order directing EPA to begin the process to rescind or reconsider the rule.

- **EPA should issue a proposed rule to withdraw the WOTUS Rule (RIN 2040-AF30). The agency also should propose a new one that is consistent with the Clean Water Act and judicial precedent. Any new rule should preserve the wastewater treatment exemption and other exemptions.**

5.0 Streamlining Chlorinated Organics Monitoring

In 1998, EPA issued a consolidated rulemaking for the Pulp and Paper industry (the "Cluster Rule"). This rulemaking recognized the industry's commitment to substantial changes in its manufacturing process including conversion of pulp bleaching practices to Elemental Chlorine Free (ECF) bleaching. To confirm that those changes achieved their intended reductions of pollutants in effluent, all bleached kraft mills and some papergrade sulfite mills listed in Subparts B and E of Part 40 CFR 430 were required to monitor and report certain pollutants (the "chlorinated organics") listed under 430.24 and 430.54.

The industry has conducted monitoring for chlorinated organics since 2001, when changes in manufacturing processes to ECF were completed at nearly all mills. Since then, the industry has spent millions of dollars annually on sampling and analyses that have demonstrated, overwhelmingly, that these pollutants are below the method of analytical detection or well within the numerical limits established. Thus, the use of ECF has clearly achieved the effluent quality targeted by the Cluster Rule and it would be much more efficient to allow facilities to certify use of ECF and forego burdensome requirements for ongoing monitoring. Indeed, this is a common practice in other parts of 40 CFR 430 related to certifying that certain biocides and bleaching chemicals are not used (e.g., 430.74 and other production subcategories).

At the time the Cluster Rule took effect in 2001, 30,700 samples per year were estimated to have been collected at an annual total cost of $6.73 million to the industry. Over ten years, the cost to the industry would have been $67.3 million. While some states have allowed mills to reduce the frequency of monitoring, the costs remain significant. We estimate that current costs are still roughly ¼ of the original costs, reflecting 8,380 samples and $1.85 million in expenditures annually (or $18.5 million over the next ten years). Yet the results from this monitoring demonstrate, overwhelmingly, that effluent quality is equal to or better than was targeted by the Cluster Rule. For example, recent queries of EPA's on-line compliance database (ECHO), show that only two mills exceeded limits and these exceedances totaled fewer than 5 in number over the most recent three years. This represents a compliance rate of greater that 99.9% under either monitoring frequency scenario.

Based on this compliance history for the vast majority of mills, there is virtually no likelihood that additional monitoring of these pollutants is providing any useful information to regulators or the public. Thus, removing the monitoring requirement,

if coupled with a certification of continued ECF bleaching, would present virtually no increased risk of non-compliance or environmental harm.

- **Consistent with the existing certification methodologies outlined in the subparts of 40 CFR 430, EPA should revise 40 CFR 430.14, 430.24, 430.44, and 430.54 to provide the option for a facility to certify during the permit renewal process that it has implemented full chlorine dioxide substitution in its bleaching stages, and that such certification demonstrates compliance during the permit term with the monitoring requirements of these parts.**

6.0 Spill Prevention, Contro l and Countermeasure (SPCC) for Hazardous Substances

Pursuant to a settlement with environmental organizations, EPA is obligated to issue a draft SPCC rule for hazardous substances by 2018 and take final agency action by 2019. This is a very ambitious schedule. EPA staff have acknowledged that there are numerous existing federal, state and local rules and requirements that already may achieve much of what would be sought in a federal rule. Accordingly, there is no need to burden manufacturing facilities with additional costly regulations that would impede their competitiveness, yet provide no additional human health or environmental protection.

- **EPA should seek extensions of the existing deadlines to allow the agency to gather and analyze available information on existing requirements.**
- **EPA should continue working with stakeholders to understand those existing requirements and should not impose additional new substantive requirements unless they are truly needed to fill regulatory gaps, if any.**

7.0 EPA Conductivity Guidance

Conductivity is a measurement of the degree to which a material, in this case water, conducts electricity. Conductivity has been used as a surrogate for estimating the total amount of dissolved substances in water, (e.g., salts). In 2011, EPA issued a conductivity "benchmark" specifically for the Appalachian region that had numerous scientific flaws. In December 2016, EPA offered for comment a draft guidance that extends the flawed approach used in the Appalachian guidance and would apply it to waterways across the rest of the country. The technical flaws in this guidance would result in stream standards that are not necessary for ensuring the protection of sensitive aquatic life. Furthermore, the extremely stringent discharger permit limits corresponding to these flawed standards would have no consequent environmental benefit. Long-term studies, including those examining the potential impacts of pulp and paper mill industry discharges, have shown that the integrity of aquatic communities does not correspond exclusively to changes in conductivity. EPA recently extended the comment period.

- **EPA should withdraw the draft Conductivity Guidance (FRL 9957–26–OW; 81 Fed. Reg. 94370 (Dec. 23, 2016)) and allow states to continue to regulate conductivity as needed.**

TAB 3

Chemical & Product Stewardship Attachment to EPA Comments

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1.0 Formaldehyde Risk Assessment

EPA began working on its Formaldehyde Risk Assessment in 1987, and a great deal of scientific information on the health effects of formaldehyde and the levels at which those effects occur has been provided to EPA by the regulated community. Many governments have used these data in regulations that recognize that formaldehyde is a threshold carcinogen. In other words, formaldehyde may cause cancer at high levels of exposure but not at low levels. Unfortunately, EPA consistently has rejected this scientific data on formaldehyde and continues to incorporate default assumptions into its risk assessment, ignoring the relevant data. As a result of EPA's hypothetical approach, the resulting "acceptable concentrations" of formaldehyde are extremely low, even below ambient concentrations in rural environments. In addition, authoritative scientific bodies have recommended that risk assessments should incorporate a "weight of the evidence" evaluation of the available data. This type of assessment allows risk assessors to reject studies that are not reflective of the larger body of scientific evidence. EPA has rejected this "weight of the evidence" approach and has relied on any adverse information to support an extreme outcome. As the result of this biased approach, EPA claims that formaldehyde causes several health outcomes that are not supported by the overall body of scientific data, including: leukemia, lymphoma, nasal pharynx cancer, reproductive, neurological, developmental effects, and asthma.

- **Place a stop on all formaldehyde IRIS program activities, including any intra- or interagency reviews or the release of any draft or final assessments.**
- **EPA should convene other experts within the Executive Branch to gain an objective perspective on formaldehyde science, and EPA's findings and conclusions should be based on the weight of the evidence and use the biological data to provide a basis for a threshold response for all health endpoints.**

2.0 Integrated Risk Info rmation System (IRIS)

IRIS is a program under EPA's Office of Research and Development with the responsibility to identify and characterize the health hazards of chemicals found in the environment. Unfortunately, the output of the IRIS program has not effectively accomplished this goal. IRIS provides support to all of EPA's program offices. However, as Congress never authorized EPA to establish IRIS, EPA has no statutory mandate and thus, IRIS is a program that the Executive Branch can modify or eliminate without the consent of Congress. Throughout the history of the IRIS program, there have been criticisms of the scientific outcome of its assessments, primarily because IRIS uses outdated or overly conservative scientific information in their assessments that result in unfounded toxicological hazards and excessively low acceptable concentration levels. When these IRIS assessments are used by EPA's program offices, they can result in unreasonably stringent regulatory standards that are not grounded in the realities that should be considered by EPA's program offices. While there have been many efforts to reform the IRIS program and incorporate 21st century scientific thinking, the dysfunctions in the program seem beyond repair.

These observations have been confirmed by other government agencies. A March 2008 GAO report noted that EPA has not been able to "routinely complete credible IRIS assessments." More recently, a 2011 NAS report noted that the IRIS program continues to fall well short of meeting the benchmarks of objectivity, scientific accuracy and transparency necessary to ensuring high quality, reliable assessments.

Elimination of IRIS will consolidate and streamline the EPA's chemical assessment programs, promote the best scientific information via other established Agency programs and free resources for other efforts including the new TSCA program. Elimination of IRIS will not prohibit the government from assessing chemical risks.

- **Place a stop on all current 2017 IRIS program activities, including the release of any draft or final assessments.**
- **EPA should eliminate the IRIS program for 2018 and beyond and reassign its responsibilities to EPA's program offices (to include zero budgeting and reallocation of existing FTEs).**
- **EPA risk assessments should incorporate the best available scientific information based on the weight of the evidence.**

3.0 Toxic Substances Control Act (TSCA) Implementation

On June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) was signed into law. The LCSA amends the Toxic Substances Control Act and provides EPA with expanded authority to address the effects of dangerous chemical substances. One of the key features of the new law is the requirement that EPA must systematically prioritize and assess existing chemicals, determine if existing risk is unreasonable, and manage identified risks. Currently, an initial list of ten chemicals has been identified for review. Our understanding is that, to determine whether a risk is unreasonable, EPA plans to evaluate all potentially foreseeable uses of a chemical in commerce. With this information, EPA may choose to evaluate the greatest exposure to the chemical, or EPA may aggregate all exposures into the assessment. Such an exercise has the potential to result in an overly conservative assessment for uses that have a low exposure potential. While formaldehyde is not listed in the top 10 chemicals for review, there are concerns that it might be included in the second 10. Some wood products containing formaldehyde (particleboard, medium density fiberboard, hardwood plywood) are not expected to be considered as "uses" since they are covered under Title VI of TSCA in the Formaldehyde Emission Standards for Composite Wood Products. However, there is a concern that other wood products containing formaldehyde (e.g., plywood, OSB) may still be required to go through a risk evaluation. The potential for EPA to use the proposed IRIS acceptable concentration for formaldehyde, which is below ambient levels, raises serious concerns with the current process.

- **In implementing LCSA, EPA should identify chemicals as "low priority" when exposures are low as required by law. In addition, EPA should consider the best available science and the weight of the scientific evidence in conducting reviews for priority chemicals.**

4.0 Formaldehyde Emissions Standards for Composite Wood Products

On December 12, 2016, EPA published in the Federal Register a final rule to reduce exposure to formaldehyde emissions from certain wood products produced domestically or imported into the United States. One year after the rule is published; composite wood products that are sold, supplied, offered for sale, manufactured, or imported into the United States must be labeled as TSCA Title VI compliant. These products include: hardwood plywood, medium-density fiberboard, and particleboard, as well as household and other finished goods containing these products. The domestic industry has supported this rule, as it would create a level playing field among American companies that have been complying with California's standards for several years and importers that are likely to produce products with higher emissions.

Further, EPA specifies in the rule outdated Department of Commerce (DOC) Voluntary Product Standards PS1-07 and PS2-04. In addition, the EPA rule does not list and thus allow structural panel stamps equivalent to PS1 or PS2, such as those promulgated by the European Union, Canada, or Australia. Therefore, structural panel inventory meeting the requirements for exemption but with the wrong label (e.g. newer specification version stamp) cannot be readily substituted or re-directed for orders being filled in the US. The latest relevant standards are PS1-09 which has an effective date of May 1, 2010 and PS2-10 with an effective date of June 1, 2011.

- We generally support the final rule and making it effective.
- However, EPA should reference the latest Voluntary Product Standards PS1-09 for Structural Plywood and PS2-10 Performance Standard for Wood-Based Structural-use Panels as promulgated by the Department of Commerce.

- **The Administration should oppose efforts to overturn EPA's Formaldehyde Emissions Standards for Composite Wood Products (RIN # 2070-AJ44).**

5.0 Chemical Data Reporting

EPA's Chemical Data Reporting (CDR) rule requires manufacturers to provide EPA with information on the manufacture and use of chemicals in commerce. In paper manufacturing using the unique Kraft Chemical Recovery process, the pulping chemicals (i.e., white, black, and green liquor) used to make paper are continuously manufactured, used, and recycled on site in a closed loop process. This essentially avoids worker exposure to pulping chemicals. The intent of the CDR is to provide the Agency exposure information for evaluating chemical prioritization and risk management. This over-reporting of pulping liquors creates a misleading perception about exposure and potential threats to public health. Thus, the information provides no regulatory benefit to the Agency to fulfill the goals of the CDR program. In the current CDR, the paper industry must file reports that indicate that over a trillion pounds of these chemicals are being "manufactured" when in fact they simply are being recycled -- not sold and not released to the environment. Due to this over-counting process, EPA has reported that the pulp and paper industry remarkably has almost 35 percent of the total reportable chemicals processed and used by all industries in the entire U.S. Such over-reporting of recycled chemicals is misleading to the public, not useful to the agency, creates false impressions about our industry, and imposes unnecessary reporting burdens.

- **EPA should provide an exemption from CDR for the reporting of recycled chemicals used in the Kraft Chemical Recovery Process.**

TAB 4

1.0 Procurement Guideline for Paper and Paper Products Containing Recovered Materials/Specifications, Labels and Standards

President Obama's Executive Order 13693 directed agencies to plan for federal sustainability for the next decade. Section 3(i) of E.O. 13693 required federal agencies to be consistent with statutory mandates for purchasing preference, and then consider sustainable products with specifications, labels or standards recommended by EPA.

A Proposed Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 1/18/2017-Federal Acquisition Regulation: Sustainable Acquisition (82 FR 5490), (FAR Case 2015-033) would implement E.O. 13693 by amending the FAR, requiring government procurement of environmentally preferable products or services that meet or exceed recommendations made by the EPA at the Greener Products website (https://www.epa.gov/greenerproducts). Such a change would lead to negative economic and environmental consequences, including:

- Fewer, not more, producers of recycled content printing paper;
- Forcing recovered fiber to uneconomic end uses, which in turn will have negative ripple effects on the economics of the market-based recovery system;
- Increased virgin fiber use in some products that currently use recovered fiber; and
- Less paper recovery as a result of market distortion.

With respect to with specifications, labels or standards, the Proposed Rule could add unnecessary costs and restrict the federal market for American-made products. Further, the EPA process for selecting the specifications, standards and ecolabels for environmentally preferable products has not provided an opportunity for public review and comment.

The EPA has not developed criteria for selecting products on its Greener Product website. Instead, through interim recommendations, the EPA uses two internal agency programs to determine appropriate product standards and labels. The proposed FAR would finalize EPA's interim recommendations even though there has been no opportunity for public review and comment on the existing agency programs or EPA's interim guidelines. Additionally, the EPA website can be updated or modified with no opportunity for public review and comment.

- **The proposed amendments to the Federal Acquisition Regulation, and specifically the Environmentally Preferable Products component as well as the post-consumer recycled content mandate should be withdrawn.**
- **The interim guidelines on Environmental Standards and Ecolabels should be repealed or amended to reflect all credible labeling systems; and EPA should not increase the current recycled content mandate for paper products and should eliminate the distinction between "pre-consumer" and "post-consumer" recovered fiber content in the Comprehensive Procurement Guidelines. By doing so, it would align the Comprehensive Procurement Guidelines with leading market-based certification systems, such as the Sustainable Forestry Initiative and the Forest Stewardship Council, which give equal weight to "pre-consumer" and "post-consumer" recycled content in paper products.**

American Forest & Paper Association

August 11, 2017

Ms. Mandy Gunasekara
Senior Advisor for Air and Radiation
Office of the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
MC 1101A
Washington, DC 20460

Dear Ms. Gunasekara:

On behalf of the American Forest & Paper Association (AF&PA), I am writing to request a meeting with you to discuss the industry's current regulatory reform priorities with a group of our member company executives from across the country. Members of our Environment Resource Committee will be in Washington, DC and available to meet with you the afternoon of Wednesday, September 6 and the morning of Thursday, September 7.

AF&PA represents U.S. manufacturers of pulp, paper, packaging, tissue and wood products with fact-based public policy and marketplace advocacy. More than 75 percent of forest products industry facilities are located in predominantly rural counties across America and are often the economic driver for their communities, large and small. The approximately 900,000 family wage jobs represent a $50 billion annual payroll, making our industry among the top 10 manufacturing sector employers in 45 states. 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*.

We will be in touch with your office shortly, but in the meantime, please feel free to have your staff contact Kat Gale at 202-463-2050 or Kat_Gale@afandpa.org with your availability on September 6 or 7. Thank you for your consideration.

Best regards,

Paul R. Noe
Vice President for Public Policy

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BETTER PRACTICES BETTER PLANET 2020
Continuing AF&PA's Commitment to Sustainability

AmericanCoatings
ASSOCIATION℠

June 28, 2017

Ms. Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Invitation to speak at the American Coatings Association Policy Summit

Dear Associate Administrator Dravis:

On behalf of the American Coatings Association (ACA), it is my pleasure to invite you to speak at our Coatings Industry Policy Summit on Wednesday, October 11, 2017 at the Marriott at Metro Center, Washington DC. We expect approximately 80 of our member company CEOs and other executives to participate, including leaders from RPM, PPG, Axalta, Sherwin-Williams, Behr, Valspar and Benjamin Moore. Your comments and insight on the EPA's implementation of the Administration's regulatory reform directives, and regulatory policy in general would be particularly germane to our executives.

As you may know, ACA is the premier trade association dedicated to advancing the coatings industry and represents paint and coatings manufacturers, suppliers, distributors, and technical professionals. We also provide a forum to showcase the coatings industry's commitment to environmental protection, product stewardship, health and safety, and the advancement of science and technology. Many of today's paints and coatings may go unnoticed by the consumer, but they play immeasurably valuable roles in delivering high-quality foodstuffs, durable goods, housing, furniture and thousands of other products to market. Total sales for the industry are approximately $27 billion annually.

We would welcome your participation during part of our Government Affairs Advocacy Update which goes from 2:00 to 5:00 pm. If you are able to join us, we envision having 15-20 minutes of informal/off-the-record comments followed by a brief Q&A and would strive to keep your time commitment to under one hour.

We hope you can join us. If you have any questions or to discuss further, please have your staff contact me directly at hmcauliffe@paint.org or 202-462-6272.

Thank you in advance for your kind consideration.

Sincerely,

Heidi K. McAuliffe
Vice President, Government Affairs

901 New York Avenue, NW – Suite 300 West | Washington, DC 20001 | 202-462-6272

NAFO®
National Alliance of Forest Owners

May 15, 2017

Submitted via www.regulations.gov – Docket No. EPA–HQ–OA–2017–0190

Sarah Rees
Director
Office of Regulatory Policy and Management
Office of Policy
1200 Pennsylvania Avenue NW.
Washington, DC 20460

Re: Comments on "Evaluation of Existing Regulations," 82 Fed. Reg. 17793 (April 13, 2017)

Dear Ms. Rees:

The National Alliance of Forest Owners ("NAFO") welcomes the opportunity to submit this letter in response to the Environmental Protection Agency's (EPA) request for comments on "Evaluation of Existing Regulations," 82 Fed. Reg. 17793 (April 13, 2017). EPA specifically asks for comment on regulations that:

(i) Eliminate jobs, or inhibit job creation;
(ii) are outdated, unnecessary, or ineffective;
(iii) impose costs that exceed benefits;
(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
(v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriates Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or
(vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified."

NAFO's mission is to protect and enhance the economic and environmental benefits of private forests through targeted policy advocacy at the national level. At the time of this submission, NAFO's members represent 80 million acres of private forests in 47 states. NAFO seeks to sustain the environmental, economic, and social values of forests and to assure an abundance of healthy and productive forest resources for present and future generations. America's privately-owned forests are one of the country's greatest resources. When managed properly for long-term productivity, they offer a wide range of benefits to our nation's economy, energy portfolio, environment, and society. Policies that restrict markets or impose burdensome regulations can stifle these benefits or even eliminate them entirely if the land is converted to other uses as a result.

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I. Biomass Regulations

Because they are a renewable resource, forests can be used repeatedly over time to produce a wide range of valuable forest products, including biomass feedstocks used for energy production, while also providing habitat for many wildlife species. Unfortunately, over the past six years, EPA's climate change policies have erected unnecessary regulatory barriers that prevent the development of new biomass energy on a level playing field with other domestic energy sources and inhibit the economic and job creation opportunities that would otherwise be realized. Because of the value that biomass energy provides throughout the forestry and forest products sectors, these regulatory barriers also impact forest products manufacturing, both directly and indirectly.

A. Energy and Economic Benefits of Biomass Energy

Biomass energy plays an important role in supporting strong forestry and forest products sectors. Biomass energy facilities provide a market for low-cost secondary products from harvesting operations and forest product manufacturing.[1] Moreover, forest products manufacturing facilities meet more than 65% of their energy needs from biomass, primarily manufacturing residuals but also logging residues. By providing a market for these feedstocks, biomass energy adds value to both forest owners and forest products manufacturers. Creating strong demand for biomass feedstocks and producing value that helps ensure the profitability of forest investments, biomass energy can play an important role in ensuring both the continued viability of the forestry and forest products sectors and the many jobs that they support and the retention of the land as forested, avoiding conversion to other uses.

Private forest owners have a long and successful track record of managing forests for long-term productivity and providing important economic benefits in rural areas. As a result of continual investments in productivity, forest owners have increased forest stocks while meeting an ever-growing demand for forest products. Based on the successful management strategies employed by NAFO's members and other private forest owners, U.S. forests have the capacity to maintain or even increase production for the foreseeable future, ensuring a consistent supply of forest products, including feedstocks for biomass energy.

The forestry and forest products sectors provide significant economic value, particularly in rural areas that may lack access to other high paying jobs. Indeed, in many cases, the forestry sector and forest products facilities—including biomass energy facilities—are among the most important employers for small, rural communities. Maintaining or expanding forestry-related jobs is critical to promoting economic growth in these communities. In many states with large rural areas, the forestry and forest products sectors, including biomass energy, are key economic drivers that are essential to the continued vitality of local communities. Nationwide, private forests support 2.4 million jobs and $99 billion in annual payroll.[2]

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[1] Kingsley, E., *Importance of Biomass Energy Markets to Forestry: New England's Two Decades of Biomass Energy Experience* (June 2012), *available at* http://www.usendowment.org/images/Importance_of_Biomass_Energy_Markets_to_Forestry_6.2012.pdf; Innovative Natural Resources Solutions LLC, *Identifying and Implementing Alternatives to Sustain the Wood-Fired Electricity Generating Industry in New Hampshire* (Jan. 2002), *available at* http://www.inrsllc.com/download/wood_firedelectricityinNH.pdf.

[2] Forest2Market. "The Economic Impact of Privately-Owned Forests in the United States." 2016. http://nafoalliance.org/images/documents/task-groups/communications/Forest2Market_Economic_Impact_of_Privately-Owned_Forests_April_2016.pdf.

In order to promote economic growth in these areas, it is critical that the Federal government adopt policies that promote biomass energy by ensuring that there are no unnecessary regulatory barriers that prevent expanded development.

B. Congressional Recognition of Carbon Neutrality

In Section 428(2) of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2017, Congress directed the Administrator, the Secretary of the Interior and the Secretary of Energy to establish "clear and simple policies for the use of forest biomass as an energy solution, including policies that reflect the carbon neutrality of forest biomass and recognize biomass as a renewable energy source, provided the use of forest biomass for energy production does not cause conversion of forest to non-forest use."

The scientific principles supporting carbon neutrality are well understood. Because forests are part of the natural carbon cycle, carbon from the atmosphere is sequestered in forests through photosynthesis and emitted through respiration, decomposition, and combustion. The dynamic processes of carbon sequestration and emission occur simultaneously on the landscape and form an ongoing cycle by which emitted carbon is sequestered. When forests are managed for long-term productivity—as they are in the United States—forest carbon stocks remain stable over time, ensuring that there is no net increase in carbon emissions from the forestry sector. In fact, EPA's annual GHG Inventory has consistently shown that forests sequester more carbon than they emit each year.[3]

In response to this Congressional mandate recognizing the carbon neutrality of forest biomass, it is imperative that EPA adopt and implement a policy that promotes biomass energy as an important part of the nation's energy portfolio. To ensure that biomass energy is promoted in accordance with Congress' direction, EPA must adopt regulations and guidance that recognize biomass energy as a renewable energy source, allowing biomass energy to compete on a level playing field with other renewable energy sources. To do so, EPA must eliminate existing regulations and guidance that place unnecessary and unreasonable GHG-related compliance obligations on biomass energy that are not required for other types of renewable energy.

C. EPA's Regulations and Guidance for Biomass Energy Have Created Unnecessary Regulatory Barriers for Forestry and Forest Products Sectors

Since 2010, EPA has issued a number of regulations and guidance documents that are inconsistent with Congress' carbon neutrality mandate and that inhibit growth in the biomass energy sector. In order to comply with Congress' directive and fully realize the economic benefits of biomass energy described above, EPA must withdraw these regulations and guidance.

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[3] *See, e.g.*, EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2014 ES-8 (2016) ("2014 GHG Inventory"), *available at* https://www.epa.gov/sites/production/files/2016-04/documents/us-ghg-inventory-2016-main-text.pdf.

First, in the 2010 Tailoring Rule, EPA, subjected carbon dioxide ("CO_2") emissions from biomass energy facilities to preconstruction permitting requirements under the Clean Air Act Prevention of Significant Deterioration ("PSD") program. As a result of these regulations, biomass energy facilities that trigger PSD permitting requirements must conduct a best available control technology ("BACT") analysis for GHG emission. EPA subsequently issued guidance addressing BACT analyses for CO_2 emissions from biomass energy. While EPA agreed to reconsider the inclusion of CO_2 emissions from biomass energy facilities, it has not taken final action to address CO_2 emissions from biomass energy facilities under the PSD program. EPA's failure to complete its review has contributed to substantial market uncertainly on the future of biomass energy.

Second, as part of the Tailoring Rule reconsideration process, EPA prepared and subsequently revised a draft Accounting Framework to address CO_2 emissions from biomass energy.[4] EPA submitted each draft Accounting Framework to the Science Advisory Board ("SAB") for review. The SAB's review of the revised draft Accounting Framework is ongoing. Both the draft Accounting Framework and the SAB's draft response include complicated processes for accounting for CO_2 emissions from biomass energy facilities that are unduly burdensome and inconsistent with Congress' directive on carbon neutrality.

Third, EPA's Acting Assistant Administrator for the Office of Air and Radiation issued a memorandum regarding CO_2 emissions from biomass energy facilities (the "McCabe Memo").[5] While appropriately recognizing the benefits of biomass energy, the memoranda also suggested that EPA should impose a sustainability requirement on the source of biomass feedstocks used for energy production. The introduction of an unexplained sustainability element on the source of biomass added to the uncertainty by shifting the agency's focus from the impact to the atmosphere to the impact on the ground.

Fourth, in the Clean Power Plan, EPA included a similar sustainability requirement to treat biomass as a renewable energy source and imposed a series of other regulatory requirements that do not apply to other types of renewable energy. Again, these requirements are unduly burdensome and are inconsistent with Congress' carbon neutrality directive.

Fifth, last year, EPA proposed to amend the Tailoring Rule to establish a "Significant Emission Rate (SER) for GHG Emissions Under the PSD Program."[6] The proposal would establish a threshold below which CO_2 emissions would be considered to have no more than a de minimis impact and thus not be subject to regulation under the BACT analysis. NAFO submitted comments urging EPA to amend the rule to consider emissions from the combustion of biomass as de minimis.

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[4] EPA, *Accounting Framework for Biogenic CO_2 Emissions From Stationary Sources*, *available at Accounting Framework for Biogenic CO_2 Emissions From Stationary Sources*; EPA, Framework for Assessing Biogenic CO2 Emissions from Stationary Sources, *available at* https://yosemite.epa.gov/sab/sabproduct.nsf/02ad90b136fc21ef85256eba00436459/3235DAC747C16FE985257DA90053F252/$File/Framework-for-Assessing-Biogenic-CO2-Emissions+(Nov+2014).pdf.

[5] Memorandum from Janet G. McCabe, Acting Assistant Administrator, EPA to Air Division Directors, Regions 1-10 re: Addressing Biogenic Carbon Dioxide Emissions from Stationary Sources (Nov. 19, 2014).

[6] 81 Fed. Reg. 68,110 (Oct. 3, 2016)

Over the past eight years, NAFO has frequently provided comments to EPA that demonstrated the economic, energy, and environmental benefits of biomass energy and urged EPA to eliminate regulatory barriers that inhibit the biomass energy sector. The information in these comments provide further support to Congress' conclusions regarding the carbon neutrality of biomass energy and provide a basis for EPA to rescind the regulations and guidance that unnecessarily burden biomass energy. A list of relevant comments, which are hereby incorporated by reference, is provided below:[7]

- National Alliance of Forest Owners' Comments on Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Docket EPA-HQ-OAR-2009-0517 (Dec. 28, 2009);
- NAFO, Call for Information: Information on Greenhouse Gas Emissions Associated With Bioenergy and Other Biogenic Sources; 75 Fed. Reg. 41173 (July 15, 2010) (Sept. 13, 2010);
- National Alliance of Forest Owners' Comments on "PSD and Title V Permitting Guidance for Greenhouse Gases," Docket: EPA-HQ-OAR-2010-0841 (Dec. 1, 2010);
- National Alliance of Forest Owners' Comments on "Listening Sessions on Greenhouse Gas Standards for Fossil Fuel Fired Power Plants and Petroleum Refineries," Docket: EPA-HQ-OAR-2011-0090 (Mar. 18, 2011);
- National Alliance of Forest Owners' Comments on "Deferral for CO2 emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration and Title V Programs: Proposed Rule", 76 Fed. Reg. 15249 (Mar. 21, 2011) Docket EPA-HQ-OAR-2011-0083 (May 5, 2011);
- National Alliance of Forest Owners' Comments on "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations", 77 Fed. Reg. 14,226 (Mar. 8, 2012) Docket EPA-HQ-OAR-2009-0517 (Apr. 20, 2012);
- National Alliance of Forest Owners' Comments on "Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units," Proposed Rule, 79 Fed. Reg. 1430 (Jan. 8, 2014) Docket EPA-HQ-OAR-2013-0495 (May 9, 2014);
- National Alliance of Forest Owners' Comments on "Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units," Proposed Rule, 79 Fed. Reg. 34,960 (June 18, 2014) Docket EPA-HQ-OAR-2013-0603 (Oct. 16, 2014);
- National Alliance of Forest Owners' Comments on "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," Proposed Rule, 79 Fed. Reg. 34,830 (June 18, 2014) Docket EPA-HQ-OAR-2013-0602 (Dec. 1, 2014);
- National Alliance of Forest Owners' Comments on "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations," Proposed Rule, 80 Fed. Reg. 64,966 (Oct. 23, 2015) Docket EPA-HQ-OAR-2015-0199 (Jan. 21, 2016);
- National Alliance of Forest Owners' Comments on "Clean Energy Incentive Program Design Details," Proposed Rule, 81 Fed. Reg. 42,940 (June 30, 2016) Docket EPA-HQ-OAR-2016-0033 (Nov. 1, 2016);

[7] Copies of these documents may be found at http://nafoalliance.org/nafo-comments-biomass.

- National Alliance of Forest Owners' Comments on "Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emission Rate (SER) for GHG Emissions Under the PSD Program," Proposed Rule, 81 Fed. Reg. 68,110 (Oct. 3, 2016) Docket EPA-HQ-OAR-2015-0355 (Dec. 16, 2016).

Based on NAFO's past comments and the information provided above, NAFO urges EPA to (1) exclude from NSR/PSD permitting requirements the CO_2 emissions from facilities that combust biomass for heat and/or energy, (2) withdraw all guidance related to PSD permitting for CO_2 emissions from facilities that combust biomass for heat and/or energy, (3) withdraw the revised draft Accounting Framework and related SAB charge, (4) withdraw the McCabe Memo, (5) rescind the biomass energy-specific requirements included in the Clean Power Plan and related proposals and (6) amend the SER rule to provide that all greenhouse gas emissions from the combustion of biomass are below the threshold where CO_2 emissions would be considered to have no more than a de minimis impact.

II. Waters of the United States

On March 6, 2017, EPA a commenced a review of the regulations defining waters of the United States (WOTUS) under the Clean Water Act that were published at 80 Fed. Reg. 37054 (June 29, 2015)("WOTUS rule").[8] NAFO fully supports this effort. NAFO believes that the WOTUS rule is premised on erroneous interpretations of Supreme Court decisions and, as a result, indefensibly expands the definition of "waters of the United States." The WOTUS rule failed to do so by including confusing and ambiguous definitions that are likely to result in inconsistent decision-making by regulators, significant burdens for the forestry industry, and a proliferation of citizen suit litigation. We urge EPA to develop, with the U.S. Army Corps of Engineers (together "Agencies"), a revised rule that comports with governing legal authorities and provides the clarity that stakeholders need.

Forestry operations take place across vast areas of land, often in areas where rainfall is abundant and where wetlands, ditches, and ephemeral features pepper the landscape. Under the WOTUS rule, many previously non-jurisdictional water features will categorically be deemed "waters of the United States" under the new definitions of "tributary" and "adjacent." This categorical assertion of jurisdiction rests heavily on an improper expansion of the significant nexus test, which the Agencies interpret to allow for aggregation of all similarly situated waters. Such sweeping jurisdiction over ditches and ephemeral drainage, in particular, will have significant ramifications for private forest owners.

The WOTUS rule fails to elucidate reliable, objective criteria for identifying whether a given parcel of land contains jurisdictional waters. For example, forest owners will be unable to determine whether a seemingly isolated waterbody on their lands is located within a "riparian area" or "floodplain" of a jurisdictional water. Similarly, it will often be impossible for a forest owner to confidently distinguish between an excluded erosional feature and a jurisdictional ephemeral tributary. Absent reliable, objective standards, forest owners could be forced to prove that a particular waterbody is not jurisdictional. Such proof would necessarily involve forest owners trying to account for, among other things, extensive tributary systems, riparian areas, floodplains, and the extent of subsurface hydrologic connections that extend far beyond the

[8] "Intention To Review and Rescind or Revise the Clean Water Rule," 82 Fed. Reg. 12532 (March 6, 2017).

boundaries of their lands. Making such a showing would be impractical and unaffordable for those forest owners who are carrying out normal silvicultural activities that do not produce sufficient financial returns to justify the analysis. This will result in the loss of the ability to manage lands and an incentive for forest owners to seek less benign uses for their land.

The categorical assertion of jurisdiction over all tributaries and adjacent waters, particularly ditches and ephemeral streams, poses a significant problem for forestry operations subject to best management practices. Designation of all of those features as jurisdictional waters will cause considerable confusion as to how forest owners will implement best management practices such as buffers along roadside ditches. Furthermore, the more waters that are defined as jurisdictional, the more opportunities there will be for allegations that certain activities involve point source discharges that are not exempted under CWA Sections 404(f) and 402(l).

For these reasons, NAFO urges timely completion of the WOTUS rule review.

III. Eliminate Unauthorized and Redundant Sustainability Procurement Mandates

In 2013, EPA released for public review and comment draft Guidelines intended to assist the Federal workforce in more consistently utilizing non-governmental product environmental performance standards and ecolabels in the Federal procurement process, consistent with Federal standards policy and sustainable acquisition mandates and commenced a pilot program.[9] The statutes cited for this exercise contain no direction for general environmental performance standards or sustainable acquisition mandates.

President Obama then signed Executive Order (EO) 13693 on March 19, 2015.[10] Among the issues addressed was sustainable federal procurement. The Council on Environmental Quality (CEQ) implementing instructions, issued on June 10, 2015, mandated that agencies must use specifications, standards, or labels recommended by EPA. EPA then issued interim recommendations in September 2015 with no public or stakeholder input and limited "sustainable" lumber procurement to materials certified under only one of the three nationwide forest certification programs with no justification or explanation. EPA then removed lumber from the recommendation table in December 2016 and indicated that the "sustainability" of lumber remains under review.[11]

The U.S. Department of Agriculture (USDA) maintains Forest Inventory and Analysis (FIA) Program that collects data on forests throughout the country. This data shows that the area of American forests, both public and private, has been increasing since the 1980's.[12] The

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[9] Draft Guidelines; Product Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement; Notice of Availability and Request for Comments, 78 Fed. Reg. 70938 (November 27, 2013).

[10] 80 Fed. Reg. 15871 (March 25, 2015).

[11] https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing.

[12] Oswalt, Sonja N.; Smith, W. Brad; Miles, Patrick D.; Pugh, Scott A.. 2014. Forest Resources of the United States, 2012: a technical document supporting the Forest Service 2015 update of the RPA

report states: "The most recent data available show a continuation of this upward trend across the country on both forest land and timberland."[13] Thus our forests are more than sustainable; they are growing.

Congress originally established the USDA "BioPreferred[sm] Program" for federal procurement preferences and product labels in the 2002 Farm Bill[14]. 7 U.S.C. § 8102. One objective of the Program is to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. In the 2014 Farm Bill, Congress amended the BioPreferred Program to "promote biobased products, including forest products, that apply an innovative approach to growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products regardless of the date of entry into the marketplace." 7 U.S.C § 8102(a)(3)(B)(vi). USDA then adopted regulations that established criteria for lumber, other wood products, pulp, paper, paperboard, and pellets to qualify under the program. 7 C.F.R. 3201.5(b)(2).

There is no reason, or statutory authority, for EPA to delve into an assessment of the voluntary, third party forest certification programs to divine which one meets some illusive standard of "sustainability." The FIA program demonstrates that our forests are stable and the BioPreferred Program provides the only forest product procurement criteria authorized by Congress. If EPA even retains this non-statutory voluntary standard assessment program, it should at a minimum recognize those programs which are authorized by law and accept the products recognized under those programs without additional process.

IV. Wetlands Delineation

In 1992, Congress directed the U.S. Army Corps of Engineers to utilize its 1987 National Wetlands Delineation Manual to identify wetlands subject to jurisdiction under section 404 of the Clean Water Act until such time as a final manual is adopted.[15] The 1987 Manual "stresses the need for considering all three parameters (vegetation, soils, and hydrology) when making wetland determinations." Manual p. 3. The manual also notes that this is different than the Fish and Wildlife Service wetlands classification system, which only requires the presence of one parameter. Congress stepped in when the Corps issued a revised interagency manual in 1989 that relaxed the strict requirement that all three parameters be present, among other changes.

Rather than adopt a new Manual or guidance through a notice and comment process, the Corps has expanded its regulatory authority through regional "Supplements" that adjust the criteria for identifying wetlands. Thus the Supplements have created a moving target that allows for expansion for federal control over private lands. Yet the supplements have never been subject to subject to the rigors of a transparent rulemaking. Given EPA's "final administrative responsibility" for construing the term "navigable waters" under section 404 of the Clean Water

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Assessment. Gen. Tech. Rep. WO-91. U.S. Department of Agriculture, Forest Service, Washington Office. Table 3, pp. 46-47.

[13] *Id.*, p. 6.

[14] Pub. L. 107–171.

[15] Energy and Water Development Appropriations Act, 1993, Pub. L. No. 102-377.

Act, we urge EPA to work with the Corps to eliminate the regional Supplements and return to proper delineation of wetlands under the Manual.

V. Preserve Clean Water Act Nonpoint Source Funding Programs for State Agencies

EPA assistance grants provide critical support to states to take priority actions in managing nonpoint sources pollution, a responsibility specially left to the states by the Clean Water Act.[16] These funds represent the cooperation in the "cooperative federalism" model. Of particular importance are the categorical grants for nonpoint source pollution management known as Section 319 funds. This funding allows states to address their highest priority issues relative to minimizing water quality issues from nonpoint sources (agriculture, forestry, stormwater, etc). Federal funds are matched by states at a rate of 60:40.

In fiscal year 2016, more than $1.1 million of Section 319 funding was allocated to state forestry agencies to deliver priority water quality and best management practices (BMP) programs in a number of states. In addition, 319 grant funding in every state is used to supplement state forestry water quality-related priorities through urban and riparian tree planting, enforcement response of BMP violations, watershed-specific interventions, and more. EPA has long recognized the effectiveness of these state BMP programs and the importance of resource availability, including section 319 grants, to the state foresters who develop, implement and evolve these programs. We urge EPA to maintain the grants for these and the other vital programs funded through section 319 and other grant programs assisting state efforts to manage nonpoint source pollution.

Conclusion

We thank EPA for the opportunity to bring our concerns to your attention. We look forward to working with the agency to achieve workable and practical solutions to these issues that will support robust rural economies.

Respectfully Submitted,

David P. Tenny
President and CEO
National Alliance of Forest Owners

[16] Clean Water Act sections 208 and 319, 33 U.S.C. §§ 1288 and 1329.

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Thomas J. Gibson
President and CEO

May 15, 2017

Ms. Samantha K. Dravis
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Response to Environmental Protection Agency s Request for Commenton the Evaluation of Existing Regulations (Docket ID No. EPA-HQ-OA-2017-0190)

Dear Ms. Dravis:

The American Iron and Steel Institute (AISI), on behalf of its U.S. producer member companies, appreciates this opportunity to comment on the Environmental Protection Agency s (EPA) Request for Comment on the Evaluation of Existing Regulations (82 Fed. Reg. 17793)(April 13, 2017). 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 18 member companies, including integrated and electric furnace steelmakers, and approximately 120 associate members who are suppliers to or customers of the steel industry. AISI s member companies are classified in the North American Industry Classification System (NAICS) in codes 3311 (Iron and steel mills and ferroalloy manufacturing) and 3312 (Steel product manufacturing from purchased steel). Additionally, member companies that mine iron ore are included in code 2122 (metal ore mining).

We reviewed the request for comment and have gathered information from our member companies detailing the impact of existing federal regulatory requirements on their ability to operate, construct, expand or modify facilities in the U.S. The detailed comments below provide:

1. Background on the number and types of permits our members need to obtain to construct, operate and/or expand facilities in the U.S.;

2. Proposed changes to existing permitting regulations that would help streamline the process and reduce overall costs for companies; and

3. A broader list of regulations outside of the federal permitting structure that our members consider an added and unnecessary burden to domestic manufacturing.

1. Manufacturing Permitting Process

The construction, operation and expansion of a steel, coke and/or mining operation requires various permits under different existing federal statutes regulating air emissions, discharges to water and handling and processing of waste products. The total permits needed to construct and operate a facility will vary depending on the particular operation but could be as high as 12 or more permits for a single facility across various state and federal agencies. As will be outlined further in our comments, the high costs and timing uncertainties in the numerous permit application processes create significant impediments and often frustrate future planning of new or expanded facilities in the U.S.

Under the Clean Air Act (CAA) before a facility is constructed or expanded the company is required to go through the New Source Review (NSR)[1] permitting process that ensures that facility will employ up-to-date pollution control technology.

Facilities opening or expanding in an area of the country considered in attainment with current National Ambient Air Quality Standards (NAAQS) must obtain a pre- construction permit under the CAA s prevention of significant deterioration (PSD) provisions. The PSD permitting process requires a showing that the facility is using the best achievable control technology (BACT) to ensure projected emissions increases will not cause an area to exceed NAAQS for any of the listed criteria pollutants. The PSD process is generally applied for and issued through state environmental agencies with oversight and approval from U.S. EPA Regional offices. A PSD permit may be required for various processes or emission units at a single facility. AISI members report that the PSD permitting approval process can take from a little over a year to up to two years in some EPA Regions despite the CAA

[1] NSR permitting technically refers to permitting of facilities in CAA nonattainment areas, and PSD refers to permitting of facilities in CAA attainment areas. Generally, the term NSR is often used broadly to refer to the permitting program, including both NSR and PSD permitting. These terms are used throughout this document according to that standard approach.

requirement that completed permit applications be granted or denied not later than one year after the date of filing.[2]

In addition to PSD permitting, facilities must also obtain a CAA Title V Operating Permit through its relevant state agency. The Title V permit includes the pollution control requirements from federal or state regulations that apply to a source and is subject to reviews by U.S. EPA, state environmental agency, federal land managers and public comment and hearings. Similar to the PSD permitting process, AISI members report varied timelines for completing the Title V review and approval process depending on the state regulatory agency and EPA Regional office, taking up to three years to receive the final permit and costs of several millions of dollars for each operating permit needed. Title V permits also must be renewed every five years, during which time a facility needs to demonstrate compliance with the permit conditions by reporting its air emissions over the five year period.

The Clean Water Act (CWA) administered by both U.S. EPA and U.S. Army Corps of Engineers (Army Corps) contains various permitting requirements that most industrial facilities must meet. CWA Sections 401 and 404 deal with certification and permitting for constructing, operating or expanding an industrial facility where federal waters will be dredged or filled. Most Section 401 water quality certifications are handled by the states and can be used to condition or deny Section 404 permits issued by the Army Corps. The Section 401 certification and Section 404 permit process can take between a year to up to four years to complete. Discharges of either industrial process waters or storm waters into federal jurisdictional water requires National Pollutant Discharge Elimination System (NPDES) permits. These permits are issued by state environmental agencies with oversight from EPA Regional offices. Members report that NPDES permits can take six months or more to obtain depending on the state or region.

2. Proposed Changes to Streamline Existing Permitting Regulations

Once a facility is constructed and in operation, some of the most onerous permitting processes that facilities have to go through to continue to function as well as to seek any efficiency improvements or expansions are those relating to obtaining the NSR/PSD construction permits described above.[3] The loss of productivity and

[2] 42 U.S.C. § 7475(c).
[3] *See also* 40 C.F.R. Parts 51 and 52.

costly, time consuming permitting efforts associated with the current NSR process are without any real benefit to the environment and have the unintended consequence of actually discouraging installment of new efficiencies.

EPA should seek to streamline NSR permitting for modifications conducted at existing steel facilities to facilitate and stimulate productivity increases, innovation and efficiency in domestic steel manufacturing. This effort is necessary because the current NSR procedures have the unintended consequences of often forcing decreases in production. EPA proposed many of the reforms advocated in 2002, 2003, 2004 and 2005. Although some of these reforms were stayed as a result of court rulings, AISI believes that EPA can still implement the reforms through a careful review of the provisions and could yield beneficial NSR reforms.[4] AISI stands ready to help EPA engage in this process.

a. Routine Maintenance Repair and Replacement Reforms

The NSR rules provide that certain physical and operational changes at a plant do not constitute "major modifications" and thus do not need to undergo the burdensome NSR process.[5] One of the categories of exempt activities are those considered "Routine maintenance, repair and replacement" (RMRR).[6] EPA applies the RMRR exclusion primarily on a case-by-case basis, using a multi-factor test for determining whether a particular change falls within or outside the exclusion. This case-by-case analysis involves several different time consuming, expensive and legally risky options a company must weigh to potentially qualify for the RMRR exemption: (i) in advance of a facility submitting a construction permit the company can request a formal applicability determination (which generally takes a minimum of three months); (ii) an RMRR argument for exemption can be made as part of the construction permitting process, which also can take many months; (iii) a facility can proceed "at risk" without prior regulatory approval and with potentially serious enforcement consequences; or (iv) a facility can forego installing state-of-the-art equipment or undertaking efficiency projects and continue operations with older, less efficient equipment.

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[4] *See New York v. EPA*, 443 F.3d 880 (D.C. Circuit 2006).
[5] 40 C.F.R. § 51.165(a).
[6] *Id.*

EPA previously recognized the need to reform the RMRR determination process due to inherent uncertainty, costs and legal risks imposed on domestic facilities, stating that the process:

> results in lost capacity and lost opportunities to improve energy efficiency and reduce air pollution.

And also requires permitting authorities:

> to devote scarce resources to make complex determinations, including applicability determinations, and consult with other agencies to ensure that any determinations are consistent with determinations made for similar circumstances in other jurisdictions.

EPA goes on to say of the currently-existing NSR process:

> the effect is to discourage plant owners or operators from engaging in replacements that are important to restoring, maintaining and improving plant safety, reliability and efficiency...this effect is exacerbated by the uncertainties inherent in the case-by case approach.[7]

These same deficient permitting processes exist today and present the same challenges to domestic manufacturing that existed more than a decade ago. EPA should revisit certain portions of the RMRR reforms from 2003, specifically the provisions known as the Equipment Replacement Provisions (ERP). These provisions would exclude from the definition of major modification at 40 C.F.R. Section 51.165, projects that replace existing, permitted equipment or components thereof with like-kind or functionally equivalent equipment, provided the replacement components or equipment do not alter the basic design of the process unit and would not result in an exceedance of the permit limits.

Additionally, EPA could identify specific activities at steel facilities and other industrial sector operations that should be presumptively considered to constitute RMRR. Such a list could be added to the regulatory language or could be issued as clarifying guidance. As an initial example, the following list of modifications common to the steel industry could be considered presumptively as RMRR rather than be

[7] 69 Fed Reg. 61250 (October 27, 2003).

subjected to the current costly case-by-case analysis: replacement of furnace shells, oxy-fuel burners, oxygen lances, tundish pre-heaters, tundish burners, transformers, capacitors, regulators, lime or carbon injection equipment and other equipment that is commonly and routinely replaced in the industry as part of normal, continual maintenance activities. AISI and its members welcome any opportunity to discuss these recommended changes to the RMRR process with the administration or answer any questions.

b. Exclude Pollution Control Projects from Modification Definition

Another potential regulatory change to the existing definition of major modifications triggering NSR permit requirements that could streamline the permitting process for existing manufacturing facilities is to exclude Pollution Control Projects (PCPs) that result in net overall reductions of air pollutants, involve upgraded or rebuilt pollution control equipment or devices, or allow raw material/fuel substitutions that do not result in exceedances of permit limits. Similar to the RMRR revisions described above, EPA explored excluding PCPs from NSR review in the past on the basis that the exclusion allows sources to install emissions controls that are known to be environmentally beneficial thus offer flexibility while improving air quality.[8] The prior EPA effort listed specific technologies that the agency believed should be presumptively considered PCPs, but further provided that PCPs not listed could nevertheless qualify for the exclusion if the permitting authority determined on a case-by-case basis if the non-listed PCP was environmentally beneficial, and provided that PCPs entitled to the exemption could include in addition to equipment and technology, work practices, process changes or other pollution prevention strategies. AISI again recommends EPA revisit the PCP exclusion and publish in either regulatory text or through guidance a list of technologies, work practices and/or strategies employed in the steel sector that would be presumptively considered PCPs and exempt from NSR review.

c. Match the NSR Definition of Major Modification with the NSPS

EPA should revise the NSR emissions test definition to match the NSPS definition. This change would provide greater opportunities for facilities to make efficiency improvements to their operations without the significant costs and permit approval delays that are currently associated with the NSR trigger. EPA proposed a

[8] 67 Fed. Reg. 80190 (December 31, 2002).

similar change in definitions which, had it been finalized, would have applied only to electric generating units (EGUs).[9]

AISI believes that that statutory language behind the NSR program fully allows for this change, and the benefits of such a change would significantly aid streamlining the permitting process currently faced by our members' facilities.

d. Adopt Plant-Wide Applicability Determinations

EPA should promote and facilitate a voluntary option that a facility can establish Plant-Wide Applicability Limitations ("PALs") (basically emissions limits that apply facility-wide) through a permitting process, allowing such facility to change, modify and upgrade equipment and operations and add new equipment without triggering major modification NSR review, provided the changes do not result in exceeding the established PAL emissions limits.[10] When EPA explored establishing PALs in the past, the agency stated "[w]e believe that the added flexibility provided under a PAL will facilitate your ability to respond rapidly to changing market conditions while enhancing the environmental protection afforded under the program."[11] AISI believes EPA's conclusion remains true today, however, these provisions were stayed in litigation. EPA could revisit this issue and work with industry to minimize the burdens of establishing PALs, so that steel plants and other domestic manufacturing facilities would be able to make needed changes to equipment and processes more quickly than under the existing burdensome NSR process. This would allow steelmaking facilities and other manufacturers to have flexibility to respond to market conditions and make the U.S. manufacturing industry more competitive in the global marketplace. With a PAL, steel facilities would, without increasing emissions above the levels already deemed acceptable by the permitting authority in the PAL permit, be able to invest in equipment and technologies without the risks and delays inherent in the existing NSR permit process.

e. Specific NSR Permit Issues

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[9] *See* 70 Fed. Reg. 61081 (October 20, 2005).
[10] *See* 40 C.F.R. § 51.165(a)(1)(v).
[11] 67 Fed. Reg. 80189 (December 31, 2002)

There are a number of additional important NSR permit related matters that would benefit greatly from increased clarity and flexibility:

- EPA should reconsider policy reasons for co-located sources being considered the responsibility of the host company or facility. A co-located facility is on leased ground and has its own operating permit, employees, equipment and is responsible for maintaining compliance. EPA maintains the position that the "host" company has control and responsibility for any co-located company's actions, which is not the case. Separately permitted entities should not be a part of permitting evaluations for each other.

- EPA should provide for better flexibility for emissions offsets from energy conservation and reuse projects. For instance, over-restrictive netting requirements force many limits on a new boiler because the rules do not allow for direct emission offsets without additional federally enforceable limits to be set, like a minimum blast furnace gas (BFG) limit or a boiler specific emission limit. While a natural gas limit would make sense for a new, efficient boiler, the other requirements do not when looking at the overall reduction in emissions.

- EPA policies that reversed in-project netting should be established to give needed flexibility for modifications so that a permittee does not have to pull in every source (including on-site contractors) for netting calculations.

- EPA should modify rules related to data collection to allow for more current techniques. Certain rules list prescribed means of data collection that are now archaic and not easily maintained as they are obsolete (*e.g.*, paper chart strip recorders). Likewise, rules related to equipment calibration should be modified. These rules are outdated in that they do not recognize the newer generations of electronic instruments that cannot be calibrated in a traditional sense and either work, fail or internally diagnose and alert user of required attention. Many units also self-calibrate. Facilities now create a "calibration" to satisfy the rule requirement but the work is just a paper trail with no real meaning or added value for instrument performance.

- EPA should address PSD projects by allowing the permittee to revisit and/or take on new or additional limits when transitioning from the source modification/construction permit to the operating permit before closing the PSD time-period if the project lasts more than some minimum time threshold (*e.g.*, 18 months or two years from the initial application to the facility start-up). Facilities should have the right to true-up or make

adjustments with the netting balances prior to operating the new equipment in case of previously unforeseen changes in scope, so long as the permittee does not change the significance determination of the project in the Technical Support Document (TSD).

f. Align Implementation Guidance with NAAQS Revisions

Under current EPA policy, when NAAQS are revised for any of the criteria pollutants, existing NSR permit applicants must often redo the required modeling analysis using the new standard. This is often difficult and costly for both the affected facility and the state permitting authority as EPA has increasingly revised NAAQS before providing the states with implementation or modeling guidance. This lag time between revised standards and the implementing guidance, which often spans many years, can cause states to delay PSD permit approvals for facilities until EPA provides the needed data. The simple fix is for EPA to ensure it has the necessary implementation and modeling guidance in place before it issues a revised standard or at the very least have guidance on track to be available before a revised standard comes into effect.

g. Grandfather Existing NSR Permits When Adopting New NAAQS

EPA should adopt regulations requiring that NSR permit applications be subject to the NAAQS standards that exist on the date the application is submitted to EPA. Manufacturing facilities that have triggered NSR review spend significant resources modeling emissions to demonstrate that the NAAQS will not be exceeded when BACT controls are employed. If any of the NAAQS are changed while the permit is being processed EPA often requires new modeling based on the new standard. A consistent approach that grandfathers existing applications in connection with any future NAAQS revisions would provide companies with certainty and ensure companies do not spend time and resources on NSR permitting only to have the goal posts moved at the last minute and find themselves back at square one. This approach could also help alleviate EPA resources from having to develop the detailed guidance states need to implement a revised standard in a rushed timeframe.

h. Single-Source Photochemical Grid Modeling

The recent final rule amending Appendix W requires that, in the absence of an analysis allowing a source to screen out of a requirement to conduct and report the

results of air quality modeling, applicants seeking PSD permits must model impacts of precursors to ozone and $PM_{2.5}$ using a chemical transport model such as a photochemical grid model.[12] EPA does not, however, specify a preferred model for this purpose. Although the CAA requires applicants for PSD permits to model air quality, EPA has long recognized that it was not technically sound to designate with particularity specific models to be used to assess the impacts of a single source of ozone or $PM_{2.5}$ and instead allowed a permit applicant, working with the permitting authority, to choose a method to conduct the required air quality analysis. EPA has evaluated whether it is feasible to designate a single model for ozone and $PM_{2.5}$ for use by all major sources applying for a PSD permit and concluded that it could not make such designations. EPA should, therefore, have retained the existing requirements applicable to sources emitting precursors of ozone and $PM_{2.5}$. What EPA has done, however, is to effectively eliminate the exploring of other methods for analyzing the impact of a proposed source on air quality. EPA should return to its long-standing prior approach to air quality analysis to support PSD applications for sources that emit precursors to these pollutants. At a minimum, EPA should adopt a moratorium on single-source modeling of at least three years to further develop cost-effective models and screening techniques. EPA can reevaluate the state of technology at the close of that period to determine whether the moratorium should continue.

i. Use of Probabilistic Modeling

Tighter margins between background pollutant concentrations and increasingly-stringent NAAQS make it more and more difficult to demonstrate compliance using overly-conservative modeling assumptions. Current EPA guidance requires deterministic air quality models that use a facility s maximum operating rate and maximum allowable emissions as opposed to realistic actual operating and emissions rates at a facility that are often well below the maximum allowables. This frequently results in modeling data substantially overstating the effects a new or modified facility will have on ambient air quality for the region. EPA should adopt more probabilistic approaches to modeling to address this conservatism, especially given ever stricter NAAQS approaching background levels that makes it difficult to attain permits for expansions, construction or efficiency improvements. Probabilistic modeling, for example, would be allowed to take into account the variability of both

[12] 82 Fed. Reg. 5182 (January 17, 2017) (to be codified at 40 C.F.R. Part 51, Appendix W 5.3.2(c)).

background air quality and emission rates for modeled sources. While numerous commenters suggested this approach to EPA during consideration of the final Appendix W rule, EPA declined to take such action. EPA is using such probabilistic modeling in other programs, so should be able to make it workable and reliable under NSR.

j. Air Emission Modeling Improvements Needed

EPA has recognized that problems exist with its preferred models, but designated fixes to those problems are considered non-default BETA option. Use of BETA fixes requires Model Clearinghouse approval, which substantially limits the utility of a fix. While fixes may require some period of technical assessment, prolonging non-default BETA designation of proven fixes does not foster the balance between the economy and environment called for by the CAA s PSD provisions.

EPA should make improved modeling tools a higher priority, including through allocating more funding for model development. Furthermore, EPA should conduct rulemakings to update Appendix W more frequently. Before the recent revision released in late 2016, EPA had not revised Appendix W since 2005, even though EPA has revised NAAQS for nearly every criteria pollutant in that same period. At a minimum, EPA should review Appendix W when it reviews NAAQS. Conducting such revisions concurrently with identification of improvements to models would better achieve the PSD program s explicit statutory purpose of ensuring economic development while protecting air resources. Key modeling improvements include:

- **Receptor exclusions** strengthen EPA guidance to exclude receptor data from areas that the public does not have legal or physical access to;
- **PM fugitive emissions** use of a pre-processing step to account for the overestimate of fugitive emissions; and
- **Source Characterization** EPA should streamline the modeling protocol approval process. Case-specific refinements involving source characterization should not trigger a non-guideline modeling approach. Substantial objective evidence and alternative source characterization protocols have been submitted to EPA to support the use of intermediate steps (without changes to AERMOD) to improve the accuracy of air dispersion modeling demonstrations for unique, non-traditional air

emission sources (*e.g.*, fugitive emissions, sources with large fugitive heat releases, unique stack configurations, etc.). EPA should authorize the use of source characterization techniques such as LIFTOFF, AERMOIST, AERLIFT, urban characterization, pre-processing step for fugitive PM, etc. Furthermore these source characterization techniques should be considered for routine application without a need for a non-guideline model approval if adequate documentation of the effects is provided.

- **EPA s AERMOD model is known to over-predict** and controls should not be required based on modeling and sources should not be responsible for the cost of adding new ambient air monitors. AISI submitted a study to EPA in 2011 that documents AERMOD s over prediction of emissions by more than 10 times compared to monitored data. When modeling shows nonattainment, sources can add new monitors per the SO_2 Data Requirements Rule instead of relying on modeling. EPA or states, not industrial sources, have historically been responsible for the cost of new and existing monitors and this cost should not be shifted to facilities. Modeling results that show an overprediction compared to monitored data should be allowed to be adjusted or calibrated based on the monitored data, instead of having industry install expensive controls based on known inaccurate modeled results.

k. Base NSR BACT Reviews on Domestically Proven Technology

In addition to the specific NSR regulatory reforms identified above that provide clarification on when PSD permitting is required, AISI suggests other changes to EPA policy once the PSD review process is triggered. BACT controls and limits considered during the PSD analysis should be based only on existing proven technologies and limits clearly demonstrated as reducing emissions at facilities located in the U.S. The PSD BACT evaluation process, spelled out through EPA guidance, should not include unproven technologies employed in other countries that have not been demonstrated as commercially feasible or effective at controlling emission in the U.S. Requiring domestic facilities to conduct technology reviews and costly feasibility analyses of technologies utilized in countries that do not have the same rigorous air pollution control and permitting requirements, places unreasonable permitting demands and delays on the already lengthy U.S. permitting process.

For the same reasons as above, the control technologies or limits considered under PSD BACT should be required to have been previously performance tested at a domestic facility to show an environmental benefit from the existing control

technology. Facilities seeking construction permits should not be required to evaluate technologies that are not already proven in the U.S. to reduce emissions. Because the current PSD BACT processes are unduly burdensome and time consuming for permit applicants and the reviewing authority, these procedures should be changed to reduce the economic burdens and time delays associated with BACT technology review.

l. Discontinue Use of Permit Performance Tests in Enforcement Actions

EPA has a history of using its enforcement powers to mandate control technologies and emissions limits in consent decrees as injunctive relief or mitigation measures. This practice of case-by-case enforcement measures creates significant disparities in the treatment of manufacturing facilities across the nation. Most importantly the enforcement strategy forces a small subset of facilities to bear the burdens of evaluating control technologies that EPA should be promoting through notice-and-comment rulemaking, or the permitting process. The enforcement burden on the targeted facilities can be extremely expensive and disruptive and often forces production limits resulting in a significant economic disadvantage of a target mill or group of mills, compared to their competitors. It also creates an additional corresponding burden and stigma of legal defense and enforcement in the facilities public record that the surrounding community may not fully understand.

EPA should also not utilize results from a post-construction performance test in an enforcement case seeking penalties or injunctive relief, provided the EPA-approved and permitted BACT technology installed was submitted with good faith pre-operational estimates of emissions. It is unfair and unproductive for EPA to review and approve technology-forcing BACT controls in a construction permit, only to file an enforcement action against a facility when it has invested in and installed the BACT controls in the event the controls do not meet the emissions reductions the facility and EPA anticipated.

AISI suggests that rather than pursue an enforcement action for penalties in the event EPA-approved BACT controls do not meet expected reductions, EPA should pursue a policy of modifying the construction permit based on the results of the performance testing. For emissions limits to be established as part of a BACT process, EPA should adopt a "test-and-set" process that establishes limits post-construction, rather than establishing emissions limits in advance of a performance test.

m. Discontinue Use of Enforcement Actions to Amend NSPS

EPA could also adopt an enforcement policy to discontinue the current practice of requiring a steel or iron ore production facility through an enforcement action to demonstrate compliance with limits on fugitive emissions from a plant production area or control device when limits are not set forth in the New Source Performance Standard (NSPS) for that source. Unless EPA changes the NSPS standards to specifically include numeric limits on fugitive emissions, it should not use language in enforcement action consent decrees to set emissions limits that were not adopted in NSPS notice-and-comment rulemaking. Currently, the NSPS does not have specific particulate matter numerical fugitive emissions limits, but rather sets opacity limits to ensure fugitive emissions are properly controlled. EPA is currently involved in a series of enforcement actions against several steelmaking facilities in Region 5 and has stated publicly that it does not like the published NSPS standards, and thus, is using the enforcement process to require Region 5 facilities to measure fugitive emissions in a manner in lieu of, and far beyond the NSPS-established opacity standards. This selective enforcement, in a single EPA Region, creates significant disparity in the applicability of the NSPS across the country and harms the competiveness of manufacturers operating in that Region.

Similarly, EPA should not use injunctive relief or mitigation as part of an enforcement action to require any steelmaking or iron ore processing facility to use a monitoring technology other than the EPA-approved Method 9 set forth in the NSPS, to evaluate compliance with the opacity standards. Again, EPA Region 5 is currently engaged in an enforcement strategy against steelmaking facilities in the Region seeking to have those facilities to install processes and technologies that are not set forth in the NSPS standards. This puts facilities in the Region at a legal and economic disadvantage to operations in other locations.

If EPA desires to change the NSPS requirements applicable to controls or fugitive particulate emissions from steelmaking facilities, it should amend the NSPS through public notice-and-comment rulemaking, rather than by selective enforcement which creates disparities in the industry and sidesteps the established rulemaking processes.

n. EPA Should Update the NSPS Opacity Standard

The opacity limit EPA utilizes under Subpart AAa, 40 C.F.R. Section 60.272a (a)(2) and (3), which mandates a 3 percent opacity limit for emissions from a control device as well as a 6 percent limit that applies to a steel plant s□production area to which the control device is attached should be updated to 10 percent. The changes are appropriate because EPA concedes that both of these limits were somewhat arbitrary when established originally and because of the practical limitations of reading a 3 or 6 percent opacity using EPA-approved Method 9 methodology. The use of a continuous opacity monitor (COM) as allowed under 40 C.F.R. § 60.273a(c) also has a high margin of error in relation to the 3 and 6 percent limits, thus creating errors and misreading of opacity, without any environmental benefit. The standards setting organization ASTM, International has also identified COMs to be accurate only to the level of 10 percent opacity, making a 3 or 6 percent limit functionally impossible to accurately measure facility opacity for compliance purposes.[13]

o. Classification of Baghouse Dust as Hazardous Waste

Dust collected from the emission control devices employed during the primary production of steel in electric arc furnaces is listed as hazardous waste under the Resource Conservation and Recovery Act (RCRA)(K061) and requires use of a RCRA- permitted recycling facility to recover valuable commodities from the dust, such as zinc. AISI requests that K061 baghouse dust be delisted as a hazardous waste. The de-listing of K061 would allow for new, potentially significant opportunities for recycling and reuse of this waste stream without negative impacts on the environment. Baghouse dust would still be subject to being classified as a regulated waste if it is determined by analysis to have hazardous waste characteristics. While steel facilities currently manage their baghouse dust utilizing several RCRA-permitted recycling processes, AISI believes that if the waste was de-listed, additional recycling markets would quickly develop for this large-volume waste stream. The development of additional uses for and recycling strategies for non-hazardous baghouse dust will potentially eliminate significant annual costs and management burdens (labeling, training, placarding, storage limits, transportation challenges) associated with listed waste, without environmental detriment.

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[13] *See*, ASTM D 6216-98, *Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications*, ASTM International, West Conshohocken, Pa., 1998.

p. U.S. Army Corps of Engineers Wetland Permitting

The Army Corps is responsible for administration of Section 404 of the CWA, which covers permitting associated with impact to wetlands under federal jurisdiction. The 404 permitting process is currently one of the most ill-defined processes for a regulated party to understand and thus to predict permit timelines. This absence of a schedule is counter to a regulatory structure that fosters a balance between environmental protection and economic development.

Specifically, the Army Corps Section 404 process should be improved to include a publicly defined sequence of required steps and timelines to achieve each of them. As an example:

- The Section 106 consultation process obligates the Army Corps to consult federally recognized tribal entities during the permitting process. This has been a completely open-ended process where the Army Corps allows the consultation to occur indefinitely. The administration should impose three-month duration to allow consultation to occur, which is more than ample time for interested parties to understand and provide input on a potential wetland impact (most public comment processes default to a 30-60 day window).

Similar consultation processes are required with the U.S. Fish and Wildlife Service, the state Historical Preservation Offices and U.S. EPA. All of these processes can and should have defined windows of duration to build a sense of business certainty of how long it will take to get through a permitting process.

Elimination of the open-ended processes would also result in reduction of other collateral effects of the current permitting process, which industry has experienced taking two-to-six years to issue a new permit, and in one case, over seven years to simply amend an existing permit. Those collateral effects include things like repeated Endangered Species Act (ESA) reviews. Because the Army Corps process currently has no mandated or even target timelines, other processes required as part of the Section 404 permit, such as review for potential concerns with endangered species are never truly complete in the Army Corps eyes. When it takes the Army Corps anywhere from two-to-seven years to issue a permit, and species are added to the ESA list (*e.g.*, endangered, threatened), removed and sometimes re-

added to the ESA list, the Army Corps sees an obligation to go back to the drawing board and re-initiate the ESA analysis. Providing permitting structure and defining the process timeline for the consultation and permit processes improves permitting certainty, avoids delays and expending unnecessary resources and ultimately the prospects for economic.

3. Broader Regulatory Programs Impacting Domestic Manufacturing that are in Need of Reform

In response to EPA s request for broader existing or proposed regulatory programs that are outside the scope of facility permitting, AISI provides the following list of programs of most concern to its members. Where appropriate we provide potential alternatives but also stand ready to work with the appropriate EPA offices in crafting common sense, data-driven solutions. AISI also wishes to express its support for broader regulatory review and revision efforts the administration has already begun on matters of import to manufacturing in general, but also the domestic steel industry. These efforts include: EPA s recent decision to withdraw and reconsider or rewrite the 2015 final Waters of the U.S. rule; EPA s actions to place the litigation over the Clean Power Plan in abeyance and consider remand and review of the final regulations for new and existing EGUs; and EPA s actions to hold the litigation over the 2015 Ozone NAAQS in abeyance while the agency considers the appropriate actions in review of the final 70 ppb standard.

a. CERCLA Section 108b Financial Assurance Requirement for Hardrock Mining

On December 1, 2016, EPA proposed the first framework for financial assurance regulations under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 108b to address risks from hazardous substances.[14] In the same notice, EPA applied that framework to the hardrock mining sector, proposing specific standards for financial assurance on the industry sector. EPA is under a court deadline to promulgate a final rule by December 1, 2017. EPA s proposal calls for classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage or disposal

[14] 82 Fed. Reg. 3388 (January 11, 2017); 40 C.F.R. Part 320.

of hazardous substances. This rulemaking is of significant interest across the mining sector and beyond, as it would very likely require significant financial resources to be moved out of operation and instead set aside for the potential future risk of hazardous contamination.

According to a notice that EPA issued in 2009 on this issue, hardrock mining is defined as the extraction, beneficiation or processing of metals (e.g., copper, gold, iron, lead, magnesium, molybdenum, silver, uranium and zinc) and nonmetallic, non-fuel minerals (e.g., asbestos, phosphate rock and sulfur). At that time, EPA decided to exclude 59 categories of mining from this definition, finding them to be low risk and thus not in need of financial assurance for CERCLA liability. Further, adequate state authority and regulations exist to cover any remediation costs associated with iron ore mining and preempt the need for redundant and oppressive federal financial assurance measures under CERCLA. AISI members in the iron ore mining sector have used EPA's own modeling to calculate the projected impact of this rule if it were to go final as proposed. The iron ore mining sector would likely incur over $8 billion in financial assurance obligations, which far outweighs the minimal risk of this mining sector poses. AISI and its impacted member companies in the iron ore mining sector believe the risk factors EPA used to exclude the other mining categories apply similarly to iron ore mining, which should also receive an exclusion from EPA.

b. EPA Draft Method for Specific Conductivity Criteria

On December 23, EPA issued its *Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity* ("Conductivity Guidance") (81 Fed. Reg. 94,370)(December 23, 2016), which purports to provide approaches for developing science-based conductivity criteria for flowing waters that reflect ecoregional- or state-specific factors. Once final, states and authorized tribes located in any region of the country may use the methods to develop field-based conductivity criteria for flowing waters. In 2011, EPA issued a similar conductivity "benchmark" for the Appalachian region "it was a chronic value of 300 micro-Siemens per centimeter (uS/cm). That equates to a Total Dissolved Solids (TDS) value of 192 ppm, which is an extremely low number that would be difficult to attain. The new EPA draft guidance takes the approach used in the Appalachian guidance and extends it to the rest of the country. Also, while the Appalachian guidance included only a chronic value, the new draft national guidance also includes acute values. Since the new document is actually a methodology, to be used with region-specific data, it does not provide specific

numbers for each region of the country, but it does contain four examples of how the methodology would be applied. The resulting values pose significant concerns for both AISI s iron ore mining and steel making members and their operations. In addition to the flawed scientific issues in the draft methodology, there are significant practical issues as to how a facility could comply with the low levels resulting from the methodology. As the draft guidance rests on a flawed scientific basis and would impose enormous compliance costs, EPA should formally withdraw the draft guidance and inform Regional offices to not apply the methodology going forward until the scientific flaws of the methodology are addressed.

c. Hazardous Air Pollutant Standards for Major Sources

EPA is currently under court ordered deadlines to complete 33 Risk and Technology Reviews (RTRs) as mandated under CAA Section 112.[15] The deadlines to complete all 33 are staggered over approximately the next three years starting with an initial six RTRs by December 31, 2018, another 20 by March 13, 2020 and the final seven by June 30, 2020.[16] AISI and its impacted members have been engaged with EPA in reviewing the current Section 112 NESHAPs and have provided substantial amounts of emissions data and invested time and capital resources to ensure the final result of the review process accurately captures the industry s risk profile.

Throughout the process of reviewing the Integrated Iron and Steel NESHAP (40 C.F.R. Part 63, Subpart FFFFF), EPA has insisted on collecting data and performing facility-wide risk review, including from non-category sources, *i.e.*, sources within the facility not regulated under Subpart FFFFF. Many of these non-category sources, such as coke ovens and steel pickling lines, have their own NESHAP standards making the additional risk modeling duplicative at best. AISI has numerous concerns with this approach and has expressed them to EPA in past meetings. Specifically, the data used to estimate risks from non-categorical sources in any facility-wide risk assessment is not subject to the same quality assurance and verification rigors as the data from Subpart FFFFF sources. For these reasons, AISI explained to EPA that the iron and steel industry has great concerns on the use of the

[15] 42 U.S.C. §§ 7412(d)(6), (f)(2).

[16] See *CA Communities Against Toxics v. EPA*, 1:15-cv-00512, U.S. Dist. Crt for DC Circ. (March 13, 2017) and *Blue Ridge Environmental Defense League v. EPA*, 1:16-cv-00364, U.S. Dist. Crt for DC Circ. (March 22, 2017)(setting final rule completion deadlines for Integrated Iron and Steel Sector, 40 C.F.R. Part 63, Subpart FFFFF and Taconite Iron Ore Processing, 40 C.F.R. Part 63, Subpart RRRRR amongst 31 other sector categories).

non-categorical data in assessing and aggregating the risks to develop a facility-wide risk, as such data are not necessarily representative of any actual risks from the sources in which the industry operates, especially since iron and steel facilities do not all share the same non- categorical sources. The emissions data AISI s members provided EPA pursuant to the initial Information Collection Request (ICR) prescribed specific sampling and analytical criteria as well as quality assurance requirements. Data from non- categorical sources is generally not subject to the same standards as the Subpart FFFFF data, is frequently outdated and could lead to misinformation. EPA has acknowledged the difference in the data quality in past meetings but still intends and is currently conducting risk modeling from the non-categorical sources. Given the concerns expressed above with the quality of the data, value and potential for misinterpretation of results and compounded with current EPA time and resource constraints given looming deadlines as outlined above, AISI again requests that non-categorical emissions and risk data be excluded from review.

The taconite mining industry is subject to the Taconite Iron Ore Processing NESHAP (40 C.F.R. Part 63, Subpart RRRRR). On March 22, 2017 the U.S. District Court for the District of Columbia issued an order setting a deadline for EPA to complete its NESHAP Risk and Technology Review (RTR) for taconite and twelve other NESHAP affected industries by December 31, 2018 or June 30, 2020, depending on EPA s category prioritization. Certain companies affected by the original Taconite NESHAP submitted a Petition to Delete (PTD) taconite as a source category regulated under Section 112 of the CAA in 2003 (along with supplemental information to EPA in 2006) because the HAP emissions associated with these facilities are low; do not represent an adverse impact on ambient air quality; and do not pose an unacceptable risk to human health or the environment as defined in Section 112 of the CAA. Therefore, as described in the PTD application, the taconite industry does not warrant regulation under the Section 112 NESHAP program. However, EPA has not completed its evaluation nor responded to the companies PTD request. Prior to initiating the Taconite NESHAP RTR, EPA should review the information presented in the PTD request and determine that due to the industries low risk, all or portions of the category should be deleted from the Taconite NESHAP RTR.

d. Clean Air Act Regulatory Changes

AISI requests the following additional changes be made to various CAA programs:

- Add or strengthen EPA s specific requirement to consider costs and cost effectiveness when establishing new NAAQS, Maximum Achievable Control Technology (MACT) floor regulation, as well as State Implementation Plans (SIPs) control requirements.

- The CAA should be amended so that NAAQS are not required to be reviewed every five years, but extended to at least 10-15 years or consider that revisions to the NAAQS are of such significant that they should be required to be passed by Congress and not EPA.

- EPA should repeal the NSPS at 40 C.F.R. Part 60, Subparts N, Na. They are redundant and less restrictive than 40 C.F.R. Part 63, Subpart FFFFF. Subparts N and Na also require the use of obsolete technology (strip recorder charts) for tracking compliance data and reporting purposes. FFFFF is more effective at protecting the environment and recognizes available technologies exist and leave the means for tracking compliance data open.

- EPA should repeal its position (not found in law or regulation, only in guidance via an FAQ document) that non-EGUs must maintain Part 75 Continuous Emission Monitoring Systems (CEMS) monitoring even if the states are following EPA s lead and not including non-EGU s in the Cross State Air Pollution Rule (CSAPR) trading program. States can demonstrate that state-wide thresholds for NOx are met through means other than Part 75 monitoring, such as the use of emissions factors. It is unreasonable, burdensome and costly to maintain and replace (as necessary) CEMS monitors that are not otherwise legally required on non-EGUs.

- EPA should repeal the enforcement criteria in the Energy Star and other efficiency reward programs, which preclude a plant (or possibly even a corporation) from the program when one plant is in enforcement. Valid projects with environmental benefits should be considered because the enforcement is unrelated to the project. In addition, some enforcement actions take years to conclude, which makes plants ineligible for those same years.

e. NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters

As noted above, many steel facilities have numerous major source emission units subject to CAA Section 112 NESHAP requirements, including industrial boiler

and process heaters (40 C.F.R. Part 63, Subpart DDDDD). The requirement to test/tune/test each burner of each applicable source is a burdensome exercise. At many steel making facilities there are multiple finishing lines with indirect heating furnaces that are comprised of hundreds of natural gas fired burners each below 5 MMBTU/hour. These units are considered cumulatively under the Boiler MACT and are therefore required to have annual tune-ups per 40 C.F.R. § 63.7515(d). The annual tune-ups require excessive line outages and man hours. The annual requirement for testing and tuning of the many small burners can range up to $100,000 for a company with the time, equipment and proper skills to conduct the tuning. For natural gas sources with burner sizes less than a certain threshold, reducing the frequency of these tune-ups to every five years would significantly reduce the cost burden.

f. MACT "Once In, Always In" Policy

Facilities currently subject to CAA Section 112 NESHAP requirements should be afforded the opportunity to petition for removal of applicability if their potential to emit (PTE) has fallen below the major source thresholds in the CAA triggering requirements to employ MACT.[17] For example, one member facility once had coal-fired boilers that put the facility over the major source HAP threshold for Subpart DDDDD. After the boilers were permanently shut down, the PTE immediately fell below those thresholds, however the facility remains an affected source under the 40 C.F.R. Part 63, Subpart SSSS Surface Coating of Metal Coil. The permanent shutdown of the boilers brought the facility PTE down to Area Source thresholds, which require different emission control standards, specifically Generally Achievable Control Technology (GACT) and not the applicable MACT standards, which are more costly and directed at larger sources of air emissions.

Similarly, manufacturing facilities with emergency back-up generators onsite often find themselves subject to 40 C.F.R. Part 63, Subpart ZZZZ engine rules. These rules are intended to capture industrial engines that are much larger sources of HAPs than engines infrequently running back-up generators that typically produce minimal emissions.

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[17] *See* 42 U.S.C. § 7412(a)(1)(defining "Major Source" as sources with the potential to emit 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants).

One member facility whose back-up generators are subject to the Subpart ZZZZ NESHAP requirements reports the following emissions in 2016:

PM_{10}:	0.0002832 tons per year (tpy)
SO_2:	0.0002639 tpy
NO_x:	0.0039906 tpy
CO:	0.0008599 tpy
VOC:	0.0003180 tpy
Total:	**0.005716 tpy**

Having to monitor, report and maintain records for such a minimal emission source is not cost efficient. For a facility with five back-up generator engines it generally costs $500 ($100 per engine) per year to monitor, report and do maintenance as EPA requires, which amounts to $90,000 per ton of emissions to comply with the regulations. AISI members believe this type of cost is an unjustified burden on manufacturers given the actual emissions from these sources and limited times these engines are running.

g. Restore Start-up, Shutdown, and Malfunction (SSM) Protections

From the inception of the CAA, EPA promulgated regulations and approved SIPs that granted exemptions and affirmative defense provisions for emissions during SSM events. But through an overly broad and unsupportable interpretation of two recent court decisions,[18] EPA abruptly changed course and began a systemic process of eliminating existing SSM exemptions and affirmative defense provisions from various CAA regulations and previously- approved SIPs. Congress never intended for the EPA to eliminate SSM emergency exemptions that have existed and been successfully implemented for over 30 years. These exemptions provide certainty and flexibility for companies to lawfully maintain their equipment and, most importantly, to protect the safety of their workers and the surrounding communities without violating air permits.

AISI urges EPA to re-establish these important SSM exemptions that were removed from CAA regulations following EPA s strained interpretations of the *Sierra Club* and *NRDC* decisions. The administration s recent action to delay the ongoing

[18] *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008); *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).

litigation over recalling 36 state SIPs based on SSM provisions in those plans is an important first step AISI applauds. We also support EPA s stated intention to review the legal rationale behind the decision to pull various SSM provisions from already approved SIPs.

h. Mandating Digital Camera Opacity Measurement Technique

EPA should not mandate industrial facilities to solely rely on the Digital Camera Opacity Technique (DCOT) for measuring opacity compliance as was done in the final Ferroalloys NESHAP and its reconsideration in January 2017. The existing Method 9 has been in place for many years and is a reliable methodology for measuring opacity at industrial facilities. The new DCOT technology has not been proven reliable or effective for measuring opacity from stack source emissions and should, therefore, not be extended to measure compliance for fugitive emissions from non-stack sources, such as the roof vents found at many of our members facilities.

Additionally, the DCOT technology is currently provided by a single vendor. Given that DCOT, to our knowledge, is not currently being used by either of the two facilities in the U.S. that exist in the ferroalloys industry as the means of verifying compliance with a regulatory opacity standard, the price for using it as a compliance measure is unknown. If EPA retains DCOT as the sole-source required compliance method, then basic economics would say the price will surely rise. Given the long term historical use of Method 9 inside and outside the ferroalloys industry, it is widely available to the regulated community through a broad network of EPA-approved testing vendors. The large network of Method 9 vendors helps to maintain a price that is stable and not exorbitant.

EPA also made this change to a compliance measurement approach through the Ferroalloy rule that applies to only two facilities. However, Method 9 s use for opacity standards has a much wider application than just for the ferroalloy industry. Therefore, if the agency wanted to make a change of this nature to such a central and widely used method, it should have more clearly done so as a wholesale change. This method change should have been formally proposed and received full public comment, with commenters aware of the full potential magnitude of this proposed change in compliance measurement. In seeking to establish DCOT for the ferroalloy industry, EPA did not follow its own guidance regarding broadly applicable test methods as spelled out in AISI s August 2016 comments on the reconsideration of the final Ferroalloy NESHAP. Given the concerns outlined here and in our formal

comments to Ferroalloy NESHAP reconsideration, AISI requests that EPA allow both DCOT and Method 9 as alternative opacity compliance measurement methods.

i. Formally Update EPA s Manganese Risk Level

EPA s long outdated inhalation reference concentration (RfC) for manganese and manganese compounds (Mn) that appears on the agency s Integrated Risk Information System (IRIS) website needs to be removed in accordance with EO 13777. Pending completion of a new IRIS review for Mn, AISI requests that EPA remove the Mn RfC from the IRIS website and replace it with a notation that refers to or incorporates the minimal risk level (MRL) developed by the U.S. Public Health Service s Agency for Toxic Substances and Disease Registry (ATSDR).

EPA developed the Mn RfC value in 1993, and it has not been revised or updated for more than two decades. Since that time, a substantial body of new scientific information has been developed concerning manganese toxicology. Several years ago when developing air toxics standards for the ferroalloys production sector, EPA recognized the outdated nature of the IRIS Mn RfC and the fact that it is no longer consistent with the latest and best available science. Accordingly, EPA ceased relying on the Mn RfC and opted instead to utilize the recently updated MRL developed by ATSDR. Further, in 2014, the EPA Office of Air Quality Planning and Standards revised its database of benchmark values for use in assessing risks from air emissions by replacing reference to the IRIS Mn RfC with the ATSDR MRL.

The agency s information quality (IQ) guidelines developed pursuant to the 2001 Information Quality Act impose a clear procedural and substantive obligation upon EPA to ensure the quality, objectivity, utility and integrity of all information disseminated by EPA. For the reasons outlined above, EPA s continued reliance upon the outdated Mn RfC on EPA s IRIS website does not meet those IQ obligations and it is therefore a prime target for elimination in accordance with the terms of EO 13777.

j. State Primacy in Regional Haze Program

In recent years, EPA has taken several actions that have dramatically increased the scope and reach of the visibility program by disapproving of SIPs to address regional haze and imposing Federal Implementation Plans (FIPs) in their place. In doing so, EPA has unlawfully expanded the regional haze FIPs beyond the

limits imposed in the CAA and beyond the scope of EPA s own implementing regulations. These efforts, in turn, have dramatically increased the regulatory burden on stationary sources currently subject to regional haze requirements and thereby imposed economic burdens on domestic manufactures.

While AISI supports reasonable and cost effective measures to improve visibility in Class I areas, it is critical that EPA and the states do so in a simple, straightforward, and flexible manner that reduces regulatory burdens and minimizes costs. The visibility program differs from most CAA programs because it is focused exclusively on aesthetic rather than human health concerns. As a result, it is even more imperative that EPA provide an adequate justification for imposing costly regulatory requirements on states and regulated sources. In the past, EPA has failed to do so and instead has issued FIPs that imposed billions of dollars in costs to regulated sources in order to achieve visibility benefits that EPA concedes would be imperceptible to the naked eye.[19]

States, regulated entities, and the courts have all expressed concern over the legality of EPA s aggressive approach toward implementing the regional haze program. In fact, the Fifth Circuit recently issued a stay of EPA s federal implementation plan after concluding that petitioners had a strong likelihood of showing that EPA exceeded its statutory authority by disapproving of Texas and Oklahoma s reasonable progress goals and establishing costly federal reasonable progress goals to take their place. *See State of Texas v. EPA*, 5th Cir. Case No. 16-60118, Doc. No. 513595283. In addition, on June 14, 2013, the Eighth Circuit Court granted Petitioners (Cliffs Natural Resources, ArcelorMittal USA LLC, and the state of Michigan) a judicial stay of the Taconite Regional Haze FIP pending final decision on the merits.

AISI encourages EPA to continue to look for ways to streamline and improve the regional haze program so that it can be efficient and effective without adding unnecessary requirements and burdens on states whose current efforts have led to meeting program glide paths and ultimately long-term visibility goals without imposing uncertainty and unnecessary regulatory burdens on individual facilities.

k. Triggers for Supplemental Environmental Impact Statements (EIS)

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[19] Visibility changes of less than 1 deciview cannot be perceived by the naked eye. 77 Fed. Reg. at 30,250.

Triggers for Supplemental Environmental Impact Statements (EIS) □ Environmental Impact Statements have grown into review studies of staggering depth and scope and for the iron ore mining industry present years of time and millions of dollars in investment in preparation prior to initiating the permitting process. The breadth and depth required of these reviews should result in an assessment that is robust enough to serve for much of the activity undertaken by a mining operation. However, the federal language prompting the supplementing of an EIS grants enormous deference to the Responsible Governmental Unit to determine when such a study should be reopened and supplemented, a process which adds time and dollars again prior to the permitting process. The administration should adopt regulations that limit the conditions for supplementing an EIS to those where the existing state or federal permitting programs are unable to acknowledge any adjustments in project scope or environmental conditions during their respective permitting processes.

l. NPDES Authority - Groundwater Conduit Theory

AISI requests clarification that the CWA does not govern discharges to groundwater even if there is a subsurface hydrologic connection between groundwater and surface water. The text and legislative history of the CWA indicate that it was never intended to regulate discharges to groundwater. EPA has never adopted any formal position interpreting the CWA to require an NPDES permit for the discharge of pollutants to groundwater that is hydrologically connected to surface water.

AISI requests that EPA, in its rewrite of the WOTUS rule or through administrative guidance clarify that the NPDES program does not regulate discharges to groundwater, even if the groundwater is hydrologically connected to surface water.

m. Inclusion of Manganese on Drinking Water Contaminant List

AISI opposes EPA s□recent addition of manganese to the Drinking Water Contaminant Candidate List (CCL 4).[20] Inclusion on CCL 4 unnecessarily opens manganese up to development of a new drinking water standard as EPA is required

[20] *See* 81 Fed. Reg. 81099)(November 17, 2016).

to make a determination to regulate or not regulate at least five substances on the CCL every five years. As EPA openly acknowledges, manganese is an essential nutrient that is subject to strict homeostatic control in the human body. Large amounts of manganese are naturally present in many foods consumed as a part of a normal diet, so manganese in drinking water is unlikely to add materially to the normal daily ingestion of manganese from diet.

The science EPA identified in the CCL 4 listing concerning manganese and any potential risk it might pose as a constituent of drinking water does not support the addition of manganese to CCL 4. The purported link between the consumption of drinking water and development neurotoxicity is not sufficiently robust to warrant the development of drinking water standard for manganese. AISI, through its coalition the Manganese Interest Group (MiG) submitted substantial comments to EPA s CCL 4 docket in 2015 outlining the flaws in EPA s science justifying manganese s inclusion on the list and incorporates those comments by reference again here. Accordingly, AISI respectfully requests that manganese either be removed from the CCL list or EPA affirmatively determine a drinking water standard is not warranted.

n. Modification or Removal of Designated Uses/Water Quality Variances

The federal water quality regulations at 40 C.F.R. Section 131.10(g) provide that states may modify or remove designated uses, and sets out six factors that may be considered to support modification or removal of a designated use. Section 131.14 provides for site-specific water quality variances. Such variances must be supported with use attainability analyses and at least one of the six factors listed at Section 131.10(g). Such variances must provide that the highest attainable condition be achieved considering all feasible alternatives.

While Section 131.10(g)(6) provides for consideration of costs for changes in designated uses and water quality variances, the cost threshold is so high (substantial and widespread economic and social impact) that this factor can only be used in rare and unusual circumstances. The regulations do not allow for considering a balancing of costs and environmental benefits. There are circumstances where designated uses may be partially attained (*e.g.*, fish in attainment, macroinvertebrates not in attainment) and the investment and operating costs to attain full attainment are so high as to be unreasonable. The following addition to Section 131.10(g) is proposed to address this situation:

Section 131.10(g)(7). As determined by the Director, the costs to achieve full attainment of the designated use are wholly out of proportion to the environmental benefits that would be achieved from full attainment of the attainment use. The Director shall consider a site-specific use attainability analysis and the lowest cost to achieve the designated use for technically feasible alternatives.

o. Mass and Concentration Effluent Limits

Title 40 C.F.R. Section 122.45(f)(2) provides that NPDES permit effluent limits shall be in terms of mass (*e.g.*, lbs./day), and that permit writers may also establish effluent limits in terms of concentration. The categorical effluent limitations guidelines for many industrial categories are production-based, whereby a reasonable measure of actual production is used with the effluent limitations guidelines factors to calculate mass technology based effluent limits. The effluent limitations guidelines do not require attainment of any particular effluent flow or effluent concentration, so long as the mass technology based NPDES permit effluent limits are attained. When duplicative concentration effluent limits are established by permit writers without cause, the permittee is, in effect, placed in double jeopardy for effluent limit exceedances and the flexibility to use any combination of effluent flow and effluent concentration is removed.

To remedy this situation, the following modifications to 40 C.F.R. Section 125(f)(2) are proposed:

Section 122.45(f)(2). Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement for cause, and the permit shall require the permittee to comply with both limitations. The provisions of this section do not apply where production based effluent limitations guidelines and/or best professional judgment are used to determine the mass effluent limitations and the mass effluent limitations apply at an internal outfall or internal compliance monitoring point. In such cases, only the mass effluent limitation shall apply at the internal outfall or internal compliance monitoring point. Supplemental or additional concentration effluent limits may apply at the corresponding final outfall that discharges to a receiving water, as may be appropriate for water quality based effluent limits or other effluent limits derived by the permitting authority.

p. Other Water-Related Matters:

There are a number of other water-related actions that we would raise for specific comment:

- We have concerns regarding a number of issues with the recently released guidance on conducting fish consumption surveys.[21] We believe that this guidance should be reconsidered, and fully endorse the Federal Water Quality Coalition comments that were submitted on the draft guidance and are in the docket for that action.

- EPA should modify the NPDES and pretreatment rules to require a permitting authority to act on a variance request within 120 days from the time of application, or the variance is deemed granted. Further, EPA should modify the NPDES permit regulations so that short-term concentrations are not an issue if overall the mass loading is reduced; otherwise, diluting the concentration results in more total pollution to the waterbody.

- EPA should mandate public reviews during the Total Maximum Daily Load (TMDL) development process. Often facility managers do not see what the documents supporting the TMDL look like until they are final. It is unreasonable to expect permittees to comment on a TMDL during a permit review process, which gives the permittee little time to analyze and respond to the TMDL.

- AISI has concerns with EPA's proposed NPDES Application and Program Updates proposed rule, issued in May 2016 and not yet finalized.[22] We request that EPA issue a new proposal considering the significant comments received, especially regarding permit shields and permit reforms. We endorse the Federal Water Quality Coalition's comments submitted on this proposed rule, which are in the docket for this action.

- AISI also has concerns about certain aspects of the draft recommended aquatic life criteria for selenium and implementation guidance. We endorse the Federal Water Quality Coalition's comments submitted on this draft guidance, which are in the docket for this action.

q. TSCA Chemical Data Reporting

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[21] *See*, https://www.epa.gov/fish-tech/guidance-conducting-fish-consumption-surveys
[22] See 81 Fed. Reg. 31343 (May 18, 2016).

Under the Toxic Substances Control Act (TSCA) regulation, the Chemical Data Reporting (CDR) regulations require exceptionally detailed monitoring, recording, and reporting of the chemical make-up of our members steel and steel coatings, raw materials, downstream uses and downstream users, among other things.[23] Having to track all of the different industry sectors, customers and out processors that our steel touches is simply an inefficient use of valuable time without a concurrent benefit. It is overly burdensome to the steel industry to report on the general safety of a product that has been widely produced for several centuries and whose chemical makeup is well known and that poses little risk from exposure. AISI recommends exempting certain steel products from CDR reporting that are shown to pose little to zero risk from exposure. Our members report having to spend approximately 800 man-hours companywide to complete CDR reporting that would be better invested in addressing issues posing a higher risk potential.

r. TSCA Regulation of Asbestos

In December 2016, EPA announced that asbestos would be one of the first ten chemical substances to undergo a risk evaluation under the revised version of TSCA.[24] AISI supports regulations based on sound science that prevent harmful exposure to asbestos. Before EPA begins its asbestos risk evaluation, however, the agency must clearly define asbestos for the purposes of this risk evaluation and any subsequent risk management rulemaking. That definition must be sufficiently precise to differentiate asbestos from common, rock-forming elongated particles or cleavage fragments, which have not been found to cause health effects like those associated with asbestos. Providing a precise and accurate definition and analytical methods for asbestos will help to focus EPA s risk evaluation on harmful asbestos and asbestiform fibers, which present real risks to human health, and avoid diverting the agency s attention and resources away to non-asbestiform mineral particles that have not been shown to cause asbestos-related diseases.

In a presentation seeking public comment on the scope of risk evaluations, EPA stated it will adhere to the definition of asbestos set out in Title II of TSCA:

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[23] 40 C.F.R. Part 711.
[24] 81 Fed. Reg. 91927 (December 19, 2016).

> The term "asbestos" means asbestiform varieties of-- (A) chrysotile (serpentine), (B) crocidolite (riebeckite), (C) amosite (cummingtonite-grunerite), (D) anthophyllite, (E) tremolite, or (F) actinolite. (TSCA § 202(3))

AISI supports the continued use of this longstanding definition, additionally, in line with EPA's request for comments, we request the following recommendations to further clarify the scope of the TSCA risk assessment of asbestos:

1. AISI requests EPA to explicitly state in its pending asbestos regulation that "The term "asbestos" does not include cleavage fragments (sometimes used interchangeably with non-asbestiform elongate mineral particles)." This addition could be bolstered by including a definition of "cleavage fragments." One readily available definition is from Appendix B to OSHA's asbestos regulations (29 C.F.R. § 1910.1001), which excludes "cleavage fragments" defined as "mineral particles formed by comminution of minerals, especially those characterized by parallel sides and a moderate aspect ratio (usually less than 20:1)." Alternatively, EPA can define "asbestiform" to clearly exclude cleavage fragments. The National Stone, Sand and Gravel Association (NSSGA), for example, has proposed a workable definition of "asbestiform" as "the mineralogical habit or form of a mineral in which ultra fine single crystal fibers (fibrils) occur in bundles that can be separated into increasingly finer fiber bundles that typically display curvature." AISI requests EPA to exclude mineral particles with aspect ratios less than 20:1 from the "asbestiform" definition.

2. AISI also requests EPA explicitly state in its pending asbestos regulation that the agency will continue to define "asbestos containing material" to include only "material which contains more than 1 percent asbestos by weight."

s. Modify the Hazardous Waste Generator Improvements Rule

AISI has concerns with the recently issued Hazardous Waste Generator (HWG) Improvement's rule. EPA's rule includes some common-sense updates that will bring greater efficiency and clarity to the HWG regulatory program. However, we are concerned by other aspects of the rule. We are especially concerned by the change to the criteria under which a generator of hazardous waste is deemed in

violation of the Resource Conservation and Recovery Act (RCRA) permitting program applicable only to facilities that treat, store or dispose of hazardous waste (TSDFs). Under the new rule, failure to meet any one of EPA s long list of conditions for exemption could subject a generator to multiple violations and substantial penalties. Even a minor deviation in compliance would cause a generator to now be considered an illegal TSDF. We oppose this provision and request that the agency promptly change this provision through notice and comment rulemaking.

t. Duplicative Reporting Under Greenhouse Gas Reporting Program

Greenhouse gas (GHG) emissions are based on production and fuel usage data that are also reported in the annual Title V fee emissions reports.[25] Completing these reports adds approximately 350 man-hours companywide according to one AISI member with four domestic facilities, while many of AISI s members have upwards of 20 facilities in the U.S. The GHG Reporting Program requires either a mass balance approach or annual emissions testing to calculate emissions from basic oxygen furnaces and electric arc furnace (EAF) steelmaking operations. The mass balance approach is an impractical method for some facilities to use therefore, those members must annually tests their basic oxygen furnaces and EAFs. This testing costs approximately $120,000 companywide each year to complete and is duplicative to similar reporting conducted annually as part of the Title V permitting requirements. AISI recommends that EPA streamline these duplicative reporting programs and use data the agency already collected from facilities for use in the GHG Reporting Program.

[25] 40 C.F.R. Part 70.

Conclusion

Thank you for your attention on the important matter of addressing unnecessary regulatory burdens facing domestic manufacturing. AISI and its members are committed to working with the Trump Administration and its executive leadership in implementing common sense regulations and policies that are based on sound science and data and consistent with the statutory missions of each agency.

Respectfully submitted,

Thomas J. Gibson
President and CEO

US EPA – ScottsMiracle-Gro Meeting

Tuesday June 27, 2017

Attendees from The ScottsMiracle-Gro Company:

1) The Honorable Steve Johnson, Former US EPA Administrator and Member, Board of Directors, The ScottsMiracle-Gro Company
2) Jim King, Senior Vice President, Corporate Affairs, The ScottsMiracle-Gro Company
3) Ann Aquillo, Vice President, Corporate Affairs, The ScottsMiracle-Gro Company

Topics for Discussion

1) Introductions and Brief Company Overview
2) Regulatory Reform Suggestions for Consideration by the US EPA: We submitted a letter to the White House in April 2017 which provides background on the topics listed below. We also will bring some examples to show labels can be improved for the consumer.
    a. Improve the pesticide label to help the consumer
    b. Make clear that the FTC, not EPA, regulates advertising
    c. Fix the Registration process
    d. Streamline processes and paperwork
3) 24c Update: We would like to discuss the use of the SLN process to help address unique needs in key states related to pesticide use.

Via electronic mail

May 15, 2017

Samantha K. Dravis, Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 1803A
Washington, DC 20460

Re: Evaluation of Existing Regulations (EPA–HQ–OA–2017–0190)

Dear Ms. Dravis,

The Institute of Scrap Recycling Industries, Inc. (ISRI)[1] is pleased to submit these comments on behalf of the US-based scrap recycling industry, in response to the U.S. Environmental Protection Agency's (EPA's) notice for public comment on *Evaluation of Existing Regulations* (EPA–HQ–OA–2017–0190, 82 Fed. Reg. 17793, April 13, 2017) in support of President Trump's Executive Order 13777, "Enforcing the Regulatory Reform Agenda." With a total economic impact in the United States of nearly $117 billion and employment of more than 530,000 Americans, the recycling industry is a vital part of the U.S economy. However, the U.S.-based scrap recycling industry's significant contributions to both environmental stewardship and the country's economic strength are dependent upon government policies that understand and recognize these benefits and that promote their growth. It is with this in mind that ISRI provides these comments, identifying the following regulations that have negatively impeded the continued growth of the industry and are in need of repeal, replacement, or modification:

- **Modification of Subtitles C & D of the Resource Conservation and Recovery Act (RCRA)** to distinguish scrap commodities destined for recycling from waste destined for disposal. The current regulatory deficiencies within 40 CFR §§261.2, 261.4, and 239-259 allow commodity

[1] ISRI is the "Voice of the Recycling Industry," promoting safe, economically sustainable and environmentally responsible recycling through networking, advocacy, and education. With headquarters in Washington, DC and 21 chapters nationwide, ISRI represents the more than 1,200 companies operating in nearly 3,000 locations in the U.S. and 34 countries worldwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles.

materials destined for recycling to be inappropriately regulated as solid or hazardous waste at the federal, states, and local levels, adding additional costs and burdens on the recycling industry. EPA should revise these regulations to free scrap commodities destined for recycling from solid waste completely, and provide associated guidance to its regional offices and states.

- **The Federal Multi-Sector General Permit (MSGP), developed pursuant to the Clean Water Act (CWA) regulations at 40 CFR §122,** contains provisions, specifically benchmark monitoring, that make achieving compliance uncertain and, at best, difficult. This uncertainty and difficulty leads to repeated cycles of monitoring, exceedances, and corrective actions and effectively encourage frivolous and costly CWA third-party lawsuits. EPA needs to revise the MSGP to account better for the unique characteristics of stormwater and to align benchmark monitoring better with the performance potential of control measures and wet-weather conditions.

- **The refrigerant management regulations at 40 CFR §82, Subpart F, pursuant to Title VI of the Clean Air Act (CAA),** need to be revised to require removal of refrigerant from appliances and vehicles **prior** to their delivery for recycling, consistent with the specific language of § 608(b)(1) of the Clean Air Act Amendments of 1990. As currently written, the regulations place the burden of enforcement on recyclers who accept appliances and vehicles for recycling, contrary to the express language and intent of the CAA, thus imposing significant liability, compliance, and enforcement burdens on such recyclers. EPA needs to revise the 40 CFR §82, Subpart F regulations so that they follow what Congress specifically directed the Agency to do when drafting the implementing regulations to the CAA Amendments, **requiring prior removal** of refrigerant from appliances and vehicles delivered for recycling to remove these burdens from recyclers.

- **The Chemical Data Reporting (CDR) regulations at 40 CFR §711, pursuant to the Toxic Substances Control Act (TSCA)**, need to be revised to eliminate the current reporting requirements for small annual amounts of scrap metal imported for recycling—12.5 or more tons per metal per facility, a small amount compared to annual production. Such reporting is burdensome and also provides no useful information to EPA. EPA needs to revise the CDR regulations to exempt imported scrap metal from reporting.

- **Elimination of Regulatory Conflicts**. ISRI asks that EPA's Office of Policy exert greater influence on the program offices, including the Office of Land and Emergency Management and Office of Air and Radiation, to communicate among themselves during rulemaking about potential regulatory conflicts or difficulties across the regulations for which they have responsibility. Improving communication across and within the offices will result in better rulemaking and better regulations with fewer unintended negative regulatory consequences.

To provide context for the comments below, ISRI next offers background on the recycling industry.

INDUSTRY BACKGROUND

The recycling industry has long been recognized as one of the world's first green industries, born out of the need to recover and conserve valuable resources. From the earliest of times, people recognized the intrinsic value of recycling and the benefits associated with using and re-using existing materials to create new products. Within the U.S., scrap recycling has a long history, dating back to the late 1600s near Philadelphia where a paper mill began using recycled cotton and fiber to make paper, and to 1776 when Paul Revere advertised for scrap metal of all kinds so that he could manufacture basic metals to help fight the War of Independence.

The modern-day scrap industry traces its roots back to the late 1800s when many of our forebears were "peddlers," collecting all types of scrap via pushcarts. The industry has evolved dramatically since then, such that it now utilizes sophisticated machinery and technology to manufacture specification-grade commodities which are critical elements to the health of domestic, as well as global, manufacturing. In fact, recyclers today are the first link in the manufacturing supply chain, supplying more than 40% of manufacturing's global raw material needs. Last year alone, the U.S.-based scrap recycling industry transformed more than 130 million metric tons of recyclable materials into specification-grade scrap products sold for productive economic use as feedstock materials by industrial consumers in the United States and throughout the world. Those commodities included:

- 67 million metric tons of iron and steel;
- 47.2 million metric tons of paper;
- More than 8 million metric tons of aluminum, copper, and other nonferrous metals;
- More than 5 million tons of electronics;
- More than 3.5 million tons of plastic scrap; and
- More than 122 million tires.

Rising global demand for scrap also provides a useful critical outlet for our excess scrap supply, with between 30 to 40 percent of the scrap processed in the U.S. annually exported to more than 150 countries around the globe. Since the year 2000, net exports of U.S. scrap have made a positive contribution to our balance of trade amounting to more than $210 billion.

Like other manufacturers, scrap recyclers create jobs, contribute to the tax base, and improve the balance of trade. However, unlike most manufacturers, the work of scrap recyclers also inherently benefits the environment and helps prevent what would otherwise become solid waste problems.

COMMENTS

ISRI requests that EPA review and revise the following regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Clean Air Act (CAA), and the Toxic Substances Control Act (TSCA), for the reasons specified below.

1. The Subtitle D (Solid Waste) and Subtitle C (Hazardous Waste) Regulations Pursuant to RCRA Need to Be Revised to Recognize That Scrap Materials Destined for Recycling Are NOT Solid Waste and Should Not be Regulated as Such on the Federal or State Levels

For decades, scrap recycling has been impeded by varying and evolving interpretations of "solid waste" under RCRA Subtitle D (solid waste), especially at the state and local levels, and under RCRA Subtitle C (hazardous waste). Such interpretations have inappropriately regulated scrap materials destined for recycling as solid or hazardous waste and recycling facilities as solid or hazardous waste facilities, layering costly, burdensome and inappropriate requirements on the recycling industry.

Scrap commodities that are "destined for recycling"[2] should not be defined as "solid waste" under RCRA Subtitle D or RCRA Subtitle C, and the recycling facilities that process such products destined for recycling should not be considered solid or hazardous waste facilities.

Currently, the Subtitle C Definition of Solid Waste at 40 CFR §261.2 (DSW) and its Exclusions at 40 CFR §261.4, recognize that recycled processed, home, and prompt scrap metal are outside and excluded from the definition of solid waste, but do not recognize that unprocessed scrap metal destined for recycling is outside the solid waste definition (§261.2) or excluded from it (§261.4). Unprocessed scrap metal that is recycled is technically a solid or hazardous waste but exempted from Subtitle C regulation at 40 CFR §261.6(a)(3)(ii)[3]. While this situation is tolerable, unprocessed scrap metal destined for recycling should be outside and excluded from DSW on its merits, just as recycled processed, home, and prompt scrap metal are.

Most significantly, even if all scrap metal destined for recycling were outside or excluded from DSW under Subtitle C, they are not also automatically outside or excluded from statute-based definition(s) of solid waste under Subtitle D. In addition, nonhazardous nonmetallic scrap commodities that are recycled – including recovered fiber/scrap paper, scrap plastics, scrap textiles, scrap glass, and scrap rubber –

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[2] While the EPA has stated that "[t]he statute and the legislative history suggest that Congress expected EPA to regulate as solid and hazardous wastes **certain** materials that are *destined for recycling*" (72 Fed. Reg. 14176; emphasis added), ISRI maintains that scrap materials destined for recycling, such as scrap metal, paper, plastics, and glass, are valuable commodities that are not among those "certain materials". "Destined for recycling" means that such scrap materials are always handled in a manner that directs them towards or keeps them in the supply chain for recycled materials and are not at any time solid waste.

[3] An unfortunate aspect of 40 CFR §261.6 is that it declares that "[h]azardous wastes that are recycled will be known as 'recyclable materials'." The term, "recyclable materials", is commonly used to refer to scrap materials. For this reason, 40 CFR §261.6 should be revised to eliminate this declaration and its use of "recyclable materials".

while not subject to RCRA Subtitle C[4] are still subject to RCRA Subtitle D. The persistent misidentification of scrap commodities as solid waste under RCRA Subtitle D has led to continual challenges and misapplications of state and local laws on the recycling industry, adding additional layers of costs and compliance burdens on individual recyclers.

Unlike the RCRA Subtitle C regulations, the RCRA Subtitle D regulations from 40 CFR §239-§259 have neither a process to determine whether a material is solid waste nor any exclusions from solid waste. There is no Subtitle D regulatory language recognizing that scrap commodities destined for recycling are outside of, or excluded from, the statute-based Subtitle D definitions of solid waste at 40 CFR §§243.101 and 246.101, among others. These Subtitle C and Subtitle D regulatory deficiencies allow scrap material destined for recycling to be inappropriately regulated as solid or hazardous waste at the federal, states, and local levels and the facilities handling such scrap material to be regulated as solid or hazardous waste facilities, to the detriment of recycling.

To be clear, recyclable materials (referred to as "scrap" by the recycling industry) are commodities—they are not waste. They are highly valuable and tradeable products, produced according to globally recognized specifications for purchase by industrial consumers—including steel mills, metal refiners, plastic manufacturers, foundries, and paper mills—to meet their raw material needs. Manufacturers value the use of scrap for the significant cost and energy savings provided. Recycled materials are routinely used as substitutes in place of virgin commodities since they are often less expensive, of comparable—if not better—quality, and save energy which are all important factors in in the manufacturing process.

The numbers tell the story…

- U.S. steelmakers rely on iron and steel scrap—processed from items as diverse as automobiles, household appliances, demolished bridges, and old machinery—to make roughly two-thirds of the steel produced in the country every year;
- Recycled copper from items such as old radiators and wire and cable, accounts for more than one-third of total U.S. copper consumption;
- More than half of the U.S. aluminum usage is supplied from soda cans, aluminum siding, and other forms of aluminum scrap; and

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[4] "The definition of solid waste contained in this part applies only to wastes that also are hazardous for purposes of the regulations implementing subtitle C of RCRA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled" (40 CFR §261.1(b)(1)).

- More than half of the paper industry's needs here in the U.S. are met each year through the use of recovered fiber produced from such items as old newspapers, magazines, catalogs, office paper, and used corrugated boxes.

As one can imagine based on these examples – and there are many more – recycling is an important economic engine and very much integral to modern manufacturing. This concept was recognized by the National Lieutenant Governors Association (NLGA) last year when they adopted *A Resolution On The Importance Of Recycling And Distinguishing Recyclable Materials As Valuable Commodities That Are Not Solid Waste*." The Resolution concludes as follows –

> *BE IT FINALLY RESOLVED that the NLGA will be an engaged forum for collaboration among states to pursue SMM that recognizes the importance of recycling and that recyclable materials such as metals, paper, plastic, glass, rubber, and textiles that are recycled directly as a viable commercial feedstock or commodity should not be, deemed to be solid waste.*

EPA itself acknowledged the distinction between scrap commodities and waste materials almost 15 years ago, although not in regulation. In 2003, EPA tasked staff to take a futuristic look at the Agency's work in the year 2020. Out of that effort came the work entitled, *Beyond RCRA*. *Beyond RCRA* makes clear that scrap materials are not waste. Along with the recommendation that the Agency move from materials control to a materials management focus. As such, it was important not to treat recyclables as wastes, but rather manage them for what they are - feedstock for the manufacture of new products. The Agency recognized then that with recycling such materials comes avoidance and concomitant costs of environmental degradation – the Environmental Protection Agency's primary mission.

Although published in 2003 during the Administration of President George W. Bush, *Beyond RCRA* was used by the Obama Administration to jump start a serious Sustainable Material Management (SMM) program. As EPA understood, in 2003 and beyond, that scrap materials are valuable materials and not waste materials there is no reason whatsoever why the Agency should not implement that understanding in 2017. The time has come for EPA to acknowledge in its regulations that scrap is not waste.

As such, it is very important that EPA revise its regulations and clearly recognize the distinction between scrap and waste, and recycling and disposal, within BOTH Subtitle C AND Subtitle D of RCRA. Somewhere within 40 CFR §239-259, EPA needs to recognize that scrap commodities – including scrap metal, paper, plastics, glass, textiles and rubber - destined for recycling are outside of and excluded from, the Subtitle D definitions of solid waste. And, because Subtitle D is largely delegated to state authorities, EPA needs to also provide **clear guidance** associated with these changes to its regional offices and state authorities.

2. The Federal Multi-Sector General Permit, Developed Pursuant to the CWA Regulations at 40 CFR §122, Must Be Revised to Better Account for the Unique Characteristics of Stormwater and to Align Benchmark Monitoring with the Performance Potential of Control Measures and Wet-Weather Conditions.

The Federal Multi-Sector General Permit (MSGP) contains provisions that make achieving compliance uncertain and, in some cases virtually impossible, thus encouraging frivolous and expensive CWA third-party lawsuits. Modelled on CWA wastewater permits, the MSGP uses benchmark monitoring to assess the effectiveness of implemented control measures specified in the MSGP. Concentrations of benchmark constituents (e.g., copper and zinc) measured in grab samples of stormwater discharges are compared to benchmark levels. *EPA has set benchmark levels much closer to dry-weather water quality standards (WQS) for receiving waters (very low) than to stormwater discharge concentrations achievable by control measures under wet-weather conditions*. This is wholly inappropriate because unlike wastewater, stormwater has highly variable flow rates, constituent concentrations, and frequencies of occurrence. Discretely measured constituent concentrations of stormwater discharges may not accurately reflect the effectiveness of implemented control measures or the actual impact of stormwater discharges on the receiving water under wet-weather conditions. *This creates a situation in which the achieving benchmarks is extremely difficult, if not impossible*. It creates a situation such that control measures specified in the MSGP, when implemented, will often be insufficient to meet benchmarks. This difficulty and uncertainty leads to repeated and costly cycles of monitoring, exceedances, and corrective actions with no easy off-ramp from such cycles.

Another problem with the use of benchmark monitoring within the MSGP is that it is viewed by some as an indicator of permit compliance even though it is clearly stated otherwise by EPA; **"[t]*he benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation*.**" (2015 MSGP §6.2.1). Benchmark exceedances have been used as "evidence" of permit violations in threats of CWA third-party lawsuits against recycling facilities, including those with highly performing stormwater control systems. The currently established benchmark levels effectively invite CWA third-party lawsuits against recyclers, despite EPA's view that a benchmark exceedance is not per se a permit violation. The result has been millions of dollars of costs to recyclers across the country.

Over the years, we have witnessed increased abuse of CWA citizen lawsuits filed for enrichment rather than as the Act originally intended. Many organizations have used publicly available databases to obtain information about regulated facilities and threaten to sue them under the CWA simply to extract sizable financial "donations" and "voluntary" actions from facilities not otherwise required by law to do so. These facilities settle simply to avoid the costs of litigation, while the organizations then use settlement donations to repeat the process on other facilities in a vicious cycle that was not intended by Congress. These groups are taking advantage of the benchmark levels within the MSGP to inappropriately further their efforts.

It is absolutely necessary for the EPA revise the MSGP to account better for the unique characteristics of stormwater and to align benchmark monitoring better with the performance potential of control measures and wet-weather conditions.

3. The Refrigerant Management Regulations Need to Be Revised to Require Removal of Refrigerant from Appliances and Vehicles Prior to Their Delivery for Recycling, as Clearly Mandated in CAA Title VI, so as to Relieve Recyclers from the Compliance, Enforcement, and Liability Burdens of the Current Regulations for Which They Were Never Intended.

The regulations promulgated by EPA in 40 CFR §82 are in direct contradiction of the clear Congressional intent and specific wording found in §608(b)(1) of the Clean Air Act Amendments of 1990, and, as a result impose significant liability, compliance, and enforcement burdens on recyclers who accept for recycling small appliances and vehicles (henceforth, "appliances") that use refrigerants. Contrary to CAA Title VI[5], which calls for removal of refrigerant from appliances **prior to their delivery for recycling**, EPA finalized so called "flexible" regulations more than 20 years ago that ignore the explicit language of the statute and have put the industry in the untenable position as both the "enforcer" and the "enforced" of refrigerant removal from recycled appliances. These regulations continue to be applied and used as enforcement actions against recyclers.

Section 608(b)(1) required EPA to promulgate regulations mandating that all CFC refrigerants "contained in bulk in appliances, machines or other goods [ ] be removed from each appliance, machine or other good prior to the disposal of such items or their delivery for recycling." The law contains two extremely important concepts:

1. That recycling is distinguished from disposal; and
2. That CFC-bearing goods which are being recycled must be evacuated "*prior to their delivery to the recycler*." Congress left no room for interpretation as to who would be responsible for the removal of CFCs from such goods. If the CFCs are to be removed prior to their delivery for recycling it is clearly the last owner of the CFC containing item prior to that delivery who is responsible.

In fact, these words appear in the CAA Amendments of 1990 because of ISRI's success in convincing the Congress that there was no practical way to require scrap recyclers to be responsible for assuring that

[5] "Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other good prior to the disposal of such items or their delivery for recycling" (42 USC §7671g).

CFC refrigerant has been removed. Congress understood that automobiles and appliances delivered to scrap processors frequently don't have the physical shape they had when originally purchased.[6] Congress understood the impracticality of ensuring that each one of thousands of such items handled by processors each day has been properly vented and Congress spoke clearly and precisely on that point.

The regulations promulgated by EPA to implement §608(b)(1) subvert the intent of Congress to insure that refrigerant is recovered upstream of the recycling industry. The statute is quite unambiguous, yet EPA promulgated regulations that put the burden on the recycler to ensure refrigerant recovery occurs. Under these regulations, recyclers must either recover refrigerant from appliances delivered for recycling, which was not a provision of CAA Title VI, or verify via signed statements or contracts that the supplier ensured removal of refrigerant from appliances prior to their delivery for recycling. If a recycler cannot adequately enforce and demonstrate compliance by others (e.g., suppliers of appliances for recycling) through signed statements or contracts, that recycler suffers enforcement for failing to do so. The penalties are potentially large even for relatively minor paperwork violations. A common outcome of enforcement is a settlement with EPA that requires the recycler to implement measures that EPA cannot otherwise require the recycler to conduct under the 40 CFR §82, Subpart F regulations, as well as a substantial monetary payment or expenditure of some kind (e.g., a supplemental environmental project).

Also, once an appliance is accepted at a recycling facility with the refrigerant properly removed, the appliance is still regulated under these regulations until it is completely processed (i.e., shredded or melted). These regulations impede the movement of appliance parts that once held or contained refrigerant during use (e.g., copper coil and steel compressor) because when these parts are further sold, perhaps several times, a signed statement or contract is required between each seller and buyer. This creates a paper trail problem with potentially tremendous compliance and enforcement implications because each buyer is responsible under these regulations for compliance by every supplier (perhaps several) associated with the appliance part and the appliance from which it originated. In such complex recycling networks, this is extremely difficult to do.

To remove these liability, compliance, and enforcement burdens on recyclers, EPA needs to revise the 40 CFR §82, Subpart F regulations to require prior removal of refrigerant from appliances and vehicles delivered for recycling *as Congress originally directed the Agency to do.*

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[6] A recycler will often not receive the product until it has already been crushed or flattened, or otherwise altered for ease and economy in transport. As a result, it is frequently difficult, if not impossible, to inspect the product to determine whether or not CFCs remain.

4. The TSCA Chemical Data Reporting (CDR) Regulations Need to Be Revised to Exempt Scrap Metal Imported for Recycling from Reporting as CDR Imposes Substantial Reporting Burdens on Recycling While Providing No Useful Information to EPA

From 1986 to 2003, TSCA Chemical Data Reporting (CDR) did not apply at all to scrap metal recycling because inorganic chemical substances (e.g., elemental metals) were exempted from CDR requirements. In addition, as scrap metal recycling does not involve any chemical reactions—only physical changes in the state, shape, size, or aggregation of scrap metal— it would not be considered manufacturing for CDR purposes in any case.

The 2003 TSCA CDR Amendments (68 Fed. Reg. 848-906) changed that situation by its removal of the reporting exemption for inorganic chemical substances. The TSCA Chemical Substance Inventory lists every metal element, so scrap metal became a potentially reportable substance by way of its individual metals. While recycling scrap metal does not constitute manufacturing for CDR purposes, importing scrap metal for recycling does because the CDR definition of "manufacture" also includes importing. Scrap recyclers suddenly had a potential reporting obligation under CDR if they imported scrap metal for recycling, even from Mexico or Canada.

As a result, recyclers find themselves in the strange situation under CDR that reporting is not required for recycling domestic scrap metal, but is required for importing scrap metal for recycling above the applicable annual facility threshold of 25,000 pounds (12.5 tons) per elemental metal. For the recycling industry, a threshold of 12.5 tons is essentially zero because 12.5 tons represents a miniscule amount of annual production. This threshold can be exceeded in just one day. Reporting because of only one day of importing activity makes no sense and would not provide any useful information. However, the burden of reporting such imported scrap metal is not insignificant, and neither is the consequence for failure to report.

Any recycler importing scrap metal is very likely going to have a reporting obligation under CDR, even if such importing represents a small amount of annual production. The current CDR exemption for a "small manufacturer" (40 CFR §711.9) does not provide complete or any relief from reporting because this exemption does not often apply[7].

EPA needs to revise the CDR regulations to exempt imported scrap metal for recycling from reporting requirements, especially given that no reporting is required for recycling domestic scrap metal that is processed in exactly the same way as imported scrap metal.

This same argument for a CDR exemption applies as well as to imported inorganic ingredients that are used in making alloys by mixing them with metals in the molten state without chemical reaction.

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[7] Earlier this year, in comments submitted on Standards for Small Manufacturers and Processors (EPA-HQ-OPPT-2016-0675), ISRI noted that the small manufacturer exemption does not provide much relief for CDR requirements.

5. EPA's Office of Policy Needs to Communicate and Coordinate the Regulatory Activities Within EPA Better to Reduce Regulatory Conflicts and Difficulties Before they are Codified, and Correct Those Conflicts that Currently Exist

ISRI would also like to note the following regulatory conflicts related to the 40 CFR §82, Subpart F regulations to illustrate the general problem of regulatory conflict between regulations issued under different (or even the same) statute.

- The CAA Title VI definition of "disposal" at 40 CFR §82.152[8] is partly inconsistent with the RCRA Subtitle C definition of "disposal" at 40 CFR §260.10[9]. While part of the CAA definition is consistent with the RCRA definition, the CAA definition of "disposal" also includes reuse of appliance parts and recycling of appliances. Reuse and recycling are consistent the RCRA Subtitle C definition of "recycled" at 40 CFR §261.1(c)(7)[10]. This CAA definition is unnecessarily inconsistent with the RCRA definition and creates unnecessary regulatory and even enforcement confusion.

- The CAA Title VI exemption from venting prohibition at 40 CFR §82.154(a) for certain hydrocarbon substances (e.g., propane and isobutane) from certain appliances is potentially severely limited by the RCRA Subtitle C regulations and state CAA regulations. Venting flammable substances may be hazardous waste disposal under the RCRA Subtitle C regulations and may cause exceedances of applicable CAA limits on emissions of volatile organic compounds. These venting exemptions were apparently offered without adequate consideration of other potentially applicable and impeding regulations.

- Under the CAA Title VI regulations, 40 CFR §82, Subpart F covers refrigerant management in appliances, and 40 CFR §82, Subpart G, Significant New Alternatives Policy Program, covers the process of approving refrigerants for use in appliances. ISRI's casual observation is that the

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[8] Disposal means the process leading to and including:
(1) The discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;
(2) The disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water;
(3) The vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity;
(4) The disassembly of any appliance for reuse of its component parts; or
(5) The recycling of any appliance for scrap.

[9] *Disposal* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
[10] A material is "recycled" if it is used, reused, or reclaimed.

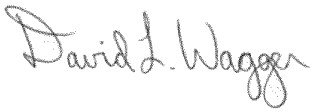
regulatory processes for refrigerant management and refrigerant approval are not well coordinated, especially concerning flammable refrigerants.

As the main cross-cutting office within EPA, the Office of Policy needs to exert greater influence across and within the program offices, including the Office of Air and Radiation and the Office of Land and Emergency Management, to communicate and coordinate their regulatory activities better to reduce regulatory conflicts and difficulties before they are codified.

CONCLUSION

ISRI appreciates this opportunity to identify for EPA those regulations that impede the business of recycling in the United States and are in need of repeal, replacement or modification. We would welcome the opportunity to meet with you and any other EPA staff to discuss our recommendations. Please feel free to contact me at 202-662-8533 or DavidWagger@isri.org.

Sincerely,



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May 12, 2017

Via Electronic Mail and First Class Mail
Sarah Rees, Director
Office of Regulatory Policy and Management
Office of Policy
1200 Pennsylvania Avenue NW
Mail Code 1803A
Washington, DC 20460

RE: Request for Comment
Evaluation of Existing Regulations
Docket ID No. EPA–HQ–OA–2017–0190

Dear Ms. Rees:

The Agency has requested comment (the "Request for Comment") concerning its response to Executive Order 13777, ''Enforcing the Regulatory Reform Agenda" (the "Executive Order"). 82 *Fed. Reg.* 17793 (April 13, 2017). Specifically, the Request for Comment seeks information from the regulated community concerning existing EPA regulations that impose "unnecessary regulatory burdens" relative to certain enumerated criteria identified in the Executive Order. Through this comment letter, ARIPPA identifies specific regulatory programs or provisions that the Agency should determine impose unnecessary regulatory burdens based on the criteria listed in the Executive Order.

ARIPPA is a non-profit trade association representing the interests of the coal refuse to energy industry. Its membership primarily consists of 14 electric generation facilities that utilize environmentally-friendly circulating fluidized bed (CFB) boiler technology to convert coal refuse into electricity. These plants are located in or near the anthracite and bituminous coal regions of Pennsylvania and, although relatively small in size, have a total generation capacity in excess of 1,400 megawatts and account for about 6% of Pennsylvania's annual electric generation.

What sets these coal refuse-fired power plants apart from conventional coal-fired electric generating units (EGUs) is the critical role they play in environmental clean-up and remediation in coal regions by removing coal refuse piles from the landscape, cleaning up the air, land and water polluted by these piles, and protecting public health and safety without shifting the cost of these activities to public sources. Coal refuse is a legacy of previous coal mining and consists of low quality coal mixed with rock, shale, slate, clay and other material. It was discarded as "waste" during the original coal extraction process and randomly disposed in piles near mine sites. To date, the coal refuse industry has removed and burned as fuel more than 200 million tons of coal refuse, restored more than 1,200 miles of streams and reclaimed more than 7,000 acres of abandoned mine lands. The environmental value of this industry to Pennsylvania has been quantified on average at $26 million per year.

As the Agency has recognized in the development of some regulations, the combustion of coal refuse in CFB units provides critical environmental benefits. Consequently, the Agency's regulatory programs should recognize and facilitate, rather than hinder, the continued operation of these units. Importantly, these facilities are very low emitting units that were used in establishing the standards now required by 40 CFR Part 63, Subpart UUUUU otherwise known as the Mercury and Air Toxics Standards (MATS). Additionally, the ash generated by these coal refuse to energy facilities is recognized in Pennsylvania environmental regulations for beneficial use in the reclamation of mining affected lands.

The use of coal refuse as fuel in CFB boilers has eliminated many abandoned coal refuse piles located throughout the Commonwealth of Pennsylvania and to a lesser extent West Virginia, Utah, and Montana. These coal refuse piles are more than eyesores. They are a major source of acid mine drainage into surface and ground waters, can spontaneously combust or catch fire from lightning strikes, are prone to subsidence, and represent real public health and safety hazards. CFB technology with limestone injection was designed to effectively combust coal refuse from past mining activities in response to the immense challenges posed by the millions of tons of coal refuse deposited throughout Pennsylvania. If these piles are not removed and used by the coal refuse to energy industry, it is highly likely that they will remain in place.

For these reasons, EPA, the Pennsylvania Department of Environmental Protection ("PADEP"), the Office of Surface Mining Reclamation and Enforcement, and other organizations have long-recognized the environmental benefits of the combustion of coal refuse.

National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 40 CFR Part 63, Subpart UUUUU (the "MATS Rule")

The MATS Rule would likely prevent many existing ARIPPA sources from remaining viable, thereby imposing extremely deleterious consequences for both the environment and the health and safety of the citizens of Pennsylvania.

In fact, even in the context of promulgating the MATS Rule, EPA stated that "[u]nits that burn coal refuse provide multimedia environmental benefits by combining the production of energy with the removal of coal refuse piles and by reclaiming land for productive use. Consequently, because of the unique environmental benefits that coal refuse-fired EGUs provide, these units warrant special consideration . . . ." 76 *Fed. Reg.* 25066. In recognition of these environmental benefits, as well as for the reasons otherwise discussed in this letter, ARIPPA strongly urges EPA to either exempt coal refuse-fired EGUs from MATS or revise the MATS Rule, as requested in this letter, to maintain the future viability of these facilities.

The MATS regulation threatens the continued viability of ARIPPA plants in a variety of ways. Foremost is the application of an emission limit for hydrogen chloride ("HCl") of 0.002 lbs./MMBtu. Notwithstanding the strong environmental performance record of the ARIPPA coal refuse-fired electric generating facilities, only one of the ARIPPA member plants can comply with the acid gas HCl emission limit established by the MATS Rule. This is due to the limited availability of cost effective emission control options for coal refuse-fired EGUs. However, the anthracite coal refuse to energy plants can meet the alternative sulfur dioxide acid gas standard of 0.20 lbs. SO2/MMBtu. This is because of the lower sulfur content of the anthracite coal refuse and not due to any difference between the technology

to combust anthracite coal refuse and bituminous coal refuse. Bituminous coal refuse has much higher sulfur content. The size and design of these CFB boilers would not support the installation and operation of additional post-combustion control systems in a manner that would enable the facilities to achieve the MATS HCl standard or in the case of the bituminous coal refuse-fired plants to meet the alternative acid gas SO2 standard and remain economically viable.

When establishing the HCl emission standard under the MATS rule, EPA failed to consider the unique characteristics of bituminous coal refuse-fired EGUs. Instead, EPA's analysis of emission control alternatives focused solely on traditional coal-fired units. [1] EPA identified the retrofit application of scrubber technology as the recognized "established" methodology under the MATS Rule for the control of SO2 and acid gases. ARIPPA is not aware of a single retrofit installation of back-end scrubbing technology for a coal refuse-fired CFB EGU. In this respect alone, the technology cannot be said to be "available" for application to ARIPPA sources. Moreover, even relying upon the cost information compiled by EPA as part of its development of the MATS Rule, the capital costs required for installation of such equipment would clearly be prohibitive for the small ARIPPA facilities in a competitive electricity generation market.

Unlike traditional coal-fired plants, the ARIPPA plants utilize limestone injected into the combustion zone of the CFB to control SO2 and acid gases, including HCl. This control measure is incapable of yielding the HCl emission reductions necessary to comply with the applicable limit under the MATS Rule. The ability to increase limestone injection rates is severely constrained by multiple factors. Initially, the requirement to achieve and maintain emission rates for multiple parameters within stringent emission limitations requires a refined "tuning" of limestone injection rates to avoid material increases in certain emissions while achieving decreases in other constituents. More significantly, the configuration of the combustion zone creates physical constraints on the ability to further increase limestone injection rates; as limestone injection rates increase, additional fuel must be added to calcine the limestone, further increasing the aggregate mass of material injected into the combustion zone. Finally in this context, the reduction of SO2 and acid gases through increased injection of limestone is asymptotic, and significant additional limestone injection achieves limited further HCl reduction. Extensive experience with limestone injection within CFB units demonstrates that the current technology, even accompanied by an attempt to increase injection rates, cannot begin to approach the HCl emission limitation currently established through the MATS Rule.[2]

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[1] For example, to the extent that dry sorbent injection, using a sodium-base sorbent, could sufficiently reduce the HCl concentration in the emissions from these coal refuse-fired CFB units, the resultant increase in sodium concentration in the ash would prevent the continued beneficial use of the ash in mine reclamation, and require disposal in lined landfills. Using EPA's own analyses relative to this point, and considering the relatively-high quantity of ash necessarily generated by these facilities, potential revenue from electricity sales could not possibly sustain these source operations in the face of these dramatic cost increases for ash management. These considerations are unique to coal refuse-fired sources and their critical role in mine reclamation through beneficial use of ash.

[2] The MATS Rule includes an alternative to rely upon SO2 emission limitations as a surrogate for control of HCl, at least under certain circumstances. However, reliance on such surrogate would provide no value to the ARIPPA plants in this context. All analyses and evaluations discussed in this letter relative to the reduction of HCl emissions from these facilities also applies to any attempt to further reduce SO2 emissions from these plants to the levels imposed under the MATS Rule. Simply put, the ARIPPA plants are no more able to demonstrate compliance with the surrogate SO2 emission limit in the MATS Rule than can such plants demonstrate compliance with the exceedingly stringent HCl emission limitation in the same regulation.

The Agency has identified alternative sorbents for the reduction of HCl emissions from coal-fired EGUs. Specifically, EPA reports that DSI has proven effective at removing HCl where a dry, alkaline sorbent (e.g., hydrated lime, trona, sodium carbonate) is injected upstream of a particulate matter control device. While ARIPPA recognizes that DSI utilizing appropriate sorbents can be effective at reducing SO2 and acid gases in certain circumstances, such applications cannot enable the bituminous coal refuse-fired plants to meet the Agency's established HCl emission limitation under the MATS Rule. In order for the ARIPPA plants to achieve the HCl emission reductions required under the MATS Rule through the use of DSI, the plants would be required to add significant quantities of either trona or sodium bicarbonate (both of which are sodium-based sorbents). The addition of such sorbents would alter the leaching characteristics of the ash, such that the ARIPPA plants would no longer be able to beneficially reuse the ash to reclaim abandoned mines in Pennsylvania. Instead, the plants would be forced to dispose of the ash in lined landfills, as reported in an analysis commissioned by EPA and performed by Sargent & Lundy. *See* "IPM Model – Revisions to Cost and Performance for APC Technologies", Sargent & Lundy, August 20, 2010 (the "Sargent & Lundy Analysis").[3] The costs associated with disposing of ash in lined landfills range between 10 and 50 times higher than those associated with beneficially reusing ash in the reclamation of mine sites. Accordingly, the increased ash disposal costs resulting from the use of DSI to control HCl emissions would render economically infeasible the use of such control technology by coal refuse-fired CFB units.

ARIPPA plants beneficially-reuse coal refuse ash produced by their CFB boilers, primarily to reclaim mine lands throughout Pennsylvania. In this way, the ARIPPA plants convert widely-recognized environmental and safety hazards into functional, and aesthetically-enhanced, reclaimed lands supporting natural vegetation. This practice has resulted in the reclamation of more than 7,000 acres of abandoned mine lands over a period spanning more than twenty years.

The ARIPPA plants are successful in contributing to the reclamation of vast acreage of abandoned mine lands because the ash currently produced by these plants is ideally suited for such reclamation, and exhibits characteristics necessary to ensure that such reclamation activities are environmentally beneficial in all respects. In order to safeguard against environmental degradation in the guise of mine reclamation, PADEP has promulgated standards to limit numerous constituents that could be present in materials otherwise destined for beneficial reuse and that would degrade soils or groundwater. For this reason, any material changes to the chemical or physical characteristics of the ash generated by the ARIPPA plants must be evaluated relative to these promulgated beneficial use standards in order to ensure that the current mine reclamation activity will not be adversely affected. Significantly, the use of sodium-based sorbents at any significant rate will degrade the chemical characteristics of the CFB-derived ash in a manner that will prevent the continued beneficial reuse of this material in mine reclamation activities in Pennsylvania.

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[3] The Sargent & Lundy Analysis estimates that the amount of coal ash produced by coal-fired EGUs represents approximately 12% of the total volume of coal material combusted. However, the evaluation reported in the study did not distinguish between traditional coal-fired EGUs and coal refuse-fired CFB units. *See* "IPM Model – Revisions to Cost and Performance for APC Technologies, Dry Sorbent Injection Cost Development Methodology", Sargent & Lundy, August 20, 2010. Historical data compiled by the ARIPPA plants demonstrates that the amount of coal ash produced by coal refuse-fired CFB units represents approximately *65% to 75%* of the total volume of coal refuse material combusted, depending on the specific type of coal refuse used. Indeed, more than 7 million tons of ash are produced each year from the combustion of coal refuse in Pennsylvania alone. This rate of ash generation is approximately five to six times greater than the quantity of ash estimated by the Sargent & Lundy Analysis.

Similarly, available information also suggests that the injection of a sodium-based sorbent would result in increased concentrations of sulfate and chloride in the ash leachate, which would likely exceed the applicable beneficial reuse standards for these pollutants. As a result, any ash impacted by the addition of trona or other sodium-based sorbent through DSI would not satisfy Pennsylvania's beneficial reuse criteria.

Our analysis of the impacts of sodium-based sorbent injection on the leaching characteristics of ash is consistent with information contained in the background documents compiled by EPA during promulgation of the MATS Rule. EPA states in the preamble to the MATS Rule that "in some situations sodium sulfates, that would be formed by the injection of trona, could potentially leach out of the fly ash/sorbent mixture on contact with water." 77 *Fed. Reg.* 9413. For this reason, "EPA's analysis of the final [MATS Rule] has included an IPM sensitivity case using a DSI waste disposal cost of $100/ton." *Id.* This represents "a 100 percent increase in assumed DSI waste disposal cost" from the proposed rule, in which "EPA modeled DSI with a waste disposal cost of $50/ton." *Id.*

EPA's statements within the preamble relate to the fundamental implication of the leachability of sodium in affected ash. As referenced above, the increased concentration of sodium (and likely sulfate and chloride) in the ash from the coal refuse-fired CFB units would exceed Pennsylvania's established standards for the beneficial use of this material in mine reclamation. Accordingly, not only would the use of trona injection preclude the continued reclamation of abandoned mine lands, but it would also necessitate the disposal of the resulting ash as a residual waste. Presently, the beneficial reuse of coal refuse ash to reclaim abandoned mines costs the ARIPPA plants between $2 and $5 per ton, the majority of which is attributable to transportation to and from the abandoned mine sites. Applying EPA's cost estimate for waste disposal of $50/ton, ARIPPA's ash disposal costs would increase by a factor of between 10 and 25 times due to the use of DSI to achieve the required HCl reductions under the MATS Rule.

In addition, the Agency has incorrectly concluded that coal refuse-fired sources can satisfy the HCl emission limit under the MATS Rule because certain existing coal refuse-fired units are currently meeting that standard. However, EPA's determination that certain existing coal refuse-fired units can satisfy the stringent HCl or alternative SO2 emission limit relies upon units combusting *anthracite* coal refuse; it is the substantially lower chlorine[4] and sulfur content in anthracite coal refuse, and not enhanced emission control equipment or performance, that enables the CFB units combusting this fuel to meet the MATS alternative SO2 emission limit. Moreover, certain of the existing anthracite coal refuse-fired units cannot satisfy the HCl limit imposed by MATS, and instead must rely on the alternative SO2 emission limit established under MATS. There is no opportunity for the bituminous coal refuse-fired units to replicate these limits because of the necessity to combust fuel with significantly different characteristics.

EPA's failure to appropriately recognize the important distinctions in fuel characteristics among coal refuse sources likely resulted in significant part from the Agency's inconsistent and inaccurate efforts to define "coal refuse" in a unique manner for purposes of the MATS Rule. The definition of "coal

[4] Coal refuse-fired CFBs currently achieve extremely efficient mercury control, with many plants exceeding 99% control rates. This level of control is due, at least in part, to the relatively high concentrations of chlorine present in bituminous coal refuse combusted by many of these facilities, which facilitates the oxidation of mercury.

refuse" included by the Agency within the MATS Rule included criteria for ash content and heating value. These specifications are inconsistent with the actual characteristics of coal refuse, contrary to the standards identified by other federal agencies[5], and in conflict with EPA's own regulatory definitions.[6] The Agency subsequently sought to remedy these errors and inconsistencies by promulgating a "technical correction" to the MATS Rule and materially changing the definition of coal refuse. In so doing, EPA failed to acknowledge that the revised definition could have the effect of including additional coal refuse-fired sources within the scope of the MATS Rule, and conducted no evaluation of the ability of these additional sources to comply with the applicable HCl emission standard.

Recommendations

MATS emission monitoring requirements, especially for stack testing, also needs to be examined for those facilities that qualify for LEE status. If a single subsequent testing program substantiates the LEE status then the testing frequency should be reduced to 3 year intervals compared to the current once per year testing requirement. The testing should not be required to be consecutive boiler operating days and the testing should be able to be conducted anytime during the third year.

Many of ARIPPA's facilities are conducting quarterly stack testing for particulate matter and annual stack testing for mercury. These tests alone can cost $70,000 annually. If our initial round of testing confirms achieving LEE status, it's unnecessary to expend another $140,000 over the next 2 years to confirm what is already known. If the initial program and two subsequent test programs conducted quarterly after the initial demonstration test achieve LEE status then the testing frequency should change to one test program every three years.

The quarterly testing for particulate matter is not only expensive, but time consuming and creates additional safety risks (i.e., stack climbing 4 times per year).

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[5] The Federal Energy Regulatory Commission ("FERC") regulations provide that "anthracite refuse . . . has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more". 18 C.F.R. § 292.202(b)(2). By contrast, "bituminous coal refuse . . . has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more." *Id.* at § 292.202(b)(3). EPA may have looked to the definition of "anthracite refuse" under the FERC regulations in developing the definition of "coal refuse" under the original MATS Rule. The FERC definition of "anthracite refuse," used alone without consideration of the corresponding definition of "bituminous coal refuse", fails to take into account the substantial variability in heating value and ash content inherent in coal refuse material.

[6] The MATS Rule defined "coal refuse" as "any by-product of coal mining, physical coal cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis." This definition of coal refuse includes additional qualifying language that is not included in the provisions of the NSPS for fossil fuel-fired steam generators and electric utility steam generating units (set forth at 40 C.F.R. §§ 60.41 and 60.41a, respectively). In fact, in order to meet the definition of coal refuse under the MATS Rule, a material would be required to exhibit an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis. These criteria are inconsistent with available data. For this reason, applying the definition of coal refuse originally included in the MATS Rule to the materials combusted by the ARIPPA plants, such materials would *not* consistently meet the applicable definition, due to the inherent variability in this fuel source.

Based on these considerations, the Agency should revise the MATS Rule to either exempt coal refuse-fired EGUs from MATS provisions or revise application of the current HCl emission limitation for coal refuse-fired EGUs. EPA could accomplish this objective either by eliminating from the final regulation any specific numeric HCl emission limitation applicable to coal refuse-fired CFB units, or adjusting the limit to a level appropriate (including under relevant provisions of the Clean Air Act) for these sources. ARIPPA stands ready to work with you on this matter.

Other Issues Ripe for Repeal, Replacement or Modification

The following regulations should also be considered for Agency review because of their potential to eliminate jobs, impose costs that exceed benefits, are unnecessary or ineffective and are inconsistent with regulatory reform policies:

I. NAAQS for Ozone (80 *Fed. Reg.* 65292; Oct. 26, 2015)

II. Cross State Air Pollution Rule (CSAPR) for 2008 NAAQS (EPA-HQ-OAR-2015-0500; FRL-9935-25-OAR)

III. Effluent Limit Guidelines (ELG) Rule (EPA-HQ-OW-2009-0819; FRL-9961-67-OW)

IV. Emissions Reporting

- This is a general comment relating to the reporting requirement of air quality data. Currently, each program (e.g. CSAPR, Acid Rain, MATS) require monitoring data on each emission to be filed separately to the Agency. For the sake of time, cost and manpower, the Part 60 and Part 75 requirements should be streamlined to provide a uniform submittal process for all programs.

Conclusion

The economic and environmental benefits of coal refuse combustion have long been recognized and supported by Pennsylvania and the federal government, including EPA. Combined, these benefits total about $780 million per year as quantified in a report (attached) prepared by Econsult Solutions, a Philadelphia-based economic consulting firm, dated September 8, 2016.

Not to be overlooked is the fact that these benefits are concentrated in financially distressed rural communities which are not only disproportionately burdened by the environmental legacy of mining, but also are struggling to create economic opportunities.

Coal refuse plants provide a major hub of employment activity in these areas, with these activities directly and indirectly supporting a range of employment at a variety of skill levels.

They also serve as major contributors to the local tax base, both through the direct value of their properties and through the economic stimulus and environmental improvements that they facilitate.

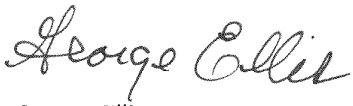
Last year, the Commonwealth of Pennsylvania in bipartisan fashion enacted a law that provides a state tax credit program to encourage the use of coal refuse as a fuel source. The law was passed as a matter of both economic and environmental state policy. The Act's preamble recognized "… the significant and tangible benefits to the environment and savings in Commonwealth funds provided by eligible facilities in reclaiming coal refuse piles and previously mined lands."

The MATS Rule should be revised to allow, not hinder, the attainment of this meaningful and well intentioned state environmental policy goal.

To maintain the future viability of coal refuse power plants, ARIPPA respectfully requests EPA to review and consider our comments.

Thank you for your efforts. Please note that ARIPPA stands ready to meet with you at your convenience to discuss these issues in more detail.

Very truly yours,



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3M

April 19, 2017

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Sent via electronic mail

Subject: Follow-up to 3M's Comments on Department of Commerce Request for Information on "Impact of Federal Regulations on Domestic Manufacturing" 43 Fed. Reg. 12,786 (Mar. 7, 2017)

Messrs. Langdon and Halfman:

This letter and attachments provide additional information that you requested during the meeting on April 5, 2017 on the above-referenced matter, which included Tom Geier, Paul Narog, and John Metzger of 3M. 3M's March 31, 2017 letter on the subject is attached for your convenience, and the information provided herein corresponds to the section "Regulatory Burden/Compliance" of that letter. Also attached is a copy of 3M's formal Environmental Policy that we spoke of during our meeting, and which 3M originally issued in 1975.

1. Research and Development (R&D)

You asked how U.S. EPA should designate R&D in its regulations in response to 3M's request that EPA should add an exemption for R&D activities to a number of regulations, especially the New Source Performance Standards promulgated under Section 111 of the Clean Air Act (CAA). In adding R&D exemptions, U.S. EPA should rely broadly on how the U.S. Congress defined R&D in Section 112[1] of the CAA, as "any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner." 42 U.S. Code § 7412(c)(7). EPA generally incorporated this statement, including the term "de minimis," without further elaboration in its exemption of R&D activities in many of the regulations issued under Section 112, including, for example, 40 C.F.R. Part 63, Subparts KK, JJJJ, SSSS & OOOO. See Table 1 (attached). Note that U.S. EPA did not define "de minimis" in the context of R&D in the CAA, and 3M is not aware of any formal guidance on this matter by EPA.

[1] "Hazardous Air Pollutants"

2. Streamlining and Simplification of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

You requested additional information about 3M's request that U.S. EPA streamline eight (8) overlapping NSPS and NESHAP regulations that potentially apply to web coating lines. Many, diverse industries use web coating lines to manufacture products such as tapes, labels, protective films, optical films, and architectural products, to name just a few. More specifically, without decreasing protection of the environment, U.S. EPA should issue a Unified Coating Rule (UCR) that facilities could choose to meet instead of the eight regulations. The UCR should additionally provide operational flexibility that encourages facilities to meet the rule by reformulating their coatings instead of using costly air pollution control devices.

Why a Unified Coating Rule (UCR) is Needed. Table 1 lists the eight (8) separate NSPS and NESHAP regulations under Sections 111 & 112 of the Clean Air Act that potentially apply to web coating lines. A line is often subject to more than one of the regulations simultaneously. A line that manufactures more than one product is often subject to different combinations of the regulations for the different products manufactured, even though there is no change in the type of emissions or how the emissions are generated. For example, 3M has web coating lines that are simultaneously subject to 40 C.F.R. Part 63, Subpart JJJJ ("NESHAP JJJJ"), 40 C.F.R. Part 60, Subpart RR ("NSPS RR"), and NSPS FFF; other 3M lines are subject to NESHAP JJJJ while manufacturing one product and subject to NESHAP OOOO while manufacturing a different product on the same line; and one 3M line is subject to NESHAP JJJJ only while manufacturing one product, subject to both NESHAP JJJJ and NSPS RR while manufacturing a different product, and subject to both NESHAP JJJJ and NSPS FFF for only about 30 hours each year while manufacturing a third product.

To reduce the cost and complexity of the eight regulations, without decreasing protection of the environment, U.S. EPA should issue a Unified Coating Rule (UCR) that a facility can choose to meet instead of any combination of the eight rules that would otherwise apply. It is noted that U.S. EPA has previously issued streamlined, optional rules of this type under 40 C.F.R. Part 65 for other industry sectors.[2]

Details of a Unified Coating Rule (UCR). A number of designs of a UCR are possible, but it should result in web coating lines being subject to a single set of requirements, and it should encourage facilities to comply with the rule by using pollution prevention (P2) approaches. More specifically, the UCR should incorporate key P2 approaches that U.S. EPA has included in web coating rules, and more specifically in surface coating rules, issued after the Pollution Prevention Act of 1990.[3] The following information outlines, in principal, a suggested approach for a UCR.

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[2] On Dec. 14, 2000, U.S. EPA created Part 65 for a consolidated Federal air rule for the Synthetic Organic Chemical Manufacturing Industry (SOCMI), as well as to "contain any future consolidated Federal air rules[.]" See 63 Fed. Reg. 57,751 (Oct. 28, 1998).

[3] The approaches included the use of equivalent emission limitations and applying emission limitations collectively to web coating lines, which "offers flexibility to reduce emissions through the use of control technology, pollution prevention, or a combination of the two." *See* proposed MACT JJJJ rule at 65

A facility may choose to meet the UCR instead of meeting any combination of eight NESHAP & NSPS regulations that would otherwise apply to any one or all of its web coating lines. A facility that chooses the UCR must meet one of the rule's emission limit options, each of which limit emissions to levels equivalent to the underlying eight NESHAP & NSPS rules. Three options are stated below as examples. With some exceptions, a single set of monitoring, recordkeeping, and reporting requirements would apply across all of the emission limit options.

Option 1—Fixed Set of Emission Limitations. One or more of the facility's web coating lines electing Option 1 must meet emission limitations that are equivalent to the most stringent limits of the underlying eight NESHAP & NSPS rules. The UCR's Option 1 limits would be stated in formats that encourage pollution prevention approaches.[4]

Option 2—Facility-Specific Emission Limit. One or more of a facility's web coating lines electing Option 2 must meet a facility-specific emissions limit. The limit would be based on the amount of coating materials applied by the lines electing this option, and the corresponding emission limitations of the eight NESHAP & NSPS rules that would otherwise apply. This option is similar in approach to facility-specific emission limits in NESHAP MMMM & PPPPP. *See* 40 C.F.R. §§ 63.3890(c)(2) & 63.4490(c)(2). A UCR's facility-specific emission limit, however, would encompass both NESHAP and NSPS web coating regulations, and account for lines that are subject otherwise to multiple rules simultaneously.

Option 3—Predominant Web Coating Activity. Under Option 3, any of a facility's web coating lines that would otherwise be subject to exactly one of the eight underlying NESHAP & NSPS rules during 90% of the lines' use could choose to meet that rule's emission limit during all uses of the lines. NESHAP MMMM & PPPP use a similar "predominant activity" approach. *See* 40 C.F.R. §§ 63.3890(c)(1) & 63.4490(c)(1). But the UCR's 90% criterion for predominant activity would encompass both NESHAP and NSPS regulations, and additionally account for web coating lines that are subject otherwise to multiple rules simultaneously.

Fed. Reg. 55,334 (Sept. 13, 2000). By pollution prevention approaches, facilities can additionally avoid costly pollution control devices such as thermal oxidizers which have secondary emissions (e.g., carbon monoxide (CO) and oxides of nitrogen (NOx)).

[4] The emission limits would be stated in the following terms, consistent with the format of NESHAP JJJJ's emission limitations: 1) pounds VOC emitted per pound of VOC applied, 2) pounds of VOC emitted per pound of coating materials applied, and 3) pounds of VOC emitted per pound of coating solids applied. *See* 40 C.F.R. §§ 63.3320(b)(1)–(3).

Thank you, again, for meeting with members of our t eam on April 5 and please let us know if you have any additional questions regarding these or any other issues that were raised in our original response to the RFI.

Sincerely,

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Attachments:

3M Environmental Policy

Table 1—General Applicability of Key Web Coating Regulations from Sections 111 & 112 of the Clean Air Act

3M's Input Letter to Dept. of Commerce (March 31, 2017)

3

Environmental, Health and Safety Policy

Environmental Policy

Applies To

This policy applies to all 3M operations.

Introduction

3M has long recognized the necessity for responsible environmental management and conservation of resources. 3M has also recognized the global nature of environmental matters and the importance of constructive cooperation in achieving international environmental conservation. 3M will continue to demonstrate leadership through our commitment to environmental management and the principles of sustainable development.

Policy Statement

We will continue to recognize and exercise our responsibility to:

- Solve our own environmental and conservation problems.
- Develop products that support a sustainable environment.
- Prevent pollution at the source wherever and whenever possible.
- Conserve natural resources through the use of optimized manufacturing operations, reclamation and other appropriate methods.
- Assure that our facilities and products are in compliance with applicable national, regional and local environmental requirements, and in conformance with other applicable environmental obligations.
- Assist, wherever possible, governmental agencies and other official organizations engaged in environmental activities.
- Foster continual improvement through company and employee initiative.

Related Information

- Aboveground Tank Inspection Standard
- Environmental Permits Standard
- Pollution Control Equipment Operations and Maintenance Documentation Standard
- Polychlorinated Biphenyls (PCBs) Standard
- Underground Tanks and Piping Standard
- VOC Air Emissions Reduction Program (AERP) Standard
- Waste Management Program Standard

For Further Information

Contact 3M Environmental Operations, St. Paul, Minnesota, 651-737-3594.

Approved By

Environmental, Health and Safety Committee

3M Environmental, Health and Safety Operations
Building 224-05-W-03
St. Paul, MN 55144

Please recycle.

Issued: 02/10/1975
Revised: 02/28/2014
Next Planned Revision: 2/2019

Table 1 — General Applicability of Key Web Coating Regulations from Sections 111 & 112 of the Clean Air Act

Designation	Citation & Regulation Name	Date Promulgated	General Rule Applicability [1]	R&D Exemption
NESHAP KK	40 C.F.R. Part 63, Subpart KK — National Emission Standards for the Printing and Publishing Industry	May 30, 1996	Publication rotogravure presses, product and packaging rotogravure, or wide-web flexographic printing presses. 40 C.F.R. § 63.820(a)(1).	"This subpart does not apply to research or laboratory equipment." 40 C.F.R. §§ 63.820(b) & 63.822 (defining "research or laboratory equipment" as "not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner."
NESHAP JJJJ	40 C.F.R. Part 63, Subpart JJJJ — National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating	Dec. 4, 2002	All web coating lines that are not subject to another subpart of 40 C.F.R. Part 63. *See* 40 C.F.R. § 63.3300.	"Any web coating line that is defined as research or laboratory equipment[.]" 40 C.F.R. §§ 63.3300(g) & 63.3310 (defining "research or laboratory equipment" as "not engaged in the manufacture of products for commercial sale in commerce except in a *de minimis* manner.")
NESHAP OOOO	40 C.F.R. Part 63, Subpart OOOO — National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles	May 29, 2003	All of the following: • Coating or printing fabric or other textiles (Coating & Printing Subcategory) 40 C.F.R. § 63.4281(a)(1). • Slashing operations (applying sizing compounds to fibers) (Slashing Subcategory) 40 C.F.R. § 63.4281(a)(2). • Dyeing or finishing fabrics or other textiles (Dyeing & Finishing Subcategory) 40 C.F.R. § 63.4281(a)(3).	"Coating, printing, slashing, dyeing, or finishing that occurs at research or laboratory operations[.]" 40 C.F.R. §§ 63.4281(c)(2) & 63.4371 (defining "Research or laboratory operation" as "not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.")
NESHAP SSSS	40 C.F.R. Part 63, Subpart SSSS — National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil	Jun. 10, 2002	Metal coil coating lines—generally meaning a metal strip that is ≥6 mil thickness. 40 C.F.R. §§ 63.5090(a) & 63.5110 (defining "metal coil").	"A coil coating line that is part of research or laboratory equipment." 40 C.F.R. §§ 63.5090(b)(1) & 63.5110 (defining "research or laboratory equipment " as " not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner."
NSPS RR	40 C.F.R. Part 60, Subpart RR — Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations - 12/30/1980	Oct. 18, 1983	Coating lines used in the manufacture of pressure sensitive tape and label materials, constructed, modified, or reconstructed after Dec. 30, 1980. 40 C.F.R. § 60.440(a). (Generally meaning any line that applies a pressure sensitive adhesive, in accordance with EPA guidance.)	None
NSPS TT	40 C.F.R. Part 60, Subpart TT — Standards of Performance for Metal Coil Surface Coating – 1/5/1981	Nov. 1, 1982	Metal coil surface coating—generally meaning a metal strip that is ≥6 mil thickness—constructed, modified, or reconstructed after Jan. 5, 1981. 40 C.F.R. §§ 60.460 & 60.461(defining "metal coil surface coating operation").	None
NSPS FFF	40 C.F.R. Part 60, Subpart FFF — Standards of Performance for Flexible Vinyl and Urethane Coating and Printing – 1/18/1983	Jun. 29, 1984	Rotogravure printing lines used to print or coat flexible vinyl or urethane products, constructed, modified, or reconstructed after Jan. 18, 1983. 40 C.F.R. § 60.580(a) & (c).	None
NSPS VVV	40 C.F.R. Part 60, Subpart VVV — Standards of Performance for Polymeric Coating of Supporting Substrates Facilities	Apr. 30, 1987	Polymeric coating of supporting substrates—generally any substrate except paper, plastic film, metallic foil, or metal coil—constructed, modified, or reconstructed after Apr. 30, 1987. 40 C.F.R. §§ 60.740(a) & (c), 60.741 (defining "polymeric coating of supporting substrates").	None

Note: [1] General applicability of the rule only. Does not include associated items, such as mix vessels, that are additionally subject to some of the rules; Does not include any of the rule's exemptions, except R&D exemption as noted, or provisions for overlap between rules.

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3M Environmental, Health and Safety Operations

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March 31, 2017

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Sent via electronic mail to http://www.regulations.gov, DOC—2017--0001

Subject: 3M Comments on Department of Commerce Request for Information on Impact of Federal Regulations on Domestic Manufacturing

To Whom It May Concern:

This letter is in response to the Department of Commerce's Request for Information regarding the Impact of Federal Regulations on Domestic Manufacturing (the "RFI"), 82 Fed. Reg. 12786 (Mar. 7, 2017).

3M is a global, diversified manufacturing company headquartered in St. Paul, Minnesota, with over 90 manufacturing facilities in the United States. We have a strong record of environmental stewardship, as reflected by our world-renowned Pollution Prevention Pays (3P) program, our stellar progress in voluntarily reducing our greenhouse gas emissions, and our efforts toward continuous improvement reflected in our 2025 Sustainability Goals.

Fundamentally, we are a science and technology company that invests significantly in research and development (R&D). 3M currently allocates approximately six percent of its annual revenue to R&D, with an R&D investment in 2016 of $1.8 billion. 3M's primary research activities take place in our extensive corporate headquarter laboratories in St. Paul, Minnesota, where more than 4,300 researchers are located.

Our significant investment in R&D translates to innovation, which is our biggest competitive advantage and the heart of 3M. 3M has 46 core technology platforms in areas as diverse as adhesives, abrasives, electronics, films, microreplication, nonwoven materials, precision coating. These technology platforms are applied across multiple markets—including automotive, communications, consumer, electronics, energy, health care, manufacturing, safety and transportation.

3M's response to your request for information follows:

General Information:

a. NAICS code(s)?
Given the large breadth of our product offering, many NAICS codes apply to 3M. Some examples include 322220, 327910, 325998, 325211, 49311.

b. What do you manufacture?
3M manufactures more than 55,000 different products and sells through our five major businesses: Industrial; Safety and Graphics; Electronics and Energy; Health Care; and Consumer. 3M is among the leading manufacturers of products for many of the markets it serves. Specific product examples include tapes, adhesives, abrasives, specialty films and chemicals, nonwoven materials, office supplies, products serving the renewable energy markets, and products serving health care and dental markets.

c. Where are your facilities located?
3M has more than 90 manufacturing sites in the United States, with operations in 29 different states.

d. How many employees?
3M employs about 90,000 employees globally, including about 36,000 employees in the United States. Approximately 20,000 of our U.S. employees work at manufacturing locations.

e. Approximate sales revenue?
3M's annual sales are approximately $30 billion across 200 countries. As noted above, we have a strong U.S. manufacturing presence, as reflected in our 2016 trade balance. Specifically, we are a U.S. net exporter of approximately $3.6 billion per year, with a 3.5 to 1 balance of trade in favor of exports from the US.

Manufacturing Permitting Process

1. How many permits from a Federal agency are required to build, expand or operate your manufacturing facilities? Which Federal agencies require permits and how long does it take to obtain them?

   - 3M currently holds more than 1,000 environmental permits that support over 90 manufacturing facilities across the U.S. Most permits are issued by state or local government agencies. The size and complexity of a facility impacts the number of permits required. Depending on the type of permit, 3M may receive permits in as long as 18 months or more.

   Additional Information: 3M environmental permits and licenses cover air quality, water quality, waste management, and a number of other areas. Nearly all of these permits or licenses are issued by a state or local government agency, typically through delegation by U.S. EPA or federally-mandated agreements, such as State Implementation Plans (SIP). Depending on the type of permit and the complexity of

the facility or project, permit approvals for 3M facilities or projects may occur relatively quickly (e.g., upon submittal of an application) or can be lengthy and have directly delayed manufacturing expansion and job growth (e.g., extended review of multiple applications and technical analyses). Some state-issued permits are additionally reviewed by U.S. EPA prior to issuance, which adds to the timeline.

2. Do any of the federal permits overlap with (or duplicate) other federal permits or those required by State of local agencies? If the answer is yes, how many permits? From which Federal agencies

   - 3M's facilities rarely require permits issued separately by federal and state/local authorities for the same matter, although U.S. EPA reviews some state-issued permits prior to issuance.

   Additional Information: Most of 3M's environmental permits are issued by state and local agencies in accordance with federal programs and federally-mandated agreements, such as State Implementation Plans (SIP). While 3M rarely needs redundant permits from state and federal agencies, significant overlap often exists with applicable regulations that form the basis of requirements in environmental permits. Examples include overlapping state and federal rules for web coating operations and multiple federal rules for leak detection programs.

3. Briefly describe the most onerous part of the permitting process.

   - Permit approval timelines can be lengthy and unpredictable when agency regulations, guidance, and/or policies are uncertain or evolving. Additional uncertainty and delay result from unclear application requirements, unexpected analyses, conflicting regulatory requirements, insufficient agency staff, and agency reluctance to adequately protect confidential business information. The permitting process has directly prevented or delayed U.S. manufacturing changes or capacity expansion, thereby affecting U.S. manufacturing agility and ability to capture market share.

   Additional Information: "Speed-to-market" is an imperative for maintaining and growing a business: speed and predictability of environmental permitting timelines are consequently key components of rapid commercialization of new products and services. We anticipate this becoming an even more important factor in the future.

4. If you could make one change to the Federal permitting process applicable to your manufacturing business or facilities, what would it be? How could the permitting process be modified to better suit your needs?

   - U.S. EPA should promote and directly facilitate issuance of innovative air quality permits by state/regional permitting authorities, especially permits that "advance-approve" changes at manufacturing facilities. U.S. EPA's existing regulations allow these types of permits. To promote such permitting, EPA should:

     a) Re-energize and enhance its existing innovative permitting program [described by a 2009 Federal Register notice at 74 Fed. Reg. 51418 (Oct. 6, 2009)].

b) Provide leadership, guidance and model permitting language for State agencies.

c) Set expectations for State agencies to actively develop and issue innovative permits efficiently and as quickly as traditional permits.

Additional Information: 3M has worked with U.S. EPA and corresponding state authorities for over 20 years on permits of this type. Each permit issued has dramatically improved 3M's ability to move quickly and decisively on growth opportunities. Advance-approvals and similar innovations in these permits have many benefits for industry and other stakeholders, including greater predictability, increased speed to market and product commercialization, greater agility for manufacturing, and support for job growth without r educing protection of the environment.

5. Are there Federal, state, or local agencies that you have worked with on permitting whose practices should be widely implemented? What is it you like about these practices?

- 3M has worked directly with U.S. EPA and many state agencies to obtain environmental permits for over 40 years. The best results occurred when U.S. EPA participated directly and provided leadership to the state agencies for innovative air quality permits with advanced-approvals, and when state agencies correspondingly engaged and drove progress. We encourage U.S. EPA to reinvigorate their leadership and support for such innovative permits, and state agencies to allocate the necessary resources to champion the issuance of such permits to support U.S. competitiveness within their state.

Additional Information: 3M's work with U.S. EPA on innovative permits contributed to a federal rule on the subject. *See* 74 Fed. Reg. 51418 (Oct. 6, 2009). Although each permitting project included the corresponding state permitting authority, it was U.S. EPA's direct involvement and hands-on advocacy, including by EPA's Office of Air Quality Planning and Standards (OAQPS), Office of General Counsel (OGC), Office of Enforcement and Compliance Assurance (OECA), and Office of Policy, Economics, and Innovation (OPEI), that were essential for overcoming state- and federal-level program barriers to innovative permits. Without active support by U.S. EPA, 3M has found that state permitting policy regresses. In some cases, permits that won national awards for U.S. EPA, 3M, and state agencies were not reissued by state agencies when U.S. EPA was no longer involved. Rather than adopt any one state's practices, 3M encourages U.S. EPA to encourage state policy and programs that drive innovative permits that include advance-approvals.

Regulatory Burden/Compliance

1. Please list the top four regulations that you believe are most burdensome for your manufacturing business. Please identify the agency that issues each one. Specific citation of codes from the Code of Federal Regulations would be appreciated.

- Research & Development (R&D), U.S. EPA rules at 40 C.F.R. Parts 60 & 63. Although some regulations explicitly exempt Research and Development (R&D) activities, many regulations do not. This includes rules that U.S. EPA adopted under the authority of Section 111 of the Clean Air Act, even though such rules were exclusively designed and intended to apply to full scale manufacturing. The costs and operational burdens of requiring R&D activities to meet manufacturing regulatory requirements far outweigh any *de minimis* environmental benefits, and imposing manufacturing requirements on R&D can in fact result in no environmental benefit at all or discourage R&D on pollution prevention. U.S. EPA should regulate R&D differently from manufacturing, corresponding to the uniqueness of R&D—that is, R&D is experimental, short duration, and focused on innovation and development rather than manufacturing products for sale.

- Confidential Business Information & Trade Secrets, U.S. EPA, 40 C.F.R. § 2.301(a)(2)(i)(B), and federal and state policy positions. U.S. EPA and state agencies often require companies to provide extensive facility-internal confidential business information (CBI) and disclose trade secrets when applying for air quality permits or submitting reports. The agencies often presume that the public has a right to know this information and thus that the information must be publicly disclosed, even if no request for disclosure has actually been made by the public. This presumption is not only unnecessary for the agencies to accomplish their mission of protecting the environment, but is also inapposite to the express recognition in the Clean Air Act and the Clean Water Act that companies have a right and a duty to prevent unwanted public disclosure of their valuable CBI and trade secrets, in which the companies have made a substantial research and development investment in order to obtain these valuable intellectual property rights.

  Under federal and state laws governing CBI and trade secrets, however, companies may lose their valuable intellectual property rights in the CBI or trade secrets upon even a single public disclosure. Accordingly, companies must carefully follow burdensome agency rules and administrative procedures to identify, substantiate, and redact CBI and trade secrets, and undertake extensive negotiations with agencies in order to protect their valuable intellectual property rights in the information submitted for agency review. This results in project-permitting delays, additional costs, and administrative burdens for agencies and companies alike, without corresponding benefit to the public interest.

In addition, if an agency inadvertently or intentionally releases a company's CBI and trade secrets, the company loses its valuable intellectual property rights and substantial R&D investments in that intellectual property. Thus, U.S. EPA should streamline the administrative process for companies to assert CBI or trade secrecy claims, and ensure that company CBI and trade secrets are protected against inadvertent or unwarranted public disclosure. For example, U.S. EPA could revise its regulations to eliminate the required disclosure of CBI or trade secrets in the permitting or emissions reporting process provided that the company makes such information available for agency inspection on request. Alternatively, the agency could pre-designate categories of company CBI and trade secret information as "always confidential" or "confidential if substantiated," and require notification of the company prior to any public release of company information identified as CBI or trade secret.

3M asks U.S. EPA to withdraw its past guidance on "emission data fields" under the Clean Air Act (see 56 Fed. Reg. 7042 (Feb. 21, 1991)). This guidance, although not adopted as a formal rule, has suggested to agencies a broad interpretation of "emission data" that leads them to impose requirements for companies to disclose as "emissions data" certain CBI/trade secrets (such as maximum process-unit throughput that is used in calculating site-internal emission rates from individual process units). EPA can meet its obligations to protect the environment in obtaining emissions information from a site without unnecessarily placing at risk of public disclosure the valuable CBI/trade secrets in which companies have invested.

- New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); U.S. EPA, 40 C.F.R. Parts 60 & 63. Multiple rules under the Clean Air Act are responsible for unnecessary costs, delays and compliance uncertainty for industry. This is due to overlapping rules, redundant requirements, conflicts between rules and undue complexity. U.S. EPA should streamline and simplify many NSPS and NESHAP rules, such as by streamlining eight existing web coating rules (e.g., the rules at 40 C.F.R Part 60, Subpart RR; 40 C.F.R. Part 63, Subpart JJJJ, etc.).

- New Chemical Introduction Rules; U.S. EPA, 40 C.F.R. Part 720. U.S. EPA's implementation of recent amendments to the Toxic Substances Control Act (TSCA) is substantially delaying manufacture of new chemical substances. Companies face uncertain timelines, uncertain outcomes, and unexpected data requirements for hundreds of pending cases. U.S. EPA can streamline and expedite this process by restoring clarity on information requirements and maximizing use of modeling and analog data to minimize the need for animal testing. Until the current delays and uncertainties are addressed, companies will face a powerful disincentive to manufacture new chemicals in the U.S.

2. How could regulatory compliance be simplified within your industry or sector?

- Recent U.S. EPA changes to the Definition of Solid Waste Rules adopted under the Resource Conservation & Recovery Act (RCRA) have made it more difficult for industries to recycle and reclaim materials [80 Fed. Reg. 1693-1814 (Jan. 13, 2015), revising 40 C.F.R. Parts 260 & 261]. The rules added restrictive criteria for "legitimacy," which will result in unnecessary treatment and disposal of materials that could otherwise be put to beneficial use as part of the "circular economy." 3M has a strong history of recycling and reuse, as supported by our Pollution Prevention Pays (3P) program. U.S. EPA should change this rule to specifically allow more beneficial use of materials without requiring them to be subject to stringent hazardous waste regulation.

- U.S. EPA should require that a standardized set of federal waste management regulations apply across the United States, instead of the current approach of state-specific regulations that make compliance demonstration more burdensome and in some instances further limit reuse, recycling, and reclamation of materials. Companies that operate in many states are forced to track the changes and specific requirements in each state they operate in, and assure that they comply with the different requirements in each of these states. A standardized set of waste management regulations across the U.S. would:
  a) Significantly reduce the cost to comply with such regulations,
  b) Improve the ability to comply with the regulations (e.g., eliminate inconsistencies), and
  c) Prevent individual states from refusing to adopt beneficial changes to regulations aimed at improving facility compliance or encouraging additional reuse, recycling, and reclamation of materials.

- Leak Detection and Repair (LDAR) requirements across multiple regulations (e.g., NESHAP's, RCRA) should be reviewed and revised to determine where the existing requirements can be coordinated and simplified. One example would be to eliminate the requirement for individual identification of components that do not require monitoring.

3. Please provide any other specific recommendations, not addressed by the questions above, that you believe would help reduce unnecessary Federal agency regulation of your business

- In many instances, streamlining permitting and reforming regulations is a complex task requiring knowledgeable U.S. EPA resources that can engage and innovate. Adequate resources at the federal and state level must be aligned to support these reforms in order to realize important benefits to U.S. innovation, competitiveness and job growth. It is not clear that U.S. EPA's resources are aligned to accomplish these objectives in light of their many other statutory and regulatory obligations. U.S. EPA should additionally encourage state agencies to assign adequate resources so that they can promptly issue permits, respond to industry questions, etc. Furthermore, 3M asks that U.S. EPA and the states collaborate with industry and trade associations, such as through joint meetings and conference attendance and participation.

- On March 20, 2015, U.S. EPA proposed the Electronic Reporting Rule (final signed but not promulgated) requiring facilities that are subject to certain NSPS and NESHAP rules to report information to the Compliance and Emissions Data Reporting Interface (CEDRI). EPA has additionally taken numerous recent actions that add CEDRI and Central Data Exchange (CDX) reporting to individual NESHAP and NSPS rules as these rules have been issued and revised. Each of these actions results in duplication of effort because state agencies generally expect that information corresponding to these rules will be reported to them directly, in paper or using their data systems. EPA should not take this action until they have coordinated better with the states, ensuring that sources do not need to submit duplicate information.

Thank you for the opportunity to comment on the important topic of permit streamlining and regulatory reform as it relates to environmental matters. Should you have any questions, please contact one of us.

Sincerely,

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May 15, 2017

Submitted via Electronic Mail

EPA Regulatory Reform Task Force
c/o Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy (mail code 1803A)
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington DC 204060

Subject: Docket EPA-HQ-OA-2017-0190

Dear Dr. Rees:

This letter is in response to U.S. EPA's Request for Comment, regarding "Evaluation of Existing Regulations," in accordance with Executive Order 13777. 82 Fed. Reg. 17793 (Apr. 13, 2017).

3M is a global, diversified manufacturing company headquartered in St. Paul, Minnesota, with more than 90 manufacturing facilities in the United States. 3M's annual sales are approximately $30 billion, and the company employs about 90,000 employees, including about 36,000 employees in the United States. We have a strong record of environmental stewardship, as reflected by our world-renowned Pollution Prevention Pays (3P) program, our stellar progress in voluntarily reducing our greenhouse gas emissions, and our efforts toward continuous improvement reflected in our 2025 Sustainability Goals.

Fundamentally, we are a science and technology company that invests heavily in research and development (R&D). 3M currently allocates approximately six percent of its annual revenue to R&D, with an R&D investment in 2016 of $1.8 billion. 3M's primary research activities take place in our extensive corporate headquarters laboratories in St. Paul, Minnesota, where more than 4,300 researchers are located.

Our significant investment in R&D translates to innovation, which is our biggest competitive advantage and the heart of 3M. 3M has 46 core technology platforms in areas as diverse as adhesives, abrasives, electronics, films, microreplication, nonwoven materials, and precision coating. These technology platforms are applied across multiple markets—including automotive, communications, consumer, electronics, energy, health care, manufacturing, safety and transportation.

In response to EPA's request for comment, we provide the following information for your consideration.

- Research & Development (R&D)—40 C.F.R. Parts 60 & 63. Although some regulations explicitly exempt Research and Development (R&D) activities, many regulations do not. This includes rules that U.S. EPA adopted under the authority of Section 111 of the Clean Air Act—the New Source Performance Standards (NSPS)—even though such rules were exclusively designed and intended to apply to full scale manufacturing. The costs and operational burdens of requiring R&D activities to meet manufacturing regulatory requirements far outweigh any *de minimis* environmental benefits, and imposing manufacturing requirements on R&D can in fact result in no environmental benefit at all or discourage R&D on pollution prevention. U.S. EPA should add an exemption for R&D activities to each of the NSPS regulations.

- Innovative Air Quality Permits. U.S. EPA should promote and directly facilitate issuance of innovative air quality permits by state/regional permitting authorities, especially permits that "advance-approve" changes at manufacturing facilities. Advance-approvals and similar innovations have many benefits for industry and other stakeholders, including greater predictability, increased speed to market and product commercialization, greater agility for manufacturing, and support for job growth—without reducing protection of the environment. To promote permits of this type, which are already provided for by U.S. EPA's existing regulations, EPA should:

  - Re-energize, expand, and enhance its existing innovative permitting program, which is described in part by a 2009 Federal Register notice at 74 Fed. Reg. 51418 (Oct. 6, 2009).
  - Provide leadership, guidance and model permitting language for State agencies.
  - Set expectations for State agencies to actively develop and issue innovative permits efficiently and as quickly as traditional permits.

  Additional Information: 3M's work with U.S. EPA on innovative permits contributed to the 2009 federal rule on the subject. Although each permitting project had the corresponding state permitting authority at the center, it was U.S. EPA's direct involvement and hands-on advocacy, including by EPA's Office of Air Quality Planning and Standards (OAQPS), Office of General Counsel (OGC), Office of Enforcement and Compliance Assurance (OECA), and Office of Policy, Economics, and Innovation (OPEI), that were instrumental for overcoming state- and federal-level program barriers to innovative permits. Without active support by U.S. EPA, 3M has found that state permitting policy regresses. In some cases, permits that won national awards for U.S. EPA, 3M, and state agencies were not reissued by state agencies when U.S. EPA was no longer involved.

- Confidential Business Information & Trade Secrets— 40 C.F.R. § 2.301(a)(2)(i)(B), and federal and state policy positions. U.S. EPA and state agencies often require companies to provide extensive facility-internal confidential business information (CBI) and disclose trade secrets when applying for air quality permits or submitting reports. The agencies often presume that the public has a right to know this information and thus the information must be publicly disclosed, even if no request for disclosure has actually been made by the public. This presumption is not only unnecessary for the agencies to accomplish their mission of protecting the environment, but is also inapposite to the express recognition in the Clean

Air Act and the Clean Water Act that companies have a right and a duty to prevent unwanted public disclosure of their valuable CBI and trade secrets—the information that companies have made a substantial research and development investment in order to obtain these valuable intellectual property rights.

Under federal and state laws governing CBI and trade secrets, however, companies may lose their valuable intellectual property rights in the CBI or trade secrets upon even a single public disclosure. Accordingly, companies must carefully follow burdensome agency rules and administrative procedures to identify, substantiate, and redact CBI and trade secrets, and undertake extensive negotiations with agencies in order to protect their valuable intellectual property rights in the information submitted for agency review. This results in project-permitting delays, additional costs, and administrative burdens for agencies and companies alike, without corresponding benefit to the public interest. In addition, if an agency inadvertently or intentionally releases a company's CBI and trade secrets, the company loses its valuable intellectual property rights and substantial R&D investments in that intellectual property.

For all the reasons stated above, U.S. EPA should streamline the administrative process for companies to assert CBI or trade secrecy claims, and ensure that company CBI and trade secrets are protected against inadvertent or unwarranted public disclosure. For example, U.S. EPA could revise its regulations to eliminate the required disclosure of CBI or trade secrets in the permitting or emissions reporting process provided that the company makes such information available for agency inspection on request. Alternatively, the agency could pre-designate categories of company CBI and trade secret information as "always confidential" or "confidential if substantiated," and require notification of the company prior to any public release of company information identified as CBI or trade secret.

3M additionally asks U.S. EPA to withdraw its past guidance on "emission data fields" under the Clean Air Act. *See* 56 Fed. Reg. 7042 (Feb. 21, 1991). This guidance, although not adopted as a formal rule, has suggested to agencies a broad interpretation of "emission data" that leads them to impose requirements for companies to disclose as "emissions data" certain CBI/trade secrets (such as maximum process-unit throughput that is used in calculating site-internal emission rates from individual process units). EPA can meet its obligations to protect the environment in obtaining emissions information from a site without unnecessarily placing at risk of public disclosure the valuable CBI/trade secrets in which companies have invested.

- <u>New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)—40 C.F.R. Parts 60 & 63.</u> Multiple NSPS and NESHAP regulations under the Clean Air Act overlap, are unduly complex, or are otherwise responsible for unnecessary costs or delays and compliance uncertainty for industry. U.S. EPA should streamline and simplify a number of its NSPS and NESHAP regulations, such as eight (8) separate regulations that potentially apply to web coating lines. A web coating line can easily be subject to more than one of the eight regulations at the same time or in other, even more complex ways. For example, 3M has web coating lines that are

simultaneously subject to 40 C.F.R. Part 63, Subpart JJJJ ("NESHAP JJJJ"), 40 C.F.R. Part 60, Subpart RR ("NSPS RR"), and NSPS FFF; other 3M lines are subject to NESHAP JJJJ while manufacturing one product and subject to NESHAP OOOO while manufacturing a different product on the same line; and one 3M line is subject to NESHAP JJJJ only while manufacturing one product, subject to both NESHAP JJJJ and NSPS RR while manufacturing a different product, and subject to both NESHAP JJJJ and NSPS FFF for the span of only about 30 hours each year while manufacturing a third product. To reduce the cost and complexity of the eight regulations, without decreasing protection of the environment, U.S. EPA should issue a Unified Coating Rule that a facility can choose to meet instead of any combination of the eight rules that would otherwise apply.

- New Chemical Introduction Rules—40 C.F.R. Part 720. U.S. EPA's implementation of recent amendments to the Toxic Substances Control Act (TSCA) is impacting manufacturers of new chemical substances. Companies face uncertain timelines, uncertain outcomes, and unexpected data requirements for hundreds of pending cases. Though progress has been made, resourcing and appropriate funding at U.S. EPA continues to be a concern. U.S. EPA can continue to streamline this process by restoring clarity on information requirements, increasing transparency on the review process and maximizing use of modeling and analog data to minimize the need for animal testing. 3M is committed to a practical, science-based approach for responsible use of new chemicals.

- Definition of Solid Waste Rules—40 C.F.R. Parts 260 & 261. Recent U.S. EPA changes to the Definition of Solid Waste Rules adopted under the Resource Conservation & Recovery Act (RCRA) have made it more difficult for industries to recycle and reclaim materials. *See* 80 Fed. Reg. 1693 (Jan. 13, 2015), revising 40 C.F.R. Parts 260 & 261. The rules added restrictive criteria for "legitimacy," which will require unnecessary treatment and disposal of materials that could otherwise be put to beneficial use as part of the "circular economy." 3M has a strong history of recycling and reuse, as supported by our Pollution Prevention Pays (3P) program. U.S. EPA should change this rule to specifically allow more beneficial use of materials without requiring them to be subject to stringent hazardous waste regulation.

3M recognizes that, in many instances, streamlining permitting and reforming regulations is a complex task requiring knowledgeable U.S. EPA resources that can engage and innovate. Some of the above changes can be made as a matter of policy decisions; other changes require at least some degree of rule-making. Adequate resources at the federal and state level must be aligned to support these reforms in order to realize important benefits to U.S. innovation, competitiveness and job growth. It is not clear that U.S. EPA's resources are aligned to accomplish these objectives in light of their many other statutory and regulatory obligations. U.S. EPA should additionally encourage state agencies to assign adequate resources so that they can promptly issue permits, respond to industry questions, etc. Furthermore, 3M asks that U.S. EPA and the states collaborate with industry and trade associations, such as through joint meetings and conference attendance and participation.

Thank you for the opportunity to comment on these important topics. Should you have any questions, please contact one of us.

Sincerely,

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May 15, 2017

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

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

I. Introduction

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

II. Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

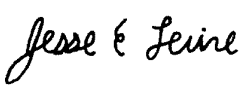
Additionally, RMA recommends that EPA reduce the burden of calculating the biogenic or natural rubber fraction in tire derived fuel (TDF). In the current greenhouse gas reporting rule, if municipal solid waste (MSW) or TDF makes up less than 10% of a unit's generated energy, then the user can calculate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

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

VIII. Conclusion

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

Respectfully submitted,



Jesse E. Levine
Manager, Regulatory Affairs
Rubber Manufacturers Association

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Lovell, William[lovell.william@epa.gov]
Cc: Brian C Mormino[brian.c.mormino@cummins.com]
From: Traci Kraus
Sent: Wed 6/14/2017 8:25:14 PM
Subject: Thank you and follow up
EMA_s Comments to EPA Regarding Evaluation of Existing Regulations.pdf
2-16-2017 NACAA Recommendations.pdf
OTC Reiterates Call For EPA To Craft Stricter Heavy.pdf

Hi Mandy, Brittany and Will,

Thanks so much for taking the time to meet with Brian and me today to discuss the heavy duty on highway truck regulatory program.

Per our discussion I have attached a few follow ups:

- EMA's comments to EPA on regulatory reform
- NACAA's recommendations to EPA
- Article regarding the Ozone Transport Commission of Northeast and Mid-Atlantic states calling for stricter NOx limits

Please let me know if there's any additional information we can get you, or if you have any questions.

All the best,

Traci Kraus

Director, Government Relations

Cummins Inc.

601 Pennsylvania Ave. NW

Suite 1100N

Washington, DC 20004

Office: 202-654-4285

Cell: 202-302-5851

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, William
Sent: Wed 6/14/2017 5:54:59 PM
Subject: Cummins Meeting
EMA Comment.pdf
NACAA Recommendations.pdf

Please find attached the two documents referenced in the Cummins meeting:

1) EMA's comments for regulatory reform, and

2) NACAA's nine recommendations to the new administration

Will Lovell

Policy Assistant, Office of Policy

U.S. Environmental Protection Agency

(202) 564-5713

Lovell.William@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Rees, Sarah
Sent: Tue 6/13/2017 5:23:22 PM
Subject: RE: AFPM reg reform comment
AFPM Comments_EPA Request for Comment_Evaluation of Existing Regulations....pdf

Et voila - they copied me directly when they submitted so I was able to quickly pull!

-----Original Message-----
From: Bolen, Brittany
Sent: Tuesday, June 13, 2017 1:21 PM
To: Rees, Sarah <rees.sarah@epa.gov>
Subject: AFPM reg reform comment

Hey, can you please send me AFPM's comments to our reg reform docket? Thank you.

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Lopez, George[lopez.george@epa.gov]
From: Lovell, William
Sent: Mon 6/26/2017 11:33:29 PM
Subject: 6/28 Presentation Prep Materials
C85_CCI June Attendees.pdf
C85_CCI June Meetings Agenda.pdf
Class of '85.v2.docx
Reg Reform Comment.pdf
Reg Reform Stakeholder Meetings_talking points_June 2017.docx

Please find attached the materials for tomorrow's meeting to **prep for Samantha's 6/28 Regulatory Reform Presentation to U.S. Electric Generating Companies**.

I placed these materials on top of your schedules.

Will Lovell

Policy Assistant, Office of Policy

U.S. Environmental Protection Agency

(202) 564-5713

Lovell.William@epa.gov

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY

Evaluation of Existing Regulations;	**)**	**Docket ID No.:**
Request for Comments	**)**	**EPA-HQ-OA-2017-0190**

COMMENTS OF THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

May 15, 2017

Jed R. Mandel
Timothy A. French
Truck and Engine Manufacturers Association
333 West Wacker Drive, Suite 810
Chicago, Illinois 60606

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY

Evaluation of Existing Regulations;	)	**Docket ID No.:**
Request for Comments	)	**EPA-HQ-OA-2017-0190**

COMMENTS OF
THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

Introduction

The Truck and Engine Manufacturers Association ("EMA") hereby submits its comments in response to the request that the U.S. Environmental Protection Agency published in the Federal Register on April 13, 2017, "seeking input on regulations that may be appropriate for repeal, replacement or modification." (82 FR 17793.)

EMA is the trade association that represents the world's leading manufacturers of internal combustion engines and heavy-duty on-highway commercial vehicles. The engines that EMA's members produce are used in virtually all applications, other than aircraft and passenger cars, and cover products that include on-highway trucks and buses, nonroad farm and construction equipment, marine vessels and locomotives, stationary generators and pumps, and lawn and garden equipment.

Over the past several decades, EPA has adopted myriad and increasingly stringent regulations establishing emission standards for each of the foregoing engine-product categories, and specifying how those engine products must demonstrate compliance with those various emission standards and related requirements. While EPA has regularly added to the number of regulations that govern the design and certification of emissions-compliant engine products, including regulations relating to the measurement and control of in-use emissions, EPA has rarely, if ever, eliminated any of the regulations (especially those that only add burden and cost, and no longer provide any cost-effective environmental benefit) that have accumulated in the Code of Federal Regulations over the past 30-plus years. Given that trend, EMA welcomes this opportunity to comment on the EPA regulations that are appropriate at this juncture for repeal, replacement or modification.

Set forth below are the regulations that EMA believes are ripe for repeal or modification. The first set of identified regulations include those that apply generally to all of the engine categories that are covered by EMA member-company products. The second set of identified regulations are applicable to specific engine and vehicle applications and are organized by product category. In assembling this list of regulations, and consistent with EPA's request, EMA has

attempted to focus on regulations that: (i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; or (iv) create inconsistencies with regulatory reform initiatives and policies. For the most part, the regulations that EMA has identified are those the costs of which have greatly outstripped their putative benefits. EMA looks forward to follow-up discussions with the Agency on the repeal or modification of each of the identified regulations.

Cross-Cutting Regulations

EPA has over the years adopted a number of engine-certification regulatory programs that apply to multiple categories of engine products. While certain of those regulatory programs may have had a reasonable basis for a claim of cost-effectiveness at the time of their initial adoption, which in some instances was more than thirty years ago, the more recent adoption of additional increasingly stringent regulations, coupled with the significant advancements in emission control technologies and diagnostics, have made several of those regulatory programs outdated and decidedly out-of-balance when assessed against any reasonable cost-benefit scale.

The cross-cutting programs at issue include production line testing, selective enforcement audit testing, the determination of deterioration factors, and the process for certifying "carry-over" engine families. EMA will address each of those programs in turn.

Production Line Testing

Under the various production line testing (PLT) regulations, EPA requires engine manufacturers, generally on a quarterly basis, and for each engine family, to select randomly a specified sample size of engines from the end of the manufacturers' assembly line. Engine manufacturers are required to test the randomly selected engines over the applicable certification test cycles to assess and confirm whether the engine family complies with the applicable emissions standards, based on the sampling of randomly selected engines. (*See*, *e.g.*, 40 C.F.R. §§ 1033.305, 1033.310, 1042.301, 1042.315, 1042.302, 1048.301, 1048.310, 1054.301, 1054.310, 1060.301 and 1060.310.)

The prescribed PLT testing is exceedingly expensive and time-consuming. Moreover, it is inherently duplicative and redundant since it amounts to little more than a costly repeat of the already rigorous initial engine testing required to obtain EPA's certification and approval to introduce engines into commerce. EPA should repeal the PLT regulations.

Selective Enforcement Audits

Under the various regulations relating to selective enforcement audits (SEAs), EPA may conduct, or may require an engine manufacturer to conduct, additional emission certification tests on specified production engines at a designated engine testing facility, which could be a facility other than the manufacturer's. This SEA testing is in addition to the PLT testing discussed above. (*See*, *e.g.*, 40 C.F.R. §§ 86.094-22, 1033.601, 1036.15, 1037.15, 1036.301, 1037.305, 1037.315, 1039.15, 1042.15, 1048.15, and 1054.15.)

As with PLT testing, SEA testing has become unreasonably costly and burdensome, especially since those SEA tests must be performed in Part 1065-compliant testing facilities. In addition, the rigorous engine family certification program, coupled with in-use testing requirements, often render SEAs an inherently duplicative and wasteful exercise. Accordingly, the SEA regulations should be modified to only allow the Agency to utilize SEAs as an enforcement tool when the Agency has a good faith basis to suspect a manufacturer's non-compliance. The Agency should be precluded from utilizing SEAs as a random enforcement mechanism or as a means to investigate a generic issue relating to engine technologies. EPA should amend and pare-back the SEA regulations accordingly.

Deterioration Factors

EPA has adopted multiple regulations over the years that relate to the calculation of deterioration factors or "DFs." The DF requirements force manufacturers to test the emissions from a sample of new engines, and then to run the engines continuously for many months to reach a point where, based on "good engineering judgement," the manufacturer can reasonably predict the engines' emissions performance at the end of their full "useful lives" (*i.e.*, 435,000 miles for HDOH engines). Typically, engine manufacturers use various techniques to age their engines to 35% of their full useful lives, and then test the aged engines' emissions to assess (based on an extrapolation out to 100% of the engines' useful lives) whether any emission constituents have increased (deteriorated) due to their operation over time. If so, manufacturers must ensure that their new engine emissions are sufficiently below the applicable emission standards to account for any observed DF. (*See*, *e.g.*, 40 C.F.R. §§ 86.004-26, 86.004-28, 1033.240(b), 1033.245, 1034.241(c), 1039.240(c), 1039.245, 1042.240 (c), 1042.245, 1048.240(c), 1048.245, and 1054.240(c).)

DF testing is exceedingly time-consuming and expensive, and its intended purpose is already served to a large extent by the advanced engine systems that can alert and induce engine operators to obtain any needed emission-related engine repairs. In light of that, EPA should initiate the necessary steps to substantially reduce the DF requirements as currently implemented by the Agency.

In particular, in its oversight of the DF-determination process, EPA should specifically allow for increased flexibilities and streamlining, including by allowing for the following: the expanded use of accelerated-aging bench tests; greater use of good engineering judgement to focus DF testing on specific regions of the engine-aging process (again, with the use of rapid-aging bench tests); greater use of good engineering judgement to address component part failures during testing; greater use of assigned DFs based on experience with similar technologies; expanded allowances for small volume exemptions from DF testing; and greater deference to manufacturers' engineering judgements regarding whether DFs are additive or multiplicative and whether the estimated deterioration is linear or not. Those increased flexibilities and opportunities for a more streamlined process are becoming increasingly important as DFs become a larger percentage component of the progressively lower emission standards. Similarly, the costs and burdens of DF testing are becoming increasingly disproportionate to their putative benefit as the underlying tailpipe standards continue their progression towards near-zero levels. Accordingly, EPA should implement the recommended revisions for simplifying and streamlining the DF requirements.

Carry-Over Engine Families

From one model year to another, manufacturers frequently produce engine families that do not incorporate any changes to their emissions-control systems or to their emissions profiles. For those types of engine families – referred to as "carry-over" engine families – engine manufacturers should not be required to go through the full EPA engine-certification process, since they will be inherently duplicative of the certification process for the prior engine model year. Rather, manufacturers should be allowed to notify and certify to EPA when a carry-over engine family is being manufactured, and EPA should issue a certification for that carry-over family based on the previously submitted certification application data relating to the prior model year engine family. In other words, for carry-over engine families, the annual certification renewal process should be largely automatic once a manufacturer attests to the Agency that a carry-over engine family is at issue. To that end, EPA should adopt guidance and regulations clarifying that carry-over engine families are exempt from the otherwise applicable annual engine-certification requirements, and that a more simplified attestation process will apply that will not require the resubmission of additional engine-test data.

Replacement Engine Provisions

Certificate holders use replacement engines to enable customers and operators to repair their equipment and trucks, and get back to their businesses, whether it be harvesting fields, constructing roads, or delivering goods. EPA's current replacement engine regulations are unduly burdensome, since they prevent certificate holders (*i.e.*, engine manufacturers) from quickly responding to the needs of customers and operators, while they also create significant recordkeeping and reporting challenges. The current replacement engine regulations are specified in 40 C.F.R. Part 1068.240, which limits where engines can be staged in the repair and maintenance process – specifically, not at facilities operated by a manufacturer's distributors and dealers – and delineates four different types of replacement engines that can be introduced into commerce. While originally written for nonroad engines, subsequent revisions have resulted in the same regulatory provision being applicable to heavy-duty on-highway engines as well. EPA's general regulatory principle is that the replacement engine must be at the same or at a lower emission level than the engine being replaced.

The regulation of replacement engines is important to ensure a level regulatory playing field for all marketplace participants. As currently prescribed, however, EPA's regulations are overly-burdensome due to onerous record-keeping and reporting requirements, in addition to a recently added provision that restricts the replacement of engines in equipment that is more than 40 years-old.

The four categories of replacement engines are as follows:

- Previous-tier replacement engines with tracking
- Previous-tier replacement engines without tracking
- Partially complete replacement engines
- Partially complete current-tier replacement engines

The first category requires annual reporting if any of the replacement engines are sold to distributors under the waiver described in 40 C.F.R. § 1068.240(b)(6). The second category requires annual reporting of not only the untracked engines produced, but of all other replacement engines regardless of the regulatory category. As a consequence, manufacturers are, in effect, required to submit annual reports to EPA for all replacement engines with information regarding which regulatory category applies.

The Agency should amend the replacement engine regulations to allow an engine manufacturer to stage replacement engines at dealers, distributors or other similar locations to better service customers and operators. As noted, those engines should be accounted for by the manufacturer in a simplified reporting process. Additionally, EPA should adopt a significantly simpler approach whereby all replacement engines would be considered as one category with one annual production report provided to EPA. In essence, the previous-tier replacement engines without tracking provisions would be applicable to all replacement engines (both complete and incomplete), but without volume limitations, and the reporting requirement for a given engine would be based on when that engine was introduced in to commerce. In addition, the requirement that replacement engines be installed in equipment newer than 40 years-old would be removed. Under the recommended approach, where replacement engine reporting is required, there would not be any required tracking of replacement engines that are beyond an engine manufacturer's direct control, and reporting would be simplified to cover the engines that a manufacturer ships in a given calendar year.

Administrative Reporting Requirements

The administrative reporting requirements that are regularly included as components of EPA's emissions compliance programs are extremely burdensome and impose costs that far exceed their benefits. The frequency of submission for the required reports varies. Some are required on a quarterly basis, while others are required to be submitted within a certain number of days from a particular milestone. There are also reports that need to be submitted on a preliminary basis and then again later in the year as a final report. The high frequency of the submissions creates significant costs and paperwork, and adds no real-world emissions benefits. While it may be necessary for EPA to receive certain data to help assess whether manufacturers are in compliance with the Agency's numerous programs, receiving manufacturers' reports on more than an annual basis does not facilitate the data analysis or compliance reviews, which are the purported rationales for the reports. Accordingly, EMA recommends that EPA reduce the frequency of all periodic reports to one-time annual submissions, which will provide EPA with the necessary data on its various programs, while reducing the unnecessary burdens associated with duplicative and iterative reporting.

Technical Amendments

Over the years, and given the hundreds of EPA regulations that impact EMA's members' products, numerous technical issues arise that need to be accounted for through specific corrections or additions to the relevant regulatory text. Currently, there are many of those types of technical amendments that the Agency should consider and implement. EMA regularly provides feedback to EPA staff regarding the necessary technical changes to the Code of Federal Regulations, and

we will continue to do so. Given the technical and very specific nature of those issues, they are not spelled out in detail in the body of these comments, but are set forth separately in Appendix A.

There is, however, one over-arching issue relating to technical amendments that the Agency should address as a component of this regulatory review process. Typically, before codifying the technical amendments that accumulate over a given year (or period of years), the Agency will wait to include those amendments as an add-on to a separate substantive rulemaking effort. That approach can result in needed technical amendments remaining uncodified for years. To address that issue, EPA should commit to adopting a technical amendment regulatory package on an annual basis.

Engine Category-Specific Regulations

Heavy-Duty On-Highway Engines and Vehicles

On-Board Diagnostics

By far the costliest regulatory requirements facing manufacturers of heavy-duty on-highway (HDOH) engines are those that relate to the design and implementation of on-board diagnostic (OBD) systems. Under the operative EPA regulations, and to a larger extent under the OBD regulations that EPA has authorized the California Air Resources Board (CARB) to adopt and implement, HDOH engine manufacturers are required to equip their engines with exceedingly complex and costly software and emission-sensor systems to detect and provide alerts relating to the potential malfunction of hundreds of emissions-related engine components. The mandated OBD systems are covered by numerous pages of regulatory detail (*i.e.*, EPA's HD OBD regulation (40 C.F.R. § 86.010-18) is 67-pages in length, while CARB's HD OBD regulations are nearly 100-pages in length) and go far beyond the efficacy of common-sense functional diagnostics.

To put the OBD burden into perspective, HDOH engine manufacturers, on average, have spent approximately $75 million per manufacturer over the past 5 years to develop and implement the prescribed OBD requirements, and the projected annual average costs for the current OBD requirements (which now include in-use testing provisions) are more than $25 million per year per HDOH engine manufacturer. Those cost impacts are 10-20 times greater than the estimated costs that EPA relied on in adopting its (and authorizing CARB's) OBD regulations. Just as important, the ever-increasing OBD burdens are unsustainable. Engine manufacturers simply do not have sufficient test cell resources, among other capital and manpower constraints, to engineer and demonstrate compliance with the mushrooming OBD technical specifications and performance criteria. Nor do they have the resources to construct and maintain the additional new test cells that would be required to accommodate the steadily increasing burdens of the CARB/EPA HD OBD requirements. The net result is an inherently unreasonable HD OBD program.

EPA's HD OBD regulations are spelled out in 40 C.F.R. § 86.010-18. Those regulations include requirements for the verification and demonstration testing of the OBD systems of production vehicles, and multiple other onerous provisions. Even more significant, however, under section 86.010-18(a)(5), EPA has specified that the Agency will accept evidence that a manufacturer has complied with CARB's OBD requirements as a sufficient demonstration that the manufacturer has complied with EPA's OBD requirements. Over the years, as CARB's OBD

program has become more and more comprehensive and complex, EPA has, in effect, subordinated its OBD program to CARB's. That subordination has reached the point where EPA now requires engine manufacturers to submit to California's authority by obtaining a CARB Executive Order (showing approval of the manufacturer's OBD systems) as a prerequisite to obtaining EPA's certification of an HDOH engine family, and thus, as a prerequisite to being able to sell the covered engines in the rest of the country. EPA's wholesale delegation to CARB of the development and implementation of HD OBD requirements has led to the untenable results that pertain today.

CARB's authority to adopt and enforce HDOH OBD requirements stems in relevant part from EPA's grant of preemption waivers on September 8, 2008, December 10, 2012, and November 7, 2016. (*See*, 73 FR 52042, 77 FR 73459, and 81 FR 78149.) Those preemption waivers, however, were premised on OBD cost assumptions that have proved to be understated by a factor of 10-20 (*i.e.*, OBD costs amount to more than $1000 per individual HDOH engine, as opposed to CARB's original estimate of approximately $60 per engine), as noted above. That raises, among other things, significant concerns regarding the assumed cost-effectiveness of the current onerous OBD requirements.

In light of the foregoing, EPA should pare down its OBD regulations to focus on functional diagnostics for exhaust aftertreatment systems, and should work in earnest to ensure that CARB does the same. Real regulatory relief in this area is absolutely vital.

In-Use Testing Requirements

HDOH engine manufacturers are required to obtain and test a sampling of in-use vehicles equipped with HDOH engines to assess the engines' compliance with the applicable "not-to-exceed" emission standards. (*See*, 40 C.F.R. § 86.1901, et seq.) To implement the heavy-duty in-use testing (HDIUT) program, engine manufacturers use two sets of portable emissions measurement systems (PEMS), one to assess the engine's gaseous emissions, such as NO_x and NMHC, and one to assess PM emissions. The average cost per engine family for in-use PM and NMHC testing (not including the costs attributable to testing for NO_x or any other gaseous pollutants) is approximately $ 150,000. The average cost per HDOH engine/vehicle is approximately $30,000.

Since the implementation of the HDIUT program in 2006, experience has shown that the overall level of compliance with the in-use PM and NMHC NTE-based emission standards is extremely high, with almost no "failures" over a ten-year period. The flip side of that coin is that the continuing burden of in-use testing for PM and NMHC cannot be shown to be cost-effective, as there is no ongoing need for it. The only HDOH vehicles tested under the HDIUT program are those that are equipped with DPFs, and that have passed the screening process for in-use testing. Those engine/vehicles operate at emission levels well below the in-use standards. The utility of an in-use PM testing program for those vehicles is not sustainable. Likewise, the NMHC emissions from HDOH vehicles are inherently low and again well below the in-use standards. As a result, the costs of an in-use NMHC testing program are excessive and have little relationship to any potential benefits.

In-use testing for PM requires a separate PEMS, elaborate installation configuration and vehicle mountings, significant additional vehicle recruiting and set-up time, and significant additional de-installation and post-processing time. Testing for NMHC requires the use of FID gas bottles and other unique in-use testing issues (including PEMS failures) that create inordinate expenditures of time and money. Consequently, the in-use testing costs for those two pollutants add significant incremental costs, and no significant incremental benefits, to the HDIUT program.

The final rulemaking for the HDIUT program contained the following provision, which was specifically negotiated by EMA:

> Recognizing that experience may show that the effectiveness, durability and overall performance of new engine technologies and exhaust aftertreatment systems may demonstrate that in-use testing for certain pollutants is unnecessary, we will consider requests from engine manufacturers to discontinue reporting and/or measurement of one or more pollutants from some or all engines based on future test experience.
> (70 Fed. Reg. at 34610)

EPA should repeal the requirements of the HDIUT program as they pertain to PM and NMHC emissions.

GHG Phase 2 Regulations

EMA is supportive of the recently finalized GHG Phase 2 regulations. (*See*, 81 FR 73478-74274, Oct. 25, 2016.) EMA did not file a petition challenging those standards, nor did EMA support any Congressional review of the Phase 2 regulations. Notwithstanding EMA's general support, there are a number of regulatory revisions and technical amendments that EPA should implement to enhance the feasibility and efficacy of the GHG Phase 2 standards, as described in further detail below. In implementing the recommended improvements to the GHG Phase 2 program, EPA will need to coordinate with, and work to ensure parallel action by, the National Highway Transportation Safety Administration, which also oversees the implementation of its own fully-aligned fuel-efficiency regulations. EPA also will need to ensure that CARB adopts harmonized and fully-aligned regulations when it proceeds to adopt its own version of the Phase 2 regulations.

GHG Phase 2 Chassis Dynamometer Test Requirement

As an element of the recently adopted GHG Phase 2 regulations, EPA requires that HDOH vehicle manufacturers conduct chassis-dynamometer testing of five (5) tractors every year, beginning with the 2021 model year. (*See*, 40 C.F.R. § 1037.655.) Manufacturers are required to measure and report emissions of NO_X, PM, CO, NMHC, CO_2, CH_4, and N_2O. Along with reporting the dynamometer test results, manufacturers must also provide the corresponding greenhouse gas emissions model (GEM) results for the vehicles. In the preamble to the final GHG Phase 2 Rule, EPA acknowledged the inherent differences between chassis-dynamometer testing and GEM simulations, and stated that the Agency will not use the dynamometer data for compliance auditing purposes. Thus, the only rationale that EPA provided for the annual five-

tractor dynamometer test requirement is for the vague purposes of "data collection and informational purposes." (*See*, 81 Fed. Reg. 73,548.)

Testing Class 8 HDOH vehicles on a chassis-dynamometer is a time-consuming and resources-intensive undertaking. Many heavy-duty manufacturers do not have a chassis-dynamometer and therefore will have to pay an independent laboratory to conduct the testing for them. Moreover, there are substantial questions about the usefulness of the data, or even whether statistically valid conclusions can be drawn from year-over-year trends in the data. Vehicle changes that may show up in dynamometer test results may be unrelated to the vehicle aspects assessed in a GEM-based simulation, and therefore may be unrelated to the GHG Phase 2 Rule. Heavy-duty chassis-dynamometer testing also likely includes a significant amount of test-to-test and lab-to-lab variability that has not been analyzed and may eliminate the possibility of drawing any meaningful conclusions from the data. Furthermore, the onerous chassis-dynamometer test requirement includes measuring criteria pollutant emissions that are outside the scope of the GHG rule.

For the reasons stated above, EPA should eliminate the chassis-dynamometer testing requirement that is set forth at 40 C.F.R. § 1037.655.

Eliminate Unnecessary Coastdown Testing Requirements

Pursuant to 40 C.F.R. § 1037.525(b)(4), EPA requires that HDOH vehicle manufacturers perform new "coastdown tests" in 2021, 2024, and 2027, to determine new computational values for their alternative aerodynamic measurement methods. That mandate is inconsistent with the common-sense requirement contained in the very next sentence of the regulatory text, which states that a coastdown test "continues to be valid for later model years until you change the tractor model in a way that causes the test results to no longer represent production vehicles." (*See*, 40 C.F.R. § 1037.525(b)(4).) The mandate that manufacturers conduct new coastdown testing at each regulatory step would require additional testing even in the absence of any change to vehicle design that would affect the aerodynamic results. It is an unnecessary and extremely costly regulatory test burden that is at odds with its companion regulatory provisions.

EPA should eliminate the regulatory mandate (40 C.F.R. § 1037.525(b)(4)) to conduct coastdown tests at every regulatory stringency step, and instead should only require new coastdown tests when design changes are made that affect aerodynamic performance.

Encourage Early Adoption of GHG-Reducing Technologies

Under the current GHG regulations, EPA provides for the enhanced generation of emission credits when certain GHG Phase 2 technologies are deployed during the "Phase 1" time-frame. *See*, 40 C.F.R. § 1037.150(y)(2). Specially, the regulations allow manufacturers to generate credits for the early deployment of automatic tire inflation systems on tractors, automatic engine shutdown systems, stop-start systems, and neutral-idle systems. EPA should expand those provisions to include additional Phase 2 technologies, such as automatic tire inflation systems on vocational vehicles, predictive cruise control, and extended-idle shutdown systems.

Similarly, the GHG Phase 2 Rule provides for the generation of extended-life emission credits for the early deployment of Phase 2-compliant light and medium heavy-duty vocational vehicles during the Phase 1 time-frame. *See*, 40 C.F.R. § 1037.150(y)(1). EPA should expand that provision to provide extended-life credits for the early deployment of Phase 2 heavy heavy-duty vocational vehicles as well.

To encourage the early deployment of Phase 2 engine technologies, the regulations provide an alternative compliance schedule for medium and heavy heavy-duty tractor engines that meet the Phase 2 standards one-year early. *See*, 40 C.F.R. § 1036.150(p). That provision also obligates manufacturers to meet the vocational engine standards one-year early, but does not likewise provide for any alternative CO_2 standards for those vocational engines in subsequent years. EPA should provide a similar compliance path that incentivizes the early deployment of Phase 2 light, medium and heavy heavy-duty vocational engines.

In the GHG Phase 2 preamble discussion about revising the "baseline" vocational engine emission level (from which EPA derived the Phase 2 engine-emission reductions), the Agency stated that it would not allow "engine credits generated against the Phase 1 [vocational vehicle engine] standards to be carried over into the Phase 2 program." *See*, 81 Fed. Reg. 73,569 (October 25, 2016). However, the Final Rule failed to include any replacement mechanism to provide incentives for vocational engines produced during the Phase 1 time period that out-perform EPA's new medium and heavy-duty Phase 2 vocational baselines. To create such an early-deployment incentive, and as an alternative to credit-calculation on the basis of the tractor engine standards, EPA should allow manufacturers to carry-over credits generated by vocational engines during Phase 1 to the extent that they out-perform EPA's Phase 2 baselines for light, medium and heavy heavy-duty vocational engines.

Avoid Unintended Consequences of Stop-Start Technologies

The Phase 2 Rule assumes the use of a technology to automatically shut-down the engine no more than five seconds after a medium and heavy heavy-duty vocational vehicle comes to a complete stop. While stop-start technologies have been deployed on passenger cars for years, it is completely new to commercial vehicles. The Rule provides for certain override conditions that are utilized on passenger cars to avoid creating the unintended consequences that can occur when an engine is shut-down automatically, such as providing for overrides when the vehicle cab temperatures are too low for the driver's safety or when the main battery's state-of-charge is too low to restart the engine. *See*, 40 C.F.R. § 1037.660(b)(4). As EMA requested during the rule-making process, we request that EPA work with manufacturers to identify additional override conditions necessary to ensure safe and effective vehicle operation that are not specified in the final regulations to reduce the occurrence of unintended consequences from the use of stop-start technologies on medium and heavy heavy-duty vocational vehicles.

Align the Audit Procedures for Aerodynamic Performance

EPA has recognized that there are multiple methods for measuring the aerodynamic drag of a heavy-duty vehicle, and that "no single test procedure is superior in all aspects to other approaches." *See*, 81 Fed. Reg. 73,625 (October 25, 2016). Accordingly, in 40 C.F.R. § 1037.525, the GHG Phase 2 Rule allows for measuring aerodynamic drag using any of several different

procedures. However, in the selective enforcement audit procedures for aerodynamic testing, regulations specify the use of only the coastdown method for measuring aerodynamic drag, yet they also provide that EPA may require a manufacturer to use the same method it used for certification. To reduce audit complexity and increase compliance predictability, EPA should revise the regulations to clarify that a manufacturer will only be required to conduct a selective enforcement audit test of aerodynamic performance using the same measurement method the manufacturer used for certification.

Refine Greenhouse Gas Emission Model (GEM) Simulations

The GEM simulation used in the Phase 2 Rule includes a model of a hydrodynamic torque converter used in automatic transmissions. The torque converter model uses various calculations to simulate how an actual hydrodynamic torque converter would slip at slow speeds and lockup at high speeds. EPA's Regulatory Impact Analysis (RIA) for the Phase 2 Rule acknowledges that the GEM simulation only approximates the K-factor torque curve that defines how an actual torque converter functions, but predicts that "for the vast majority of vehicles, the effect of this approximation on simulated CO_2 emissions is negligible. *See*, RIA § 4.2.2.3.3.4. However, EMA has found that when simulating certain engines in GEM, they consume significantly more fuel during low-speed operation than in the real world. EPA should reassess the K-factor used in the automatic transmission torque converter model in GEM to ensure that it is representative of actual torque converters, or provide a method for determining K-factors for different transmissions and inputting the values in GEM.

Promote Deployment of Hybrid Technologies

The GHG Phase 2 Rule requires that manufacturers conduct a powertrain test to assess the benefits of mild hybrid technologies. However, powertrain testing is very complicated, time consuming and expensive. To promote the deployment of mild hybrids without mandating the burden of powertrain testing, EPA should provide a fixed benefit for mild hybrids that could be added to GEM in lieu of actual powertrain test results.

The Phase 2 Rule provides an advanced credit multiplier for plug-in electric hybrid vehicles to promote their deployment. Similarly, EPA should also provide an appropriate advanced credit multiplier for the deployment of hybrid powertrains that do not have the plug-in feature.

Reduce Certification Burdens

The GHG Phase 2 Rule is primarily structured as a credit-averaging regulation whereby manufacturers assess vehicles in the GEM simulation and ensure that at the end of the year all the vehicles they have sold, on average, meet the mandated emission standards. Under such a scheme, much of the initial information manufacturers provide EPA to obtain certification is merely a prediction of where the manufacturer's credit balances will be at the end of the year. Accordingly, we recommend streamlining the up-front certification requirements as follows:

- Eliminate the need to submit GEM results for prospective vehicles
- Eliminate credit projections

- Allow carry-over certification after the first year of a new GHG standard

The GHG Phase 2 Rule includes detailed and complicated Delegated Assembly requirements for auxiliary power units (APUs) and for natural gas fuel tanks that are often installed by specialized manufacturers after the vehicle leaves the truck-manufacturing plant. Such multi-stage manufacturing occurs because the APU and natural gas tank installers are experts in their trades and receive minimal input from the truck manufacturer. Accordingly, EPA should streamline the requirements so that the truck manufacturer simply validates that the components were actually installed.

Class 2b/3 Testing Burden

Testing 10% of the sub-configurations of Class 2 and 3 cab-complete vehicles will create disproportionate and extreme amounts of testing compared to other vehicle categories. While there are high volumes of Class 2 and 3 sub-configurations compared to light-duty vehicles, the actual sales volumes for Class 2 and 3 vehicles are generally very low. This leads to a disproportionately high test burden for a relatively small fraction of manufacturers' vehicle sales. The testing requirements for Class 2 and 3 vehicles should be proportionate to their total volume. Accordingly, EPA should modify the testing requirement in the regulations to cover either a smaller percentage, or the Agency should set a cap at 20 tests. (*See*, 40 C.F.R. § 86.1819-14(d)(9)(i).)

Air Conditioning (AC) Credits

EPA and NHTSA recognize AC improvements in the regulations for light-duty vehicles, but not for heavy-duty vehicles, even though EPA and NHTSA both recognize the benefits of AC technologies that reduce GHGs and fuel-consumption. Since the benefits of those technologies are not measured in the certification process, they are applied as credits. Although the benefits are just as real for heavy-duty vehicles as they are for light-duty vehicles, neither EPA nor NHTSA allows credits for AC technologies. Manufacturers believe those credits should be harmonized between the light-duty a nd heavy-duty programs. To that end, EPA (and NHTSA) should modify (harmonize) the heavy-duty vehicle regulations to include AC credits, using a list of pre-approved default credits. (*See*, 40 C.F.R. § 86.1867-12 – CO_2 credits for reducing leakage of air conditioning refrigerant; 40 C.F.R. § 86.1868-12 – CO_2 credits for improving the efficiency of air conditioning systems; and 40 C.F.R. § 600.510-12 – calculation of average fuel economy and average CREE.)

Off-Cycle Credits

Similarly, EPA recognizes off-cycle improvements in the regulations for light-duty vehicles, but not for heavy-duty vehicles. As with the AC credits described above, EPA and NHTSA recognize the benefits of off-cycle technologies, yet do not offer credits for heavy-duty vehicles. (Off-cycle means that the benefits are not fully measured in the certification test cycle.) Manufacturers believe those credits should be harmonized between the light-duty and heavy-duty programs. Accordingly, EPA (and NHTSA) also should modify (harmonize) the heavy-duty vehicle regulations to include credits for CO_2-reducing off-cycle technologies, using a list of pre-approved default credits. (*See*, 40 C.F.R. § 86.1869-12 – CO_2 credits for off-cycle CO2-reducing technologies; and 40 C.F.R. § 600.510-12 – calculation of average fuel economy and average CREE.)

Drive-By Noise Requirements

EPA's drive-by noise requirements are found at 40 C.F.R. Part 205, Subpart B. Those requirements are outdated and EPA has not attempted to enforce them for many years. In fact, the enforcement office associated with those regulations was disbanded in the 1980s. In light of the foregoing, EPA should eliminate those regulations.

Nonroad Engines

Global Harmonization

The machinery and equipment that are powered by nonroad engines are sold into a global marketplace. As a result, it is critically important to engine manufacturers' ability to compete effectively in the global market for nonroad engines that the applicable engine-certification regulations be as fully aligned and harmonized as possible. To that end, EPA should work proactively to ensure that its nonroad engine regulations do not create any unwarranted barriers to international trade and commerce.

Specific Recommendations

- EPA should eliminate the NTE requirements for nonroad engines that are less than 19kW and that do not have electronic controls. (*See*, 40 C.F.R. § 1039.101(e).) Under the European Union's (EU) Stage V regulations, mechanically-controlled nonroad engines do not need to comply with the NTE requirements.

- EPA should eliminate the requirement that nonroad engines less than 19kW be tested over the nonroad transient test cycle (NRTC). The EU Stage V regulations exclude all variable-speed nonroad engines less than 19kW from the NRTC-testing requirements.

- EPA should eliminate the requirement that nonroad engine manufacturers measure and report GHG emissions. Specifically, EPA should eliminate the requirements that nonroad engine tests include the measurement of CH_4 and N_2O emissions. The required investments in measurement systems, testing processes, and dedicated personnel are widely disproportionate to any putative benefits.

- EPA should eliminate the requirement that nonroad engines used in auxiliary power units (APUs) be equipped with diesel particulate filters (DPFs). That requirement (*See*, 40 C.F.R. § 1039.699) is not cost-effective.

- Certain regulations restrict cost-effective emissions solutions from being deployed in specialized, low-volume agricultural and construction equipment, and so have potentially negative emissions impacts. In that regard, EPA should eliminate the percentage limit on the annual production of "Alternate FEL Cap" engines, which is currently set at 5%. (*See*, 40 C.F.R. § 1039.101(d)(2).) Using Alternate FEL Caps allows for a more cost-effective emissions solution for low-volume specialty products when a fully-compliant Tier 4 solution can be cost-prohibitive. Removing this volume limit would allow full market demands to be met, without any net emissions impact, since credits are required to offset

the higher-emissions products. Additionally, the provisions which allow exemptions from transient testing, not-to-exceed requirements, and crankcase emissions for the first four years of the Tier 4 standards should be re-instated. Those exemptions provide another means for allowing the development of cost-effective engines for low-volume specialty products, while maintaining a neutral emissions impact by adjusting the required credits upward based upon appropriate correction factors. Accordingly, the previously-used correction factors should be re-established without expiration. Those two changes would ensure cost-effective options for low-volume specialized equipment that powers America's agricultural and construction industries without negative emissions impacts.

- EPA should eliminate the smoke testing requirements for nonroad engines. (*See*, 40 C.F.R. § 1039.105.)

Marine and Locomotive Engines

Alignment with IMO Standards

EPA's Tier 4 marine engine standards are aligned with the IMO Tier III limits for engines with power ratings greater than 600kW, but not for engines with power ratings between 130-600kW. One result of this mis-alignment is that advanced NO_x-control technologies have been developed and implemented for certain commercial marine engines above the 600kW power threshold, but not below. That result, in turn, means that there is a potential shortage or unavailability of IMO Tier-III-compliant engines below 600kW. That situation has arisen in Canada and has required that annual exemptions be implemented for the IMO Tier III standards as applied to commercial marine engines rated between 130-750kW on vessels with combined propulsion power less than 750kW.

Additionally, commercial marine vessels built in 2016 are in service now with EPA Tier 3-compliant engines ranging from 130kW-1400kW that do not incorporate aftertreatment systems. Those engines are IMO Tier II- compliant. Vessel builders and owners need guidance from EPA confirming that they may continue to operate their EPA Tier 3-compliant engines under the scenarios described below.

Given the regulatory mis-alignment and potential product unavailability at issue, EPA should issue a regulatory guidance document confirming that the following reasonably anticipated scenarios will be permitted for U.S. domestic vessels equipped with EPA Tier 3 engines, and for U.S.-flagged or foreign-flagged international vessels equipped with EPA Tier 3/IMO Tier II engines and IMO Tier II engines, respectively.

Scenario 1

Guidance should allow unimpeded travel between all U.S. port cities for EPA Tier 3 engine-equipped vessels that are only engaged in domestic U.S. commerce.

Scenario 2

> Guidance should provide a process for allowing exemptions on a case-by-case basis, based on IMO Tier III product unavailability for engines less than 1400kW, during vessel planning or construction phases. Those exemptions could be granted by the U.S. or any other flag-state. In such cases, EPA Tier 3/IMO Tier II engines would be acceptable. Such vessels would be allowed to enter and operate in U.S. waters as compliant vessels without triggering any IMO Tier III requirements for the exempted engines. It is anticipated that IMO Tier III-compliant engines will become available within the next 12-24 months to fill product gaps below 1400kW.

Scenario 3

> Guidance should allow U.S.-domestic vessels to travel to Canada with EPA-certified engines, as Canada currently allows, and to return to U.S. ports as domestic vessels.

In assessing the scope of the necessary guidance, it is important to note that the foregoing scenarios could apply not just to vessels with propulsion engines less than 600kW, but also on larger vessels having propulsion engines greater than 600kW, which also are equipped with auxiliary marine engines less than 600kW. In such cases, the EPA Tier-3-compliant auxiliary engine would not be compliant with IMO Tier III due to product unavailability.

Additionally, the IMO regulations have an exemption from emissions requirements for marine emergency-power gensets. EPA's current marine regulations, however, do not contain such an exemption. Most emergency gensets installed on vessels are radiator-cooled, and so are different from the types of sea water-cooled engines on which the current marine engine standards are premised. While there is an exemption under the marine regulations for the use of engines certified to the land-based standards, those engines typically lack the other marine hardware (SOLAS, USCG hoses, etc.) required in order to be installed on a vessel. Accordingly, EMA recommends that the marine regulations be harmonized with the IMO regulations, which contain an exemption for marine emergency-power gensets.

Useful Life Determination

The "useful life" regulations applicable to marine engines are inconsistent with the useful life regulations that apply to nonroad engines. (*Compare* 40 C.F.R. § 1042.101(e)(2) *with* 40 C.F.R. § 1039.101(g)(2).) More specifically, under the marine engine regulations, it is possible that an engine family's useful life could be extended if a manufacturer advertises or markets a longer time to rebuild, even if the manufacturer is not seeking EPA approval of an alternative useful life different from the generally specified useful life values. EPA should revise section 1042.101(e)(2) to conform to the language utilized in section 1039.101(g)(2).

California Requirements For Engines Below 37kW

EPA has previously granted a preemption waiver authorizing CARB to adopt certain emission standards for certain categories of marine engines. Over time, this has created an unacceptable inconsistency in marine engine standards, since, in at least once significant instance, CARB has not kept pace with EPA.

Currently, CARB's regulations require that marine engines less than 37kW need to be certified to EPA's Tier 2 emission standards. (*See*, 13 CCR § 2421(b)(1)(A). Table 1a.) However, EPA's current standards for marine engines less than 37kW are the Tier 3 emission standards, not the Tier 2 standards. Thus, in this instance, CARB's regulations are less stringent than the corollary federal standards and, as such, are not entitled to a preemption waiver.

California's emission standards for marine engines less than 37kW no longer meet the requirement for a preemption waiver under Section 209(e) of the federal Clean Air Act (42 U.S.C. § 7543(e)), and, thus, California's waiver for those standards should be withdrawn.

Recreational Marine Engines

EPA should allow high-performance Category 1/Tier 3 diesel-fueled recreational marine engines below 600kW to be used in commercial vessels, with certification testing allowed under the E5 test cycle and with a specified useful life of 1000 hours. Currently, those engines are tested under the E3 test cycle and are required to meet a longer useful life. (*See*, 40 C.F.R. § 1042.101.) Nonetheless, the type of high-performance diesel-fueled marine engines at issue have an inherently more limited service life given their high power rating and power-density, and in that regard, are more similar to gasoline-fueled inboard and outboard engines.

Gasoline-fueled marine engines may be installed in commercial vessels based on the certification as recreational marine engines under the E4 test cycle, and with a limited useful life requirement. Similar treatment and accommodation should be afforded to high-performance diesel-fueled recreational marine engines. This regulatory amendment will simplify the treatment of recreational marine engines and will level the regulatory playing field.

DFs For Marine Engines

As noted previously, the current DF requirements should be eliminated or substantially streamlined. In the specific case of marine engines, EPA should allow engine manufacturers to utilize fixed multiplicative DFs based on the application of good engineering judgement in the context of known engine technologies. EMA proposes the following multiplicative DFs for the following pollutants: CO 1.1, HC 1.1, NO_x 1.05, and PM 1.05.

Production Line Testing

As noted earlier, PLT requirements are outdated and should be eliminated. This requirement is especially burdensome and costly as applied to marine engines, and is a requirement that EPA has not imposed on the manufacturers of nonroad engines. In particular, special consideration should be given to Category 2 marine engines. Category 2 marine engine families currently are not allowed the low-volume family exemption that is provided for Category 1 marine

engines under 40 C.F.R. §1042.301(a)(2). As such, if even a single engine is sold in a Category 2 family during a model year, it must have a PLT test. With Tier 4 standards forcing the use of aftertreatment, and with the advent of 40 C.F.R. 1065 test methods, the cost of PLT testing on such large engines and aftertreatment systems has become exorbitant, and the testing process has become exceedingly burdensome. PLT testing is so expensive, in fact, that it can limit the number of low-emission Category 2 engines that can be placed on the market. In that regard, there are very few test cells in the world that can accommodate such large engines with aftertreatment, and setting up and running a PLT test consumes a wholly disproportionate amount of the time available in those few test cells. That it turn limits manufacturers' ability to develop new products. Accordingly, PLT requirements should be eliminated across the board, and especially with respect to Category 2 marine engines. At a bare minimum, Category 2 marine engines should be allowed to use the low-volume family exemption in 40 C.F.R. §1042.301(a)(2).

Also, if all marine PLT's are not eliminated, quarterly reporting of PLT results should be eliminated. (*See*, 40 C.F.R. § 1042.345.) That reporting requirement puts an extra burden on marine engine manufacturers, and, again, is a burden that is not placed on nonroad engine manufacturers.

Stationary Engines

"Grand-Fathered" Emergency Backup Engines

On May 1, 2015, in the case of Delaware Dept. of Natural Resources v. EPA, Case No. 13-1093 (D.C. Cir. 2015), the Court of Appeals struck down the 100-hour exemption from air pollution controls that EPA had allowed for emergency backup generators, including during emergency demand-response operations. *See*, 40 C.F.R. § 60.4211(f). To address the uncertainties caused by the Court of Appeals decision, EPA should adopt "grand-fathering" provisions for engines that were manufactured to function as emergency backup engines during the period from January 1, 2011, through May 1, 2015. More specifically, EPA should clarify that the grand-fathered engines may operate for an unlimited number of hours in emergency situations, and may operate for up to 100 hours for non-emergency demand-response purposes if they are retrofitted with selective catalytic reduction systems that can demonstrate Tier 4 emission levels through established on-site emissions testing procedure at typical engine-operating loads.

Small Spark-Ignited Engines

Small spark-ignited (SSI) engines are used to power a broad array of products, ranging from lawn mowers to portable generators. Over the years, EPA has adopted an increasingly comprehensive and stringent regulatory program to control and reduce the emissions from SSI engines. Certain of those regulations, however, have proved to be overly burdensome and unduly costly, including the following:

- EPA should adopt a clear and straight-forward small-volume engine family threshold definition for SSI engines.

Conclusion

EMA appreciates the opportunity to submit these comments on the regulations that the Agency should consider for repeal, replacement or modification. We look forward to discussing these issues in further detail with the Agency in the near future.

Respectfully submitted,

TRUCK & ENGINE
MANUFACTURERS ASSOCIATION

Appendix A

Necessary Technical Amendments

As noted in the body of EMA's comments, the implementation of EPA regulations regularly identifies technical issues that were not foreseen or adequately addressed when those regulations were initially drafted and adopted. EMA and EPA staff typically sort through those technical issues in a collaborative manner, but there is no established procedure for implementing agreed-upon technical amendments in a timely manner. EPA should adopt a policy whereby a package of technical amendments is proposed for adoption on an annual basis. In that regard, the following items, among others, should be included in the next round of technical amendments that the Agency undertakes:

- Eliminate the limitation on the use of replacement engines in stationary equipment that is more than 15 years-old, as specified in 40 C.F.R. § 60.4210(i).

- Establish separate NESHAP limits for liquid-fueled compression-ignition stationary engines with displacements larger than 30 liters per cylinder, especially for engines operating on fuels other than ultra-low sulfur diesel fuel.

- Simplify and enhance the flexibility of the engine labeling regulations, including those that pertain to the content and location of engine labels.

- Allow more flexibility in the Agency's DEF quality guidance to permit more widespread use of NO_x-sensor-based DEF quality monitoring.

- Revise the marine replacement engine notification requirements from the current 30-day deadline (from the date of shipment) to match the nonroad replacement engine notification deadline of 270 days after the end of the relevant calendar year.

- Streamline the EIAPP application and certification process.

- Align and harmonize the EPA and IMO certification test fuel requirements for Category 1 and 2 marine engines. Currently, EPA requires the ASTM fuel specifications, while IMO requires fuels meting the specifications of ISO 8217.

- Eliminate the requirement under 40 C.F.R. § 1042.820 for NO_x and PM reductions relative to a baseline engine to determine authorization for a certified remanufactured engine, and instead use the standards of the respective Tiers as the basis for cost-effectiveness calculations under 40 C.F.R. § 1042.815.

- Allow for the use of natural gas kits for remanufacturing engines, even though the fuel does not need to be registered. *See,* 40 C.F.R. § 1042.801(f)(1).

- Change the altitude specified in 40 C.F.R. § 1033.115 (e)(1) from 7000 feet to 4000 feet to correspond with 40 C.F.R. § 1033.505.

- Remove the following language from Maintenance Instruction (See, 40 C.F.R. § 1033.220): "If owners/operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those locomotives from in-use testing or deny a warranty claim." To help ensure in-use compliance, the updated Maintenance Instructions need to be controlling. To that end, EPA should allow manufacturers to require that the most current maintenance instructions be followed prior to in-use testing.

- Revise 40 C.F.R. § 1033.645 so that engine manufacturers will not be subject to in-use liability for engines that have been identified to contain non-OEM parts, and such engines will be excluded from in-use testing.

- Eliminate the prohibition against deeming Category 1 and 2 IMO Stage II-III engines to be interchangeable with EPA Tier 4-certified marine engines for use on U.S.-flagged vessels.

- Reduce or eliminate stationary performance test requirements for stationary engine operators if the engines are EPA-certified (*e.g.*, NSPS-certified engines).

- Reduce the administrative burdens associated with Delegated Final Assembly, including through the elimination of the requirement to submit annual affidavits.

- Under EPA 40 C.F.R. § 1068, allow engines to be moved from one exemption to another (*e.g.*, from test exemption to manufacturer-owned).

- Align marine and locomotive annual PLT reporting requirements to eliminate reports if no testing took place. *See,* 40 C.F.R. §1033.320(e), and §1042.345(a).

- Change Inducement-Override reporting (40 C.F.R. § 60.4201(g)) to events where a 120-hour reset is requested from the manufacturer. Eliminate reporting of each and every activation.

- Eliminate the requirement to add a DPF to an engine in remote regions of Alaska, as required by 40 C.F.R. § 60.4216 if a marine engine is used pursuant to § 60.4201(g).

- 40 C.F.R. § 10033.250 and § 1033.335 – Combine locomotive quarterly sales report and locomotive quarterly installation audit report into one annual report.

- 40 C.F.R. § 1033.135 – Reduce the required label information to a minimum to match the information on EPA-issued certificates. Eliminate other details.

- 40 C.F.R. § 1068.210 – Formal requests for test exemption approval should be web-based and the approval process should be streamlined for expedited approval.

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY

Evaluation of Existing Regulations;	**)**	**Docket ID No.:**
Request for Comments	**)**	**EPA-HQ-OA-2017-0190**

COMMENTS OF THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

May 15, 2017

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UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY

Evaluation of Existing Regulations;	)	**Docket ID No.:**
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COMMENTS OF
THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

Introduction

The Truck and Engine Manufacturers Association ("EMA") hereby submits its comments in response to the request that the U.S. Environmental Protection Agency published in the Federal Register on April 13, 2017, "seeking input on regulations that may be appropriate for repeal, replacement or modification." (82 FR 17793.)

EMA is the trade association that represents the world's leading manufacturers of internal combustion engines and heavy-duty on-highway commercial vehicles. The engines that EMA's members produce are used in virtually all applications, other than aircraft and passenger cars, and cover products that include on-highway trucks and buses, nonroad farm and construction equipment, marine vessels and locomotives, stationary generators and pumps, and lawn and garden equipment.

Over the past several decades, EPA has adopted myriad and increasingly stringent regulations establishing emission standards for each of the foregoing engine-product categories, and specifying how those engine products must demonstrate compliance with those various emission standards and related requirements. While EPA has regularly added to the number of regulations that govern the design and certification of emissions-compliant engine products, including regulations relating to the measurement and control of in-use emissions, EPA has rarely, if ever, eliminated any of the regulations (especially those that only add burden and cost, and no longer provide any cost-effective environmental benefit) that have accumulated in the Code of Federal Regulations over the past 30-plus years. Given that trend, EMA welcomes this opportunity to comment on the EPA regulations that are appropriate at this juncture for repeal, replacement or modification.

Set forth below are the regulations that EMA believes are ripe for repeal or modification. The first set of identified regulations include those that apply generally to all of the engine categories that are covered by EMA member-company products. The second set of identified regulations are applicable to specific engine and vehicle applications and are organized by product category. In assembling this list of regulations, and consistent with EPA's request, EMA has

attempted to focus on regulations that: (i) elimi nate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; or (iv) create inconsistencies with regulatory reform initiatives and policies. For the most part, the regulations that EMA has identified are those the costs of which have greatly outstripped their putative benefits. EMA looks forward to follow -up discussions with the Agency on the repeal or modification of each of the identified regulations.

Cross-Cutting Regulations

EPA has over the years adopted a number of engine-certification regulatory programs that apply to multiple categories of engine products. While certain of those regulatory programs may have had a reasonable basis for a claim of cost -effectiveness at the time of their ini tial adoption, which in some instances was more than thirty years ago, the more recent adoption of additional increasingly stringent regulations, coupled with the significant advancements in emission control technologies and diagnostics, have made several of those regulatory programs outdated and decidedly out-of-balance when assessed against any reasonable cost-benefit scale.

The cross-cutting programs at issue include production line testing, selective enforcement audit testing, the determination of deterioration factors, and the process for certifying "carry-over" engine families. EMA will address each of those programs in turn.

Production Line Testing

Under the various production line testing (PLT) regulations, EPA requires engine manufacturers, generally on a quarterly basis, and for each engine family, to select randomly a specified sample size of engines from the end of the manufacturers' assembly line. Engine manufacturers are required to test the randomly selected engines over the applicable ce rtification test cycles to assess and confirm whether theengine family complies with the applicable emissions standards, based on the sampling of randomly selected engines. (*See*, *e.g.*, 40 C.F.R. §§ 1033.305, 1033.310, 1042.301, 1042.315, 1042.302, 1048.301, 1048.310, 1054.301, 1054.310, 1060.301 and 1060.310.)

The prescribed PLT testing is exceedingly expensive and time-consuming. Moreover, it is inherently duplicative and redundant since it amounts to little more than a costly repeat of the already rigorous initial engine testing required to obtain EP A's certification and approval to introduce engines into commerce. EPA should repeal the PLT regulations.

Selective Enforcement Audits

Under the various regulations relating to selective enforcement audits (SEAs), EPA may conduct, or may require an engine manufacturer to conduct, additional emission certification tests on specified production engines at a designated engin e testing facility, which could be a facility other than the manufacturer's. This SEA testing is in addition to the PLT testing discussed above. (*See*, *e.g.*, 40 C.F.R. §§ 86.094-22, 1033.601, 1036.15, 1037.15, 1036.301, 1037.305, 1037.315, 1039.15, 1042.15, 1048.15, and 1054.15.)

As with PLT testing, SEA testing has become unreasonably costly and burdensome, especially since those SEA tests must be performed in Part 1065-compliant testing facilities. In addition, the rigorous engine family certification program, coupled with in-use testing requirements, often render SEAs an inherently duplicative and wasteful exercise. Accordingly, the SEA regulations should be modified to only allow the Agency to utilize SEAs as an enforcement tool when the Agency has a good faith basis to suspect a manufacturer's non-compliance. The Agency should be precluded from utilizing SEAs as a random enforcement mechanism or as a means to investigate a generic issue relating to engine technologies. EPA should amend and pare-back the SEA regulations accordingly.

Deterioration Factors

EPA has adopted multiple regulations over the years that relate to the calculation of deterioration factors or "DFs." The DF requirements force manufacturers to test the emissions from a sample of new engines, and then to run the engines continuously for many months to reach a point where, based on "good engineering judgement," the manufacturer can reasonably predict the engines' emissions performance at the end of their full "useful lives" (*i.e.*, 435,000 miles for HDOH engines). Typically, engine manufacturers use various techniques to age their engines to 35% of their full useful lives, and then test the aged engines' emissions to assess (based on an extrapolation out to 100% of the engines' useful lives) whether any emission constituents have increased (deteriorated) due to their operation over time. If so, manufacturers must ensure that their new engine emissions are sufficiently below the applicable emission standards to account for any observed DF. (*See*, *e.g.*, 40 C.F.R. §§ 86.004-26, 86.004-28, 1033.240(b), 1033.245, 1034.241(c), 1039.240(c), 1039.245, 1042.240 (c), 1042.245, 1048.240(c), 1048.245, and 1054.240(c).)

DF testing is exceedingly time-consuming and expensive, and its intended purpose is already served to a large extent by the advanced engine systems that can alert and induce engine operators to obtain any needed emission-related engine repairs. In light of that, EPA should initiate the necessary steps to substantially reduce the DF requirements as currently implemented by the Agency.

In particular, in its oversight of the DF-determination process, EPA should specifically allow for increased flexibilities and streamlining, including by allowing for the following: the expanded use of accelerated-aging bench tests; greater use of good engineering judgement to focus DF testing on specific regions of the engine-aging process (again, with the use of rapid-aging bench tests); greater use of good engineering judgement to address component part failures during testing; greater use of assigned DFs based on experience with similar technologies; expanded allowances for small volume exemptions from DF testing and greater deference to manufacturers' engineering judgements regarding whether DFs are additive or multiplicative and whether the estimated deterioration is linear or not. Those increased flexibilities and opportunities for a more streamlined process are becoming increasingly important as DFs become a larger percentage component of the progressively lower emission standards. Similarly, the costs and burdens of DF testing are becoming increasingly disproportionate to their putative benefit as the underlying tailpipe standards continue their progression towards near-zero levels. Accordingly, EPA should implement the recommended revisions for simplifying and streamlining the DF requirements.

Carry-Over Engine Families

From one model year to another, manufacturers frequently produce engine families that do not incorporate any changes to their emissions-control systems or to their emissions profiles. For those types of engine families – referred to as "carry-over" engine families – engine manufacturers should not be required to go through the full EPA engine-certification process, since they will be inherently duplicative of the certification process for the prior engine model year. Rather, manufacturers should be allowed to notify and certify to EPA when a carry-over engine family is being manufactured, and EPA should issue a certification for that carry-over family based on the previously submitted certification application data relating to the prior model year engine family. In other words, for carry-over engine families, the annual certification renewal process should be largely automatic once a manufacturer attests to the Agency that a carry-over engine family is at issue. To that end, EPA should adopt guidance and regulations clarifying that carry-over engine families are exempt from the otherwise applicable annual engine-certification requirements, and that a more simplified attestation process will apply that will not require the resubmission of additional engine-test data.

Replacement Engine Provisions

Certificate holders use replacement engines to enable customers and operators to repair their equipment and trucks, and get back to their businesses, whether it be harvesting fields, constructing roads, or delivering goods. EPA's current replacement engine regulations are unduly burdensome, since they prevent certificate holders (*i.e.*, engine manufacturers) from quickly responding to the needs of customers and operators, while they also create significant recordkeeping and reporting challenges. The current replacement engine regulations are specified in 40 C.F.R. Part 1068.240, which limits where engines can be staged in the repair and maintenance process – specifically, not at facilities operated by a manufacturer's distributors and dealers – and delineates four different types of replacement engines that can be introduced into commerce. While originally written for nonroad engines, subsequent revisions have resulted in the same regulatory provision being applicable to heavy-duty on-highway engines as well. EPA's general regulatory principle is that the replacement engine must be at the same or at a lower emission level than the engine being replaced.

The regulation of replacement engines is important to ensure a level regulatory playing field for all marketplace participants. As currently prescribed, however, EPA's regulations are overly-burdensome due to onerous record-keeping and reporting requirements, in addition to a recently added provision that restricts the replacement of engines in equipment that is more than 40 years-old.

The four categories of replacement engines are as follows:

- Previous-tier replacement engines with tracking
- Previous-tier replacement engines without tracking
- Partially complete replacement engines
- Partially complete current-tier replacement engines

The first category requires annual reporting if any of t he replacement engines are sold to distributors under the waiver described in 40 C.F.R. § 1068.240(b)(6). The second category requires annual reporting of not only the untracked engines produced, but of all other replacement engines regardless of the regul atory category. As a consequence, manufacturers are, in effect, required to submit annual reports to EPA for all replacement engines with information regarding which regulatory category applies.

The Agency should amend the replacement engine regulations to allow an engine manufacturer to stage replacement engines at dealers, distributors or other similar locations to better service customers and operators. As noted, those engines should be accounted for by the manufacturer in a simplified reporting process. Additionally, EPA should adopt a significantly simpler approach whereby all replacement engines would be considered as one category with one annual production report provided to EPA. In essence, the previous -tier repl acement engines without tracking provisions would be applicable to all replacement engines (both complete and incomplete), but without volume limitations, and the reporting requirement for a given engine would be based on when that engine was introduced in to commerce. In addition, the requirement that replacement engines be installed in equipment newer than 40 years -old would be removed. Under the recommended approach, where replacement engine reporting is required, there would not be any required tracking of replacement engines that are beyond an engine manufacturer's direct control, and reporting would be simplified to cover the engines that a manufacturer ships in a given calendar year.

Administrative Reporting Requirements

The administrative reporting r equirements that are regularly included as components of EPA's emissions compliance programs are extremely burdensome and impose costs that far exceed their benefits. The frequency of submission for the required reports varies . Some are required on a quarterly basis, while others are required to be submitted within a certain number of days from a particular milestone. There are also reports that need to be submitted on a preliminary basis and then aga in later in the year as a final report. The high frequenc y of the submissions creates significant costs and paperwork, and adds no real-world emissions benefits. While it may be necessary for EPA to receive certain data to help assess whether manufacturers are in compliance with the Agency's numerous programs, receiving manufacturers' reports on more than an annual basis does not facilitate the data analysis or compliance reviews, which are the purported rationales for the reports. Accordingly, EMA recommends that EPA reduce the frequency of all periodic reports to one-time annual submissions, which will provide EPA with the necessary data on its various programs, while reducing the unnecessary burdens associated with duplicative and iterative reporting.

Technical Amendments

Over the years, and given the hundred s of EPA regulations that impact EMA's members' products, numerous technical issues arise that need to be accounted for through specific corrections or additions to the relevant regulatory text. Currently, there are many of those types of technical amendments that the Agency should consider and implement. EMA regularly provides feedback to EPA staff regarding the necessary technical changes to the Code of Federal Regulations, and

we will continue to do so. Given the technical and very specific nature of those issues, they are not spelled out in detail in the body of these comments, but are set forth separately in Appendix A.

There is, however, one over-arching issue relating to technical amendments that the Agency should address as a component of this regulatory review process. Typically, before codifying the technical amendments that accumulate over a given year (or period of years), the Agency will wait to include those amendments as an add-on to a separate substantive rulemaking effort. That approach can result in needed technical amendments remaining uncodified for years. To address that issue, EPA should commit to adopting a technical amendment regulatory package on an annual basis.

Engine Category-Specific Regulations

Heavy-Duty On-Highway Engines and Vehicles

On-Board Diagnostics

By far the costliest regulatory requirements facing manufacturers of heavy-duty on-highway (HDOH) engines are those that relate to the design and implementation of on-board diagnostic (OBD) systems. Under the operative EPA regulations, and to a larger extent under the OBD regulations that EPA has authorized the California Air Resources Board (CARB) to adopt and implement, HDOH engine manufacturers are required to equip their engines with exceedingly complex and costly software and emission-sensor systems to detect and provide alerts relating to the potential malfunction of hundreds of emissions-related engine components. The mandated OBD systems are covered by numerous pages of regulatory detail (*i.e.*, EPA's HD OBD regulation (40 C.F.R. § 86.010-18) is 67-pages in length, while CARB's HD OBD regulations are nearly 100-pages in length) and go far beyond the efficacy of common-sense functional diagnostics.

To put the OBD burden into perspective, HDOH engine manufacturers, on average, have spent approximately $75 million per manufacturer over the past 5 years to develop and implement the prescribed OBD requirements, and the projected annual average costs for the current OBD requirements (which now include in-use testing provisions) are more than $25 million per year per HDOH engine manufacturer. Those cost impacts are 10-20 times greater than the estimated costs that EPA relied on in adopting its (and authorizing CARB's) OBD regulations. Just as important, the ever-increasing OBD burdens are unsustainable. Engine manufacturers simply do not have sufficient test cell resources, among other capital and manpower constraints, to engineer and demonstrate compliance with the mushrooming OBD technical specifications and performance criteria. Nor do they have the resources to construct and maintain the additional new test cells that would be required to accommodate the steadily increasing burdens of the CARB/EPA HD OBD requirements. The net result is an inherently unreasonable HD OBD program.

EPA's HD OBD regulations are spelled out in 40 C.F.R. § 86.010-18. Those regulations include requirements for the verification and demonstration testing of the OBD systems of production vehicles, and multiple other onerous provisions. Even more significant, however, under section 86.010-18(a)(5), EPA has specified that the Agency will accept evidence that a manufacturer has complied with CARB's OBD requirements as a sufficient demonstration that the manufacturer has complied with EPA's OBD requirements. Over the years, as CARB's OBD

program has become more and more comprehensive and complex, EPA has, in effect, subordinated its OBD program to CARB's. That subordination has reached the point where EPA now requires engine manufacturers to submit to California's authority by obtaining a CARB Executive Order (showing approval of the manufacturer's OBD systems) as a prerequisite to obtaining EPA's certification of an HDOH engine family, and thus, as a prerequisite to being able to sell the covered engines in the rest of the country. EPA's wholesale delegation to CARB of the development and implementation of HD OBD requirements has led to the untenable results that pertain today.

CARB's authority to adopt and enforce HDOH OBD requirements stems in relevant part from EPA's grant of preemption waivers on September 8, 2008, December 10, 2012, and November 7, 2016. (*See*, 73 FR 52042, 77 FR 73459, and 81 FR 78149.) Those preemption waivers, however, were premised on OBD cost assumptions that have proved to be understated by a factor of 10-20 (*i.e.*, OBD costs amount to more than $1000 per individual HDOH engine, as opposed to CARB's original estimate of approximately $60 per engine), as noted above. That raises, among other things, significant concerns regarding the assumed cost-effectiveness of the current onerous OBD requirements.

In light of the foregoing, EPA should pare down its OBD regulations to focus on functional diagnostics for exhaust aftertreatment systems, and should work in earnest to ensure that CARB does the same. Real regulatory relief in this area is absolutely vital.

In-Use Testing Requirements

HDOH engine manufacturers are required to obtain and test a sampling of in-use vehicles equipped with HDOH engines to assess the engines' compliance with the applicable "not-to-exceed" emission standards. (*See*, 40 C.F.R. § 86.1901, et seq.) To implement the heavy-duty in-use testing (HDIUT) program, engine manufacturers use two sets of portable emissions measurement systems (PEMS), one to assess the engine's gaseous emissions, such as NO_x and NMHC, and one to assess PM emissions. The average cost per engine family for in-use PM and NMHC testing (not including the costs attributable to testing for NO_x or any other gaseous pollutants) is approximately $150,000. The average cost per HDOH engine/vehicle is approximately $30,000.

Since the implementation of the HDIUT program in 2006, experience has shown that the overall level of compliance with the in-use PM and NMHC NTE-based emission standards is extremely high, with almost no "failures" over a ten-year period. The flip side of that coin is that the continuing burden of in-use testing for PM and NMHC cannot be shown to be cost-effective, as there is no ongoing need for it. The only HDOH vehicles tested under the HDIUT program are those that are equipped with DPFs, and that have passed the screening process for in-use testing. Those engine/vehicles operate at emission levels well below the in-use standards. The utility of an in-use PM testing program for those vehicles is not sustainable. Likewise, the NMHC emissions from HDOH vehicles are inherently low and again well below the in-use standards. As a result, the costs of an in-use NMHC testing program are excessive and have little relationship to any potential benefits.

In-use testing for PM requires a separate PEMS, elaborate installation configuration and vehicle mountings, significant additional vehicle recruiting and set-up time, and significant additional de-installation and post-processing time. Testing for NMHC requires the use of FID gas bottles and other unique in-use testing issues (including PEMS failures) that create inordinate expenditures of time and money. Consequently, the in-use testing costs for those two pollutants add significant incremental costs, and no significant incremental benefits, to the HDIUT program.

The final rulemaking for the HDIUT program contained the following provision, which was specifically negotiated by EMA:

> Recognizing that experience may show that the effectiveness, durability and overall performance of new engine technologies and exhaust aftertreatment systems may demonstrate that in-use testing for certain pollutants is unnecessary, we will consider requests from engine manufacturers to discontinue reporting and/or measurement of one or more pollutants from some or all engines based on future test experience.
> (70 Fed. Reg. at 34610)

EPA should repeal the requirements of the HDIUT program as they pertain to PM and NMHC emissions.

GHG Phase 2 Regulations

EMA is supportive of the recently finalized GHG Phase 2 regulations. (*See*, 81 FR 73478-74274, Oct. 25, 2016.) EMA did not file a petition challenging those standards, nor did EMA support any Congressional review of the Phase 2 regulations. Notwithstanding EMA's general support, there are a number of regulatory revisions and technical amendments that EPA should implement to enhance the feasibility and efficacy of the GHG Phase 2 standards, as described in further detail below. In implementing the recommended improvements to the GHG Phase 2 program, EPA will need to coordinate with, and work to ensure parallel action by, the National Highway Transportation Safety Administration, which also oversees the implementation of its own fully-aligned fuel-efficiency regulations. EPA also will need to ensure that CARB adopts harmonized and fully-aligned regulations when it proceeds to adopt its own version of the Phase 2 regulations.

GHG Phase 2 Chassis Dynamometer Test Requirement

As an element of the recently adopted GHG Phase 2 regulations, EPA requires that HDOH vehicle manufacturers conduct chassis-dynamometer testing of five (5) tractors every year, beginning with the 2021 model year. (*See*, 40 C.F.R. § 1037.655.) Manufacturers are required to measure and report emissions of NO_X, PM, CO, NMHC, CO_2, CH_4, and N_2O. Along with reporting the dynamometer test results, manufacturers must also provide the corresponding greenhouse gas emissions model (GEM) results for the vehicles. In the preamble to the final GHG Phase 2 Rule, EPA acknowledged the inherent differences between chassis-dynamometer testing and GEM simulations, and stated that the Agency will not use the dynamometer data for compliance auditing purposes. Thus, the only rationale that EPA provided for the annual five-

tractor dynamometer test requirement is for the vague purposes of "data collection and informational purposes." (*See*, 81 Fed. Reg. 73,548.)

Testing Class 8 HDOH vehicles on a chassis-dynamometer is a time-consuming and resources-intensive undertaking. Many heavy-duty manufacturers do not have a chassis-dynamometer and therefore will have to pay an independent laboratory to conduct the testing for them. Moreover, there are substantial questions about the usefulness of the data, or even whether statistically valid conclusions can be drawn from year-over-year trends in the data. Vehicle changes that may show up in dynamometer test results may be unrelated to the vehicle aspects assessed in a GEM-based simulation, and therefore may be unrelated to the GHG Phase 2 Rule. Heavy-duty chassis-dynamometer testing also likely includes a significant amount of test-to-test and lab-to-lab variability that has not been analyzed and may eliminate the possibility of drawing any meaningful conclusions from the data. Furthermore, the onerous chassis-dynamometer test requirement includes measuring criteria pollutant emissions that are outside the scope of the GHG rule.

For the reasons stated above, EPA should eliminate the chassis-dynamometer testing requirement that is set forth at 40 C.F.R. § 1037.655.

Eliminate Unnecessary Coastdown Testing Requirements

Pursuant to 40 C.F.R. § 1037.525(b)(4), EPA requires that HDOH vehicle manufacturers perform new "coastdown tests" in 2021, 2024, and 2027, to determine new computational values for their alternative aerodynamic measurement methods. That mandate is inconsistent with the common-sense requirement contained in the very next sentence of the regulatory text, which states that a coastdown test "continues to be valid for later model years until you change the tractor model in a way that causes the test results to no longer represent production vehicles." (*See*, 40 C.F.R. § 1037.525(b)(4).) The mandate that manufacturers conduct new coastdown testing at each regulatory step would require additional testing even in the absence of any change to vehicle design that would affect the aerodynamic results. It is an unnecessary and extremely costly regulatory test burden that is at odds with its companion regulatory provisions.

EPA should eliminate the regulatory mandate (40 C.F.R. § 1037.525(b)(4)) to conduct coastdown tests at every regulatory stringency step, and instead should only require new coastdown tests when design changes are made that affect aerodynamic performance.

Encourage Early Adoption of GHG-Reducing Technologies

Under the current GHG regulations, EPA provides for the enhanced generation of emission credits when certain GHG Phase 2 technologies are deployed during the "Phase 1" time-frame. *See*, 40 C.F.R. § 1037.150(y)(2). Specially, the regulations allow manufacturers to generate credits for the early deployment of automatic tire inflation systems on tractors, automatic engine shutdown systems, stop-start systems, and neutral-idle systems. EPA should expand those provisions to include additional Phase 2 technologies, such as automatic tire inflation systems on vocational vehicles, predictive cruise control, and extended-idle shutdown systems.

Similarly, the GHG Phase 2 Rule provides for the generation of extended-life emission credits for the early deployment of Phase 2-compliant light and medium heavy-duty vocational vehicles during the Phase 1 time-frame. *See*, 40 C.F.R. § 1037.150(y)(1). EPA should expand that provision to provide extended-life credits for the early deployment of Phase 2 heavy heavy-duty vocational vehicles as well.

To encourage the early deployment of Phase 2 engine technologies, the regulations provide an alternative compliance schedule for medium and heavy heavy-duty tractor engines that meet the Phase 2 standards one-year early. *See*, 40 C.F.R. § 1036.150(p). That provision also obligates manufacturers to meet the vocational engine standards one-year early, but does not likewise provide for any alternative CO_2 standards for those vocational engines in subsequent years. EPA should provide a similar compliance path that incentivizes the early deployment of Phase 2 light, medium and heavy heavy-duty vocational engines.

In the GHG Phase 2 preamble discussion about revising the "baseline" vocational engine emission level (from which EPA derived the Phase 2 engine-emission reductions), the Agency stated that it would not allow "engine credits generated against the Phase 1 [vocational vehicle engine] standards to be carried over into the Phase 2 program." *See*, 81 Fed. Reg. 73,569 (October 25, 2016). However, the Final Rule failed to include any replacement mechanism to provide incentives for vocational engines produced during the Phase 1 time period that out-perform EPA's new medium and heavy-duty Phase 2 vocational baselines. To create such an early-deployment incentive, and as an alternative to credit-calculation on the basis of the tractor engine standards, EPA should allow manufacturers to carry-over credits generated by vocational engines during Phase 1 to the extent that they out-perform EPA's Phase 2 baselines for light, medium and heavy heavy-duty vocational engines.

Avoid Unintended Consequences of Stop-Start Technologies

The Phase 2 Rule assumes the use of a technology to automatically shut-down the engine no more than five seconds after a medium and heavy heavy-duty vocational vehicle comes to a complete stop. While stop-start technologies have been deployed on passenger cars for years, it is completely new to commercial vehicles. The Rule provides for certain override conditions that are utilized on passenger cars to avoid creating the unintended consequences that can occur when an engine is shut-down automatically, such as providing for overrides when the vehicle cab temperatures are too low for the driver's safety or when the main battery's state-of-charge is too low to restart the engine. *See*, 40 C.F.R. § 1037.660(b)(4). As EMA requested during the rule-making process, we request that EPA work with manufacturers to identify additional override conditions necessary to ensure safe and effective vehicle operation that are not specified in the final regulations to reduce the occurrence of unintended consequences from the use of stop-start technologies on medium and heavy heavy-duty vocational vehicles.

Align the Audit Procedures for Aerodynamic Performance

EPA has recognized that there are multiple methods for measuring the aerodynamic drag of a heavy-duty vehicle, and that "no single test procedure is superior in all aspects to other approaches." *See*, 81 Fed. Reg. 73,625 (October 25, 2016). Accordingly, in 40 C.F.R. § 1037.525 the GHG Phase 2 Rule allows for measuring aerodynamic drag using any of several different

procedures. However, in the selective enforcement audit procedures for aerodynamic testing, regulations specify the use of only the coastdown method for measuring aerodynamic drag, yet they also provide that EPA may require a manufacturer to use the same method it used for certification. To reduce audit complexity and increase compliance predictability, EPA should revise the regulations to clarify that a manufacturer will only be required to conduct a selective enforcement audit test of aerodynamic performance using the same measurement method the manufacturer used for certification.

Refine Greenhouse Gas Emission Model (GEM) Simulations

The GEM simulation used in the Phase 2 Rule includes a model of a hydrodynamic torque converter used in automatic transmissions. The torque converter model uses various calculations to simulate how an actual hydrodynamic torque converter would slip at slow speeds and lockup at high speeds. EPA's Regulatory Impact Analysis (RIA) for the Phase 2 Rule acknowledges that the GEM simulation only approximates the K-factor torque curve that defines how an actual torque converter functions, but predicts that "for the vast majority of vehicles, the effect of this approximation on simulated CO_2 emissions is negligible. *See*, RIA § 4.2.2.3.3.4. However, EMA has found that when simulating certain engines in GEM, they consume significantly more fuel during low-speed operation than in the real world. EPA should reassess the K-factor used in the automatic transmission torque converter model in GEM to ensure that it is representative of actual torque converters, or provide a method for determining K-factors for different transmissions and inputting the values in GEM.

Promote Deployment of Hybrid Technologies

The GHG Phase 2 Rule requires that manufacturers conduct a powertrain test to assess the benefits of mild hybrid technologies. However, powertrain testing is very complicated, time consuming and expensive. To promote the deployment of mild hybrids without mandating the burden of powertrain testing, EPA should provide a fixed benefit for mild hybrids that could be added to GEM in lieu of actual powertrain test results.

The Phase 2 Rule provides an advanced credit multiplier for plug-in electric hybrid vehicles to promote their deployment. Similarly, EPA should also provide an appropriate advanced credit multiplier for the deployment of hybrid powertrains that do not have the plug-in feature.

Reduce Certification Burdens

The GHG Phase 2 Rule is primarily structured as a credit-averaging regulation whereby manufacturers assess vehicles in the GEM simulation and ensure that at the end of the year all the vehicles they have sold, on average, meet the mandated emission standards. Under such a scheme, much of the initial information manufacturers provide EPA to obtain certification is merely a prediction of where the manufacturer's credit balances will be at the end of the year. Accordingly, we recommend streamlining the up-front certification requirements as follows:

- Eliminate the need to submit GEM results for prospective vehicles
- Eliminate credit projections

- Allow carry-over certification after the first year of a new GHG standard

The GHG Phase 2 Rule includes detailed and complicated Delegated Assembly requirements for auxiliary power units (APUs) andfor natural gas fuel tanks that are often installed by specialized manufacturers after the vehicle leaves the truck-manufacturing plant. Such multi-stage manufacturing occurs because the APU and natural gas tank installers are experts in their trades and receive minimal input from the truck manufacturer. Accordingly, EPA should streamline the requirements so that the truck manufacturer simply validates that the components were actually installed.

Class 2b/3 Testing Burden

Testing 10% of the sub-configurations of Class 2 and 3 cab-complete vehicles will create disproportionate and extreme amounts of testing compared to other vehiclecategories. While there are high volumes of Class 2 and 3 sub-configurations compared to light-duty vehicles, the actual sales volumes for Class 2 and 3 vehicles are generally very low. This leads to a disproportionately high test burden for a relatively small fraction of manufacturers' vehicle sales. The testing requirements for Class 2 and3 vehicles should be proportionate to their total volume.Accordingly, EPA should modify the testing requirement in the regulations to cover either a smaller percentage, or the Agency should set a cap at 20 tests. (*See*, 40 C.F.R. § 86.1819-14(d)(9)(i).)

Air Conditioning (AC) Credits

EPA and NHTSA recognize AC improvements in the regulations for light-duty vehicles, but not for heavy-duty vehicles, even though EPA and NHTSA both recognize the benefits of AC technologies that reduce GHGs and fuel-consumption. Since the benefits of those technologies are not measured in the certification process, they are applied as credits. Although the benefits are just as real for heavy-duty vehicles as they are for light-duty vehicles, neither EPA nor NHTSA allows credits for AC technologies. Manufacturers believe those credits should be harmonized between the light-duty and heavy-duty programs. To that end, EPA (and NHTSA) should modify (harmonize) the heavy-duty vehicle regulations to include AC credits, using a list of pre-approved default credits. (*See*, 40 C.F.R. § 86.1867-12 – CO_2 credits for reducing leakage of air conditioning refrigerant; 40 C.F.R. § 86.1868-12 – CO_2 credits for improving the efficiency of air conditioning systems; and 40 C.F.R. § 600.510-12 – calculation of average fuel economy and average CREE.)

Off-Cycle Credits

Similarly, EPA recognizes off-cycle improvements in the regulations for light-duty vehicles, but not for heavy-duty vehicles. As with the AC credits described above, EPA and NHTSA recognize the benefits of off-cycle technologies, yet do not offer credits for heavy-duty vehicles. (Off-cycle means that the benefits are not fully measured in the certification test cycle.) Manufacturers believe those credits should be harmonized between the light-duty and heavy-duty programs. Accordingly, EPA (and NHTSA) also should modify (harmonize) the heavy-duty vehicle regulations to include credits for CO_2-reducing off-cycle technologies, using a list of pre-approved default credits. (*See*, 40 C.F.R. § 86.1869-12 – CO_2 credits for off-cycle CO2-reducing technologies; and 40 C.F.R. § 600.510-12 – calculation of average fuel economy and average CREE.)

Drive-By Noise Requirements

EPA's drive-by noise requirements are found at 40 C.F.R. Part 205, Subpart B. Those requirements are outdated and EPA has not attempted to enforce them for many years. In fact, the enforcement office associated with those regulations was disbanded in the 1980s. In light of the foregoing, EPA should eliminate those regulations.

Nonroad Engines

Global Harmonization

The machinery and equipment that are powered by nonroad engines are sold into a global marketplace. As a result, it is critically important to engine manufacturers' ability to compete effectively in the global market for nonroad engines that the applicable engine -certification regulations be as fully al igned and harmonized as possible. To that end, EPA should work proactively to ensure that its nonroad engine regulations do not create any unwarranted barriers to international trade and commerce.

Specific Recommendations

- EPA should eliminate the NTE requirements for nonroad engines that are less than 19kW and that do not have electronic controls. (*See*, 40 C.F.R. § 1039.101(e).) Under the European Union's (EU) Stage V regulations, mechanically-controlled nonroad engines do not need to comply with the NTE requirements.

- EPA should eliminate the requirement that nonroad engines less than 19kW be tested over the nonroad transient test cycle (NRTC). The EU Stage V regulations exclude all variable-speed nonroad engines less than 19kW from the NRTC-testing requirements.

- EPA should eliminate the requirement that nonroad engine manufacturers measure and report GHG emissions. Specifically, EPA should eliminate the requirements that nonroad engine tests include the measurement of CH_4 and N_2O emissions. The required investments in measurement systems, testing processes, and dedicated personnel are widely disproportionate to any putative benefits.

- EPA should eliminate the requirement that nonroad engines used in auxiliary power units (APUs) be equipped with diesel particulate filters (DPFs). That requirement (*See*, 40 C.F.R. § 1039.699) is not cost-effective.

- Certain regulations restrict cost -effective emissions solutions from being deployed in specialized, low-volume agricultural and construction equipment, and so have potentially negative emissions impacts. In that regard, EPA should eliminate the percentage limit on the annual production of "Alternate FEL Cap" engines, which is currently set at 5%. (*See*, 40 C.F.R. § 1039.101(d)(2).) Using Alternate FEL Caps allows for a more cost-effective emissions solution for low -volume specialty products when a fully -compliant Tier 4 solution can be cost -prohibitive. Removing this volume limit would allow full market demands to be met, without any net emissions impact, since credits are required to offset

the higher-emissions products. Additionally, the provisions which allow exemptions from transient testing, not-to-exceed requirements, and crankcase emissions for the first four years of the Tier 4 standards should be re-instated. Those exemptions provide another means for allowing the development of cost-effective engines for low-volume specialty products, while maintaining a neutral emissions impact by adjusting the required credits upward based upon appropriate correction factors. Accordingly, the previously-used correction factors should be re-established without expiration. Those two changes would ensure cost-effective options for low-volume specialized equipment that powers America's agricultural and construction industries without negative emissions impacts.

- EPA should eliminate the smoke testing requirements for nonroad engines. (*See*, 40 C.F.R. § 1039.105.)

Marine and Locomotive Engines

Alignment with IMO Standards

EPA's Tier 4 marine engine standards are aligned with the IMO Tier III limits for engines with power ratings greater than 600kW, but not for engines with power ratings between 130-600kW. One result of this mis-alignment is that advanced NO_x-control technologies have been developed and implemented for certain commercial marine engines above the 600kW power threshold, but not below. That result, in turn, means that there is a potential shortage or unavailability of IMO Tier-III-compliant engines below 600kW. That situation has arisen in Canada and has required that annual exemptions be implemented for the IMO Tier III standards as applied to commercial marine engines rated between 130-750kW on vessels with combined propulsion power less than 750kW.

Additionally, commercial marine vessels built in 2016 are in service now with EPA Tier 3-compliant engines ranging from 130kW-1400kW that do not incorporate aftertreatment systems. Those engines are IMO Tier II-compliant. Vessel builders and owners need guidance from EPA confirming that they may continue to operate their EPA Tier 3-compliant engines under the scenarios described below.

Given the regulatory mis-alignment and potential product unavailability at issue, EPA should issue a regulatory guidance document confirming that the following reasonably anticipated scenarios will be permitted for U.S. domestic vessels equipped with EPA Tier 3 engines, and for U.S.-flagged or foreign-flagged international vessels equipped with EPA Tier 3/IMO Tier II engines and IMO Tier II engines, respectively.

Scenario 1

Guidance should allow unimpeded travel between all U.S. port cities for EPA Tier 3 engine-equipped vessels that are only engaged in domestic U.S. commerce.

Scenario 2

> Guidance should provide a process for allowing exemptions on a case-by-case basis, based on IMO Tier III product unavailability for engines less than 1400kW, during vessel planning or construction phases. Those exemptions could be granted by the U.S. or any other flag-state. In such cases, EPA Tier 3/IMO Tier II engines would be acceptable. Such vessels would be allowed to enter and operate in U.S. waters as compliant vessels without triggering any IMO Tier III requirements for the exempted engines. It is anticipated that IMO Tier III-compliant engines will become available within the next 12-24 months to fill product gaps below 1400kW.

Scenario 3

> Guidance should allow U.S.-domestic vessels to travel to Canada with EPA-certified engines, as Canada currently allows, and to return to U.S. ports as domestic vessels.

In assessing the scope of the necessary guidance, it is important to note that the foregoing scenarios could apply not just to vessels with propulsion engines less than 600kW, but also on larger vessels having propulsion engines greater than 600kW, which also are equipped with auxiliary marine engines less than 600kW. In such cases, the EPA Tier-3-compliant auxiliary engine would not be compliant with IMO Tier III due to product unavailability.

Additionally, the IMO regulations have an exemption from emissions requirements for marine emergency-power gensets. EPA's current marine regulations, however, do not contain such an exemption. Most emergency gensets installed on vessels are radiator-cooled, and so are different from the types of sea water-cooled engines on which the current marine engine standards are premised. While there is an exemption under the marine regulations for the use of engines certified to the land-based standards, those engines typically lack the other marine hardware (SOLAS, USCG hoses, etc.) required in order to be installed on a vessel. Accordingly, EMA recommends that the marine regulations be harmonized with the IMO regulations, which contain an exemption for marine emergency-power gensets.

Useful Life Determination

The "useful life" regulations applicable to marine engines are inconsistent with the useful life regulations that apply to nonroad engines. (*Compare* 40 C.F.R. § 1042.101(e)(2) *with* 40 C.F.R. § 1039.101(g)(2).) More specifically, under the marine engine regulations, it is possible that an engine family's useful life could be extended if a manufacturer advertises or markets a longer time to rebuild, even if the manufacturer is not seeking EPA approval of an alternative useful life different from the generally specified useful life values. EPA should revise section 1042.101(e)(2) to conform to the language utilized in section 1039.101(g)(2).

California Requirements For Engines Below 37kW

EPA has previously granted a preemption waiver authorizing CARB to adopt certain emission standards for certain categories of marine engines. Over time, this has created an unacceptable inconsistency in marine engine standards, since, in at least once significant instance, CARB has not kept pace with EPA.

Currently, CARB's regulations require that marine engines less than 37kW need to be certified to EPA's Tier 2 emission standards. (*See*, 13 CCR § 2421(b)(1)(A). Table 1a.) However, EPA's current standards for marine engines less than 37kW are the Tier 3 emission standards, not the Tier 2 standards. Thus, in this instance, CARB's regulations are less stringent than the corollary federal standards and, as such, are not entitled to a preemption waiver.

California's emission standards for marine engines less than 37kW no longer meet the requirement for a preemption waiver under Section 209(e) of the federal Clean Air Act (42 U.S.C. § 7543(e)), and, thus, California's waiver for those standards should be withdrawn.

Recreational Marine Engines

EPA should allow high-performance Category 1/Tier 3 diesel-fueled recreational marine engines below 600kW to be used in commercial vessels, with certification testing allowed under the E5 test cycle and with a specified useful life of 1000 hours. Currently, those engines are tested under the E3 test cycle and are required to meet a longer useful life. (*See*, 40 C.F.R. § 1042.101.) Nonetheless, the type of high-performance diesel-fueled marine engines at issue have an inherently more limited service life given their high power rating and power-density, and in that regard, are more similar to gasoline-fueled inboard and outboard engines.

Gasoline-fueled marine engines may be installed in commercial vessels based on the certification as recreational marine engines under the E4 test cycle, and with a limited useful life requirement. Similar treatment and accommodation should be afforded to high-performance diesel-fueled recreational marine engines. This regulatory amendment will simplify the treatment of recreational marine engines and will level the regulatory playing field.

DFs For Marine Engines

As noted previously, the current DF requirements should be eliminated or substantially streamlined. In the specific case of marine engines, EPA should allow engine manufacturers to utilize fixed multiplicative DFs based on the application of good engineering judgement in the context of known engine technologies. EMA proposes the following multiplicative DFs for the following pollutants: CO 1.1, HC 1.1, NO_x 1.05, and PM 1.05.

Production Line Testing

As noted earlier, PLT requirements are outdated and should be eliminated. This requirement is especially burdensome and costly as applied to marine engines, and is a requirement that EPA has not imposed on the manufacturers of nonroad engines. In particular, special consideration should be given to Category 2 marine engines. Category 2 marine engine families currently are not allowed the low-volume family exemption that is provided for Category 1 marine

engines under 40 C.F.R. §1042.301(a)(2). As such, if even a single engine is sold in a Category 2 family during a model year, it must have a PLT test. With Tier 4 standards forcing the use of aftertreatment, and with the advent of 40 C.F.R. 1065 test methods, the cost of PLT testing on such large engines and aftertreatment systems has become exorbitant, and the testing process has become exceedingly burdensome. PLT testing is so expensive, in fact, that it can limit the number of low-emission Category 2 engines that can be placed on the market. In that regard, there are very few test cells in the world that can accommodate such large engines with aftertreatment, and setting up and running a PLT test consumes a wholly disproportionate amount of the time available in those few test cells. That it turn limits manufacturers' ability to develop new products. Accordingly, PLT requirements should be eliminated across the board, and especially with respect to Category 2 marine engines. At a bare minimum, Category 2 marine engines should be allowed to use the low-volume family exemption in 40 C.F.R. §1042.301(a)(2).

Also, if all marine PLT's are not eliminated, quarterly reporting of PLT results should be eliminated. (*See*, 40 C.F.R. § 1042.345.) That reporting requirement puts an extra burden on marine engine manufacturers, and, again, is a burden that is not placed on nonroad engine manufacturers.

Stationary Engines

"Grand-Fathered" Emergency Backup Engines

On May 1, 2015, in the case of Delaware Dept. of Natural Resources v. EPA, Case No. 13-1093 (D.C. Cir. 2015), the Court of Appeals struck down the 100-hour exemption from air pollution controls that EPA had allowed for emergency backup generators, including during emergency demand-response operations. *See*, 40 C.F.R. § 60.4211(f). To address the uncertainties caused by the Court of Appeals decision, EPA should adopt "grand-fathering" provisions for engines that were manufactured to function as emergency backup engines during the period from January 1, 2011, through May 1, 2015. More specifically, EPA should clarify that the grand-fathered engines may operate for an unlimited number of hours in emergency situations, and may operate for up to 100 hours for non-emergency demand-response purposes if they are retrofitted with selective catalytic reduction systems that can demonstrate Tier 4 emission levels through established on-site emissions testing procedure at typical engine-operating loads.

Small Spark-Ignited Engines

Small spark-ignited (SSI) engines are used to power a broad array of products, ranging from lawn mowers to portable generators. Over the years, EPA has adopted an increasingly comprehensive and stringent regulatory program to control and reduce the emissions from SSI engines. Certain of those regulations, however, have proved to be overly burdensome and unduly costly, including the following:

- EPA should adopt a clear and straight-forward small-volume engine family threshold definition for SSI engines.

Conclusion

EMA appreciates the opportunity to submit these comm ents on the regulations that the Agency should consider for repeal, replacement or modification. We look forward to discussing these issues in further detail with the Agency in the near future.

Respectfully submitted,

TRUCK & ENGINE
MANUFACTURERS ASSOCIATION

Appendix A

Necessary Technical Amendments

As noted in the body of EMA's comments, the implementation of EPA regulations regularly identifies technical issues that were not foreseen or adequately addressed when those regulations were initially drafted and adopted. EMA and EPA staff typically sort through those technical issues in a collaborative manner, but there is no established procedure for implementing agreed-upon technical amendments in a timely manner. EPA should adopt a policy whereby a package of technical amendments is proposed for adoption on an annual basis. In that regard, the following items, among others, should be included in the next round of technical amendments that the Agency undertakes:

- Eliminate the limitation on the use of replacement engines in stationary equipment that is more than 15 years-old, as specified in 40 C.F.R. § 60.4210(i).

- Establish separate NESHAP limits for liquid-fueled compression-ignition stationary engines with displacements larger than 30 liters per cylinder, especially for engines operating on fuels other than ultra-low sulfur diesel fuel.

- Simplify and enhance the flexibility of the engine labeling regulations, including those that pertain to the content and location of engine labels.

- Allow more flexibility in the Agency's DEF quality guidance to permit more widespread use of NO_x-sensor-based DEF quality monitoring.

- Revise the marine replacement engine notification requirements from the current 30-day deadline (from the date of shipment) to match the nonroad replacement engine notification deadline of 270 days after the end of the relevant calendar year.

- Streamline the EIAPP application and certification process.

- Align and harmonize the EPA and IMO certification test fuel requirements for Category 1 and 2 marine engines. Currently, EPA requires the ASTM fuel specifications, while IMO requires fuels meting the specifications of ISO 8217.

- Eliminate the requirement under 40 C.F.R. § 1042.820 for NO_x and PM reductions relative to a baseline engine to determine authorization for a certified remanufactured engine, and instead use the standards of the respective Tiers as the basis for cost-effectiveness calculations under 40 C.F.R. § 1042.815.

- Allow for the use of natural gas kits for remanufacturing engines, even though the fuel does not need to be registered. *See,* 40 C.F.R. § 1042.801(f)(1).

- Change the altitude specified in 40 C.F.R. § 1033.115 (e)(1) from 7000 feet to 4000 feet to correspond with 40 C.F.R. § 1033.505.

- Remove the following language from Maintenance Instruction (See, 40 C.F.R. § 1033.220): "If owners/operators follow the original maintenance instructions rather than the newly specified maintenance, this does not allow you to disqualify those locomotives from in-use testing or deny a warranty claim." To help ensure in-use compliance, the updated Maintenance Instructions need to be controlling. To that end, EPA should allow manufacturers to require that the most current maintenance instructions be followed prior to in-use testing.

- Revise 40 C.F.R. § 1033.645 so that engine manufacturers will not be subject to in-use liability for engines that have been identified to contain non-OEM parts, and such engines will be excluded from in-use testing.

- Eliminate the prohibition against deeming Category 1 and 2 IMO Stage II-III engines to be interchangeable with EPA Tier 4-certified marine engines for use on U.S.-flagged vessels.

- Reduce or eliminate stationary performance test requirements for stationary engine operators if the engines are EPA-certified (*e.g.*, NSPS-certified engines).

- Reduce the administrative burdens associated with Delegated Final Assembly, including through the elimination of the requirement to submit annual affidavits.

- Under EPA 40 C.F.R. § 1068, allow engines to be moved from one exemption to another (*e.g.*, from test exemption to manufacturer-owned).

- Align marine and locomotive annual PLT reporting requirements to eliminate reports if no testing took place. *See,* 40 C.F.R. §1033.320(e), and §1042.345(a).

- Change Inducement-Override reporting (40 C.F.R. § 60.4201(g)) to events where a 120-hour reset is requested from the manufacturer. Eliminate reporting of each and every activation.

- Eliminate the requirement to add a DPF to an engine in remote regions of Alaska, as required by 40 C.F.R. § 60.4216 if a marine engine is used pursuant to § 60.4201(g).

- 40 C.F.R. § 10033.250 and § 1033.335 – Combine locomotive quarterly sales report and locomotive quarterly installation audit report into one annual report.

- 40 C.F.R. § 1033.135 – Reduce the required label information to a minimum to match the information on EPA-issued certificates. Eliminate other details.

- 40 C.F.R. § 1068.210 – Formal requests for test exemption approval should be web-based and the approval process should be streamlined for expedited approval.

Dear Chairman Barrasso:

Thank you for your letter regarding the ongoing regulatory reform process at the Environmental Protection Agency (EPA). The agency appreciates your interest in providing information to help us apply the Administrator's "Back-to-Basics Agenda," which balances environmental protection with economic growth. As we implement Executive Orders 13777 and 13783, we will be sure to devote particular attention to the issues of cost-benefit analysis and the review process.

As part of our implementation of EO 13777, on April 11, 2017, the EPA requested public comments on its evaluation of existing regulations that may be appropriate for repeal, replacement, or modification. The enthusiastic response from homeowners, small businesses, small governments, and other regulated entities provided a springboard for identifying unnecessary and overly burdensome regulations. In particular, the EPA will target rules that impose substantial economic costs but provide limited environmental benefits.

The calculation of a regulation's costs and benefits is a vital component of the rulemaking process. Assumptions and procedures must be transparent and supported by the best available science and economics. The use of such obscure metrics as the "social cost of carbon" and "co-benefits" undermines regulatory certainty and imposes unnecessary costs on American citizens and businesses. In recognition of these facts, Executive Order 13783 directed Administrator Pruitt to review the use of the social cost of carbon and withdrew several policy documents based on it.

Finally, Congress has established statutory review processes that reflect the best interest of our country. The Unfunded Mandate Reform Act (2 U.S.C. Chs. 17A, 25) and the Regulatory Flexibility Act (5 U.S.C. 601-612) ensure the small businesses and different levels of government are incorporated in the rulemaking process. Additionally, the Executive Branch established another safeguard against federal overreach in Executive Order 13132. These review processes were set in place for a reason and must be incorporated into EPA regulations.

Again, thank you for your letter. We will be sure to keep your comments in mind as we carry out the President's Executive Orders and put forward sensible regulations. Furthermore, we greatly appreciate your leadership on the Senate Committee on the Environment and Public Works. We look forward to joining together to make the federal government work for the American people again. If you have further questions, please contact me or your staff may contact Thea Williams in the EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,

Samantha Dravis

Senior Counsel and Associate Administrator

Dear Mr. Belcher,

On behalf of Administrator Pruitt, thank you for your letter regarding Executive Order 13547, "Stewardship of the Ocean, Our Coasts, and the Great Lakes," also known as the National Ocean Policy. The agency appreciates your interest in providing information to help us apply the Administrator's "Back-to-Basics Agenda," which balances environmental protection with economic growth.

As you know, the responsible management of our natural resources is of the utmost important to our nation's prosperity. Our coasts and other water resources provide a variety of recreational, commercial, and educational benefits. In order to coordinate the multiple uses of our nation's water resources, the federal government must work with state and local stakeholders to develop sensible policies.

President Trump has prioritized sensible rulemaking during his administration. On February 24, 2017, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda," which directed agencies to create Regulatory Reform Task Forces. On March 28, 2017, he issued Executive Order 13783," Promoting Energy Independence and Economic Growth," which encourages the responsible development of America's energy resources. Together, these orders will reduce unnecessary regulatory burdens placed on the American people.

Again, thank you for your letter. I sent a copy of your comments on behalf of the National Ocean Policy Coalition to Docket ID: EPA-HQ-OA-2017-0190. The Regulatory Reform Task Force at the Environmental Protection Agency will use this docket to make recommendations about potential repeal, replacement, or modification of existing regulations. In the meantime, if you have any questions, you may contact me directly at (202) 564-4332 or dravis.samantha@epa.gov.

Sincerely,

Samantha Dravis

Senior Counsel and Associate Administrator

Dear Congressman Weber:

On behalf of Ryan Jackson, thank you for your letter regarding the EPA's Regulatory Reform Task Force and the ocean disposal of dredged material. The agency appreciates your interest in providing information to help us apply the Administrator's "Back-to-Basics Agenda," which balances environmental protection with economic growth.

As part of our implementation of EO 13777, on April 11, 2017, the EPA requested public comments on its evaluation of existing regulations that may be appropriate for repeal, replacement, or modification. The enthusiastic response from homeowners, small businesses, small governments, and other regulated entities provided a springboard for identifying unnecessary and overly burdensome regulations. In particular, the EPA will target rules that impose substantial economic costs but provide limited environmental benefits.

Again, thank you for your letter. We will be sure to keep your comments in mind as we carry out the President's Executive Orders and put forward sensible regulations. Furthermore, we greatly appreciate your leadership in the House of Representatives. We look forward to joining together to make the federal government work for the American people again. If you have further questions, please contact me or your staff may contact Thea Williams in the EPA's Office of Congressional and Intergovernmental Relations at williams.thea@epa.gov or (202) 564-2064.

Sincerely,

Samantha Dravis

Senior Counsel and Associate Administrator

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May 15, 2017

Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

Attention: Docket ID Number EPA-HQ-OA-2017-0190
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: U.S. Environmental Protection Agency's Request for Comment, "Evaluation of Existing Regulations"

Dear Ms. Rees:

The American Fuel & Petrochemical Manufacturers (AFPM) respectfully submits these comments in response to the Environmental Protection Agency's (EPA or Agency) Request for Comment, titled "Evaluation of Existing Regulations."[1] AFPM recognizes this information will assist EPA's Regulatory R eform Task Force (Task Force) in evaluating existing regulations to alleviate unnecessary regulatory burdens, as directed by Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (EO 13777).[2]

AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. Millions of Americans use products produced by AFPM members every day. Our members serve the American people responsibly and effectively by manufacturin g virtually all U.S petroleum fuels and petrochemicals, strengthening economic and national security, and providing jobs directly and indirectly for over four million people.

While domestic fuel and petrochemical manufacturers have invested and will contin ue to invest substantial capital in environmental protection, AFPM member companies face regulatory obstacles that can undermine the ability of petrochemical manufacturers and refiners to create jobs and compete in the global economy. It is a truism that our modern lifestyle is inextricably linked to the fuels and petrochemicals AFPM members produce. AFPM supports clear and reasonable regulations that are science and data driven, create a level playing field upon which to compete, and have benefits that exceed the regulation's costs. That said, the U.S. regulatory burden, if left

[1] "Evaluation of Existing Regulations, 82 *Fed. Reg.* 17,793 (April 13, 2017).
[2] "Presidential Executive Order on Enforcing the Regulatory Reform Agenda," February 24, 2017, https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda.

unchecked, creates an economic incentive to produce these essential products outside the country, threatening well-paying jobs, tax revenues, and the security of the nation.

The market policy and infrastructure factors affecting the American fuel supply have created a high-cost environment that hampers our nation's economy and threatens our critical refining infrastructure. Unfortunately, government regulation has the ability to make matters even worse. Proposed new regulations and unnecessary tightening of existing standards threaten to raise energy costs for every American consumer, with little or no environmental benefit.

AFPM supports sensible regulations as important tools to protect our well-being by providing rules for all businesses to live by. Too often, however, the U.S. regulatory regime is opaque, duplicative, or outright conflicting —creating uncertainty for businesses, shuttering good projects, and ultimately harming consumers. There are common sense regulatory reform measures that will promote transparency, good government, and sound science without compromising the environment, health, or safety. Far from undermining sensible regulation, such reforms would allow regulated entities to deliver better results for less cost.

These comments highlight EPA regulations AFPM believes are most burdensome for our members and their business operations. We have included recommendations to either eliminate some of these requirements or modify them as appropriate. To facilitate EPA's review, we have divided these comments into three broad categories: 1) Stationary Sources; 2) Fuels; and 3) Toxic Substance Control Act (TSCA) and Lautenberg Chemical Safety Act (LCSA) Implementation.

A. Stationary Sources

The following are the five stationary source regulations of greatest concern to AFPM members:

1. Risk Management Plan (RMP) – 40 CFR Part 68

In August 2013, following the explosion of the fertilizer plant in West, Texas, President Obama issued Executive Order (EO) 13650, entitled "Improving Chemical Facility Safety and Security." The EO directs the federal government to improve operational coordination with state and local partners, improve federal agency coordination and information sharing, modernize policies, regulations and standards, and work with stakeholders to identify best practices in chemical facility safety and security. The Department of Homeland Security (DHS), Occupational Safety and Health Administration (OSHA) and EPA were to work in conjunction to achieve these objectives. Using this EO as justification, EPA proposed significant modifications to the existing RMP regulations. On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms and Explosives said that the West, Texas facility fire had been deliberately set. Because the incident was caused intentionally, the recently-promulgated RMP revisions would not have prevented the incident.

AFPM members have significant concerns surrounding the new requirements to compel disclosure of potentially security-sensitive information to emergency responders and the public, perform inherently safer technology assessments and third-party audits, and eliminate the use of representative sampling when performing a compliance audit. Particularly, sharing security-sensitive information is adverse to DHS's mission to protect our nation's security.

EPA's RMP revisions relied on an erroneous cost-benefit analysis. Some of the revisions compromise safety by limiting the ability of companies to hire qualified auditors and diverting resources to inherently safer technology analysis that provides little safety benefit when conducted after a facility is already built. Furthermore, EPA did not respect the jurisdictional lines between itself and OSHA on these issues, as OSHA has primary jurisdiction over the "inside the fence line" requirements that EPA relied on to justify its cost-benefit calculations.

As such, AFPM and five other industry associations filed a petition for reconsideration with EPA and a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. The coalition is challenging aspects of the rule that compromise security and fail to enhance safety. The petition urges EPA to seek further public comment on various issues surrounding the rule, such as investigators' finding that arson caused the fire that served as the foundation of EO 13650 and the subsequent RMP revisions. In addition, the petition asks EPA to seek feedback on changes in the final rule that expanded provisions for disclosure of facility data and the scope of auditing requirements, as well as whether the rule's independent audit and safer technologies analysis provisions are justified. In response to the petition, EPA agreed to delay the rule's effective date from March 21 to June 19 in order to reconsider the regulation, and has proposed to further delay the effective date until February 19, 2019.

Moreover, the RMP rules significantly overlap with and are redundant to the OSHA Process Safety Management Rules in 29 C.F.R. §1910.119. This overlap/redundancy can lead to duplicative and inconsistent regulations. It can also lead to differing interpretations between OSHA and EPA. AFPM members believe this is an area that is especially ripe for reform and revision.

Recommendation

EPA should withdraw the revisions to the RMP rules and allow OSHA to take the lead on process safety management.

2. Ozone NAAQS – 40 CFR Part 50; 40 CFR Part 58

Under the Clean Air Act, EPA must review national ambient air quality standards (NAAQS) for criteria pollutants at least every five years and revise them "as may be appropriate." Primary NAAQS must be set at a level "requisite to protect the public health" with "an adequate margin of safety." Secondary NAAQS must specify a level of air quality "requisite to protect the public welfare from any known or anticipated adverse effects." In a final rule published in the Federal Register on October 26, 2015, EPA lowered the primary and secondary ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.[3]

On December 23, 2015, AFPM and numerous other entities filed petitions for review in the U.S. Court of Appeals for the D.C. Circuit. EPA petitioned the court to postpone oral argument and the Court placed the case in abeyance. EPA is to file status reports and a motion to govern further proceedings after EPA takes action on the 2015 standard. AFPM's primary concern with EPA's rule is the attainability of the standard. AFPM continues to advocate for a legislative solution on

[3] "National Ambient Air Quality Standards for Ozone," 80 *Fed. Reg*. 65,292 (Oct. 26, 2015).

ozone that would provide meaningful relief for companies faced with more stringent permitting requirements and regulations as a result of the new standard, but the Administration should also consider what avenues may exist for regulatory relief, including with respect to associated implementation rules, such as the Exceptional Events Rule.[4]

EPA's decision to lower the ozone standard from 75 parts ppb to 70 ppb will force many counties across the United States into non-attainment with the ozone NAAQS, increasing the burden on state and local governments and industry. Nonattainment areas are subject to numerous Clean Air Act requirements, including the submittal of state plans to bring an area into attainment, application of reasonably available control technology ("RACT") requirements, permit requirements for the construction and operation of new or modified major sources and other measures that a state or EPA may determine are necessary or appropriate in order to bring an area into attainment. *See* 42 U.S.C.§ 7502. These requirements can both inhibit the ability of industry already located in a nonattainment area to expand as well as raise costs and act as a disincentive for new industry to locate in a nonattainment area.

During the 2015 ozone NAAQS rulemaking, EPA identified 241 counties that would not meet the 70 ppb ozone standard based on 2012-2014 data.[5] But under EPA's current ozone designation process, nonattainment areas are not limited to counties that have measured air quality above a NAAQS; instead, EPA stated that "it is important to examine ozone-contributing emissions across a relatively broad geographic area associated with a monitored violation . . . EPA intends to consider information relevant to designations associated with the counties in the Combined Statistical Area (CSA), or where appropriate, the Core Based Statistical Area (CBSA) in which the violating monitor is located."[6] If this process is followed, new nonattainment areas will need to be established for the 70 ppb standard and existing nonattainment areas must be reevaluated to determine whether they should be expanded under a "weight of the evidence analysis" based on the evaluation of air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.[7]

Conversely, however, EPA has also projected that a combination of on-the-books federal regulations and implementation of the existing 75 ppb ozone standard would achieve air quality meeting or exceeding a 70 ppb standard across virtually the entire countryoutside of California by 2025. Thus, EPA has been proceeding apace with the designation process for the 2015 ozone NAAQS – planned for 2017 – while it also has information indicating that further burdening state and local governments with new ozone designations and redesignations of existing nonattainment areas will occur when air quality in most of the country is moving towards attainment of the 2015 NAAQS.

AFPM recognizes that the five-year cycle is part of the statutory design of the Clean Air Act and that other implementation measures are based in statute. But the Administration can ease the burden on states and businesses byfurther considering how improving air quality can beaccounted for considered during the implementation process for the 2015 ozone NAAQS.

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[4] "Treatment of Data Influenced by Exceptional Events," 81 *Fed. Reg*. 68,216 (Oct. 3, 2016).
[5] "2015 Ozone Standards," https://ozoneairqualitystandards.epa.gov/OAR_OAQPS/OzoneSliderApp/index.html#.
[6] "Area Designations for the 2015 Ozone National Ambient Air Quality Standards," Memorandum from Janet McCabe to EPA Regional Administrators, February 25, 2016 at 5.
[7] *Id.* at 6.

For example, EPA has previously implemented policies like Early Action Compacts designed to both achieve air quality standards and avoid imposing the burdens that flow from nonattainment designations. This process used a "nonattainment deferred" status for areas, dependent upon the achievement of certain milestones. Thus, EPA should fully explore whatever additional flexibility it may possess to implement NAAQS in a reasonable manner which recognizes the cumulative impact of finalizing more stringent NAAQS in 1997, 2008 and 2015, the overall downward trend in ozone concentrations,[8] and improvements in air quality that can be projected in future years. Such an approach will allow state resources to be allocated more effectively and reduce resulting economic hardship, while still achieving intended air quality improvements.

EPA should also review rules and guidance that the previous Administration relied on when it promulgated the 2015 ozone NAAQS. Specifically, EPA should review rules and guidance for "exceptional events" which rely on authority within Clean Air Act §319(b), the Agency's interpretation of international transport provision contained in Clean Air Act §179B, and the available classification of an area as a "rural transport area" pursuant to Clean Air Act §182. AFPM previously filed detailed comments regarding all three provisions as part of the comments it filed on the proposed 2015 ozone NAAQS.[9] Among other recommendations, AFPM urged EPA to allow for greater state flexibility in "flagging" and excluding exceptional event data, clarify that relief under the international transport provisions is available to non-border states and that such relief is intended to be widely available on a consistent basis, and that EPA should take additional steps to issue workable regulations or guidance for use of the rural transport area designation.

Regarding EPA's recent rulemaking and guidance for Exceptional Events, the information lacks objective, science-based criteria for approving a demonstration. For example, the guidance document discusses "Q/D" (fire emissions divided by the distance from the fire) for wildfire-related ozone events. However, Q/D appears inconsistent with peer reviewed scientific analyses that clearly demonstrate that for most wildfire plumes, ozone concentrations increase with distance from the fire (Jaffe and Wigder 2012). Another inconsistency with EPA's exceptional event guidance lies in the discussion of the possible use of statistical analyses to quantify the ozone increment related to exceptional events. In the guidance, EPA requires an overly conservative methodology that is inconsistent with EPA's prior approval of an ozone exceptional event that used a similar statistical analysis but not by the overly conservative methodology described by EPA in the guidance. This guidance states "*The difference between the predicted values and the measured values are analyzed, and the 95th percentile of those positive differences (observed [ozone ("O3")] is greater than predicted) is recorded. This 95 percent error bound is added to the O3 value predicted by the regression equation for the flagged days, and any difference between this sum and the observed O3 for the flagged day may be considered an estimate of the O3 contribution from the fire ...*" [Emphasis added] The 95th percentile of positive values is equivalent to the 97.5th percentile of all values. The California Air Resources Board applied this statistical method in a successful exceptional events case demonstration for 2008 California wildfires (CARB 2011), and EPA cited this element in its approval documentation (April 13,

[8] National ozone levels (as measured over 8 hours) have decreased 22% since 1990. *See* https://gispub.epa.gov/air/trendsreport/2016.

[9] American Fuel & Petrochemical Manufacturers' Comments on the Environmental Protection Agency's Proposed Rulemaking: National Ambient Air Quality Standards for Ozone (Docket No. EPA-HQ-OAR-2008-0699-2114.), March 17, 2015 at 25-34.

2011). However, the CARB analysis did not apply the stringent error bound requirements of considering only the positive differences, but was accepted in any case.

AFPM calls upon EPA to take immediate steps to increase the transparency of data EPA relies on for NAAQS rulemakings. EPA should ensure that all scientific and technical information that the Agency relies on to determine the level of a NAAQS is publicly available to ensure opportunities for independent analysis of the data. In addition, EPA should reform the Clean Air Scientific Advisory Committee (CASAC) and increase the diversity of CASAC membership to include qualified professionals in regulated industries.

Recommendations

EPA should:

- Support a more flexible implementation of non-attainment designations for the 2015 ozone NAAQS to allow for full implementation of the 2008 ozone NAAQS as well as for implementation of other federal and state rules that will reduce ozone formation.
- Empanel CASAC with diverse membership to include qualified professionals within industry, consulting, and state environmental agency backgrounds.
- Revise and reissue the exceptional events rule and guidance, taking into account comments related to science-based information about fire-related events and objective approval criteria that clarify what constitutes and adequate demonstration.

3. Refinery Sector Rule (RSR) – 40 CFR Part 60, Subparts J and Ja; 40 CFR Part 63, Subparts CC and UUU

Under the Clean Air Act, EPA is required to regulate hazardous air pollutants (HAPs) from "major" sources (i.e., those that emit 10 tons per year (tpy) or more of a listed HAP, or 25 tpy or more of a combination of HAPs). EPA must develop standards for HAPs based on the maximum achievable control technology (MACT) used at the best-controlled facilities within an industry. The petroleum refining and petrochemical industries are subject to a number of MACT standards. EPA also must develop and implement a program for assessing risks remaining after facilities implement MACT standards (i.e., residual risk), and may issue regulations toreduce residual risks to protect the public health with an "ample margin of safety." The residual risk provisions require EPA to consider costs, energy, safety and other relevant factors as it regulates to prevent "adverse environmental effects." If necessary, EPA must issue risk-based regulations within eight years after the promulgation of the MACT standard.

Beginning in 2006, EPA conducted a thorough residual risk review that concluded that the existing 40 CFR 63 Subpart CC and UUU standards for petroleum refineries did not have residual risks requiring further rules. This was finalized in a rule signed by EPA on January 16, 2009. However, the final rule was withheld from publication at the request of the Obama Administration and withdrawn in 2009."

After withdrawing the completed refinery residual risk rule in 2009, EPA began a second residual risk analysis and finalized the Refinery Se ctor Rule on December 1, 2015, [10] and subsequently clarified the compliance dates in a second final rule published on July 13, 2016. [11] AFPM supported EPA's process to evaluate the residual risk remaining after full implementation of the refinery MACT rules. As demonstrated by EPA's analysis for this rule, refinery emissions do not pose a significant residual risk to the public. But despite this fact, EPA included significant new compliance requirements in the December 2015 rule. AFPM does not believe that the additional regulation of these sources is authorized under the Clean Air Act because EPA concluded that the risks were acceptable. Further, much of the rulemaking eliminated various allowances for emissions during startups, shutdowns, and malfunctions as a result of EPA's overly broad interpretation of Sierra Club v. EPA, 551 F.3d 1019 (D.C. Cir. 2008).

Furthermore, in setting new standards for controlling flare emissions, EPA erroneously went far beyond the MACT "floor" of the best 12 percent controlled flares, in requiring flare compliance for several parameters based on a 15-minute block average compliance period, an example of EPA over-reaching its Congressional mandate to set the MACT floor based on the best performing 12 percent. The 15-minute block average compliance period does not represent the best 12 percent of flares. We are unaware of any flares controlled to a 15-minute block average compliance period prior to this rulemaking. Even the flares subject to Consent Decrees were required to comply on a rolling 3-hour basis prior to this rulemaking. We provided comments to EPA in support of a rolling 3-hour compliance period and against the 15-minute block average compliance period, but EPA finalized the rule with the 15-minute block average compliance period.

In response, AFPM and the American Petroleum Institute (API) filed a joint petition for review in the D.C. Circuit and administrative petitions for reconsideration of EPA's refinery sector residual risk rule as a number of issues need to be clarified. A collection of environmental groups also filed petitions for review and reconsideration, seeking to tighten EPA's emissions standards for flares and pressure relief devices. The lawsuit has been placed in abeyance while EPA considers the pending petitions for reconsideration.

On June 16, 2016, EPA granted the environmental groups' petitions for re consideration and requested comment on the following aspects of the final rule: 1) work practice standards for pressure relief devices and emergency flaring events, including the assessment of risk from the implementation of these standards; 2) alternative work practice standards for delayed coking units employing a water overflow design; and 3) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling stations that consistently record benzene concentrations below 0.9 micrograms per cubic meter. While these issues go beyond those raised by AFPM and API in their petitions for reconsideration, the letter granting reconsideration stated that EPA may grant reconsideration of additional issues in the future. AFPM and API submitted comments opposing the environmental groups' petition and are awaiting a decision. EPA has also not yet made a determination on the AFPM/API petition for reconsideration.

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[10] "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards," 80 *Fed. Reg.* 75,178 (Dec. 1, 2015).

[11] "National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector Amendments," 81 *Fed. Reg.* 45,232 (July 13, 2016).

Recommendations

EPA should:

- Reject the environmental groups' petitions for reconsideration and retain the challenged provisions. In addition, since compliance deadlines are approaching in 2018, EPA needs to take action on the AFPM/API petition in order to ensure regulatory certainty;
- Revise the flare compliance requirements to replace all 15-minute block average compliance periods with a rolling 3-hour compliance period. EPA should make this change quickly to alleviate the need for compliance planning and expenditures related to the shorter compliance period currently in the rule; and
- Eliminate the fenceline monitoring provisions as EPA has found insufficient risk to justify their inclusion.

4. Recommendations for Revising New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

In 2002, EPA promulgated a package of NSR reform regulations. These regulations contained provisions that changed the test for measuring whether a significant net emissions increase occurred (allowing use of "projected actual emissions") and allowing for a longer baseline period in order to determine past emissions and therefore whether an emissions increase triggering NSR had occurred. The 2002 NSR reform package also contained other provisions providing for plantwide applicability limits (PALs) which included a simplified "facility-wide actuals" emission test under which PSD/nonattainment new source review (NNSR) permitting would not be triggered if the facility-wide actual emissions for a given pollutant did not increase above the PAL.

In the years since this effort, EPA has offered small "fixes" for grandfathering facilities when NAAQS are lowered and other implementation rules and guidance have been proposed or finalized designed to reduce NSR analysis and permitting burdens. But the time has come for a more comprehensive review of the NSR program and exploration of legislative and regulatory changes to the program.

Recommendation

The Administration should consider the following modifications to the permitting process, including revisions to the PSD/NNSR program:

- Eliminate the need to consider emissions increases from non-modified affected emission units;
- Allow project netting so that emissions reductions associated with a project can be considered in Step 1 of the PSD/NNSR applicability analysis;
- Use a "potential to potential" comparison of emissions to determine whether PSD/NNSR is triggered; and/or
- Provide a definition of "project" to address uncertainty around project aggregation.

5. Refinery Effluent Limit Guidelines

With respect to the Clean Water Act (CWA) and national pollutant discharge elimination system (NPDES) permitting, EPA is currently undertaking a study to determine whether to revise the petroleum refining effluent limit guidelines (ELGs) for NPDES permits. As a first step, AFPM urges EPA and the Administration to consider whether new regulations are necessary or beneficial before burdening industry with an extensive information collection request (ICR). EPA has stated that it is investigating two theories: (1) whether there has been an increase in loadings to refinery wastewater treatment plants resulting from increases in heavy Canadian crude feedstock; and (2) whether there are increase loadings to refinery wastewater treatment plants as a result of the installation of air pollution control equipment (e.g. fluid catalytic cracking unit (FCCU) scrubbers).

Over the past several decades, AFPM members have invested billions of dollars in technologies to modernize their wastewater treatment facilities to meet the Total Maximum Daily Load (TMDL) developments, NPDES permit revisions (every 5 years at a minimum), and water quality -based effluent limits (WQBEL). Therefore, AFPM requests that EPA further study existing data (eliminating the overly conservative estimations commonly found in the Toxics Release Inventory) and identify the gaps that are not covered by TMDL and WQBEL before embarking on another data collection effort through the ICR that EPA is preparing to issue. This would better utilize scarce agency resources as well as reduce unnecessary burdens on industry. Further, AFPM believes that reviewing available data, as recommended above, will support a conclusion that further rulemaking is unnecessary.

Recommendation

AFPM does not support EPA pursuing a refinery ELG rulemaking based on unclear drivers and objectives from EPA. AFPM recommends that EPA positively state that there is no need to revise the refinery ELG.

Other key regulations of concern to AFPM members:

6. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Financial Assurance

CERCLA 108(b) addresses the promulgation of regulations that require certain classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register on January 6, 2010, and a Notice of Intent to proceed with Rulemaking in the Federal Register on January 11, 2017.

The ANPRM identified additional classes of facilities within three industry sectors that may warrant the development of financial responsibility requirements under section 108(b)—the Chemical Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry

(NAICS 2211). A court order [12] established a schedule for EPA's regulatory response, with the hard rock mining industry chosen as the first industry sector with other industries to follow.

Factors EPA may consider in the decision on whether to propose requirements for an industry sector include: 1) the amounts of hazardous substances released to the environment; (2) the toxicity of these substances; 3) the existence and proximity of potential receptors; 4) contamination historically found from facilities; 5) whether the causes of this contamination still exist; 6) experiences from Federal cleanup programs; 7) projected costs of Federal clean-up programs; and 8) corporate structures and bankruptcy potential. EPA's action will consider whether section 108(b) financial assurance will effectively reduce these risks. The proposed rule for the hardrock mining industry (82 Fed. Reg. 3,388) is contrary to the new administration's priority to focus on promoting U.S. businesses, industries, and job creation, and may add a potentially unnecessary additional financial bur den on this industry group. Additionally, many of these facilities are already required to maintain financial assurance under State programs, raising the question of why additional Federal requirements are necessary.

Since many of the affected facilities are likely to be already required to have Resource Conservation and Recovery Act (RCRA) financial assurance, this requirement should be deemed unnecessary. It is not clear what additional benefit this regulation will provide or what additional activities it will cover.

Recommendation

AFPM does not support a rulemaking process for additional financial assurance at this time as the benefits have not been adequately demonstrated.

7. Elimination of "Once in Always in" policy for MACT rules

On January 3, 2007, EPA proposed amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MAC T Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors.[13] This policy clarified when a major source of hazardous air pollutants can become an area sour ce – by obtaining federally enforceable limits on its potential to emit – rather than comply with major source requirements. The proposed amendments would allow a major source to become an area source at any time by limiting its potential to emit HAPs to below the major source thresholds of 10 tpy of any single HAP or 25 tpy o f any combination of HAPs. EPA also proposed revising tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions proposed through this notice.

After receiving comments, no further action was taken on this proposed rule.

[12] Idaho Conservation League, et al., No. 14-1149 (D.C. Cir. 2016).
[13] "Potential to Emit for MACT Standards – Guidance on Timing Issues," May 16, 1995, https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

Recommendation

AFPM recommends that EPA finalize this rule, as proposed to minimize the long-term compliance burden for sources that reduce emissions below the major source threshold. Finalizing this rule would provide a powerful incentive for facilities to reduce emissions to below the major source threshold, where possible and practicable.

8. Hazardous Waste Generators Improvement Rule

EPA recently published the Hazardous Waste Generators Improvement Rule.[14] The rule is helpful in some respects but imposes additional burdens in others. For instance, it causes waste generators who violate even one "Condition for Exemption" to be treated as if it was a violation of a waste treatment, storage, and disposal facilities (TSDFs) requiring a RCRA permit even though waste generators are not required to comply with as many regulations as a TSDF. Violation of a single minor condition can therefore mean that an otherwise exempt facility must obtain a RCRA permit and can be cited for violations of numerous regulations and permit conditions. This regulatory change contradicts the clear intention of Congress that RCRA permits not be required of hazardous waste generators who do not treat, store, or dispose of the waste.

Recommendation

EPA should revise the provisions equating a generator violation as a TSDF violation and the need for so many conditions constraining RCRA generators from realizing the improvements in the final rule.

9. Site Remediation MACT

EPA has proposed changes to the NESHAP for the Site Remediation source category.[15] The proposal would expand the regulatory program to include air emissions associated with site remediation conducted under the authority of CERCLA and RCRA. Eliminating the exemption will subject such remediation sites to new regulatory burdens and expense, when such sites are already subject to RCRA and CERLCA air emission controls. The agency itself acknowledges that the expansion is redundant and unnecessary, stating in the proposal that "[w]e do not anticipate any [Hazardous Air Pollutant (HAP)] emission reductions from the proposed removal of the RCRA/CERCLA exemption." 81 FR 29825. Thus, by the Agency's own admission, this is a proposed rule that, if finalized, would impose new regulatory burdens, yet achieve no environmental benefit.

Recommendation

AFPM supports withdrawing this proposed rule in its entirety and maintaining the current RCRA/CERCLA exemption.

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[14] 40 CFR Part 260-265; 40 CFR Part 268; 40 CFR Part 270; 40 CFR Part 279.

[15] "National Emission Standards for Hazardous Air Pollutants: Site Remediation, 81 *Fed. Reg.* 29,821 (May 13, 2016).

10. EPA's Tentative Denial of a Petition to Expand the Corrosivity Characteristic to Include Solids

In 81 *Fed. Reg.* 21,295 (April 11, 2016), EPA responded to a court-ordered deadline and agreement to evaluate expanding the definition of corrosive hazardous waste (HW) (D002 waste code) to include solids. EPA proposed to reject the Public Employees for Environmental Responsibility (PEER) petition requesting this expansion on the grounds that it fails to demonstrate that the revisions are necessary to protect human health. Other programs, such as OSHA's worker safety regulations, address the petitioner's stated concerns as well.

Recommendation

AFPM supports EPA's denial of the petition, maintaining the current definition of the HW corrosivity characteristic.

11. Hazardous Waste Import-Export Rule

The proposed revisions of the existing regulations will require hazardous waste exporters and receiving facilities recycling or disposing hazardous waste from foreign sources to maintain a single publicly accessible Website (''Export/Import Web site'') towhich documents can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste import and export shipments.

Recommendation

AFPM supports withdrawing this regulation as it will likelynot add to protection of human health and the environment. The existing system of documentation under RCRA adequately tracks the fate of imported or exported hazardous waste.

12. Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater

EPA issued updated CWA guidance, which is used in setting water quality standards and is relevant to CWA discharge permits and other regulatory programs (e.g., RCRA ecological risk assessment).[16]

The updated criteria are overly conservative in the application of selenium standards to lentic and lotic water bodies and in the corresponding fish tissue standards, which are not applicable in all instances. Revised implementation guidance should clearly state that flexibility to evaluate area-specific appropriate fish species and area water body conditions is necessary and prudent. As an example, the recently issued criteria arebased on warm water fish uptake;however, the regulations need flexibility to account for local sensitive aquatic species.

[16] "Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater," 81 *Fed. Reg.* 45,285 (July 13, 2016).

Recommendation

AFPM supports a reevaluation of this guidance based upon more realistic assumptions, such as accounting for local sensitive aquatic species.

B. Fuels

Key Fuels Regulation facing AFPM members:

1. Renewable Fuel Standard (RFS) – 40 CFR Part 80, Subpart M

One of the biggest challenges American fuel manufacturers are experiencing today involves the regulatory conflicts and problems with the size and scope of EPA's RFS program. The RFS is an unworkable policy that disadvantages consumers, drives up costs, and fails to achieve its purported goals.

The Energy Independence and Security Act of 2007 (EISA) expanded the RFS to include a de facto mandate for 15 billion gallons of corn ethanol by 2015. EISA also established an advanced biofuels mandate that includes three subcategories: cellulosic biofuels, biomass-based diesel, and "other advanced." "Other advanced" biofuels have regulatory significance because the statutory sum of cellulosic biofuels and biomass-based diesel is less than the total advanced biofuels requirement and must be made up with ethanol derived from sugar, additional cellulosic biofuels, or additional biomass-based diesel. Under EISA, the total renewable mandate will increase to 36 billion gallons by 2022 unless EPA waives or revises the annual mandates. The Congressionally-forecasted quantities of "other advanced" biofuels are particularly problematic because the cellulosic industry failed to commercialize drop-in renewable fuels, such as cellulosic gasoline.

AFPM opposes government-mandated biofuel blending, which distorts the free market's efficient allocation of transportation fuels and disadvantages consumers. The statutory RFS provisions contain an aggressive schedule for mandating the use of a large amount of ethanol. Declining gasoline demand and increasing ethanol mandates under the RFS threaten our nation's fuel supply. Moving beyond the E10 blendwall[17] is not feasible because higher ethanol blends are not suitable for widespread distribution given the incompatibility of these blends with the existing fleet of motor vehicles, small engines, marine engines, and fuel distribution infrastructure.

Recommendation

EPA should use realistic projections of the demand for gasoline/ethanol blends and E85, and for the production of cellulosic biofuel. The Agency should must use its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the overall mandate for renewable fuel does not exceed the E10 blendwall. EPA must continue to recognize the blendwall and realistic E0 demand and should not set an RFS mandate that would cause the average mandated ethanol content to exceed 9.7 percent of projected gasoline demand.

[17] "E10" refers to a blend of 90 percent gasoline and 10 percent ethanol.

In addition, EPA should move the existing point of obligation to the position holder at the blending rack. This would make the RFS more equitable by leveling the playing field between refiner and large exempt blenders. AFPM petitioned EPA to move the point of obligation on August 4, 2016. EPA subsequently proposed a denial of the petition on November 22, 2016, and closed the comment period on February 22, 2017.

In addition to the RFS recommendations above, AFPM has additional suggestions for EPA fuels regulations that should be deleted/eliminated or modified, including:

Topic	Discussion	Recommendation
Winter Reformulated Gasoline (RFG) and winter conventional gasoline (CG) 40 CFR Part 80	Currently, CG and RFG are segregated year-round. The RFG segregation restrictions are unnecessary because all RFG downstream of a refinery must meet RFG specifications anyway. Minor mixing of non-RFG products, as can occur in normal product distribution systems, that does not cause RFG to be off-spec with EPA compliance specifications (benzene, sulfur, and VOC-reduction) should not be prohibited. This will provide optimization of fuel distribution and storage through the reduction of the need to downgrade expensive RFG to lower-valued products (such as transmix or conventional gasoline).	Delete requirements to segregate winter RFG and winter conventional gasoline. Assuming EPA removes the distinction between RFG and conventional gasoline in the non-VOC season (winter), it also should: • Remove the survey requirement for winter RFG (because there would not be winter RFG any longer) in 80.68; and • Adjust the total number of surveys and samples so that the sample size is based on a statistically supported calculation to provide the prescribed level of accuracy in the survey results. Any other current minimum sample requirements should also be removed.
The RFG survey oxygen program to verify downstream oxygenate blending 40 CFR Part 80	Since all RFG has been E10 since 2006, a retail survey is an unnecessary expense. The RFS regulations are requiring ethanol blending at or near the blendwall rendering the survey pointless and no longer necessary.	Eliminate the RFG survey oxygen program in 80.69.
Mandatory Greenhouse Gas (GHG) emissions reporting	EPA was required by the appropriations bill for FY 2008 (P. L. 110-161) to develop a program for reporting GHG emissions. Reporting	Delete requirements for mandatory GHG emissions reporting.

40 CFR Part 98	has been required for years without an associated GHG emissions control requirement.	
Fuel registrations 40 CFR Part 79	Refiners are required to submit duplicative information on multiple EPA reporting forms, resulting in redundant reporting requirements.	• Eliminate the Fuel Manufacturer Quarterly Report for Motor Vehicle Gasoline or Diesel Fuel as it serves no purpose or provides duplicate information (EPA Form 3520-12Q). • Eliminate the Fuel Manufacturer Annual Report for Motor Vehicle Gasoline or Diesel Fuel as it also serves no purpose or provides duplicate information (EPA Form 3520-12A).
Reid Vapor Pressure (RVP) of the complex model valid range for RFG 40 CFR Part 80	EPA has promulgated ranges for several gasoline parameters. One of these is a lower limit for RVP in the complex model at 80.45, 6.4 psi.	Change the lower RVP of the complex model valid range for RFG to 6.0 psi.
RFS program 40 CFR Part 80	Renewable volume obligations should not include transmix. Transmix is not gasoline or diesel fuel and cannot be used directly as a transportation fuel.	Allow refiners to back out transmix from their gasoline and diesel production when calculating their renewable fuel obligations (RVOs) in the RFS program.
Gasoline properties required for certification and reported to EPA in batch reports 40 CFR Part 80	The only EPA compliance standards for gasoline are benzene, sulfur, and summertime volatility (RVP for conventional gasoline and RFG volatile organic compounds (VOC) reduction). Other gasoline parameters (*i.e.,* olefins, aromatics and distillation) are currently required to be reported to EPA for every batch of gasoline produced or imported. These other parameters were necessary for complex model compliance. However, the complex model is only used now for summer RFG VOC. The batch reports should be revised.	The following should be the <u>only</u> properties reported on batch reports: • All batches – Sulfur and benzene • All summer batches – RVP • All summer RFG batches – VOC Reduction and supporting test results (oxygen, E200, E300, aromatics, and olefins) In addition to removing the reporting requirements and obsolete regulatory certification sections, the regulations, primarily at

		§80.47, should be clarified that EPA-required tests need only be run if the property is used in determining compliance with an EPA standard or an EPA reporting requirement. This will reduce compliance exposure with regard to running an EPA-required test method incorrectly. For instance, we may still run distillation year-round for all gasoline batches, but running it flawlessly by the EPA-prescribed version of the D-86 test method would only carry compliance implications for summer RFG batches. Another value is *the complex model limits would no longer apply* for all conventional gasoline and for all non-VOC RFG, reducing a current refinery constraint. --- OR --- Eliminate gasoline batch reporting altogether The gasoline batch reports support the refiner's benzene, sulfur, and volatility compliance reporting. The annual attestation is sufficient to check that the refiner's testing records support the refiner's compliance with the standards. The batch reporting is duplicative and burdensome. The two options above reduce the number of parameters in

		batch reports or eliminate batch reporting altogether and apply to individual batches and composites of batches.
Independent laboratory sampling and testing of RFG (or at least non-VOC RFG) 40 CFR Part 80	In the early days of the RFG program, with uncertainty around how refinery labs would perform, the independent laboratory option seemed to make sense to help EPA evaluate if a particular refinery laboratory was having testing performance issues. Today, especially under the Tier 3 rule, refineries have more stringent lab performance requirements. The independent lab requirement no longer adds value and only causes extra cost and delay in producing RFG. This could reduce the cost of producing RFG, including the cost of independent sampling and testing, and reduce shipping delays while waiting for independent lab sampler.	Eliminate independent laboratory sampling and testing of RFG (or at least non-VOC RFG).
The Substantially Similar (SubSim) Interpretive Rule 73 Fed. Reg. 22277 (April 25, 2008)	The current SubSim Interpretive Rule refers to a 1988 version of ASTM D4814. Today's fuel is being manufactured to meet modern versions of D4814. Differences exist between the 1988 version and the current versions that cause sub-optimization of the fuel pool. This would enable greater optimization during fuel production by only having to meet a single, modern specification.	Update the SubSim Interpretive Rule.
RFG reporting 40 CFR Part 80	AFPM would like to see the elimination of quarterly RFG reports, as annual reports are sufficient for EPA's statistical and enforcement needs.	Amend 40 CFR Sec. 80.75 to require annual reporting.
Volumetric Additive Reconciliations (VARs) 40 CFR Part 80	AFPM members are striving to reduce administrative tasks, and reduce compliance exposure with regard to ensuring each of the required elements are placed on a VAR record each month for each additive system. This	Eliminate required VARs.

	requirement is unnecessary to ensure compliance with the regulatory requirement that certified detergent additives be used in all gasoline.	
EPA administrative *pre*view of Office of Transportation and Air Quality Registration (OTAQREG) registration changes	When a company submits a registration change, duly signed by the responsible corporate officer (RCO), such changes should be accepted as submitted, and should not be subject to an EPA review prior to making the changes effective. The delay caused by EPA's review/approval queue is unnecessary. If EPA reviews changes after they are effective and the changes are found to be in violation, the company should bear the burden of the erroneous submission. The main value of an electronic submission system should be speed. This value is negated when EPA previews everything before it is effective. AFPM requests a reduction in wait time to make registration changes.	Eliminate EPA administrative *pre*view of OTAQREG registration changes.
Ultra low sulfur diesel (ULSD) 40 CFR Part 80, Subpart I	AFPM is seeking increased clarity around applicable requirements. Subpart I is riddled with expired requirements, making it very difficult for regulated parties (and the regulators) to understand the requirements.	Eliminate expired elements of 40 CFR Part 80 Subpart I (ULSD).
Detergent additive regulations 40 CFR Part 80	The "Interim" detergent additive program was implemented in 1996 (effective in 1997) at 80.161, but the requirements remain listed in the CFR. Retaining expired requirements in the regulations complicates a regulatory entity's compliance.	Eliminate §80.141 through §80.160.
Gasoline Toxics 40 CFR Part 80, Subpart J	40 CFR Part 80, Subpart J, Gasoline Toxics, was effectively replaced by Subpart L, Gasoline Benzene. Removal of this obsolete regulation will increase understanding of applicable requirements.	Eliminate 40 CFR Part 80, Subpart J, Gasoline Toxics.

Lead and phosphorous test methods 40 CFR Part 80	Section 80.3 references appendices of Part 80 as test methods to test for lead and phosphorus. These methods are antiquated and should be replace with references to the appropriate ASTM test methods.	Eliminate §80.3 in 40 CFR (lead and phosphorous test methods).
RFS 0104 reports 40 CFR Part 80	All information for the RFS 0104 report comes straight from the EPA Moderated Transaction System (EMTS) except the volume of biofuel held at the end of the quarter and even that is not required for obligated parties. If the biofuel inventories are necessary, maybe it can be set up to enter that into EMTS, or have just a single annual report of inventories for non-obligated parties. EPA already has access to this information and should not maintain a separate reporting requirement for information it already has in its possession.	Eliminate the quarterly RFS 0104 reports.
Downstream Oxygenate Blending 40 CFR Part 80	There are four separate programs that govern the inclusion of downstream oxygenates in gasoline, each with distinct testing requirements: 1) anti-dumping, 2) RFG, 3) gasoline benzene and 4) gasoline sulfur - Conventional blendstock for oxygenate blending (CBOB) may be included if it meets requirements of 80.101(d)(4)(ii) - must demonstrate added by refiner or have contract with downstream oxygenate blending (currently only 18 percent accounted for) - RFG 80.69(a) – hand blend and in-use retail survey to ensure oxygenate was added downstream - Tier 2 gasoline sulfur allowed 0 ppm ethanol in calculations, now Tier 3 (beginning 2017) requires refiners to test for ethanol content or assume 5 ppm (this also necessitates testing neat reformulated blendstock for oxygenate blending	Simplify and modernize the programs, ideally using one methodology for CG/RFG, which covers all programs and would maintain the level of stringency. Options: Test hand blends for all gasoline (instead of only for RFG), or refinery gate sampling and testing for all gasoline.

	(RBOB)/CBOB, in addition to hand blended sample testing required per 80.69, etc.) - Gasoline benzene allow refiners to be included in RFG (if 80.69 is met) or 80.101(d)(4) is met Many reporting options and requirements create burden, causes refiners to blend conventional gasoline (CG) that is cleaner than RFG, and test both neat and oxygenated blended samples.	
Emergency response streamlining and enhancement 40 CFR Part 80	The variation of procedures in response to a temporary fuel supply interruption (such as a hurricane) from state to state creates challenges from a timing and complexity standpoint. In some states, response is only available if the interruption/shortage is due to a named storm, and some states would only offer enforcement discretion. In addition, the level of approval varies from a state agency approval to needing the Governor's signature (always slower), etc. There should be a consistent, Federal process, and in return, EPA needs to let states drop any NAAQS exceedances during this time from Attainment determinations. This would remove the major concern for states in these waivers being granted by removing the potential penalty for these actions.	A Federal process to either self-implement or receive rapid approval for summer gasoline RVP waivers in case of temporary supply interruptions.
Butane blending 40 CFR Part 80	Six reports are required for butane blending and as a result, there is much redundancy.	Streamline and eliminate redundancies of butane blending reporting requirements.
Gasoline Loading Racks 40 CFR 63 Subpart XX	There needs to be an efficient means for temporary relaxation of some of the Federal rules on Gasoline Loading Racks (40 CFR 63 Subpart XX) to allow for open dome loading during periods of supply interruption. The regulation requires loading to be controlled using a vapor recovery	The regulations should recognize temporary situations when there is a supply disruption.

	system, and that greatly slows down the loading time and truck turnaround. EPA offers enforcement discretion, which is not sufficient. Perhaps states should be authorized to grant permission, since they have a better grip on local conditions and needs than Federal policymakers.	

C. TSCA and LCSA Implementation

The following comments are organized by opportunities that AFPM believes EPA can take advantage of when finalizing regulations to implement the LCSA. Comments on EPA's existing chemical work plan and new chemicals program are also included. AFPM is also commenting on certain policies, procedures and guidance that are integral to TSCA but have not been included in any existing or proposed regulations. AFPM sees a unique opportunity for EPA to minimize regulatory burdens as these regulations are implemented.

I. Implementation of the LCSA

a) AFPM supports EPA 's efforts to implement the LCSA, wants the subsequent regulations to reflect the intent of Congress, and believes that EPA should meet the deadlines outlined in the statute.

The LCSA requires EPA to promulgate a series of regulations ranging from modernizing the TSCA Inventory to outlining the processes for prioritization of substances, risk evaluation and collection of fees. AFPM fully supports the Agency's efforts to propos e the rules and meet the deadlines imposed by LCSA.

While it is important to meet statutory deadlines, it is equally important to reflect the intent of Congress in any regulations required by a particular statute. AFPM believes that if the Agency is fully transparent throughout the rulemaking process, any deviation from the statutory requirements, including deadline obligations, will be understood by stakeholders.

b) EPA has an opportunity to reduce regulatory burdens when finalizing rules that have been proposed to implement the LCSA provisions.

EPA has proposed rules to modernize the TSCA inventory, outline the process for prioritization of substances for further work, and establish a framework for risk evaluations of high priority substances. AFPM has com mented on each of those proposals, outlining concerns and offering constructive suggestions. Although some stakeholders may say that congressionally mandated regulations are outside of the scope of EO 13777, AFPM disagrees. The final rules ("TSCA Inventory Notification (Active -Inactive) Requirements" [EPA -HQ-OPPT-2016-0426]; "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act" [EPA -HQ-OPPT-2016-0636]; and, "Processes for Risk Evaluation and Chemical Prioritization Under the Amended Toxic Substances Control Act" [EPA -HQ-OPPT-2016-0400]),

which are expected in June 2017, should meet the general objectives of EO 13777, which are to reduce regulatory burdens. Below are several examples of where regulatory burdens could be reduced while finalizing proposed rules under TSCA.

c) **To reduce the burdens associated with new chemical reviews, prioritization of existing substances for work, and the risk evaluation process, EPA should revise its interpretation of the LCSA safety standard's "conditions of use."**

In general, EPA's interpretation of "conditions of use" is overly broad and goes well beyond what Congress intended when creating the safety standard. This interpretation has already created additional and unnecessary burdens on the regulated community as well as the Agency.This effect can be seen in the new chemicals program, where EPA is considering uses beyond those identified by the manufacturer. The result has been lengthy reviews, as well as demands for complex toxicity testing (i.e., sub-chronic and chronic inhalation studies) that do not reflect potential exposures from uses identified in the premanufacture notice (PMN).

When creating LCSA, Congress did not intend a dramatic change in the safety standard, nor did it intend for EPA to significantly change the way it conducts risk evaluations for new and existing chemicals. The intent was to allow EPA to more efficiently use its TSCA regulatory tools and to make the Agency's processes and decision-making more transparent and based on the best available science.

There are no provisions in the LCSA that require EPA to consider all conditions of use, nor was that the intent of Congress. In fact, at Section 6(b)(4)(F)(ii) the statute explicitly mentions "sentinel exposures" when requiring EPA to describe its consideration of exposures. Sentinel exposures are employed to represent broad categories of use so that the assessor does not have to go into each specific subcategory of use. Sentinel exposures represent realistic upper-bound exposures within those broad use categories. The exposures are expected to be much greater than other sources or pathways, so if the margin of exposure is at an acceptable level, there is no need to delve into each and every type of use or background source. This approach reduces the regulatory burden on industry and EPA, while ensuring an effective health and safety regulatory program.

AFPM interprets the inclusion of sentinel exposures as a clear message to the Agency that it should not include every conceivable use when determining the scope of a risk evaluation. The intent of Congress was to allow EPA flexibility in its approach to risk evaluation so that the Agency could maximize the efficient use of resources.

The move away from EPA's standard risk assessment practices has already brought the new chemical review process to a sudden halt, impeding innovation in the US and affecting supply chains throughout the economy. The result of EPA's misinterpretation of conditions of use has wasted time and resources by not focusing on the uses and exposures that present the greatest risk. EPA's new approach lacks the type of focus the Agency had for years in the new chemicals program and in other previous risk assessment activities. Prior to EPA's move away from its established risk evaluation approaches, nearly ten times the number of new and often safer chemicals were introduced into the US on an annual basis than in Europe. Currently, the backlog of new chemicals in the review process numbers in the hundreds, which is unprecedented. If this

trend continues, by the end of the year Europe will outpace the US in the number of new chemicals entering commerce, which is directly linked to American innovation.

EPA should not c onsider uses and exposures outside of those identified by the PMN submitter. That will alleviate the backlog of substances in the new chemical review process and return the Agency to its successful and internationally acclaimed approach to new chemical rev iews. Importantly, AFPM is not suggesting that EPA disregard "known, intended, or reasonably foreseen uses" of existing chemicals; rather, the Agency should more narrowly exercise and clearly articulate its discretion in the prioritization and risk evaluat ion process rules to use qualitative, semi-quantitative and other approaches when evaluating hazards, exposures and risks.

d) Acceptance of robust summaries in lieu of full study reports will reduce regulatory burdens on EPA, the regulated community and other interested stakeholders.

The concept of a robust summary was developed and established as part of the High Production Volume (HPV) Challenge, which was a voluntary program that allowed sponsors to voluntarily submit hazard information to EPA on high production volume chemicals. The idea was to reduce the burdens of gathering full study reports, submitting the full reports to EPA, and Agency staff reviewing them. The format and content of robust summaries was the result of a multistakeholder group and designed to provide a technically qualified reviewer with enough information to make a scientific judgment on the study methods, reliability and results. Since then, the concept of a robust summary has been adopted globally through individual environmental authorities, as well as the Organization for Economic Cooperation and Development (OECD) and United Nations environment programs.

Full study reports from laboratory toxicity studies are voluminous and have significant monetary value, often into the hundreds of thousands and even millions of dollars. Great care must be taken to protect that private property and its contents, which creates a burden on both industry and EPA. In addition, reviewing the volumes of underlying data found in a study report should only be reserved for cases of scientific ambiguity, questionable scientific integrity or where there is significant disagreement with the interpretation of results.

EPA adoption of robust summaries will bring about greater consistency in regulatory appr oaches with countries that have strong trade relationships with the US. Robust summaries will significantly reduce potential burdens on EPA and the regulated community. AFPM believes that there are no issues with adopting the use of robust summaries for actions under TSCA Sections 4, 5, 6, and 8.

e) EPA can reduce the burdens associated with risk evaluations by allowing manufacturers to voluntarily submit risk evaluations conducted by EPA contractors and other approved technical organizations.

Part of the risk evaluation process outlined in TSCA Section 6, as modified by LCSA, is a process by which manufacturers can voluntarily request a risk evaluation on a chemical.The statute directs EPA regarding the number of chemicals that can go throughthis process at any one time, but gives EPA discretion as to how the process is implemented. AFPM urges EPA to consider expediting the approval or disapproval of dossiers that have already undergone a risk evaluation by an EPA - approved contractor or othe r technically qualified convener of risk experts. This would create a

pathway for a series of risk evaluations that is parallel and concurrent to the risk evaluations conducted by EPA.

AFPM member companies have a tremendous amount of experience in a variety of different programs that regulate chemicals in commerce. Petrochemicals, refining streams and derivative products tend to be well -studied and have been reviewed through a variety of programs. The dossiers prepared for other programs, such as REACH in Europe, can be easily modified for an evaluation under TSCA. While EPA is busy conducting evaluations on chemicals it selects as high priorities, industry should be afforded the oppor tunity to hire an EPA contractor or other technically qualified consultancy to convene a panel of experts and conduct a risk evaluation that could be submitted for expedited evaluation by the Agency.

A simple and straightforward process would include the following:

1. Company or consortium retains an EPA contractor or other technically qualified consultancy to conduct a risk evaluation on a chemical, which follows the procedures outlined by EPA;
2. EPA contractor convenes a panel of technical experts to review t he dossier of hazard and exposure information;
3. Expert panel reaches a conclusion based on the TSCA safety standard;
4. EPA contractor packages the dossier, list of panelists (including qualifications), review procedures and outcome for submission to EPA;
5. Company or consortium submits package to EPA for expedited review; and
6. EPA makes decision whether chemical meets safety standard.

f) EPA can reduce the burdens associated with modernization of the TSCA Inventory

AFPM generally supports the approach proposed by EPA to create a list of substances currently in commerce, which will become the Active portion of the TSCA Inventory. AFPM has identified opportunities where EPA can reduce the reporting burden when creating the Active list.

The intent of Congress when crafting TSCA Section 8(b) was to create and continually update an Inventory of substances actually in commerce. It is widely agreed by Congress and stakeholders that the TSCA Inventory no longer reflects an accurate depiction of chemicals in commerce; therefore, Congress added provisions in the LCSA to modernize (reset) the TSCA Inventory. Those provisions are quite clear that the sole purpose of the Inventory reset is to create an Active Inventory that lists chemicals in commerce, and create an Inactive Inventory that lists chemicals that may have been in commerce at some point in the past. Only the chemical names are necessary to create the Active and Inactive lists. Any other information contradicts the objectives set out in Section 8(a)(5)(A) to avoi d unnecessary reporting, reduce the costs of compliance and to limit reporting to the entities most likely to have that information.

g) EPA should only require submission of the substance that was manufactured and not require date ranges when reporting substances to the Active portion of the Inventory.

In Unit I.C. of its Federal Register notice, "TSCA Inventory Notification (Active -Inactive) Requirements" at 82 FR 4255 (January 13, 2017), EPA first mentions a requirement for reporting the "date range when manufacture occurred," because the Agency could "obtain confirmation that the chemical substance in question had indeed been manufactured or processed" during the 10 -

year time period. EPA reiterates the proposed inclusion of date ranges in Unit III.C. and adds that the information is necessary to limit erroneous reporting outside of the look -back period, ensure the accuracy of the notices, and increase the reliability of commercial activity designations AFPM does not agree that the reporting of date ranges will achieve any of these objectives.

Date ranges for manufacturing activities are typically not retained for 10 years, so it is very unlikely that companies will have that information. Because companies are unlikely to have date ranges going back 10 years, that information will do nothing to limit reporting of manufacture beyond the 10-year period – i.e., the erroneous reporting.

Date ranges will not ensure the accuracy of information contained in Form A. Companies will already be required to sign a statement verifying the accuracy of reported information. AFPM does not see how adding a date range assures Inventory accuracy.

Date ranges have no impact on the reliability of commercial activity designations. Again, companies will already be signing a statement that assures the accuracy of the submitted information, so adding date ranges does not verify whether a substance was produced or imported. In fact, knowing whether a substance was produced or imported has no purpose in creating an Active Inventory. Only the identification of the substance is necessary for the Inventory reset.

In summary, AFPM sees no purpose for requiring date ranges in Form A submissions. That information will be difficult, if not impossible to ascertain, which presents an unnecessary burden on reporters and runs counter to the objectives set forth in Section 8(a)(5)(A). Eliminating date ranges will reduce the cost of compliance and avoid unnecessary reporting, both of which are objectives outlined in Section 8(a)(5)(A). It will also avoid a situation where EPA is requiring reporting from a party not likely to have that information, which is another objectiv e outlined in that subparagraph.

h) EPA should not require the type of commercial activity when reporting a substance to the Active portion of the Inventory.

Knowing whether a substance was produced domestically or imported is not necessary to determine whether the substance was in commerce during the past 10 years. The purpose of the Inventory reset is solely to create a list of chemicals that are active in commerce. It doesn't matter if the chemicals were produced or imported, since both fall under the definition of "manufacture." AFPM urges EPA to delete the requirement to report the type of commercial activity, which wil l further the Agency's goals of reducing "unnecessary" reporting and reducing the cost of compliance, both outlined explicitly in Section 8(a)(5)(A).

i) EPA should ensure that a company no longer intending to sell a chemical into commerce is not responsiblefor reporting to the Inventory reset, even if that company manufactured the substance within the past 10 years.

There are many reasons that businesses cancel or divest products or product lines. In cases where businesses or product lines are sold or merged, the new entity that intends to sell those substances into commerce should be responsible for and be afforded the opportunity to report for the purpose of being placed on the Active portion of the Inventory. The company that sold the business or product line should not be responsible for reporting because there is no longer intent to distribute

that substance for commercial purposes and there is a high likelihood that the pertinent records were transferred as part of the business transaction. One of the objectives of TSCA Section 8(a)(5)(A) is to limit reporting to the entity most likely to have the information. In this case, the seller would not likely have that information.

Another example is a company experiencing a temporary domestic supply disruption sometime in the past, which could have been the result of a supply shortage in the US, and then being forced to obtain a substance from a non-domestic source for a limited time. The company had and still has no intent to import in the future, as this w as a temporary situation. The company should not be required to report that substance to the Active Inventory if there was and still is no intent to distribute the substance in commerce in the future.

j) Polymers on the current TSCA Inventory should also app ear on the Interim Active Inventory.

Polymers on the TSCA Inventory but not subject to Chemical Data Reporting (CDR) rule requirements are excluded from EPA's proposed Interim Active Inventory, including polymers with a "Y" designation. Many polymers wer e placed on the TSCA Inventory before EPA promulgated the polymer exemption under Section 5. These low risk polymers would likely meet the standard for the polymer exemption today. The purpose of the polymer exemption was to alleviate the need for EPA to expend resources reviewing these low-risk substances under the new chemicals program. These polymers should appear on the Interim Active Inventory to help avoid unnecessary reporting and reduce the cost of compliance, which are objecti ves found in Section 8(a)(5)(A).

k) AFPM commends EPA for eliminating the requirements for substantiation of CBI claims when reporting to the Active Inventory, especially for substances reported during the 2016 CDR reporting cycle, because those claims were recently substantiated.

In Unit III.E. of its Federal Register notice, "TSCA Inventory Notification (Active -Inactive) Requirements" at 82 FR 4255 (January 13, 2017), Summary of the Proposed Rule, EPA does not include mandatory substantiation requirements for CBI claims for chemical identity made on Form A. Under a separate rule, to be promulgated at a future date, EPA will propose the substantiation requirements for those claims. AFPM generally supports the decision to postpone substantiation requirements for CBI claims older than five years and include them in the Review Plan, but believes substantiation for substances reported during the latest CDR cycle is unnecessary. AFPM also supports EPA's acceptance of early, voluntary substantiations with Form A submissions.

Section 8(b)(4)(B)(iii) compels EPA to require substantiation of CBI claims for chemical identities; however, Section 8(b)(4)(D)(i) excludes companies that have "substantiated the claim in a submission made to the Administrator during the 5 -year period ending on the last day of the of the time period specified by the Administrator." The statute does not specify a particular type of submission for the substantiation, so AFPM interprets these provisions to apply to any CBI substantiation, including submissions under CDR.

AFPM agrees with the Agency decision to reduce the reporting burden by minimizing the information requirements, especially for CBI recently claimed and substantiated during the most

recent CDR reporting cycle. Minimizing the information requirements would also help the Agency meet its obligations under Section 8(a)(5)(A) by not requiring reporting that is "unnecessary or duplicative" and minimizing "the cost of compliance."

AFPM supports EPA's decision to honor the existing CBI claims of manufacturers and processors, even if they were not the original CBI claimants. Through this decision, EPA acknowledges that businesses are acquired, merged and even leave the marketplace. The maintenance of an existing CBI claim can provide companies with an innovation-based competitive advantage that would not otherwise be afforded.

l) EPA should regularly update the Active list to avoid multiple reporting of any one substance.

To further achieve the objectives set forth in Section 8(a)(5)(A) of "TSCA Inventory Notification (Active-Inactive) Requirements," EPA should update the Interim Active Inventory on a frequent and regular basis. This would alert others that manufacture those same substances and avoid redundant reporting, thereby reducing unnecessary reporting and the overall cost of compliance. The purpose of the Active Inventory is to create a list of chemicals currently in commerce, not a list of manufacturers that produce or import those chemicals.

II. Existing Regulations Prior to LCSA

a) EPA can reduce the burdens of substantiating CBI claims.

Congress has provided EPA with a great deal of discretion when it comes to substantiating claims of CBI. EPA requires up-front substantiation and periodic re-substantiation for all CBI claims, which has become quite burdensome over the years. AFPM views CBI as intellectual property and believes that companies should be afforded more deference when asserting a CBI claim.

40 CFR 711.30 outlines the questions companies are required to answer when asserting a CBI claim. The questions are numerous and burdensome, which provides a disincentive to companies wishing to keep their sensitive business information confidential, especially from foreign competitors that do not respect the concept of intellectual property. EPA could significantly reduce the regulatory burden by limiting the number of questions that need to be answered to substantiate a CBI claim.

b) EPA should reduce the reporting requirements of substances that are non-toxic or do not present a potential for exposure under the intended use, and use its Section 8 Preliminary Assessment and Information Rule (PAIR) authority to collect information for chemicals it intends to prioritize.

Currently, data on production, use and exposure must be reported for substances on the TSCA Inventory that are produced or imported above 25,000 pounds per year, regardless of whether those chemicals pose a risk to human health or the environment. This includes materials that are non-

toxic or for which there is no potential for exposure under their intended uses. During the last available reporting cycle, EPA collected information on 7,690 chemicals from 4,785 sites.

AFPM supports the Agency's efforts to collect information under CDR. Casting such a broad net, however, is not necessary. Most of the information collected under CDR will not be used for prioritization or risk evaluation; rather, it will just be put on a web site. Additionally, the quality of the exposure information collected under CDR is questionable, since manufacturers are unlikely to possess downstream use and exposure information.

EPA could reduce the reporting burdens under CDR by exempting or partially exempting non-toxic chemicals and those that do not present a potential for exposure under the intended uses, such as intermediates. Limiting collected information to quantities manufactured and known uses can still provide EPA with enough information to make a rough estimate of risk.

EPA has computer models and other tools that can predict ranges of toxicity and potential exposures, just by knowing the molecular structure of the chemical and its general uses. If EPA requires more precise or detailed information, it should use its authority under TSCA Section 8(a) and issue a PAIR rule that includes processors (i.e., those most likely to have downstream use and exposure information). PAIR rules are more targeted than general information collections (i.e., CDR reporting) and can include specific entities without burdening the rest of industry.

c) Chemicals that are manufactured in the U.S. for export and returned to the U.S. should not be counted as imports or subject to CDR reporting.

There are a number of reasons why a chemical could be manufactured, exported, then returned to the U.S. The only information relevant to EPA should be the original manufacture of the substance. To count returns as imports results in double-counting and distorts the actual market picture, in addition to placing an unnecessary burden on reporters.

d) Substances that are byproducts from recycling processes should be exempt or partially exempt from reporting under the CDR rule.

TSCA Section 8(b) requires EPA to create and maintain a list of chemicals in commerce, commonly known as the TSCA Inventory. For many years companies were required to report the chemicals and amounts they were manufacturing and importing under the Inventory Update Rule (IUR). In 2006, EPA changed the nature of IUR reporting, significantly increasing the burden by including information related to use and exposure. EPA stopped using the term "Inventory Update Rule" in 2011 and established the term "Chemical Data Reporting."

Included in CDR reporting are byproducts from recycling processes. AFPM believes that the burden associated with reporting byproducts under CDR is a strong disincentive for recycling. Furthermore, it results in a distortion of the marketplace because the recycling does not change the overall volume of the manufacture for that substance. Those same molecules are counted over and over, each time the material is recycled. To make matters worse, the companies required to report byproducts of recycling will be considered manufacturers and could be subject to even more costly burdens, such as toxicity testing and risk evaluations. EPA should exempt byproducts of recycling processes from CDR reporting.

e) **EPA should allow for a non-punitive correction to the TSCA Inventory for Chemical Substances of Unknown or Variable Composition, Complex Reaction Products, and Biological Materials (UVCBs) to reduce the potential burden associated with the new chemical review process.**

UVCB substances, also known as Class 2 substances, cannot be represented by a distinct molecular structure. They may be isomeric mixtures, complex and naturally occurring mixtures of related molecules, and other materials for which separation and purification of components is technically or economically unfeasible. Many products derived from oil, such as petroleum streams, waxes, base oils, etc., are UVCBs.

In the past several years, EPA's enforcement office has threatened action against AFPM member companies because EPA staff insisted that certain UVCB nomenclature was outdated. This marked a distinct change in nomenclature policy, but the regulated community wasnever afforded the opportunity to comment on the change, nor was it given any chance to comply.

EPA stated that the manufacturers of those substances were out of compliance with TSCA and demanded that certain UVCBs be renamed and treated as new chemicals subject to the burdensome new chemical review process, even though the products and processes used by manufacturers had not changed in decades, even before there was an EPA. AFPM members and petroleum-related products are not the only ones facing this sudden burden.

In addition to fines of up to $25,000 per day, the burden of reporting the substance as a new chemical would entail a sudden stoppage in manufacturing or import, disrupting supply chains that depend on the chemical. Each UVCB would have to be broken up into sub-species and a premanufacture notice would be required for each separate substance, potentially numbering in the hundreds. The potential burden under this scenario could cripple a small or medium-sized company. EPA could easily reduce the burden of UVCB nomenclature issues by instituting a non-punitive TSCA Inventory correction and allow companies to work in cooperation with the Agency to resolve long-standing nomenclature issues.

D. Conclusion

AFPM encourages the Administration to work with Congress to bring long overdue reforms to the regulatory process. Reforms to increase transparency, enhance the quality of data used in rulemaking, and increase the accountability of the Administration and Congress to the American people are important goals that will promote economic opportunities while protecting health, safety, and the environment. Significant reductions in air, water, and waste pollution have occurred over the past several decades. Further reductions generally come at an increasing cost and are smaller than prior reductions. This rising cost to benefit ratio should be strongly considered in any future statutory or regulatory changes.

AFPM looks forward to continuing our work with you and other federal agencies to create a regulatory environment that protects public health and welfare without destroying jobs, jeopardizing our nation's energy security, or eroding our domestic manufacturing capabilities. If

you have any questions about our comments or need any additional infor mation, please contact me at (202) 552-8461 or dfriedman@afpm.org.

Sincerely,

David Friedman
Vice President, Regulatory Affairs

Class of ’85/Cross-Cutting Issues Group Meetings

28 June 2017

NAME	COMPANY
AMOS, Jonathan	**Xcel Energy**
BAHTIC, Nedin	**Lakeland Electric**
BARRETT, Justin	**AES**
BARTON, Elvy	**Salt River Project**
BLOUNT, Will	**PowerSouth Electric Cooperative**
BURROWS, Byron	**Tampa Electric**
CASH, Rebecca	**LG&E and KU**
CASHIN, Mike	**Minnesota Power**
COLLIER, Angelique	**AES**
EATON, Kristin	**Florida Power &Light**
FLOYD, Susan Margaret	**Entergy**
FROSCH, Deborah	**Alliant**
GANNON, Maureen	**Public Service New Mexico**
GLESS, Jodie	**Florida Power &Light**
GRESS, Benjamin	**Great River Energy**
HAMPP, John	**Florida Power &Light**
HARDEN, Tim	**Alliant**
HILLESHEIM, David	**Xcel Energy**
HOCH, Joe	**Alliant**
HORN, Claudette	**Public Service New Mexico**
HUFF, Don	**Dairyland Power Cooperative**
JOHNSON, Rick	**Entergy**
KAUFER, lian	**Florida Power &Light**
KNOWLES, Berdell	**JEA**
LEAF, Patti	**Xcel Energy**

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Class of ’85/Cross-Cutting Issues Group Meetings

28 June 2017

NAME	COMPANY
LOIACANO, Jennifer	**Arkansas Electric Cooperatives**
MARTIN, Nick	**Xcel Energy**
McQUEEN, Kelly	**Entergy**
McQUOWN, Brian	**Oklahoma Gas &Electric**
MILLER, Cris	**Basin Electric Power Cooperative**
MONTALVO, Kara	**Salt River Project**
NELSON, Deb	**Great River Energy**
PAULSON, John	**Minnesota Power**
PLUTA, Michele	**Alliant**
REIMANN, Jon	**AES**
REVLETT, Gary	**LG&E and KU**
RIEHL, Carissa	**Great River Energy**
ROTH, Mary Jo	**Great River Energy**
ROSVOLD, Rick	**Xcel Energy**
SEHA, Ann	**Xcel Energy**
SHAMORY, Craig	**Talen Energy**
SHEA, Eric	**Florida Power &Light**
SMITH, Jennifer Thulien	**Xcel Energy**
SOLE, Michael	**NextEra Energy**
STEPHENS, Keith	**PowerSouth Electric Cooperative**
TOKARCZYK, Crystal	**Minnesota Power**
TREANOR, Elysia	**Portland General Electric**
TURNER, Usha	**Oklahoma Gas & Electric**
TUTTLE, Tomey	**Florida Power &Light**
WEGLARZ, Melissa	**Minnesota Power**
WILKUS, Dan	**Westar**

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Class of ’85/Cross-Cutting Issues Group Meetings

28 June 2017

BAKER BOTTS:

Berge, Megan
Bumpers, Bil
Jezouit, Debra
Mallick, Allison

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CLASS OF '85 REGULATORY RESPONSE GROUP MEETING AGENDA

Great River Energy Office
12300 Elm Creek Blvd.,
Maple Grove, MN 55369

June 27, 2017 (9:15 a.m. – 3:15 p.m. Central)

Coffee and pastries (9:00 a.m. – 9:15 a.m.)

I. Introduction & Update on Issues (9:15 a.m. – 10:00 a.m.)

A. EPA Analysis of Air Regulation Impacts on Jobs
B. Challenge to the Congressional Review Act
C. "Sue and Settle" Developments
D. Treatment of Malfunctions in MACT Standards

II. Opacity Litigation (10:00 a.m. – 10:30 a.m.)

A. Citizen Suits: Alleged Opacity Violations
B. Opacity Monitoring Issues

Break (10:30 a.m. – 10:45 a.m.)

III. Regulatory Reform Update (10:45 a.m. – 11:30 a.m.)

A. OMB Guidance Documents
B. Two-for-One Executive Order
C. Summary of Comments on EPA Regulatory Reform
D. Status of EPA Regulatory Reform Task Force
E. Status of EPA's Reconsideration of Rules

IV. Roundtable Discussion: Class of '85 Regulatory Reform Strategy (11:30 a.m. – 12:15 p.m.)

A. RICE Issues
B. Monitoring Requirements
C. Modeling Issues
D. Other Issues

Lunch Break (12:15 p.m. – 1:15 p.m.)

V. Guest Speaker Presentation on the New State-Federal Relationship (1:15 p.m. – 2:15 p.m.)

A. David Thornton, Assistant Commissioner for Air Policy, Minnesota Pollution Control Agency

Break (2:15 p.m. – 2:30 p.m.)

VI. Regional Haze (2:30 p.m. – 3:15 p.m.)

A. Regional Haze FIP Challenges
B. Challenges to Regional Haze Revision Rule
C. CSAPR > BART
D. Preparing for the Second Planning Period

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June 28, 2017 (9:00 a.m. -- 1:15 p.m. Central)

Coffee and pastries (8:45 a.m. – 9:00 a.m.)

I. Climate Change Issues (9:00 a.m. – 9:45 a.m.)

A. Review and Replacement of the Clean Power Plan
B. Public Trust Climate Litigation
C. State Climate Initiatives

II. NSR/Enforcement Issues (9:45 a.m. – 10:30 a.m.)

A. Status of Ongoing Enforcement Cases and Citizen Suits
B. Lessons Learned From *Ameren*

Break (10:30 a.m. – 10:45 a.m.)

III. NAAQS and Interstate Transport Issues (10:45 a.m. – 11:15 a.m.)

A. Section 126 Petitions
B. Status of 2015 Ozone NAAQS
C. Upcoming NAAQS Reviews

IV. Class Action Tort Litigation (11:15 a.m. – 11:45 a.m.)

A. Trends in Class Action and Toxic Tort Litigation
B. Best Practices for Avoidance and Defense

Break (11:45 a.m. – 12:15 p.m.)

V. Working Lunch: Discussion With EPA Office of Policy About Regulatory Reform (12:15 p.m. – 1:15 p.m.)
Joint with Cross-Cutting Issues Group

A. Samantha Dravis, Associate Administrator, EPA Office of Policy
B. Sarah Rees, Director, Office of Regulatory Policy and Management, EPA Office of Policy

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CROSS-CUTTING ISSUES GROUP MEETING AGENDA

Great River Energy Office
12300 Elm Creek Blvd.,
Maple Grove, MN 55369

June 28, 2017 (12:15 p.m. - 4:30 p.m. Central)

I. Working Lunch: Discussion With EPA Office of Policy About Regulatory Reform (12:15 p.m. – 1:15 p.m.)
Joint with Class of '85 Regulatory Response Group

A. Samantha Dravis, Associate Administrator, EPA Office of Policy
B. Sarah Rees, Director, Office of Regulatory Policy and Management, EPA Office of Policy

Break (1:15 p.m. – 2:00 p.m.)

II. Update on Issues (2:00 p.m. – 2:15 p.m.)

A. PCB Rulemaking
B. Litigation Update
C. Pipeline Update

III. Status of Agency Regulatory Reform Efforts (2:15 p.m. – 2:45 p.m.)

A. Summary of Comments on EPA Regulatory Reform
B. Status of EPA's Reconsideration of Rules
C. Status of Department of Interior Regulatory Reform

IV. Water Reform: Developments and Strategy (2:45 p.m. – 3:30 p.m.)

A. Effluent Limitation Guidelines
B. WOTUS White Paper and Strategy for Agency Outreach
C. Client Roundtable: 316(b) / Cooling Water Intake Rule; Nutrient Reduction

V. Wildlife Reform: Strategy Discussion (3:30 p.m. – 4:00 p.m.)

A. Memorandum 37041 on MBTA Liability
B. 2016 Critical Habitat Regulations and Policy
C. FWS Mitigation Policies

VI. Coal Ash Developments (4:00 p.m. – 4:30 p.m.)

A. EPA Guidance on Coal Ash Permitting Programs
B. CWA Liability for Discharges to Groundwater

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Overview of Comments of the Class of '85 Regulatory Response Group on Regulatory Reform

The Class of '85 Regulatory Response Group is a voluntary ad hoc coalition of approximately 30 electric generation companies from around the country that has been actively involved in the development of Clean Air Act rules and guidance affecting the electric generating industry for over 25 years.

The Class of '85 own and operate electric generating units (EGUs) subject to the CAA in approximately 35 states throughout the country.

Summary of Key Comments

A. EPA Should Streamline Recordkeeping and Reporting Requirements to Eliminate Duplicative Obligations

GHG Emissions Reporting

- **Summary of Issue:** There is an overlap in emissions reporting requirements under two part of the Code of Federal Regulations (Part 75 and Part 98). By streamlining the reporting process, the electric industry would reduce the reporting resources needed.
- EPA established Part 75 in 1993 to establish continuous emission monitoring and reporting requirements in support of EPA's Acid Rain Program. The program regulates EGUs that burn fossil fuels such as coal, oil and natural gas and have a generator capacity of greater than 25 megawatts. For these units, Part 75 requires continuous monitoring and reporting of sulfur dioxide (SO2) mass emissions, CO2 mass emissions, nitrogen oxides (NOx) emission rate, and heat input.
- Part 98, referred to as the Greenhouse Gas Reporting Program (GHGRP), is a mandatory rule for reporting greenhouse gases from sources that emit 25,000 metric tons or more of CO2e each year. Part 98.32 requires reporting of CO2, methane (CH4), and nitrous oxide (N2O) mass emissions from each stationary fuel combustion unit on an annual basis.
- Reporting under Parts 75 and 98 could be consolidated to reduce the reporting obligations for the electric sector by automatically populating specific CO2 emissions and heat input information entered in an EPA system under Acid Rain Program into the GHG reporting system.
- **EPA Response:** The agency does not appear to have publicly announced an effort to address this issue, but OAR, in its 5/15/17 memorandum responding to the Regulatory Reform Task Force, indicated a willingness to review this issue.

Maximum Achievable Control Technology (MACT) Reports

- **Summary of Issue:** The Class of '85 suggests the elimination of duplicative reporting requirements in general, and for the Boiler MACT in particular.
- They offer as an example that the Boiler MACT regulations in Part 63 require semi-annual compliance reports which are to include information on any deviations from an emission limit or operating limit. (40 CFR §63.7550(d)). The Title V regulations in Part 70 (state operating permits) contains a similar semi-annual compliance reporting requirement for deviations from permitting requirements. (40 CFR §70.6(3)(iii)).
- The Class of '85 suggests eliminating the requirement in Part 63 to the extent it duplicates requirements in Part 70.

- **EPA Response:** Your identification of a specific duplicative reporting requirement is very helpful and your suggested remedy appears to be quite sensible. To the extent that there are duplicative reporting requirements, it would make sense to roll them into the Title V permitting program.

Title V Permitting Program

- **Summary of Issue:** Title V of the CAA requires major sources and some non-major sources to obtain and operate in compliance with an operating permit that contains all applicable CAA requirements for the source.
- The Class of '85's comment on the Title V program pertains to the overlap between the reporting requirements in the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Industrial, Commercial, and Institutional and Process Heaters ("Boiler MACT") and Title V regulations. They urge EPA to streamline these regulations to reduce the regulatory burden on industry and the administrative burden on EPA.
- **EPA Response:** Your identification of duplicative reporting requirements is helpful. See also the discussion under Boiler MACT, above.

Part 64 Compliance Assurance Monitoring (CAM)

- **Summary of Issue:** The Compliance Assurance Monitoring (CAM) Rule was promulgated in 1997. CAM establishes procedures intended to provide a reasonable assurance of compliance with applicable CAA requirements for large emission units that rely on pollution control device equipment to achieve compliance.
- CAM requires monitoring be conducted to determine that control measures, once installed or otherwise employed, are properly operated and maintained so that they continue to achieve a level of control that complies with applicable requirements.
- The Class of '85 suggests that outdated Part 64 CAM provisions be eliminated. They offer as an example that electrostatic precipitator ("ESP") power monitoring under CAM has been rendered unnecessary by newer technologies and more recent regulations and should eliminated. They provide a citation to 40 CFR §64.3, but there appears to be no reference to ESPs in that section.
- **EPA Response:** EPA agrees that unnecessary and outdated regulations should be removed or revised. In the ESP example you gave, more detail would be helpful. Are ESPs explicitly or implicitly controlled by provisions in 40 CFR §64.3? What specific regulatory text changes would you suggest?

B. EPA Should Eliminate Monitoring and Testing Requirements That Provide No Environmental Benefits.

CEMS Certifications on Bypass Stacks

- **Summary of Issue:** The Class of '85 requested that EPA reduce the MATS requirement for CEMS certification on bypass stacks in cases where bypass stacks are rarely used.
- **EPA response:** My understanding is that the 2014 MATS reconsideration made an adjustment to how bypass stacks were addressed in the context of monitoring and testing requirements. Specifically, the final reconsideration provided options if it is not feasible to certify and QA the data from a CEMS. Units can route the exhaust from the bypass through the main stack (and

monitor bypass emissions, if any, that way) OR just use the CEMS on the main stack and count hours that the bypass stack is in use as hours of deviation from the monitoring requirements.

- Did these revisions address your concerns or do you have additional suggestions for CEMS certification on bypass stacks?

Tuning Requirements for New/Modified Units

- **Summary of Issue:** The Class of '85 suggested that EPA should exempt new and modified units with best available control technology ("BACT") limits from the initial MATS nitrogen oxides ("NOx") and carbon monoxide ("CO") tuning requirements.
- **EPA Response:** The tuning requirements are structured as work practice standards to offer flexibility and they help ensure that the burners are in good working order, the controls, as installed, are working properly and the system has been correctly tuned. These requirements also need to be met by when new units are installed.
- If new units were exempt from the requirements, how could EPA ensure that the burners are in good working order?

C. EPA Should Revise Maintenance Requirements That Provide No Environmental Benefits.

Boiler Tune-Ups

- **Summary of Issue:** The Boiler MACT regulations at 40 CFR §63.7515 require an annual tune-up (i.e., boiler adjustment) be conducted "no more than 13 months after the previous tune-up."
- The Class of '85 notes that tracking a compliance deadline based on a calendar year is significantly more manageable than tracking a compliance deadline that does not occur on the same date each year, and, therefore suggests tune-ups be require once every calendar year.
- **EPA Response:** EPA is very interested in providing industry sensible, needed flexibility. Although the current regulation allows 13 months between tune-ups, it doesn't require that facilities wait that full time. A facility can choose to conduct the tune-up at the same time every year. Does this flexibility address your concern?

RICE MACT and NSPS

- **Summary of Issues:** Stationary engines, also called reciprocating internal combustion engines (RICE), are commonly used at power and manufacturing plants for emergency and non-emergency operations to generate electricity and to power pumps and compressors.
- Requirements vary depending on engine type (gasoline or diesel), engine size (by horsepower), number of hours run per year, and designation as "emergency" or "non-emergency" engines.
- Class of '85 provides several recommendations to reduce tracking, maintenance, and reporting burden, including reducing requirements on infrequently run engines and small emergency engines.
- They also want EPA to increase the number of hours that large engines can run prior to triggering certain requirements, to allow engine operators to develop their own operation and maintenance plans for emergency engines instead of following manufacturer's instructions, and to extend the deadline for performing oil changes.
- In addition, they want EPA to revise the definition of an "emergency situation" to include

planned situations when power is not available so that they can use on-site non-emergency engines to provide replacement power rather than renting off-site engines.

- **EPA Response:** EPA appreciates your comments on the RICE MACT and NSPS. As we evaluate the requirements for these engines, we would like to discuss these comments with you in more detail.

D. Additional Recommendations to Reduce Regulatory Burdens

Low-Emitting EGUs Under MATS

- **Summary of Issue:** The Class of '85 recommends that EPA amend the MATS provisions addressing the demonstration of low-emitting EGU ("LEE") status to permit use of actual unit operating data, rather than potential maximum operating data.
- The low emitting EGU (or LEE) approach for existing sources represents another of the emissions quantification flexibilities provided by MATS. In exchange for demonstrating and maintaining emissions much lower than those required by the rule, EGU owners or operators are able to avoid installation and operation of sophisticated measurement instruments. Demonstrating LEE status allows units to extend the duration of time between ongoing testing to demonstrate compliance as well as to re-verify LEE program eligibility.
- **EPA Response:** As of 2016, 11% of MATS EGUs have LEE status. EPA understands that you would like more units to achieve LEE status and will consider your suggestions for how to change the provisions to allow more units to be eligible.

MATS Residual Risk Review

- **Summary of Issue:** The Group strongly recommends that EPA complete the residual risk and technology review for coal-fired power plants covered by the MATS. EPA is statutorily required to assess the risk remaining after the implementation of a specific NESHAP within 8 years of the final NESHAP. For MATS, EPA will need to complete this review by 2020.

- **EPA Response:** At this time, EPA is working to complete residual risk and technology reviews for multiple source categories. That said, we can always adjust how we prioritize these reviews while still meeting statutory deadlines.

Acid Rain Program

- **Summary of Issue:** The Acid Rain Program requires electric power plants to reduce emissions of sulfur dioxide ("SO2") and nitrogen oxides ("NOx"), the primary precursors of acid rain. The program also establishes monitoring requirements for SO_2, NOx and CO_2 emissions, volumetric flow and opacity data from affected units.
- According to the Class of '85, ultrasonic meters are the most accurate type of instrument for measuring volumetric flow rates of natural gas, but are subject to more complicated regulatory requirements because they are not explicitly approved under the acid rain monitoring regulations in Appendix D or Appendix E of 40 CFR Part 75. They urge EPA to update the regulations to explicitly approve the use of these monitors.
- **EPA Response:** EPA appreciates your comments and would like to discuss the advantages of using the ultrasonic meters over other monitors. Are the ultrasonic monitors cheaper than other monitors approved for use in the Acid Rain Program?

"Once In, Always In" Policy

- **Summary of Issue:** In May 1995, EPA issued implementing guidance for a number of provisions of its nascent MACT program under section 112 of the CAA (which addresses hazardous air pollutants). The guidance stated that once a source becomes subject to a MACT standard it must always remain subject to that standard, even if in the future it reduces its emissions of hazardous air pollutants below the major source thresholds.
- Over the years, EPA has considered making changes to this policy, publishing (but never finalizing) two separate proposals to alter the policy (in May 15, 2003 and January 3, 2007).
- The Class of '85 urges EPA to withdraw the 1995 guidance.
- **EPA Response:** We have heard similar comments from multiple sources. The agency does not appear to have publicly announced an effort to address this issue, but OAR, in its 5/15/17 memorandum responding to the Regulatory Reform Task Force, indicated a potential willingness to reconsider the policy. If EPA, withdraws the 1995 guidance, would you like EPA to replace the guidance with a regulation?

Clean Power Plan (CPP), New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Power Plants (GHG NSPS for Power Plants), and Related Actions

- Per direction from the President and Administrator Pruitt, EPA has initiated a Review of the CPP and the GHG NSPS for Power Plants, and has withdrawn related regulatory proposals concerning federal plan requirements and model rules for greenhouse gas emissions from power plants.
- *Note: The Class of '85 did not comment on this topic.*

COMMENTS OF THE CLASS OF '85 REGULATORY RESPONSE GROUP

ON THE

REQUEST FOR COMMENTS ON THE "EVALUATION OF EXISTING REGULATIONS"

EPA Docket No. EPA–HQ–OA–2017–0190

I. INTRODUCTION

On April 13, 2017, the U.S. Environmental Protection Agency ("EPA" or "Agency") published in the *Federal Register*, at 82 Fed. Reg. 17,793, a notice entitled "Evaluation of Existing Regulations" ("Notice"), requesting public comment on regulatory reform issues. The Notice was published in response to Executive Order 13777 ("EO"), entitled "Enforcing the Regulatory Reform Agenda," which directs federal agencies to establish Regulatory Reform Task Forces ("Task Forces") to evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification, with the goal of alleviating "unnecessary regulatory burdens."[1] The EO directs the Task Forces to seek input from entities significantly affected by federal regulations in their efforts to identify regulations for reform. EPA's Notice specifically requests comments on EPA regulations "that may be appropriate for repeal, replacement, or modification."[2]

The Class of '85 Regulatory Response Group ("Class of '85" or "Group") respectfully submits these comments in response to the Notice.[3] The Class of '85 is a voluntary ad hoc coalition of approximately 30 electric generating companies from around the country that has been actively involved in the development of Clean Air Act ("CAA") rules and guidance affecting the electric generating industry for over 25 years. Members of the Class of '85 own and operate electric generating units ("EGUs") subject to the CAA in approximately 35 states throughout the country, and will be directly affected by any CAA-related regulations pertaining to the electric generating industry that are repealed, replaced, or modified by EPA.

The Class of '85 encourages EPA to make targeted edits to certain regulatory requirements that are redundant or unnecessary.[4] The changes proposed in these comments would significantly reduce the costs and burdens associated with a number of regulatory requirements, and this streamlining would have no negative environmental impacts, and, in some cases, even positive environmental outcomes.

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[1] 82 Fed. Reg. 12,285 (Mar. 1, 2017).

[2] 82 Fed. Reg. at 17,793.

[3] Attached as Appendix A is a list of the Class of '85 members who support these comments.

[4] Brief descriptions of the numerous regulatory programs addressed in these comments are included in Appendix B.

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II. COMMENTS

A. EPA Should Streamline Recordkeeping and Reporting Requirements to Eliminate Duplicative Obligations.

EPA should revise certain provisions of the Code of Federal Regulations ("C.F.R.") to streamline recordkeeping and reporting requirements across the Agency's various regulatory programs. In numerous cases, EGUs are required to submit the same information to the Agency under multiple programs, resulting in duplicative reporting that provides no environmental benefit at the cost of increased staff time. Specific examples of duplicative reporting requirements that EPA should streamline include the following:

- **Greenhouse Gas ("GHG") Emissions Reporting.** EPA should exempt from the requirement to submit carbon dioxide ("CO_2") emissions data pursuant to the GHG Reporting Rule[5] EGUs that already submit to EPA all information needed to calculate CO_2e emissions (*e.g.*, CO_2, nitrous oxide, and methane) pursuant to other rules, such as the Acid Rain Program. For instance, 40 C.F.R. § 98.3(c)(4)(iii)(B) of the GHG Reporting Rule is duplicative of the Acid Rain Program requirement in 40 C.F.R. § 75.64 that EGUs submit to EPA CO_2 mass emissions data. For EGUs subject to these duplicative requirements, submission of this data under the GHG Reporting Rule is superfluous and unnecessary. Eliminating these duplicative requirements would streamline reporting and eliminate a regulatory burden that provides no environmental benefits.

- **Periodic Maximum Achievable Control Technology ("MACT") Reports.** EPA should streamline duplicative reporting requirements in the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Industrial, Commercial, and Institutional and Process Heaters ("Boiler MACT") and Title V regulations. Specifically, EPA should eliminate the requirement to submit annual and biennial reports under the Boiler MACT,[6] where such submissions are duplicative of Title V reports. For example, under the Boiler MACT, periodic reports must include information on whether the source experienced any deviations from an emission limit or operating limit.[7] This requirement is duplicative of the requirement to include in Title V reports information on "[a]ll instances of deviations from permit requirements."[8] The Class of '85 urges EPA to streamline these regulations to reduce the regulatory burden on industry and the administrative burden on EPA.

- **Part 60 Summary Reports.** EPA should eliminate the requirement in Part 60[9] to submit information in a summary report that already is submitted pursuant to the Part

[5] 81 Fed. Reg. 89,188 (Dec. 9, 2016).

[6] *See* 40 C.F.R. § 63.7550.

[7] 40 C.F.R. § 63.7550(d).

[8] 40 C.F.R. § 70.6(3)(iii).

[9] *See* 40 C.F.R. § 60.7(d).

75 Electronic Data Reporting ("EDR") requirements,[10] as the submission of certain information in the summary report is unnecessary and duplicative of the EDR submissions.

- **Part 64 Compliance Assurance Monitoring ("CAM").** EPA should modify the Part 64 CAM provisions[11] to eliminate requirements that have become unnecessary and outdated in light of subsequent regulations. For example, electrostatic precipitator ("ESP") power monitoring under CAM[12] has been rendered unnecessary by continuous particulate matter ("PM") monitoring utilizing either PM Continuous Emissions Monitoring Systems ("CEMS") or PM Continuous Parametric Monitoring Systems ("CPMS"), and testing required by the Mercury and Air Toxics Standards ("MATS").[13]

B. EPA Should Eliminate Monitoring and Testing Requirements That Provide No Environmental Benefits.

The Class of '85 urges EPA to eliminate emission monitoring and equipment testing requirements that provide no environmental benefits. Elimination of these requirements would result in significant cost savings for the electric generating industry with no environmental impact. In certain situations, elimination of equipment testing requirements would actually result in *reduced* emissions. Opportunities to eliminate these environmentally unnecessary (and in some cases, environmentally detrimental) requirements exist in numerous CAA programs, including the following:

- **Monitoring Certification and Quality Assurance/Quality Control ("QA/QC") Redundancies.** EPA should eliminate redundancies between the Part 60 and Part 75 monitoring certification and QA/QC requirements by adding language to Part 60 that provides sources the option to comply only with Part 75 where requirements are duplicative. For example, where Subpart A (*e.g.*, 40 C.F.R. § 60.8 and/or § 60.13), Subpart D, or Subpart GG refer to the appendices in Part 60 for test methods, performance specifications, and QA/QC standards (*e.g.*, Appendix A, B, or F), those references would be replaced by similar references to Part 75.

- **CEMS Certifications on Bypass Stacks.** EPA should reduce the MATS requirements for CEMS certification on bypass stacks in cases where bypass stacks are rarely used (*i.e.*, where bypass stacks operate equivalent to a capacity factor of less than one percent).[14] In these cases, affected sources may be required to bypass *only* for purposes of CEMS certification. For example, one Class of '85 member installed CEMS (PM, mercury, and hydrogen chloride) on the bypass stacks for two

[10] *See* 40 C.F.R. § 75.64.

[11] *See* 40 C.F.R. §§ 64.1-10.

[12] *See* 40 C.F.R. § 64.3.

[13] Table 5 to Subpart UUUUU of Part 63.

[14] *See* 40 C.F.R. § 63.10010(a)(4).

of its units. This company has significantly reduced the use of these bypass stacks, and, in fact, has not used the bypasses since December 2016 and expects very limited use, if any, in the future. Because the company is using the bypass stacks on a very limited basis, it cannot fulfill the CEMS certification requirement unless it runs the stacks specifically for that purpose. In situations like this, the CEMS certification requirement actually results in *increased* emissions because the stacks would not otherwise be in use. Additionally, for some EGUs, the operation of bypass stacks for the sole purpose of CEMS certification could result in emission limit violations. It is illogical that compliance with a monitoring requirement would result in noncompliance with an emission limit. Reducing the frequency of CEMS certification requirements for infrequently used bypass stacks would prevent these unnecessary emissions.

- **Opacity Monitoring Requirements.** EPA should exempt from the Part 60 opacity monitoring requirements[15] units on which a PM CPMS or PM CEMS is installed, as these systems more accurately measure PM emissions than do opacity monitors. In such cases, opacity monitors are unnecessary to assure compliance with PM emissions limits. Relatedly, EPA should edit the text of 40 C.F.R. §§ 60.45(a) and 60.48Da(o)(2) so that EGUs with wet stacks have the option to use opacity monitors as parametric monitors rather than reporting monitors. This is appropriate for EGUs with wet stacks, as opacity monitors are not reliable indicators of PM emissions for facilities with wet scrubbers, as EPA has recognized.[16] Alternatively, EPA could allow EGUs with wet stacks the option of correlating a series of PM stack testing with the opacity monitor results to establish an appropriate compliance limit for the opacity monitor in light of the wet flue gas conditions. Finally, EPA should clarify that Subpart D PM and opacity standards and monitoring requirements apply only when a boiler is operating.[17] Boilers do not generate emissions when they are not combusting fuel, so there is no need for these requirements to apply during these times.

- **Infrequently Operated Reciprocating Internal Combustion Engines ("RICE").** EPA should reduce the RICE MACT monitoring and testing requirements for non-emergency engines that operate less than 50 hours per year.[18] First, EPA should revise the requirement that testing be completed every 8,760 hours of operation or every three years, whichever comes first,[19] to allow the option that testing be completed (1) based on a reasonable number of hours of engine operation (i.e., 500 hours) or (2) every three years. Eliminating the requirement to perform testing every

[15] *See* 40 C.F.R. § 60.45(a); § 60.48Da(o)(2).

[16] *See, e.g.*, 40 C.F.R. § 75.14(b) (exempting EGUs with wet flue gas streams from opacity monitoring requirements).

[17] *See* 40 C.F.R.§ 60.45.

[18] *See* 40 C.F.R. Part 63, Subpart ZZZZ.

[19] *See* 40 C.F.R. Part 63, Subpart ZZZZ, Table 3.

8,760 hours or every three years, whichever comes first, would allow for less frequent testing that would have both economic and environmental benefits. It would avoid forcing units to run and burn a significant amount of fuel solely for the purpose of compliance testing. For example, one Class of '85 member estimates that requiring testing once every three years wastes approximately 10,000 gallons of diesel fuel, as the units are forced to run purely for the purposes of testing. Second, the requirement to continuously monitor catalyst inlet temperature and pressure drop is excessive and provides little benefit.[20] These two parameters should be recorded during periodic compliance testing to verify that they are within the allowable ranges during normal operation.

- **Relative Accuracy Test Audits ("RATA") Testing.** Part 75 requires periodic RATAs of all CEMS.[21] EPA should reduce the number of RATA runs required under Part 75 from nine to three, which would provide just as accurate results with fewer burdens. A study by RMB Consulting & Research, Inc. and the Electric Power Research Institute has found that "if the RATA criteria is [stet] met using the results from the first three, four, five or six test runs, performing additional test runs has no impact on the RATA results and consequently no benefit."[22] *See* Table 1. Accordingly, if the RATA criteria are satisfied using the results from the first three test runs, no additional test runs should be required, and the RATA should be considered complete. Sources should retain the option to perform additional test runs as necessary, pursuant to the current RATA requirements.

[20] *See* 40 C.F.R. Part 63, Subpart ZZZZ, Table 6.

[21] *See* 40 C.F.R. Part 75, Appendix B; § 75.74.

[22] Russell S. Berry and Stephen K. Norfleet, RMB Consulting & Research, Inc., and Charles E. Dene, Electric Power Research Institute, *The Evolution of Part 75 Performance Test Procedures and Specifications*, at http://www.rmb-consulting.com/newpaper/tucson/perfspec.html.

Table 1: Simulated RATA Data[23]						
Run Number	**CEMS Value**	**Reference Method Value**	**Standard Deviation**	**t-value**	**Confidence Coefficient**	**Relative Accuracy**
1	103	100				
2	97	100	4.24	12.71	38.12	38.12
3	103	100	3.46	4.303	8.61	9.61
4	92	100	5.32	3.182	8.46	9.71
5	110	100	6.82	2.776	8.47	9.47
6	88	100	8.08	2.571	8.49	9.65
7	114	100	9.35	2.447	8.64	9.64
8	84	100	10.53	2.365	8.81	9.93
9	117	100	11.56	2.306	8.89	9.77

- **Relative Accuracy Audits ("RAAs").** EPA should eliminate the requirement to perform quarterly RAAs for units that have converted from hardware CEMS to a software-based predictive emission monitoring system ("PEMS").[24] This requirement is unnecessary because, unlike a CEMS, a PEMS is a computer model that does not change over time. These units already are required to perform annual RATA testing, which is sufficient to ensure adequate functioning of the PEMS. Performing RAAs on PEMS is a resource and time-intensive process that does not yield any incremental benefit. For example, one Group member has its plant staff maintain old CEMS sample lines, stack probes, and sample pumps so that they can perform the RAA at ground level rather than climb the stacks with a portable analyzer. This effectively defeats the purpose of replacing the old CEMS system.

- **Linearity.** EPA should allow EGUs to perform CEMS linearity and calibrations under Part 75 when units are offline. It takes approximately one hour to perform a linearity, so it is difficult to complete a linearity on combustion turbines that operate for short periods of time. Performance of a linearity while a unit is offline would have no impact on test accuracy, as the CEMS is monitoring calibration gas and not stack gas. Accordingly, this revision would avoid requiring units to operate longer than they otherwise would (and therefore emitting more than they otherwise would) solely to complete a test.

[23] *Id.*

[24] *See* 40 C.F.R. Part 60, Appendix F, § 5.1.3.

- **Wall Effects Adjustment Factor.** 40 C.F.R. § 75.59(a)(7)(ii)(S) allows for the establishment of a "[c]alculated (site-specific) wall effects adjustment factor determined *during the run*" (emphasis added). However, determining wall effects adjustment factors can take hours, which requires the source owner to maintain the unit at uneconomic loads for longer periods than necessary. EPA should allow EGUs the option to establish a site-specific reference method 2H Wall-Effects adjustment factor under Part 75 so that EGUs no longer need to operate at uneconomic loads for long periods of time just to establish a wall effects adjustment factor.[25]

- **Tuning Requirements for New/Modified Units.** EPA should exempt new and modified units with best available control technology ("BACT") limits from the initial MATS nitrogen oxides ("NOx") and carbon monoxide ("CO") tuning requirements.[26] Since these limits are set based on the "best performing" controls, tuning of newly installed equipment is unnecessary.[27]

C. EPA Should Revise Maintenance Requirements That Provide No Environmental Benefits.

Numerous CAA programs contain maintenance requirements that are time-consuming and burdensome and yet yield negligible environmental benefits. The Class of '85 urges EPA to revise these unnecessary maintenance requirements to reduce the regulatory burden on the electric generating industry. Examples of provisions that should be revised include the following:

- **Emergency Engines Under the RICE MACT and New Source Performance Standards ("NSPS").** The RICE MACT and NSPS limit operation of emergency engines to 100 hours of operation per year for maintenance and readiness testing, 50 of which can be used for non-emergency operation.[28] Additionally, the RICE NSPS requires owners/operators to maintain emergency engines per the manufacturer's specifications.[29] These requirements have two significant ramifications for owners and operators of emergency engines, while providing negligible environmental benefit.

  First, owners/operators must spend an unreasonable amount of time tracking the hours of operation of these engines, as well as the reasons for which operation occurred. The time spent on this tracking is grossly disproportionate to the amount of time that these engines operate. For example, one Group member has over 80 small

[25] *See* 40 C.F.R. § 75.59(a)(7)(ii)(S).

[26] *See* 40 C.F.R. § 63.10005(e).

[27] EPA should consider extending this exemption from initial tuning requirements to existing units with controls that have been determined to be equivalent to BACT pursuant to consent decrees or other regulatory program requirements, such as a regional haze state implementation plan.

[28] 40 C.F.R. § 63.6640(f); 40 C.F.R. § 60.4211(f).

[29] 40 C.F.R. §60.4211(a)(1).

engines (*i.e.*, under 500 horsepower) that are subject to either the RICE MACT or NSPS. On average, these engines each operate approximately 20 hours per calendar year. To document compliance with the hours of operation limit, the company spends an average of six hours per engine, each year, tracking and reporting operations. In other words, for every 20 hours of operating time, the company spends six hours on paperwork—a highly inefficient ratio. Additionally, compliance with the Engine NSPS requirement to maintain emergency engines per the manufacturer's specifications requires burdensome tracking for facilities that own dozens of certified generators from different manufacturers, all of which have different maintenance procedures and schedules.

Second, owners/operators must comply with excessive maintenance requirements for these small, infrequently operated engines. Specifically, the RICE MACT requires owners/operators to perform frequent oil changes or oil analyses,[30] which are unnecessary for infrequently run units and result in the unnecessary and environmentally burdensome disposal of oil. These unnecessary oil changes and oil analyses also are expensive; one Group member estimates that it spends approximately $700 on annual maintenance for each emergency engine (over $55,000 annually combined). Additionally, the RICE NSPS requirement to comply with manufacturer specifications can similarly result in unnecessary oil changes,[31] as well as other unnecessary maintenance procedures, on emergency engines that run infrequently.

The Group proposes three solutions to these problems, all of which would significantly reduce the tracking, reporting, and maintenance burdens discussed above, with negligible environmental impact:

- *First*, the Group urges EPA to amend the RICE MACT and NSPS to exempt emergency engines under 500 horsepower. This would (1) eliminate the excessive tracking requirements for run hours and reasons for run; and (2) eliminate the requirement for unnecessary and environmentally detrimental oil changes or oil analyses under 40 C.F.R. § 63.6625(i)-(j). Instead, oil changes would be performed as needed to properly maintain units in light of how much they have run. These changes would result in significant cost savings and drastically reduce administrative burdens, without changing the environmental benefits of the MACT, as these units are very small with low emissions. At a minimum, EPA should exempt emergency engines under 500 horsepower from tracking requirements.

- *Second*, for emergency engines over 500 horsepower that remain subject to the RICE MACT and NSPS, EPA should eliminate the limitation of non-emergency operation to 50 hours per year; instead, EPA should allow these

[30] 40 C.F.R. § 63.6625(i)-(j).

[31] 40 C.F.R. § 60.4211(a)(1). .

units to operate up to 100 hours per year for maintenance, readiness testing, *and* non-emergency operation (not to include operation as part of a financial arrangement with another entity). This would eliminate the need to track the reasons for which the units operate while ensuring that these units do not operate any more than already is permitted under the current regulatory requirements. Alternatively, EPA should at a minimum exempt these engines from tracking requirements.

- *Third*, EPA should revise the requirement under the RICE NSPS to maintain emergency engines per the manufacturer's specifications to allow EGUs the ***option*** to develop their own operation and maintenance plans that would allow them an opportunity to streamline their maintenance obligations for their small generators. Exercise of this option would have negligible environmental impact, as owners/operators must properly maintain units, including by performing oil changes or oil analyses when appropriate based on how much the engine has actually run, so that they will be available when needed during emergencies, and because these units run very infrequently.

- **Definition of "Emergency Situation" in RICE MACT and NSPS.** EPA has interpreted the definition of an "emergency situation" under the RICE MACT narrowly to mean "a sudden, unplanned and unforeseen event."[32] Because of this narrow interpretation, companies are incentivized to rent higher-emitting diesel generators rather than rely on onsite back-up generators when power is lost to a facility due to planned maintenance, such as when work on a substation that provides power to a facility must be performed. EPA should define "emergency situation" in the RICE MACT and NSPS to clarify that in situations where power is not available, the operation of on-site emergency engines to provide replacement power would be considered an emergency situation. This would result in reduced emissions, as companies would no longer need to rent high-emitting diesel generators purely to avoid exceeding the 100-hour limitation of non-emergency operation.

- **Oil Change Requirements Under the RICE MACT.** EPA should amend 40 C.F.R. § 63.6625(i) to extend the deadline for performing an oil change from two to 20 business days after receiving an adverse oil analysis result. This would allow sufficient time to resample to confirm an adverse result and avoid unnecessary oil changes, which require the environmentally burdensome disposal of oil.

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[32] *See, e.g.*, Letter from Becky Weber, Director, EPA Region 7 Air and Waste Management Division, to Floyd Gilzow, Director of Member Relations and Public Affairs, Missouri Public Utility Alliance, re: 40 CFR Part 63 National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; Final Rule Dated March 3, 2010, available at http://c.ymcdn.com/sites/www.kmunet.org/resource/resmgr/Presentations_Misc_Docs/EPA%20Response%20to%20MPUA.pdf.

- **Boiler Tune-Ups.** EPA should amend the frequency of required tune-ups under the Boiler MACT to be based on calendar years (*e.g.*, once every calendar years), instead of every 13 months.[33] From a compliance perspective, tracking compliance deadlines based on a calendar year is significantly more manageable than tracking compliance deadlines that do not occur on the same date each year.

D. Additional Recommendations to Reduce Regulatory Burdens.

The Group urges EPA to make the following revisions to its CAA-related regulations to further streamline regulatory requirements while still protecting the environment:

- **Low-Emitting EGUs Under MATS**. The Group recommends that EPA amend the MATS provisions addressing the demonstration of low-emitting EGU ("LEE") status to permit use of actual unit operating data, rather than potential maximum operating data.[34] Eligibility for LEE status requires that a source calculate potential annual mercury emissions assuming "maximum potential annual heat input to the unit"[35] or "maximum potential annual electricity generation"[36] times 8,760 hours. This approach employs unreasonable assumptions about unit operation, as using maximum potential heat input or electricity generation vastly overestimates annual mercury emissions because coal-fired EGUs do not operate at maximum capacity constantly for every hour of a calendar year. It would be more accurate to use *actual* data to calculate annual mercury emissions. The Group urges EPA to amend the MATS so that the mercury emission rate result from the 30-day test (as described at 40 C.F.R. § 63.10005(h)(3)) performed during the reporting year would be multiplied by the actual annual heat input to the unit or annual electricity generation (instead of the maximum potential) and reported as part of the semiannual compliance report. This would allow more units to qualify as LEE, which allows for reduced testing obligations but also imposes more stringent mercury emissions limits. Overall, this would alleviate testing and reporting burdens, with no increase in mercury emissions, and could even decrease emissions.

- **Clarification in the MATS Rule**. The Group urges EPA to clarify the reference value to be used in the system integrity checks ("SICs") required under the MATS.[37] EPA also should clarify or update 40 C.F.R. § 63.10023(b) regarding PM CPMS operating limits to expressly allow for the use of stack concentration or other raw data signals in addition to milliamps to determine site specific operating limits ("SSOL"). Section 63.10023(b), which provides instructions on how to calculate the SSOL from the performance test, lists only milliamps and not stack concentration or other raw

[33] *See* 40 C.F.R. § 63.7515(d).

[34] *See* 40 C.F.R. § 63.10005(h).

[35] 40 C.F.R. § 63.10005(h)(3)(iii)(C)(1).

[36] 40 C.F.R. § 63.10005(h)(3)(iii)(C)(2).

[37] *See* 40 C.F.R. Part 63, Subpart UUUUU, Appendix A, § 4.1.1.3.

data signals. The omission of stack concentration or other raw data signals from 40 C.F.R. § 63.10023(b) appears to be an oversight. For instance, 40 C.F.R. § 63.10023(a) expressly allows the use of multiple different output values (*e.g.*, milliamps, stack concentration, or other raw data signals) from the PM CPMS during the performance test. Further, Table 7 to Subpart UUUUU lists milliamps, PM concentration, and raw data signals as acceptable outputs to monitor for compliance with the 30 day operating limit. EPA should revise 40 C.F.R. § 63.10023(b) to similarly expressly list stack concentration or other raw data signals in addition to milliamps. This would avoid the regulatory confusion that could occur if regulators view milliamps as the only acceptable output to monitor because it is the only output specifically listed in 40 C.F.R. § 63.10023(b).

- **MATS Residual Risk Review**. The Group strongly recommends that EPA complete the residual risk and technology review for coal-fired power plants covered by the MATS. Section 112(f)(2) of the CAA requires EPA to assess the risk remaining after the implementation of a specific NESHAP. Specifically, within eight years of a final NESHAP, EPA must promulgate an emission standard, if promulgation of such a standard is required in order to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Because the MATS was finalized and published in 2012, EPA is required to complete this review by 2020. EPA should undertake a rulemaking to fulfil this nondiscretionary statutory obligation.

- **Once in, Always in.** On May 16, 1995, EPA released a memorandum titled "Potential to Emit for MACT Standards-Guidance on Timing Issues."[38] This guidance document clarified that "facilities that are major sources for [hazardous air pollutants ("HAPs")] on the 'first compliance date' are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained." This interpretation dis-incentivizes changes to major sources that would reduce emissions because these units will always be regulated as major sources. The Group urges EPA to withdraw this guidance document.

- **AP-42 Emission Factors.** EPA has been publishing a compilation of air pollutant factors (AP-42) since 1968.[39] The compilation currently contains emission factors and process information for more than 200 air pollution source categories. The Fifth Edition of AP-42 was published over 20 years ago, in January 1995. While EPA has published some supplements and updates to that edition, the Group encourages EPA to make long-overdue revisions to the AP-42 emission factors. Many of the current factors are based on outdated technology and small sample sizes, which results in

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[38] John S. Seitz, *Potential to Emit for MACT Standards-Guidance on Timing Issues* (1995), https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf

[39] R.L. Duprey, *Compilation of Air Pollutant Factors* (1968), https://www3.epa.gov/ttn/chief/ap42/oldeditions/1st_edition/ap42_phs_1968.pdf

inaccurate estimation of emissions. This impacts permit application development and compliance with reporting requirements. Updating the AP-42 emission factors will increase accuracy and help streamline the permitting process.

- **Ultrasonic Flow Monitors.** The Acid Rain Program establishes requirements for the monitoring, recordkeeping, and reporting of SO_2, NOx, CO_2, volumetric flow, and opacity data from affected units.[40] These monitoring requirements are performance-based, which means they generally do not require that a source use a particular type of CEMS.[41] However, the regulatory requirements differ depending on the particular type of CEMS utilized. Ultrasonic meters, which measure volumetric natural gas flow rates, are the most accurate type of meter, but are subject to more complicated regulatory requirements. Because ultrasonic monitoring is not explicitly approved under either Appendix D or Appendix E, use of ultrasonic monitors is conditioned upon development and implementation of a QA/QC program for the systems.[42] To ensure regulatory compliance, the ultrasonic meter readings must be compared to a primary standard (AGA/ASME/NIST) meter or to an in-line reference meter that has been tested for accuracy during the previous year.[43] For the in-line reference meter approach, the entity must run three separate tests for three different load levels each with a minimum length of 20 minutes.[44] This means the entity must complete at least nine 20 minute runs within seven consecutive unit operating days.[45] For ongoing QA/QC, this testing must be repeated every four fuel flow meter operating quarters, where an operating quarter is a quarter in which the fuel flow meter has operated for at least 168 partial or full operating hours.[46] Thus, the current regulation dis-incentivizes installation of the most advanced and modern monitoring technology by imposing significantly more testing requirements. The Class of '85 urges EPA to revise these regulations to update the monitoring systems approved under Appendix D and Appendix E to address the use of ultrasonic meters. This will allow companies to install the best monitoring technology without an increased regulatory burden.

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[40] *See* 40 C.F.R. § 75.1.

[41] *See* Part 75 CEMS Field Audit Manual, EPA at 15 (July 16, 2013), https://www.epa.gov/sites/production/files/2015-05/documents/part_75_cems_field_audit_manual.pdf

[42] 40 C.F.R Part 75, Appendix B.

[43] 40 C.F.R. Part 75, Appendix D, § 2.1.5-2.1.6(b).

[44] *Id.* § 2.1.5.2.

[45] *Id.*

[46] *Id.* § 2.1.6(a).

III. CONCLUSION

The Class of '85 appreciates the opportunity to comment on existing regulations and make recommendations regarding their repeal, replacement, or modification. The Group urges EPA to follow the recommendations in these comments, which would alleviate "unnecessary regulatory burdens." Specifically, adoption of the proposed regulatory reforms in these comments would significantly reduce costs associated with recordkeeping, reporting, testing and maintenance, while maintaining, and in some cases improving, environmental protection.

Dated: May 15, 2017

Respectfully submitted,

Debra J. Jezouit
Megan H. Berge
Allison Watkins Mallick
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
Washington, DC 20004
(202) 639-7700

Appendix A

CLASS OF '85 REGULATORY RESPONSE GROUP

AES Corporation
Alliant Energy Corporation
Arizona Electric Power Cooperative, Inc.
Arkansas Electric Cooperative Corporation
City of Tallahassee
Cleco Corporation
Cogentrix Energy Power Management, LLC
Dairyland Power Cooperative
Dayton Power & Light Company
Entergy Services, Inc.
Florida Municipal Electric Association
Florida Municipal Power Agency
Gainesville Regional Utilities
Great River Energy
Hawaiian Electric Company, Inc.
Indianapolis Power & Light Company
JEA
Lakeland Electric
Louisville Gas & Electric/Kentucky Utilities
National Grid
NextEra Energy, Inc.
OGE Energy Corp.
Orlando Utilities Commission
PowerSouth Energy Cooperative
Public Service Company of New Mexico
Salt River Project
Talen Energy
Tampa Electric Company
Westar Energy
Western Farmers Electric Cooperative
Xcel Energy Inc.

Appendix B

Rule	C.F.R.	*Federal Register*	Description
Acid Rain Program	40 C.F.R. Parts 72-78	58 Fed. Reg. 3,590 (Jan. 11, 1993); 58 Fed. Reg. 15,634 (Mar. 23, 1993); 62 Fed. Reg. 55,460 (Oct. 24, 1997)	The Acid Rain Program, established under Title IV of the Clean Air Act ("CAA"), requires electric generating units ("EGUs") to reduce emissions of sulfur dioxide ("SO_2") and nitrogen oxides ("NOx"), the primary precursors of acid rain.
Boiler MACT	40 C.F.R. Part 63, Subpart DDDDD	80 Fed. Reg. 72,790 (Nov. 20, 2015)	The Boiler Maximum Achievable Control Technology ("MACT") rule sets national emission standards for hazardous air pollutants ("NESHAPs") reflecting MACT for industrial boilers, commercial and institutional boilers, and process heaters that are located at major sources (*i.e.*, sources that emit or have the potential to emit above a certain threshold of hazardous air pollutants ("HAPs") per year) for various HAPs under Section 112 of the CAA.
CAM Rule	40 C.F.R. Part 64	62 Fed. Reg. 54,900 (Oct. 22, 1997)	The Compliance Assurance Monitoring ("CAM") Rule establishes enhanced monitoring and compliance certification requirements for major stationary sources that are required to obtain Title V operating permits.
GHG Reporting Rule	40 C.F.R. Part 98	74 Fed. Reg. 56,260 (Oct. 30, 2009); 81 Fed. Reg. 89,188 (Dec. 9, 2016)	The Greenhouse Gas ("GHG") Reporting Rule requires monitoring and reporting of GHG emissions from sources across multiple sectors of the economy, including EGUs, that emit above a certain threshold of carbon dioxide equivalent per year.
MATS	40 C.F.R. Part 63, Subpart	77 Fed. Reg. 9,304 (Feb.	The Mercury and Air Toxics Standards ("MATS") rule sets NESHAPs for EGUs for various HAPs, including mercury,

	UUUUU	16, 2012)	under Section 112 of the CAA.
Part 60	40 C.F.R. Part 60	36 Fed. Reg. 24,877 (Dec. 23, 1971)	Part 60 establishes standards of performance for new stationary sources, including general provisions under Subpart A; standards of performance for fossil fuel-fired steam generators under Subpart D; and standards of performance for electric utility steam generating units under Subpart Da. Part 60 also contains appendices that establish testing procedures that must be followed to establish compliance with the requirements of the various subparts.
RICE MACT	40 C.F.R. Part 63, Subpart ZZZZ	78 Fed. Reg. 6,674 (Jan. 30, 2013)	The Reciprocating Internal Combustion Engine ("RICE") MACT sets NESHAP reflecting MACT for RICE located at major or area sources for various HAPs under Section 112 of the CAA.
RICE NSPS	40 C.F.R. Part 60, Subparts IIII and JJJJ	78 Fed. Reg. 6,674 (Jan. 30, 2013)	The RICE New Source Performance Standards ("NSPS") set performance standards for emissions from new, modified, and reconstructed stationary compression ignition internal combustion engines and stationary spark ignition internal combustion engines under Section 111(b) of the CAA.
Title V Program	40 C.F.R. Parts 70 and 71	57 Fed. Reg. 32,250 (July 21, 1992)	Title V of the CAA requires major sources and some non-major sources to obtain and operate in compliance with an operating permit that contains all applicable CAA requirements for the source.

EPA Regulatory Reform

Talking Points and Q&As

On February 24, 2017, President Trump issued Executive Order 13777 on Enforcing the Regulatory Agenda.

The Executive Order (EO) establishes the "policy of the United States to alleviate unnecessary regulatory burdens placed on the American people." Among other things, it requires each agency to create a Regulatory Reform Task Force to evaluate existing regulations and to identify regulations that should be repealed, replaced, or modified.

To inform these recommendations, EPA held public meetings to listen and learn from those directly impacted by our regulations, including federal, state, local and Tribal governments; small businesses; consumer; non-governmental organizations and trade associations.

We also accepted public comment through our regulatory reform docket. That docket closed on May 15, 2017. We have received over 450,000 comments in that docket.

Per the EO, we are particularly interested in regulations that:

- eliminate jobs, or inhibit job creation;
- are outdated, unnecessary, or ineffective;
- impose costs that exceed benefits;
- create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

DRAFT

EPA has already taken steps to initiate the review or reconsideration of specific regulations and the withdrawal of proposed actions that impose burden. These include:

- Review of the Waters of the United States Rule –EPA has initiated its review of the rule, and a proposal is currently at OMB for EO 12866 review.

- Withdrawal of Methane ICR – In 2016, EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. On March 2, 2017, EPA withdrew this information collection request (82 Fed. Reg. 12817; March 7, 2017). The agency expects this will lead to cost savings of approximately $37,000,000.

- Risk Management Plans – is under review, and we are staying the effective date through February 2019 to allow time to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action on the RMP rule.

- Light-duty Mid-Term Evaluation – on March 15, 2017, EPA and DOT announced that EPA intends to reconsider the final determination that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025.

- Review of Clean Power Plan and Related Actions – EPA is reviewing the Clean Power Plan and NSPS for GHGs at Electric Generating Units, and has withdrawn the Federal Plan/Trading Rule/Framework Amendments.

- Review of Methane Oil and Gas Rule – EPA initiated a review of the rule and has submitted a proposed extension of compliance deadlines to the Office of Management and Budget for review.

- Review of Steam Electric ELG – On May 25, 2017, EPA issued a proposed postponement of the rule's compliance deadlines for publication in the Federal Register.

- Review of Landfill Methane Rules – On May 23, 2017, EPA announced a 90-day administrative stay for the final rules and a proposal to stay both rules until March 13, 2020.
- Certified Pesticide Applicators Rule –EPA has initiated a review of the rule.

- Formaldehyde Emission Standards for Composite Wood Products – On May 24, 2017, EPA issued a direct final rule and parallel proposed rule to extend compliance dates in the final rule.

At this point, the Task Force is reviewing the comments received to evaluate additional regulations that are candidates for repeal and reform beyond the actions we already have in place.

There are also other regulatory reform activities that are coordinated with this work.

- EO 13783 on Promoting Energy Independence and Economic Growth requires that we review regulations, orders and guidance documents that burden the development or use of domestic energy. We are looking to the comments received in the regulatory reform docket to help inform that work.
- The Department of Commerce issued a Request for Information per the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burden for Domestic Manufacturing which resulted in 170 public comments, with most EPA-

relevant comments focused on air permitting programs (e.g., NSR, Title V, SSM, etc.).

The Regulatory Reform Task Force will use all this input to inform EPA's regulatory reform efforts, and help fulfill the Administration's commitment to removing unnecessary regulatory burdens on the American people.

Q&As

How will this effort be managed?

EO 13777 calls for agencies to establish:

- A Regulatory Review Officer (RRO) to oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law.
- A Regulatory Reform Task Force to evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.

Who is EPA's Regulatory Review Officer?

Administrator Pruitt has designated Samantha Dravis, Senior counsel and Associate Administrator for Policy to serve as EPA's RRO.

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Who is on EPA's Regulatory Review Task Force?

Along with the RRO, Ryan Jackson, EPA Chief of Staff, will serve as Chairman. Other members include Bryon Brown, EPA Deputy Chief of Staff for Policy and Brittany Bolen, EPA Office of Policy Deputy Associate Administrator.

What is the timeframe for identifying regulations for potential reform?

Under the Executive Order, by May 26 the Task Force is to provide a report to the Administrator detailing the agency's progress. We expect to deliver an updated progress report in November 2017.

By July 26 the Task Force is to submit a draft report on regulatory reform under the Domestic Energy EO to the Director of OMB and the Vice President. The draft report will be published in the Federal Register. The final report is due by September 24.

DRAFT

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Lorraine Gershman
Sent: Tue 5/16/2017 2:47:45 PM
Subject: RE: Follow up on NSPS DD: Grain Elevators
NSPS DD Letter to Dravis Regulatory Reform FINAL 5-15-17.pdf
NOPA Reg Reform FINAL 05.15.17.pdf

Samantha,

As a follow up, here are the filed comments of the NSPS DD Coalition on EPA's proposal to evaluate existing regulations, along with NOPA's comments. In these remarks we ask that EPA's newly-formed Regulatory Reform Task Force recommend to the Administrator to:

1)Not finalize the proposed amendments to NSPS Subpart DD; and

2)Formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule in order to offset the costs of a future rule, as detailed in E.O. 13771 - Reducing Regulations and Controlling Regulatory Costs.

Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS ***prospectively*** and/or modifying it based on the Coalition comments submitted in 2014, as part of a larger Regulatory Reform effort.

We have also shared these comments directly with Josh Lewis.

Best,

Lorraine

From: Lorraine Gershman
Sent: Tuesday, May 09, 2017 5:06 PM
To: 'dravis.samantha@epa.gov' <dravis.samantha@epa.gov>

Cc: 'bolen.brittany@epa.gov' <bolen.brittany@epa.gov>; 'gunasekara.mandy@epa.gov' <gunasekara.mandy@epa.gov>
Subject: Follow up on NSPS DD: Grain Elevators

Samantha, thank you again for meeting with the Regulatory Improvement Council (Valis Associates) this morning. It was a pleasure to hear from you regarding some of industry's big concerns.

As I mentioned in our brief discussion, NOPA is a part of a coalition of agribusiness trade associations that have been working on the NSPS DD: Grain Elevators for the last decade. In October 2016, EPA's final NSPS package was sent to OMB for review under EO 12866. The revisions would include new emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating emissions from temporary storage facilities. The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 - the date the proposed amendments were published in the *Federal Register*. This rule package was not finalized by EPA, and on January 24, 2017, the rule was officially withdrawn from OMB. (See: https://www.reginfo.gov/public/do/eoDetails?rrid=126938) At this point in time, we are uncertain if this rule is going to be resubmitted to EPA for review or if EPA will no longer pursue revision of NSPS Subpart DD. That said, in order to not subject new grain elevators to these burdens, it is critical that EPA:

1) not finalize the proposed amendments to NSPS Subpart DD; and 2) formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule in order to offset the costs of a future rule, as detailed in E.O. 13771 - Reducing Regulations and Controlling Regulatory Costs. Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS, and other outdated NSPS, as part of a larger Regulatory Reform effort.

Jess McCluer, my counterpart at NGFA, briefed Josh Lewis on this issue at the OSDBU stakeholder meeting last month, and requested a meeting. Josh's response was that he is talking to colleagues in the air office and will be in touch soon to discuss next steps.

The coalition will be submitting more detailed comments on this issue to the docket next week, and we are happy to meet with you or the relevant contact person to discuss this issue in more detail.

(As an aside, I was encouraged to hear about EPA's intentions to bring back the Sector Strategies program. I was involved in that effort, and the CAAAC multipollutant sector strategy effort as well, when I was with the American Chemistry Council and found value in both efforts. And I also support EPA educational visits to regulated facilities. I worked with Penny Lassiter in OAQPS to have several of her technical staff accompany me to ethylene production facilities in advance of the RTR efforts.)

Please do not hesitate to contact me if I can be of further assistance.

Best,

Lorraine Gershman

Lorraine Gershman, P.E.

Vice President, Regulatory Affairs

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Duke Energy
Fountaintown Gas Co., Inc.
Indiana Michigan Power
Indiana Natural Gas Corp.
Indianapolis Power & Light Company
Midwest Natural Gas Corp.
Northern Indiana Public Service Co.
Ohio Valley Gas Corp.
South Eastern Indiana Natural Gas Co., Inc.
Sycamore Gas Co.
Vectren Energy Delivery of Indiana, Inc.

THE VOICE FOR INDIANA ENERGY

May 9, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Executive Order 13777, "Enforcing the Regulatory Reform Agenda"

Dear Administrator Pruitt:

In response to Executive Order 13777, "Enforcing the Regulatory Reform Agenda," the Indiana Energy Association ("IEA") hereby submits the following comments on the Cross-State Air Pollution Rule ("CSAPR") Update for the 2008 Ozone NAAQS.

Pursuant to Clean Air Act Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), the IEA previously submitted a Petition for Reconsideration to request that the United States Environmental Protection Agency ("EPA") reconsider and correct certain deficiencies in the final rule entitled *Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 81 Fed. Reg. 74504 (Oct. 26, 2016) ("Final Rule") (EPA–HQ–OAR–2015–0500). Additionally, the CSAPR Update Rule is the subject of litigation (*Wisconsin v. EPA*, No. 16-1406 (D.C. Cir.)), including a petition for judicial review by the Indiana Utility Group ("IUG")/IEA on December 21, 2016. In sum, the IEA believes the ozone season NOx budget for the State of Indiana is insufficient as a result of several deficiencies, which places an undue burden on Indiana utilities.

The IEA has identified a number of deficiencies and concerns with the methodology, assumptions, and technical data EPA used in setting the NOx budget for Indiana. In particular, Indiana lost over 5,000 tons of allocation due to a change in the calculation formula where EPA adopted a "relative reduction" calculation in the final rule. EPA also used a Selective Catalytic Reduction (SCR) unit emissions rate of 0.070 lb/MMBtu for several facilities (Cayuga, Gibson 5, and Petersburg 3) where it should have used either the current emissions rate (representing base case or historic emissions) or a rate of 0.10 lb/MMBtu (for future controlled case).

The IEA hereby requests that EPA reconsider certain technical aspects of the Update Rule that impacts the Indiana NOx budget, including:

- EPA's change to a "relative reduction" methodology adopted in the final rule for calculating the budget that had not been included in the proposed rule;

- EPA's inappropriate adjustments to the "2015 Historic Emissions Rate" for Indiana which result in artificially lowering the starting point for EPA's budget calculation;
- EPA's inconsistent and inappropriate application of the "widely achievable" emissions rate for operation of SCR on existing units; and
- EPA's use of 2015 heat input for Indiana units rather than 2014 as proposed or the highest of a multi-year period.

We greatly appreciate your consideration of this petition. If you have any questions or comments, please do not hesitate to contact me at (317) 607-7791 or trushenberg@indianaenergy.org.

Very Respectfully,

Timothy J. Rushenberg
Vice President

Attachments:
1. *Petition for Administrative Review* of the CSAPR Update Rule, March 1, 2017
2. *Petition for Judicial Review*, December 21, 2016

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May 15, 2017

VIA ELECTRONIC MAIL

Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re.: NOPA's Comments on Evaluation of Existing Regulations (82 Fed. Reg. 17,793)
(Docket ID No. EPA-HA-OA-2017-0190)

Dear Ms. Dravis:

The National Oilseed Processors Association (NOPA) appreciates the opportunity to submit comments on EPA's Evaluation of Existing Regulations (82 Fed. Reg. 17,793, April 13, 2017).

The National Oilseed Processors Association (NOPA) is a national trade association that represents 13 companies engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans. NOPA's member companies process more than 1.8 billion bushels of oilseeds annually at 64 plants located in 20 states throughout the country.

The NAICS code that directly applies to oilseed processing facilities is 311224 – Oilseed processing. NOPA member company facilities range in size from small, family-owned businesses to large multi-national corporations.

NOPA belongs to the New Source Performance Standard (NSPS) DD Coalition, the National Ambient Air Quality Standards (NAAQS) Implementation Coalition (NIC), and the Food Associations Coalition managed by Herbert Estreicher of Keller and Heckman and fully support the comments submitted by those groups to this docket.

Regulatory Burden/Compliance

The ever-changing landscape of regulatory requirements for manufacturing facilities results in more and more resources devoted to compliance, in lieu of investing in new equipment and additional jobs. The list compiled below reflects regulations and policies that have a detrimental impact to the oilseed processing industry.

1) ***EPA's NAAQS/Preconstruction Permitting Process***. One of the biggest concerns with NAAQS is that a new/revised NAAQS is effective almost immediately after finalization, without any accompanying implementation regulations. A facility undergoing permitting may have to restart the entire permitting process in order to accommodate a revised NAAQS that becomes effective before the final permit is issued. The PSD regulations are highly complex and their implementation is largely achieved through ever-changing EPA guidance and policy documents that have not gone through rulemaking. As noted in comments below and in more detail in the comments submitted by the NIC, EPA's Appendix W modeling requirements do not accurately predict emission impacts for all

facilities, and can lead to overly restrictive pollution control requirementsEPA should strive to promptly issue implementation regulations afte r a new NAAQS is finalized in order to provide certainty to the regulated community.

2) ***EPA's NSPS DD (Grain Elevators) Rulemaking***. As noted in the comments submitted by the NSPS DD Coalition, NOPA is a part of a coalition of agribusiness trade associations that have been working on the NSPS DD: Grain Elevators for the last decade. In October 2016, EPA's final NSPS package was sent to OMB for review under EO 12866. The revisions would include n ew emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating emissions from te mporary storage facilities. The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 - the date the proposed amendments were published in the *Federal Register*. This rule package was not finalized by EPA, and on January 24, 2017, the rule was officially withdrawn from OMB. We are uncertain if this rule is going to be resubmitted to OMB for review or if EPA will no longer pursue revision of NSPS Subpart DD. That said, so as to not subject new grain elevators to these burdens, it is critical that EPA: 1) not finalize the proposed amendments to NSPS Subpart DD; and 2) formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS, and other outdated NSPS, as part of a larger Regulatory Reform effort.

3) ***EPA's Startup, Shutdown, and Malfunction (SSM) Policy.*** Beginning with the court decision in Sierra Club v. Johnson, 551 F.3d 1019 (D.C. Cir. 2008) , EPA has required facilities to be in continuous compliance with normal emission and operating limits, without allowing for any deviations due to unforeseen circumstances. If an event occurs that causes the facility to exceed a limit, the facility is at the mercy of the regulatory authority's discretion regarding enforcement for that event. Since this court decision, EPA has rarely allowed for the use of a work practice during the startup and shutdown periods of operation. EPA should look to set work pract ice standards or set alternative emission limits during periods of SSM, as allowed under sections 112(d)(2) and 112(h) of the Clean Air Act (CAA)

4) ***EPA's Risk and Technology Review (RTR) Rules*** . Section 112(f) of t he CAA requires EPA to review National Emission Standards for Hazardous Air Pollutants (NESHAP) rules after eight years toevaluate the remaining risk posed by the regulated facilities, and section 112(d)(6) of the CAA requires EPA to review advances in pollution control technologies. EPA has been slowly conducting these RTR rules over the past decade, and faces many more in the next few years. Despite regularly finding low residual risk from various regulated facilities, EPA has regularly pushed for lower emission limits, requiring the installation of expensive new equipment with limited to no demonstrated benefits. EPA should focus its reviews on ensuring that the NESHAP rules are effective, pose little residual risk, and do not impose additional costs on regulated industry without demonstrated benefits.

5) ***Federal Response Plans (FRP)***. EPA requires facilities that store over one million gallons of oil to prepare a Federal Resp onse Plan . For the oilseed processing industry, this requirement also applies to vegetable oil, which is one of the primary products of our business. A FRP is required even if the facility has adequate secondary containment for their oil tanks. The FRP req uires that regulated facilities have a contract with an oil spill response organization (OSRO) to provide emergency response if needed. Often, this contract requires a retainer be paid to the OSRO based on the amount of oil that the facility

stores. Because these facilities generally have adequate containment, the OSRO's services is rarely needed. In order to provide a timely response to a spill, facilities may be required to buy and maintain a boat to deploy spill -containing booms on a water body. Facilities with a FRP are also required to hold periodic costly drills. Finally, FRPs duplicate requirements in the Spill Prevention Control and Countermeasure (SPCC) plans – in particular, the Emergency Response Action Plan (ERAP). EPA should look to remove duplicative requirements that add burden to regulated facilities. One way for EPA to minimize the burden on vegetable oil producers is to exclude vegetable oil from the definition of "oil" in the FRP, and instead require vegetable oil producers to prepare only SPCC plans.

6) ***TSCA Reporting Requirements.*** The Toxic Substances Control Act (TSCA) requires facilities to regularly report the manufacture or use of chemicals in commerce. This requirement also applies to food products that are used for non-food uses. Although these substances are regulated by FDA for human consumption, if the same substance is used for a non-food use, information about its end use, production volumes, and other information is required to be reported. As requested in the the Food Associations' comments, EPA should eliminate the TSCA CDR reporting requirements for food substances already regulated by FDA.

7) ***Regional Consistency Requirements***. On August 3, 2016, EPA finalized revisions to its Regional Consistency regulations to more clearly address the implications of adverse federal court decisions that result from challenges to locally or regionally applicable actions. These revisions introduced a narrow procedural exception under which an EPA Regional office no longer needs to seek Headquarters concurrence to diverge from national policy in geographic areas covered by such an adverse court decision. EPA claimed that the revisions will help to foster overall fairness and predictability regarding the scope and impact of judicial decisions under the Clean Air Act, but in fact, it provides little regulatory certainty to companies that have operations in multiple EPA regions. EPA should reconsider this regulation.

8) ***EPA Electronic Reporting Requirements.*** In many new rules, EPA has begun requiring facilities to submit testing data electronically, such as through CEDRI. The goal of these rules is to reduce the paperwork burden; however, this has not yet been accomplished. For many of these rules, the states also need to obtain the test data, and not all states have access to EPA's database. In some cases, EPA requires the submittal of data before the testing companies can reformat their results to comply with EPA's rule, or EPA's database is not yet ready to accept testing data. EPA should work to ensure that all states have access to the same facility data to reduce duplication of effort for the regulated parties, and that the electronic databases and submittal portals are extensively tested before use.

9) ***Rulemaking through guidance.*** EPA has frequently issued guidance documents that served as de facto regulations, but these documents never underwent public notice and comment. Many are not even considered final agency actions and therefore can't be challenged. One such example is the 1990 New Source Review Draft Guidance. Even though this document is 27 years old and was never finalized, it still serves as the basis for many NSR permitting decisions. All federal Agencies should follow the proper notice and comment procedures to ensure that the regulations are being interpreted and applied consistently.

Manufacturing Permitting Process

New oilseed processing facilities undergo a lengthy and detailed environmental permitting process. This permitting process is filled with many challenges that can derail a project, including uncertainty in schedule for obtaining a final permit, the requirement to model emissions using programs that cannot account for site-specific inputs, and public input and challenges. Once a project hits a roadblock or is substantially delayed, the project may be scrapped and the accompanying jobs and growth would disappear.

A new or modified oilseed processing facility may need to obtain a preconstruction (Prevention of Significant Deterioration (PSD)/ Nonattainment New Source Review (NNSR)) air permit, a National Pollution Discharge Elimination System (NPDES) wastewater permit, an Army Corps wetlands permit, a state building permit, a state groundwater withdrawal permit, as well as develop numerous plans, including facility response/Spill Prevention Control and Countermeasure (SPCC), Process Safety Management (PSM)/Risk Management Plan (RMP), and Food Safety Modernization Act (FSMA). Furthermore, these facilities may also need to undergo the following reviews: Wetlands Assessments and Surveys, Threatened and Endangered Species and Habitat Assessments and Surveys, Floodplain Assessments and Surveys, Cultural Resources Assessments and Surveys, U.S. Army Corps of Engineers Clearances, and Section 401 State Water Quality Certifications. Once the preconstruction reviews and permits are secured, these facilities then need to obtain operating permits.

A large majority of these permits are regulated under EPA.For most environmental permits, the states have the authority to issue permits, with an EPA review often required. Such permits require dedicated permit staff in each state that are familiar with permitting requirements and facility operations.

For the past few years, states have struggled to balance their budgets, and permit writers have often been eliminated as part of budget cuts, losing experience and knowledge of the applicability of the rules and the industries under permit. At the same time, many states have been trying to welcome new manufacturing facilities and new jobs, resulting in a permit backlog that has not yet been resolved. Facilities will not be built unless permits can be issued in a timely manner.

Typically, the most onerous regulatory review/permitting program for oilseed processing facilities has involved air permitting. Over the past seven years, EPA has tightened several ambient air quality standards while increasing its reliance on modeling to demonstrate attainment and project impacts. For example, in 2010 EPA finalized a one-hour NO_X standard, only to later discover that models are predicting exceedances where monitors demonstrate attainment. At the same time, EPA has been slow to issue guidance to the state permitting agencies and has failed to highlight flexibility states have in drafting permits. As such, many permits have gotten bogged down, lengthening the timeline to permit issuance and increasing the permit backlog at the states.

Some specific examples of technical issues that recent industrial projects have encountered include:

- There is no formal mechanism for the States or the regulated community to implement any changes in the model or methods via EPA guidance or 40 CFR 51 Appendix W. Without changes to the model or methods, states are wed to using the current suite of modeling tools which frequently do not account for site-specific conditions and overestimate projected impacts. An overestimate of projected emission impacts may result in a facility having to install costly, unneeded control technology or a project not moving forward at all.
- Currently approved modeling programs do not adequately represent all facility scenarios. When modeling is compared to actual monitoring data, the model proves to be overly conservative. By having overly conservative models, some facilities have not been able to

demonstrate attainment with the current standards and have been forced to abandon new projects.

- Finally, in many cases EPA has failed to provide direction to the states which are responsible for permitting industrial facilities. Without guidance from EPA, many states are struggling to determine what is acceptable to EPA, and may resist innovative and flexible approaches. The result is that projects may be scrapped,along with any new jobs that would have accompanied the project.

Recently, several NOPA members have announced new facilities or expansion of existing facilities, and have undergone the permitting process. One of the most trying aspects of the permit process is the never-ending uncertainty in the process itself. Any minor comment or correction may result in another full review of the permit application. Each delay in the permit process might result in a changed limit or guidance that must now be addressed in the permit. This would include a new NAAQS, or a ratcheting down of a storm water benchmark. A final permit is rarely final until all appeals are exhausted.

In conclusion, NOPA appreciates this Administration's efforts to relieve some of the regulatory burdens faced by the oilseed processing industry. Thank you in advance for your consideration of NOPA's comments. If you have any questions, or will like to further discuss our comments, please contact me at lgershman@nopa.org or 202-864-4368.

Sincerely,

Lorraine Krupa Gershman, P.E.
Vice President, Regulatory Affairs

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Thur 7/6/2017 10:43:56 PM
Subject: TTMA Comment
TTMA Comment.pdf

Please see attached.

Will Lovell

Policy Assistant, Office of Policy

U.S. Environmental Protection Agency

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Lovell.William@epa.gov

TTMA
TRUCK TRAILER Manufacturers Association
TTMAnet.org Since 1941

Jeffrey M. Sims • President
7001 Heritage Village Plaza • Suite 220 • Gainesville, VA 20155 • 703-549-3010

April 13, 2017

Samantha K. Dravis,
Regulatory Reform Officer and Associate Administrator
Environmental Protection Agency, Office of Policy
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Request for Comment: EPA-HQ-OA-2017; FRL-9961-60-OP

Dear Ms. Dravis:

I am writing in response to your Request for Comment published in the Federal Register today seeking input on regulations that are appropriate for repeal, replacement or modification in accordance with the mandates set forth in Executive Order 13777, "Enforcing the Regulatory Reform Agenda," issued on March 28, 2017.

The Truck Trailer Manufacturers Association submits the enclosed copy of a letter previously sent to EPA Administrator Scott Pruitt and US DOT Secretary Elaine L. Chao requesting that they review, reconsider and begin a process to rescind the heavy-duty trailer provisions contained in "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2," 81 Fed. Reg. 73,478 (Oct. 25, 2016). We again ask to meet with EPA representatives at your earliest convenience to address this matter, which is urgent for our members, their employees and customers.

Thank you for your consideration of our request.

Sincerely,

Jeff Sims

Jeff Sims, President

TTMA
TRUCK TRAILER Manufacturers Association
TTMAnet.org Since 1941

Jeffrey M. Sims • President
7001 Heritage Village Plaza • Suite 220 • Gainesville, VA 20155 • 703-549-3010

April 3, 2017

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

Elaine L. Chao, Secretary
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Request to Reconsider and Stay Phase 2 GHG and Fuel Efficiency Standards for Truck Trailers

Dear Administrator Pruitt and Secretary Chao:

I am writing to request your immediate intervention to resolve a pending petition filed by the Truck Trailer Manufacturers Association (TTMA) in the US Court of Appeals for the District of Columbia Circuit to review the greenhouse gas fuel economy standards for heavy-duty truck trailers. TTMA's members manufacture nearly all of the heavy-duty truck trailers sold and operated in the United States. We represent over 70 trailer manufacturers with offices and plants located in over 33 states. Most of these manufacturing companies are closely-held, family-owned businesses. Our members' customers comprise cargo shippers and motor carrier fleets, large and small, as well as independent owner-operators, who together move nearly all of the nation's commercial truck freight.

The new greenhouse gas standards unlawfully treat trailers as "motor vehicles" and unwisely mandate installation of aerodynamic equipment on the vast majority of trailers, regardless of actual use. Because the industry already installs this equipment in those uses where it saves fuel, the standards will substantially burden the motor carrier industry and produce little or no additional greenhouse gas or fuel economy gain. Moreover, we believe that the President's March 28, 2017 Executive Order requiring review and, as appropriate, suspension, revision or rescission of actions arising from President Obama's June 2013 Climate Action plan directly applies to these standards. We therefore ask that EPA and NHTSA review, reconsider and begin a process to rescind these standards. We further ask EPA and NHTSA to take steps to suspend or stay the effectiveness of the standards in the interim, due to the burden of imminent steps that trailer manufacturers otherwise must take to comply. We ask to meet with you or your designees at your earliest convenience to address this matter, which is urgent for our members, their employees and customers.

* * *

1. *The Standards*. On October 25, 2016, EPA and NHTSA promulgated "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2" (GHGP2), which the agencies expressly described as having been "called for" in the 2013 Climate Action Plan. 81 Fed. Reg. 73,478, 73,480 (Oct. 25, 2016). Beginning with 2018 trailer production, the new GHGP2 standards will mandate installation of side skirts, trailer tails, low-rolling resistance tires and tire monitoring/inflation systems on most trailers manufactured and sold in the United States by TTMA's members. Trailer manufacturers must install and sell this equipment even if the trucking operations of their customers will not achieve any fuel economy benefits (such as circumstances in which the trailers will not be hauled over long distances at highway speeds sufficient to produce any benefits).

2. *Petition for Review and Deficiencies in Rule*. On December 22, 2016, TTMA petitioned for review of the trailer standards in the United States Court of Appeals for the District of Columbia Circuit (Case No. 16-1430). TTMA intends to raise several objections to the rule:

The agencies lack statutory authority. EPA's authority under the Clean Air Act to set standards for mobile sources is limited to engines and "motor vehicles," defined in the statute to mean "self-propelled vehicle[s] designed for transporting persons or property on a street or highway." 42 U.S.C. § 7550(2). Trailers are not self-propelled. Trailers are not equipped with engines that provide the power needed to transport cargo and thereby consume fuel or cause air emissions. EPA's contention that trailers are part of the motor vehicle tractor-trailer combination makes no sense. Tractors and trailers are manufactured and sold separately by different sets of manufacturers to customer populations that are not the same; a single trailer is likely to be hauled by multiple tractors during its lifetime and, conversely, a single tractor is likely to haul multiple trailers. Moreover, in the nearly fifty years since EPA has been regulating emissions from heavy-duty engines and trucks, it has never treated the trailer as part of a truck so as to fall within the definition of "motor vehicle," and there is no evidence Congress ever intended such a result. Likewise, NHTSA lacks statutory authority. Its governing authority for fuel economy standards, the Energy Independence and Security Act (EISA), also does not define heavy-duty "vehicle" to include a trailer. In the rulemaking, NHTSA has erroneously relied instead on definitions in the Motor Vehicle Safety Act, which separately authorizes NHTSA to adopt safety regulations but does not address fuel efficiency or emissions of any kind. *See* 49 U.S.C. § 30101.

The standards are arbitrary and capricious. The GHGP2 standards for trailers, if implemented, will do little to reduce greenhouse gas emissions or improve fuel economy. TTMA members and the trucking industry already participate extensively in EPA's voluntary Smartway program to develop and incorporate aerodynamic equipment in trailers where there are benefits from doing so. This is particularly true for trailers hauled regularly over long distances at highway speeds, where aerodynamic efficiency makes a measurable difference. But aerodynamic devices such as side skirts and trailer tails also add significant weight to trailers and thus are counterproductive in multiple short-run operations and at lower speeds (where most of the trailers' moving time occurs). In lower speed operations, aerodynamic efficiency is not achieved and the equipment is only counter-productive dead weight. EPA and NHTSA erroneously assumed in the rulemaking that tractor-trailers, on average, operate near highway speeds most of the time. Moreover, heavy-duty trucks are subject to an 80,000-pound maximum combined weight limit for tractor, trailer and cargo. Because the GHGP2 rule will mandate aerodynamic equipment on trailers, trucking companies who already haul loads that are at or near this limit in order to maximize efficiency will have to reduce the cargo in each load and haul the excess on additional trailers. The result will be more (and heavier) tractor-trailers on the nation's highways to haul the same total amount of freight. In addition to the costs of the aerodynamic equipment, this will add more trucks burning more fuel with more emissions, especially in low-speed service for which the additional equipment has no material benefits. It will also result in more accidents and more injuries and fatalities involving tractor-

trailers, which is contrary to NHTSA's primary mission under the Motor Vehicle Safety Act. 81 Fed Reg. at 73,642.

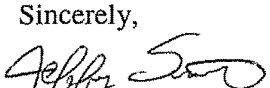
3. *The Executive Order Requires Review, Reconsideration and Rescission*. Section 3(d) of President Trump's March 28, 2017 Executive Order mandates that all agencies review and identify actions that are related to or arose from President Obama's June 2013 Climate Action Plan. As noted above, the GHGP2 rule, including the trailer standards, are clearly within the scope of this Order. The Order further directs that each agency shall, as soon as practicable, publish for notice and comment proposed rules suspending, revising, or rescinding any such actions, as appropriate and consistent with law and the policies stated in Section 1 of the Order. The Order states in its very first sentence as policy to avoid regulatory burdens that unnecessarily constrain economic growth and prevent job creation. Section 1 goes on to elaborate as policy that environmental regulations must comply with the law, have greater benefits than costs, and rely on the best available peer-reviewed science and economics. For the reasons described above, the trailer requirements in the GHGP2 rule conflict with these policies.

Furthermore, we note that in seeking to justify the costs as outweighing the benefits of the GHGP2 rule, EPA relied on the Obama Administration's "social cost of carbon." *See* 81 Fed. Reg. at 73,875 (explaining that the agencies "estimate the global social benefits of CO_2 emission reductions expected from the heavy-duty GHG and fuel efficiency standards using the social cost of carbon"). The March 28 Executive Order directed that the prior Administration's social cost of carbon analyses be withdrawn, and that, effective immediately, agencies shall ensure that estimates used in valuing the GHG impacts of regulations be consistent with OMB Circular A-4 (Sept. 17, 2003). The Order specifically directed that this include the approach to considering domestic versus international impacts and the consideration of the appropriate discount rates. Accordingly, the Order directs a new approach, effective immediately, that is different from and in conflict with the approach EPA used to justify the GHGP2 standards, which the Order makes clear is "no longer representative of government policy." Not only does this constitute a further policy reason to revisit the trailer requirements, but it constitutes centrally relevant new information warranting reconsideration of the rule under Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B).

4. *EPA Action is Urgent to Avoid Substantial Economic Impacts*. As anticipated in the directive of Section 3(d) of the Executive Order that the agencies take action "as soon as practicable," this matter is of great time sensitivity to TTMA's members. Although the GHGP2 standards apply to trailers manufactured after January 1, 2018, the standards will have costly impacts on trailer manufacturers in the latter half of 2017. The manufacturers will soon have to quote and commit in advance to trailer orders for production in 2018, and they will soon begin incurring substantial expenditures for parts inventory and for reconfiguring manufacturing plants and assembly lines to enable installation of the required devices. These are, in many cases, small- to medium-sized businesses throughout the country who can ill afford the unnecessary burdens of these standards, which will impact them, their employees, customers and the economy at large.

TTMA would like to meet with you or your designees to seek an immediate path to reconsideration of the GHGP2 trailer requirements and an approach to stay the effectiveness of the rule in the interim to avoid the burden and disruption of imminent steps to comply. We very much appreciate your attention to this important matter and your consideration of our requests on an expedited basis.

Sincerely,



Jeff Sims, President

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Larson, Katie
Sent: Mon 7/10/2017 2:51:40 PM
Subject: Steel and NSR- follow up
SSAB Americas_RFI Response.EPA_2017_0190.pdf
SSAB Americas Wins AMM Award 2017 FINAL.pdf

Good morning Ms. Bolen-

Thank you for the time you and Daisy shared with the steel industry on June 29th. Particularly during this incredibly busy period for the Agency, you were generous with your time and showed a true understanding of our industry and the challenges we face.

As we shared in the meeting, SSAB Americas is encouraged that Secretary Pruitt is interested in revisiting NSR reform. I hope that you'll consider SSAB a resource as you develop the NSR Task Force. We have terrific experts at our plants in Iowa and Alabama who would be willing to answer any questions and share their experience with your staff.

Attached are SSAB's comments submitted during the public comment period. I thought you might also be interested in the Steel Industry Environmental Responsibility and Stewardship award we received last week.

All the best

Katie

Katie McCall Larson

Director, Government Relations

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SSAB is a Nordic and US-based steel company. SSAB offers value added products and services developed in close cooperation with its customers to create a stronger, lighter and more sustainable world. SSAB has employees in over 50 countries. SSAB has production facilities in Sweden, Finland and the US. SSAB is listed on the NASDAQ OMX Nordic Exchange in Stockholm and has a secondary listing on the NASDAQ OMX in Helsinki. www.ssab.com.

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SSAB

SSAB Americas Again Wins Prestigious Steel Industry Award for Environmental Excellence

New York, New York (June 28, 2017) – On June 27, North American steelmaker SSAB Americas beat out steel industry competitors to win a 2017 American Metal Market (AMM) Award for Steel Excellence for Environmental Responsibility/Stewardship. This is the second time SSAB Americas has won the award; the company also earned it in 2015.

The AMM Awards for Steel Excellence, now in their eighth year, honor world-class companies in and in support of the global steel industry. More than 60 finalists in 17 categories were drawn from the largest, most-competitive pool of applicants ever nominated, and winners were chosen by a prestigious panel of judges.

SSAB Americas earned the Environmental Responsibility award for its achievements in operating as good stewards for the environment. The company's nomination focused on key projects related to environmental responsibility, most notably, the company's launch of EcoSmart in 2016. EcoSmart is a customer awareness program aimed at touting SSAB Americas' current and ongoing commitment to making planet-friendly products using a planet-friendly process – a process which results in more than 60 percent fewer CO2 emissions than the North American steel industry average. SSAB's environmental initiatives also have resulted in reduced waste, greater energy efficiency and enhanced recycling efforts.

Jon Howley, Director, Environment for SSAB Americas, accepted the honor at the awards dinner. "With this award, we have shown that environmental sustainability is at the core of what we do at SSAB," said Howley. "We continuously strive to make the least impact possible to our environment, to help create a better world for tomorrow. We are honored that our efforts are being recognized in the industry and beyond."

SSAB Americas President Chuck Schmitt expressed great pride in the work of the organization. "This award solidifies our standing in the North American steel industry," Schmitt said. "We owe great thanks to our loyal employees, valued customers and other partners who have helped SSAB become a market leader in North America."

SSAB Americas produces steel plate and coil in the US at mills in Montpelier, Iowa and Mobile, Alabama, with offices and support facilities also located Chicago, Toronto, Houston and St. Paul. SSAB Americas' steel is used to build heavy machinery, ships, bridges, wind towers, rail cars and more. SSAB Americas is a division of Nordic-based global steelmaker SSAB.

SSAB Americas was also a finalist for the Steel Producer of the Year award. The June 27 awards dinner was attended by more than 250 steel industry leaders from around the world at the Edison Ballroom in midtown Manhattan.

-#####-

SSAB
SSAB is a Nordic and US-based steel company. SSAB offers value added products and services developed in close cooperation with its customers to create a stronger, lighter and more sustainable world. SSAB has employees in over 50 countries. SSAB has production facilities in Sweden, Finland and the US. SSAB is listed on Nasdaq Stockholm and has a secondary listing on Nasdaq Helsinki. www.ssab.com.

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SSAB

May 12, 2017

Ms. Samantha K. Dravis,
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Mail Code 1803A
Washington, DC 20460

Re: Response to Environmental Protection Agency's Request for Comment on the Evaluation of Existing Regulations (Docket ID No. EPA-HQ-OA-2017-0190)

Dear Ms. Dravis,

The following are the comments of SSAB Enterprises, LLC to USEPA's Request for Comment on Evaluation of Existing Regulations which request was published at 82 Fed. Reg. 17793 on April 13, 2017. USEPA is seeking comments on regulations that may be appropriate for repeal, replacement or modification, in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

SSAB is a highly-specialized global steel company with four (4) manufacturing facilities in the United States. SSAB's US facilities make advanced high-strength steels and quench-and-tempered steels, strip, plate and coil. SSAB is on the leading edge of making steel products lighter, stronger and with a longer lifespan. SSAB's steel plants in the US have a permitted steel production capacity of 3,950,000 tons annually.

Because SSAB is a global company, with steelmaking operations worldwide, it is uniquely qualified to comment upon US environmental regulations which restrict growth and inhibit jobs in the US. SSAB appreciates the opportunities provided by Executive Order 13777, and the Request for Comment on the Administration's Regulatory Reform Agenda. The company's comments are as follows:

I. **Streamline Air Permitting.** Current regulatory programs for permitting air sources in the US meet all of the factors USEPA is considering as a basis for regulatory reform, i.e., they are unduly burdensome, outdated, unnecessary and impose costs that exceed environmental benefit. It is SSAB's position that USEPA should streamline air permitting for modifications proposed or completed at existing facilities in order to facilitate and stimulate productivity increases, innovation and efficiency in US manufacturing operations in general and steel manufacturing in particular. This reform effort is necessary because the current New Source Review ("NSR") procedures that must be followed for an existing facility to make modifications are too cumbersome, time-consuming and have the unintended consequence of actually forcing decreases in production as facilities increase efficiencies in fuel, energy and raw material usage. This, in turn, inhibits job creation. The loss of productivity, and costly, time-consuming permitting efforts associated with the current NSR process, are without any real benefit to the environment as has been recognized by USEPA.

To address concerns that the NSR process was counterproductive to industry, in 2002 USEPA began a series of NSR Reforms to change NSR applicability requirements to *"...allow sources more*

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flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies." (67 Fed. Reg. 80186, December 31, 2002). Many of the reforms, however, were "stayed" or withdrawn as a result of court rulings, and were never further pursued by USEPA. SSAB recommends the reforms be reconstituted and addressed anew.

NSR Reform. To remove the limitations on production and efficiency at manufacturing facilities that are inherent in the existing NSR process, USEPA and state permitting authorities should reform the parts of the NSR process which are outdated and impose costs and delays in expansion to the industry without commensurate benefits to the environment. The reforms will not need to "start from scratch" because many of the NSR Reforms advocated by SSAB were previously adopted by USEPA in 2002, 2003, 2004 and 2005 (although were "stayed" or withdrawn as a result of later court rulings). We believe it is time to reconsider and re-enact certain portions of the previously adopted reforms, specifically the following:

Routine Maintenance Repair and Replacement ("RMRR") Reforms. USEPA should codify the NSR reforms to RMRR requirements previously adopted in a Final Rule at 68 Fed. Reg. 61248 et. seq. (October 27, 2003).[1] SSAB believes the time is ripe to revisit and reinstitute certain portions of the RMRR provisions from 2003, and should additionally identify specific activities at specific industries that should be considered presumptively to constitute RMRR.

Background. The NSR rules provide that certain physical and operational changes at a plant do not constitute "Major Modifications" and thus do not need to undergo the burdensome NSR process. One of the categories of exempt activities includes those activities which are considered "Routine Maintenance, Repair and Replacement" or "RMRR." USEPA applies the RMRR exclusion primarily on a case-by-case basis, using a multi-factor test for determining whether a particular change falls within or outside the exclusion.

USEPA makes determinations as to whether a proposed change meets the RMRR exemption based on an analysis of several different time-consuming, expensive and legally risky options available to facilities in making RMRR arguments: (i) in advance of a facility submitting a construction permit a company can request a formal applicability determination (which generally takes a minimum of three months); (ii) an RMRR argument for exemption can be made as part of the construction permitting process, which also can take several months; (iii) a facility can proceed "at risk" without prior regulatory approval and with potentially serious enforcement consequences; (iv) a facility can forego or curtail replacements and proceed with older, less efficient equipment; or (v) a plant can forego installing state-of-the-art equipment or forego efficiency projects.

[1] It should be noted that although adopted in October 2003, on July 1, 2004 the Equipment Replacement Provisions of the RMRR were "Stayed" at 69 Fed. Reg. 40274 as a result of Judicial Order, the effect of which was to have the RMRR rules reverted to how they existed prior to October 2003.

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In the October 27, 2003 Rulemaking reforming the RMRR rules, USEPA stated that the then-current RMRR exemptions from NSR (which remain in place today) need to be changed not only because of the costs and legal risks, but also because the approach:

> *" …results in lost capacity and lost opportunities to improve energy efficiency and reduce air pollution." But also because the RMRR case-by-case process requires permitting authorities "…to devote scarce resources to make complex determinations, including applicability determinations, and consult with other agencies to ensure that any determinations are consistent with determinations made for similar circumstances in other jurisdictions."*

USEPA goes on to say of the currently-existing NSR process:

> *"…the effect is to discourage plant owners or operators from engaging in replacements that are important to restoring, maintaining and improving plant safety, reliability and efficiency...this effect is exacerbated by…the uncertainties inherent in the case-by case approach." (69 Fed Reg. 61250).*

SSAB Recommendation. The RMRR changes previously adopted in the 2003 Final Rule (known commonly as the "Equipment Replacement Provisions" or "ERP"), which provisions SSAB is advocating be adopted anew, should exclude from the definition of "Modification," projects which replace existing, permitted equipment or components thereof with like-kind or functionally equivalent equipment, provided the replacement components or equipment that do not alter the basic design of the process unit, and would not result in an exceedance of the permit limits.

SSAB Further Recommendation. To provide further clarity for the industry in the RMRR exemption, SSAB suggests that USEPA codify, or publish formally as guidance, a list of modifications common to specific industries (for example, electric arc furnace ("EAF") steelmaking) which would be considered presumptively to be RMRR (e.g., replacement of furnace shells, oxy-fuel burners, oxygen lances, tundish pre-heaters, tundish burners, transformers, capacitors, regulators, lime or carbon injection equipment and other equipment that is commonly and routinely replaced in the industry as part of normal, continual maintenance activities).

Pollution Control Projects. USEPA should re-adopt a version of the previously adopted NSR Reforms that would automatically exclude from the definition of "Modification" Pollution Control Projects ("PCPs") that result in net overall reductions of air pollutants, involve upgraded or rebuilt pollution control equipment or devices, or allow raw material/fuel substitutions that do not result in exceedances of permit limits.

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Background. The December 31, 2002 rulemaking provided that installation of PCPs at existing facilities are not "Modifications" and should be exempt from New Source Review. The rulemaking listed specific technologies that the Agency believed should be presumptively considered to be PCPs, but further provided that PCPs not listed could nevertheless qualify for the PCP exclusion if the permitting authority determined on a case-by-case basis the non-listed PCP was environmentally beneficial, and provided that PCPs entitled to the exemption could include in addition to equipment and technology, work practices, process changes or other pollution prevention strategies.

As justification for the exemption USEPA stated: *"The PCP Exclusion allows sources to install emissions controls that are known to be environmentally beneficial. These provisions thus offer flexibility while improving air quality."* (67 Fed. Reg. 80190).

SSAB Recommendation. SSAB recommends that USEPA adopt anew a form of PCP exclusion from the definition of "Modification." To further clarify the PCP exclusion for specific industries, SSAB recommends that USEPA publish a list of technologies, work practices and strategies that could be used in particular industries to help determine which technologies and practices would be considered "presumptively eligible" for the PCP exclusion.

Plantwide Applicability Determinations. USEPA should promote and facilitate the NSR reforms published in the December 31, 2002 Final Rule (67 Fed. Reg. 80186 et. seq.) under 40 CFR Section 51.165(a)(1)(v)(D) which provides to industry a voluntary option that a facility through a permitting process, is able to establish Plant-Wide Applicability Limitations ("PALs") (basically emissions limits that apply facility-wide) allowing such facility broad flexibility to change, modify and upgrade equipment and operations and add/or replace equipment *without triggering major NSR review*, provided the changes do not result in exceeding the established PAL emissions limits. According to USEPA: *"We believe that the added flexibility provided under a PAL will facilitate your ability to respond rapidly to changing market conditions while enhancing the environmental protection afforded under the program."* (67 Fed. Reg. 80189, December 31, 2002). SSAB believes USEPA's conclusion remains true today, however, SSAB notes that PALs are not widely used in industry because of the significant permitting burdens and delays (often many years) in the Title V permitting process. USEPA should remove the time impediments to the use of PALs by speeding up the Title V review process if it involves PALs, or creating a separate process for permitting PALs.

Background. Central to the PAL concept is that under 40 CFR Section 51.165(a)(1)(v)(D), the term "Major Modification" does **not** include physical or operational changes at a plant that do not result in an exceedance of the PAL. (See, 67 Fed Reg. 80245).

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Once a PAL is established in a permit in accordance with the PAL permitting provisions (as set forth in the Final Rule under 40 CFR Section 51.165(f), (see 67 Fed Reg. 80255)) the facility may make changes (including both physical changes as well as changes in operating methods) without the need to undergo NSR, provided the changes, if any, to overall plant-wide emissions do not increase above the PAL emissions limits set forth in the facility permit.

SSAB Recommendation with respect to PALs. The implementation and use of PALs are recognized by USEPA, the states and industry as being very difficult because they generally include modifications to Title V permits, long recognized as time-consuming to accomplish and, thus, creating a disincentive to their use. SSAB recommends the Agency minimize the time burdens of establishing PALs so that industry would be allowed to make changes to equipment and processes more quickly than under the existing burdensome NSR process, allowing EAFs and other facilities to have flexibility to respond to market conditions and make the US industry more competitive in the global marketplace. With a PAL, EAFs would, *without increasing emissions above the levels already deemed acceptable by the permitting authority in the PAL permit,* be able to invest in equipment and technologies without the legal risks and delays inherent in the existing NSR process.

Other Air Permitting Streamlining Changes:

In addition to the specific NSR regulatory reforms identified above, the company suggests other changes to USEPA policy on modifications at US manufacturing facilities.

Because the current PSD/NSR BACT review processes are unduly burdensome and time consuming for both permittees and the reviewing authority, those procedures should be changed to reduce the economic burdens and time delays associated with BACT technology review in the permitting process. Specifically, SSAB suggests the following:

BACT controls and limits considered during, and required under PSD/NSR, should be based **only** on existing proven technologies and limits clearly demonstrated as being effective at reducing emissions at facilities located in the United States. That is, the PSD/BACT technology evaluation should not include unproven technologies employed in other countries which have not been effectively demonstrated in the United States. Requiring US facilities to conduct technology reviews and costly feasibility analyses of technologies utilized in countries that do not have the rigorous air pollution control and permitting requirements as in the US, places unreasonable permitting demands and delays on the US permitting process.

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For the same reasons as above, the only control technologies or limits required to be considered under PSD/NSR/BACT must have been previously performance tested at a US facility to show verifiable decreases in emissions over past actual emissions rates. Facilities seeking construction permits should not be required to evaluate technologies that are not already proven in the US to reduce emissions.

II. USEPA should update the new Source Performance Standards ("NSPS") applicable to steel manufacturing facilities under 40 CFR Part 60 Subpart AAa. Updates should include the following:

Opacity Limit Under the NSPS Subpart AAa 40 CFR Section 60.272a(a)(2) and (3). The 3% Opacity Limit for emissions from a control device as well as the 6% limit that applies to the melt shop to which the control device is attached should be changed to 10%. The changes are appropriate because both of these limits were admitted by USEPA to have been somewhat arbitrary at the time established, and because of the practical limitations of reading a 3% or 6% opacity using USEPA-approved Method 9 methodology (recognized as having a ±5% margin of error). Because the method has a high margin of error given the limit, the limit should be raised to accommodate the margin of error in the method.

Similarly, the use of a continuous opacity monitor (COM) as allowed under 40 CFR Part 60.273a (c) has a 10% margin of error in relation to the 3% and 6% limits, thus often creating errors and misreadings of opacity, without any environmental benefit (The COMs has been identified by ASTM D6216-98 to be accurate only to the level of 10% opacity). Again, because the method has a high margin of error relative to the limit, the limit should be raised to accommodate the margin of error in the method.

III. USEPA must make revisions to its Next Generation Enforcement policy to eliminate patently unfair and unduly burdensome enforcement strategies employed in recent years.

1. USEPA's current policy of forcing control technology and emissions limits (as injunctive relief and mitigation) in consent decrees reached as a result of enforcement (rather than public-notice-and-comment rulemaking) creates significant disparities in the treatment of facilities and, in particular EAF steelmaking facilities, across the nation. Most importantly, the enforcement strategy forces a small subset of facilities to bear the burdens of evaluating technologies that USEPA should be proposing through notice-and-comment rulemaking, or the permitting process. The enforcement burden on the targeted facilities can be extremely expensive, disruptive to business and often forces the inclusion of production limits, resulting in a significant economic disadvantage for the target plant, compared to its competitors, with the additional corresponding burden and stigma of legal defense and enforcement.

2. USEPA should not be able to utilize results from a post-construction performance test in any enforcement case seeking penalties or injunctive relief, provided the USEPA- approved and

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permitted BACT technology that was installed with good faith pre-operational estimates of emissions. It is patently unfair for USEPA to review and approve in a construction permit, technology-forcing BACT controls, only to file an enforcement action against a facility if the controls do not meet the emissions reductions anticipated and permitted by the facility and USEPA.

SSAB suggests that rather than pursue an enforcement action for penalties in the event USEPA-approved, permitted and installed BACT controls do not meet expected reductions, the Agency should pursue a policy of modifying the construction permit based on the results of the performance testing. For emissions limits to be established as part of a BACT process, USEPA should adopt a "test-and-set" process which establishes limits post-construction, rather than establishing emissions limits in advance of a performance test, and then punishing a facility if it cannot meet the limits set in the construction permit.

3. With respect to EAF steelmaking, USEPA should not, through injunctive relief or mitigation as part of an enforcement action, require any EAF facility to demonstrate compliance with **limits on fugitive emissions** from a meltshop or control device <u>if such limits are not specifically set forth in the NSPS</u>. That is, unless and until USEPA changes the NSPS AA and AAa standards to specifically include fugitive emissions numeric limits, it cannot force, through language in consent decrees as a result of enforcement, emissions limits that were not adopted in NSPS rulemaking. Currently the NSPS does not have specific numerical particulate matter fugitive emissions limits, but rather sets opacity limits to ensure fugitive emissions are properly controlled. USEPA is currently involved in a series of enforcement actions against EAFs in Region 5 and has stated publicly that it does not like the long-established NSPS standards, and thus, rather than changing the standards through public notice and comment rulemakings, USEPA is using the enforcement process to require Region 5 facilities to measure fugitive emissions in a manner in lieu of, and far beyond the NSPS-established opacity standards. This selective enforcement, in a single Region, creates significant disparity in the applicability of the NSPS across the country, and leads to inconsistent and variable enforcement across regions.

4. Similarly, USEPA should not, through injunctive relief or mitigation as part of enforcement action, require a facility to use a monitoring technology other than the USEPA-approved monitoring method(s) set forth in the NSPS, to evaluate compliance with the standards. Again, with respect to EAF steelmaking, USEPA Region 5 is currently engaged in an enforcement strategy against EAF facilities and other industries in the Region seeking to have those facilities install processes and technologies that are not set forth in the NSPS standards. This puts facilities in the Region at a legal and economic disadvantage relative to facilities in other locations.

   If USEPA wants to change the NSPS requirements to further control fugitive particulate emissions, it should do it by public-notice-and-comment rulemaking to the NSPS, rather than by selective enforcement which creates disparities within an industry and sidesteps the established rulemaking process.

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IV. Electric Arc Furnace Dust (K061) should be delisted as a hazardous waste.

1. The de-listing of Electric Arc Furnace Dust (K061) generated during EAF steelmaking would allow for new, potentially significant opportunities for recycling and reuse of this waste stream without negative impacts on the environment. EAF Baghouse Dust would still be subject to being classified as a waste if it is determined by analysis to be a characteristic hazardous waste. While SSAB and most EAFs manage EAF Baghouse Dust utilizing permitted recycling processes, it is believed if the waste was de-listed, recycling markets would quickly develop for this large-volume waste stream. The development of additional uses for and recycling strategies for non-hazardous EAF dust will eliminate significant annual costs and management burdens (labeling, training, placarding, storage limits, transportation challenges) associated with a listed hazardous waste, without detriment to the environment.

Thank you for your consideration of these comments. We look forward to working with the Trump Administration to streamline permitting, reduce regulatory burdens, and create a more competitive environment for American workers and businesses.

Respectfully submitted,

Jon P. Howley, Director of Environment
Katie R. Larson, Director of Government Relations

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To: Greaves, Holly[greaves.holly@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Kime, Robin
Sent: Fri 6/30/2017 4:02:18 PM
Subject: Questions for the Record assigned to OP
OP Budget QFRs Final.docx

Hello,

Attached are responses. I hope this is helpful. Just let us know if we can do more.

Thank you.

Robin

From: "Greaves, Holly" <greaves.holly@epa.gov>
Date: June 27, 2017 at 1:45:09 PM EDT
To: "Dravis, Samantha" <dravis.samantha@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>
Subject: Questions for the Record assigned to OP

Sam/Brittany,

We have received over 250 questions for the record from members of Congress related to the Administrator's House Budget Hearing. I'm writing to ask your help in crafting responses to 17 of the questions that deal with Policy matters.

Responses need to be returned to me and Troy **by noon on Friday** to meet the congressional deadline.

Attached please find the questions assigned to OP. Thanks in advance for your help!

Holly

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 28, 2017

M-17-23

MEMORANDUM FOR: REGULATORY REFORM OFFICERS AND REGULATORY POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES

CC: PERFORMANCE IMPROVEMENT OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Dominic J. Mancini, Acting Administrator
Office of Information and Regulatory Affairs

SUBJECT: Guidance on Regulatory Reform Accountability under Executive Order 13777, titled "Enforcing the Regulatory Reform Agenda"

Background

This memorandum provides guidance regarding sections 4 and 5 of Executive Order (EO) 13777, titled "Enforcing the Regulatory Reform Agenda." Section 4 requires the Office of Management and Budget (OMB) to issue guidance about the performance indicators that agencies listed in 31 U.S.C. § 901(b)(1) (see Application section below) must incorporate into their annual performance plans. The performance indicators measure progress toward the following goals:

- improving implementation of regulatory reform initiatives and policies pursuant to section 2 of EO 13777;[1] and
- identifying regulations for repeal, replacement, or modification.

[1] Section 2 of EO 13777 identifies the following regulatory reform initiatives and policies:

- EO 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
- EO 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
- Section 6 of EO 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
- The termination, consistent with applicable law, of programs and activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

Section 5 permits waivers from compliance with EO 13777 if there is a determination that the agency "generally issues very few or no regulations."

Application

The agencies subject to EO 13777 are only those agencies subject to the regulatory review requirements of EO 12866.[2] While independent regulatory agencies are not subject to EO 13777, they are still encouraged to comply.

The *Waivers* section in this Guidance applies to all agencies subject to EO 13777.

In contrast, the *Requirements* section in this Guidance only applies to a subset of agencies subject to EO 13777, in particular:

The Department of Agriculture
The Department of Commerce
The Department of Defense
The Department of Education
The Department of Energy
The Department of Health and Human Services
The Department of Homeland Security
The Department of Housing and Urban Development
The Department of the Interior
The Department of Justice
The Department of Labor
The Department of State
The Department of Transportation
The Department of the Treasury
The Department of Veterans Affairs
The Environmental Protection Agency
The National Aeronautics and Space Administration

Nevertheless, agencies subject to EO 13777 that are not included in the above list are strongly encouraged to comply with the *Requirements* section of this Guidance and must still comply with all sections of EO 13777 with the exception of section 4(a).

Requirements

Beginning with the FY 2019 Annual Performance Plan (APP)[3] agencies must, at a minimum, include in their plans the following performance indicators[4] for the fiscal year:

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[2] Agencies subject to regulatory review under EO 12866 are those authorities of the United States that are an "agency" under 44 U.S.C. § 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(5).
[3] See 31 U.S.C. § 1115(b).
[4] The terms "EO 13371 deregulatory action," "EO 13771 regulatory action," and "total incremental cost" have the same meaning as in the OMB guidance implementing EO 13771.

1. Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
2. Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
3. Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
4. Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions issued; and
5. Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

In their FY 2019 APP, agencies must establish performance goal(s) associated with each indicator. They must also set a target for the level of performance to be achieved within the time period. These actions should be consistent with the guidance in Part 6 of OMB Circular A-11. Agencies must also include in their FY 2019 APP the above performance indicators and set targets for the corresponding performance goals for FY2018. Beginning with their FY 2018 Annual Performance Reports, agencies must report the appropriate performance data for each performance indicator and goal, and identify each action evaluated for indicator 1, each Regulatory Reform Task Force recommendation for indicator 2, and each EO 13771 regulatory and EO 13771 deregulatory action for indicators 3 and 4 respectively.

In addition, agencies should establish and report other meaningful performance indicators and goals for the purpose of evaluating and improving the net benefits of their respective regulatory programs (*i.e.,* all of the existing regulations in place that address a specific regulatory objective). This likely will require measuring the costs and benefits of regulatory programs and setting goals for improving those programs' net benefits. The effort to improve net benefits may be conducted as part of developing agency strategic and performance plans and priority goals, and may use existing quarterly and annual performance review processes to assess progress against these objectives. Please consult with your OIRA desk officer during your agency's development of new performance indicators for evaluating the net benefits of regulatory programs.

Agencies should also report on their performance in terminating, consistent with applicable law, any programs or activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded or that were terminated during the fiscal year. This performance can be reported as either a performance indicator or other means (*e.g.,* a narrative discussion) in the agency's performance plan and report.

Waivers

Compliance with EO 13777 may be waived if there is a determination that the agency generally issues very few or no regulations. [5] A waiver may be revoked at any time.

[5] EO 13771 defines "regulation" as an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of

An agency requesting a waiver should provide OMB at least the following information:

1) An overview of its existing regulations, including information about the nature and goal of the regulations, and the magnitude of those regulations' benefits and costs;
2) The number of significant regulatory actions (see EO 12866) on its existing and, if available, planned *Unified Agenda of Regulatory and Deregulatory Actions*, and estimates of the total incremental benefits and costs of those actions;
3) An overview of the nature, quantity and impact of regulations the agency plans to issue that the agency believes are not significant (see EO 12866); and
4) Information about the benefits and costs of its existing and planned significant guidance documents. [6]

OMB may request that the agency provides additional information to help determine the appropriateness of a waiver.

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an agency, but does not include: (a) regulations issued with respect to a military, national security, or foreign affairs function of the United States (For more information about the national security function exemption, see question 7 in the OMB guidance titled "Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'"); (b) regulations related to agency organization, management, or personnel; or (c) any other category of regulations exempted by the Director.

[6] The OMB guidance referenced in the above footnote defines "EO 13771 regulatory action[s]" to include "a significant guidance document (*e.g.*, significant interpretive guidance) reviewed by [OMB's Office of Information and Regulatory Affairs] under the procedures of EO 12866 that have been finalized and that impose total costs greater than zero."

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: Environmental Protection Agency
June 15, 2017

Questions for the Record – Administrator of the Environmental Protection Agency

Office of Policy

Rewriting Several Rules per Executive Orders: WOTUS, Clean Power Plan, and Methane

I was pleased to see two early actions from the President to issue:

- Executive Order 13778 on *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" rule*, and

- Executive Order 13783 on *Promoting Energy Independence and Economic Growth*.

I have a number of concerns with the WOTUS rule's flawed history -- it was originally proposed before the scientific studies were complete, the Small Business Association believed EPA should have conducted a Small Business Advocacy Review Panel prior to releasing the rule, and in December 2016 the GAO determined that EPA had violated the law by expending funds on a social media campaign to promote rule.

In my opinion, the only clarity that the WOTUS rule offered was that more Federal permits would be required under an Administration that was not approving permit applications. It was a clear example of Federal overreach.

The FY17 Omnibus included language asking EPA (and the Department of the Interior) to keep the Committee apprised of actions to comply with the Executive Order to promote energy independence and economic growth. For EPA, there were a number of specific directives within the Executive Order related to the Clean Power Plan, the methane rule, and other regulations.

Calvert Q1: Please provide an update on what steps the Agency is taking to comply with these Executive orders.

Executive Order 13778 directs the EPA to review the final 2015 WOTUS rule. In response, Administrator Pruitt issued a Federal Register notice of review (82 FR 12532) on March 6, 2017. On June 27, 2017 the Administrator signed a proposed rule to rescind the definition of WOTUS in the 2015 rule. This proposal re-codifies the definition that existed prior to the 2015 rule and that is currently in place as a result of the U.S. Court of Appeals for the Sixth Circuit's stay of the 2015 rule. In a second action, EPA plans to propose a new definition interpreting the jurisdictional bounds of the Clean Water Act, taking into consideration the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

Executive Order 13783 directs the EPA to undertake a number of actions, including reviews of 1) the Clean Power Plan (CPP) and related rules and actions, and 2) the oil and gas sector emission standards for new, reconstructed, and modified sources ("oil and gas methane rule").

On March 28, 2017, Administrator Pruitt signed notices to review the CPP and the NSPS for EGUs, and at the same time withdrew the suite of proposed federal rules associated with the CPP (the federal plan, model trading rules, and the framework for the Clean Energy Incentive Program). We currently have a CPP review proposal at OMB undergoing interagency review.

On March 28, 2017, Administrator Pruitt also signed a notice to review the oil and gas rule. EPA has administratively stayed upcoming requirements for fugitive emissions, pneumatic pumps, and professional engineer certification for an initial three months, and has proposed to stay these requirements for an additional two years while the agency considers appropriate final action for the rule.

Calvert Q2: Where is the agency in the process with respect to each of those rules?

See response to Calvert Q1.

Waters of the United States

Because states are primary implementers of federal rules, state input into rulemaking early in the process, well before a rule is formally proposed, is critical to an effective and efficient regulatory program. EPA's review of the Water of the United States rule is key example.

Amodei Q4: Does the EPA plan to include state environmental agencies as co-regulators in the development of a new WOTUS definition to ensure effective implementation if a final rule is pursued?

On April 19, 2017, EPA initiated a formal process known as Federalism consultation, which requires agencies to conduct preproposal discussions with elected state and local officials and their associations where a rule may have implications for the distribution of power and responsibilities among federal, state, and local governments. The written comment period for the consultation period has closed and the agencies will consider all comments received under this processes as the new WOTUS definition is being developed.

Regulation Review

Executive Order 13783 on Promoting Energy Independence and Economic Growth requires a review of all regulations.

McCollum Q92: How is EPA going about conducting this review and what scientific evidence and economic assumptions or models is the Agency relying on for the basis of its decisions?

Pursuant to EO 13777, EPA held multiple public meetings and opened a docket for public comments about regulations that may be appropriate for repeal, replacement, or modification. EPA is planning to draw from that information as we consider which regulations may unduly burden the development of domestic energy resources. Regulations identified for possible repeal, replacement, or modification would be subject to standard rulemaking procedures, including additional public comment, and at that time more details on the basis for the regulatory action would be provided.

McCollum Q93: Environmental regulations already undergo a rigorous analysis of costs and benefits as they move through the regulatory process. In its annual accounting to Congress last year, OMB found that benefits of major rules EPA officially adopted from 2005-2015 exceed their costs by up to 13 times (OMB 2016). A 2011 peer-reviewed EPA assessment of the long term benefits and costs of the Clean Air Act and its implementing regulations found that its middle estimate of annual benefits exceeds costs by 30 to one--that's $2 trillion in net benefits vs. $65 billion in costs. Which specific EPA regulations does EPA believe are overly stringent and in need of scaling back?

EPA has begun to take action on some regulations, such as those identified in Executive Orders 13783 and 13778. EPA is still considering which additional regulations may unduly burden the development of domestic energy resources.

McCollum Q94: Administrator Pruitt has expressed concern about the compliance costs of particular industries, please provide an estimate of the change in net benefits to the American public from rolling any regulations back.

Such estimates will be part of the rulemaking record for any individual rules that are revised or rescinded.

McCollum Q95: Has the Agency considered the additional cost to industry of facing a patchwork quilt of different state requirements instead of one federal standard?

Within the statutory boundaries, there are a number of factors to consider when revising federal rules, including costs, implementation issues, and the appropriate balance between state and federal authority. EPA will consider each of those factors, and others, as appropriate, when revising rules.

McCollum Q96: What steps has the EPA taken to implement President Trump's Executive Order on Reducing Regulation and Controlling Regulatory Costs?

EO 13771 directs all agencies to repeal two existing regulations for each new regulation issued in FY 2017 and thereafter, and also directs agencies that the total incremental costs of all

regulations should be no greater than zero in FY 2017. Executive Order 13777 on Enforcing the Regulatory Reform Agenda further directs federal agencies to establish a Regulatory Reform Task Force and to evaluate existing regulations and make recommendations to the Administrator regarding their repeal, replacement, or modification. Consistent with these Executive Orders, EPA established a Task Force and has been taking a hard look at existing EPA regulations to help identify regulations that may be appropriate for repeal per EO 13771. EPA has also initiated the delay or reconsideration of multiple regulations finalized by the previous administration that have led to cost savings that may further EO 13771 implementation.

McCollum Q97: How is EPA choosing which two regulations to repeal for every new regulation promulgated?

In April, OMB released guidance clarifying implementation of EO 13771. EPA is still developing our internal process to fully implement that guidance.

McCollum Q98: In EPA's regulation review has the Agency consistently adhered to the requirements of the Administrative Procedures Act, specifically the notice-and-comment period that gives the public time to respond to any proposed changes by the government?

From OGC: EPA is still in the process of conducting its E.O. 13783 review. To the extent that the APA requires the EPA to engage in notice and comment rulemaking as part of that process, EPA intends to do so.

McCollum Q99: How does EPA justify delaying the effective date for the companion rule for Pesticide Applicator Protection for an additional year to May 22, 2018?

From OGC: EPA delayed the effective date for the Certification of Pesticide Applicators rule in order to allow the new Administration sufficient time to adequately conduct a substantive review of the questions of fact, law and policy behind the rule, and to prevent possible confusion and disruption among state regulators and certified pesticide applicators if the January 4, 2017 rule were to become effective (displacing existing certification requirements) and then substantially revised or repealed as a result of the new Administration's review.

McCollum Q103: How does EPA plan to defend the many inevitable lawsuits it will face from rolling back environmental regulations? Is this really the most effective way for EPA to fulfill its mission?

From OGC: We are effectively fulfilling the mission of EPA by ensuring the Agency issues sensible regulations that protect the environment and allow for economic growth. We often face litigation in response to regulatory decisions, given the broad range of stakeholders we serve, who care deeply about the work we do. EPA will continue, as we always have, to work with the

Department of Justice to vigorously defend against all lawsuits brought against the Agency.

McCollum Q104: Executive Order 13777 required the head of each agency to designate a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies to ensure agencies effectively carry out regulatory reforms, consistent with applicable law.

[[This doesn't appear to need a response]]

McCollum Q105: Who have you appointed as the Regulatory Reform Officer for EPA and what are their credentials?

Administrator Pruitt designated Samantha K. Dravis, Senior Counsel and Associate Administrator for the Office of Policy to serve as EPA's Regulatory Reform Officer. Ryan Jackson, EPA Chief of Staff serves as Chairman. Regulatory Reform Task Force members include Byron Brown, EPA Deputy Chief of Staff for Policy; and Brittany Bolen, EPA Office of Policy Deputy Associate Administrator.

Environmental Impact on Children's Health

It is estimated that 88% of the existing global burden of disease attributable to climate change occurs in children younger than 5 years old in both industrialized and developing countries. Climate change is currently affecting child health through increased heat stress, decreased air quality, altered disease patterns of some climate-sensitive infections, physical and mental health effects of extreme weather events, and food insecurity in vulnerable regions. Outdoor air pollution is linked to respiratory problems in children, including decreased lung function, coughing, wheezing, frequent respiratory illness, and asthma exacerbation. Children bear the burden of negative health outcomes resulting from exposure to pollutants across their lifespan.

McCollum Q174: The EPA has put a hold on efforts to make our air cleaner by pausing work on the ozone standard and the Clean Power Plan. Is the EPA calculating the costs to children and their families from all of the health effects of polluted air and accelerated climate change?

There are a number of factors to consider when revising federal rules, and EPA will consider those factors, as appropriate, when revising rules. For example, the rulemaking record for the Review of the Clean Power Plan will include information about economic implications of that proposal.

McCollum Q175: As the EPA Administrator overseeing this regulatory review, are you consulting with pediatric associations, patient organizations, or other representatives for children's health to determine the cost burdens that rolling back these regulations would place on impacted families and our health care system as a whole?

EPA receives input from a wide variety of stakeholders during development of regulations. In addition, in the case of children's health, EPA receives advice from the Children's Health Protection Advisory Committee.

McCollum Q176: How will the benefits to children of strong environmental regulations be weighed in comparison to the costs to some businesses of meeting those regulations in any final decisions?

The cost, benefits, and distributional impacts of regulations are one of the factors, along with others, that inform proposed and final regulations.

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Debell, Kevin
Sent: Sat 5/13/2017 2:55:41 AM
Subject: Revised DOC Response and Cover Memo
2017 05 12 Response to DOC.docx

Hi Samantha and Brittany:

I hope all is well. We revised the new DOC response document today and received some late comments on it, so please find attached a new version. We have also prepared language for the email transmitting this document to DOC. We hope you find this useful.

Please note that page 56 of the DOC draft report includes a list of 16 actions EPA is "taking to reduce regulatory burden or streamline permitting." The actions were included in EPA's April 21 submittal to DOC. Our new response document does not include the same list of actions, given the higher level at which it is written. If you are comfortable with the list of actions, we do not need to do anything. If you are concerned about the actions not being in the EPA document, we can adjust the document. If you have any issues with the actions appearing in DOC's draft report, we can include those concerns in our comments to DOC.

Please let me know if you would like us to make changes to the attached document. We are working on the agency's comments on the DOC draft report and will have those to you on Monday.

Best,

Kevin

Dear Mr. Comstock:

Thank you for sharing for review the pre-decisional draft report on "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing."

Please find attached a short document summarizing EPA's response to comments received from the Department of Commerce Request for Information. We would appreciate this document being included in the appendices of the next version of the DOC report. Thank you for your consideration.

If you have any questions, please contact me or Brittany Bolen at bolen.brittany@epa.gov.

Regards,
Samantha Dravis

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Dravis, Samantha
Sent: Fri 4/14/2017 3:34:58 PM
EPA Memo to Commerce Dravis Edits.docx

Here are my initial edits just on the commerce memo part of it. Digging into the response now.
Do you just want to further add your edits into this one?

U.S. Environmental Protection Agency Response to Department of Commerce on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing

The Department of Commerce Request for Information (RFI) of March 7, 2017 (82 FR 12786), generated feedback from more than 170 commenters. Many of the comments addressed EPA activities. The majority of these comments focused on the following:

Clean Air Act (CAA)
New Source Review (NSR) Preconstruction Permits (Prevention of Significant Deterioration (PSD) and Nonattainment NSR Permits)
Title V Operating Permits
National Ambient Air Quality Standards (NAAQS)
National Emission Standards for Hazardous Air Pollutants (NESHAP)
New Source Performance Standards (NSPS)
Exemptions for Start-up, Shutdown, and Malfunction (SSM)
Greenhouse gas limits under PSD/Title V/NSPS

Comments generally related to NSR, though some suggested regulatory revisions for program areas such as Title V permits, NSPS, and NESHAP. On permitting programs, most comments related to streamlining the process for NSR applicability. Commenters indicated interest in greater certainty on the time to obtain a permit and in changes to the requirements to determine if an NSR permit is required. Other comments on NSR related to air pollution control technology requirements, modeling of proposed source impacts on surrounding air quality, and offsets. Comments on NSPS and NESHAP generally related to costs or associated monitoring and recordkeeping requirements for specific source categories/units. Other comments included, but were not limited to, increasing NAAQS review time from five to 10 years and expediting issuance of guidance when a NAAQS is revised.

EPA is engaged in work to improve CAA permit issuance timelines, reduce burdens, and streamline permitting processes. Ongoing regulatory activities include finalizing rulemaking to clarify and streamline Title V permit petitions received and reviewed by EPA (81 FR 57822) and finalizing rulemaking to clarify and streamline permitting associated with greenhouse gas emissions (81 FR 68110). EPA also plans to expand outreach on flexible permitting techniques, including plant-wide applicability limits and to develop guidance to facilitate air quality assessments and reduce the burden of PSD compliance demonstrations.

Clean Water Act (CWA)
National Pollutant Discharge Elimination System Permits (NPDES)
Section 404 Dredge/Fill Permits
Clean Water Rule

Comments on CWA generally focused on the Clean Water Rule, which revised the definition of "waters of the United States," as well as the NPDES and section 404 permitting processes. On the Clean Water Rule, EPA and the Department of the Army have published a notice of intent to review and rescind or revise the rule (82 FR 12532). On NPDES, EPA has proposed revisions to modernize the regulations (81 FR 31344) and is considering an effort to develop a streamlined, online permit application process. Improving the CWA Section 404 permit process will require

coordination with the U.S. Army Corps of Engineers, which issues the permits.

Resource Conservation and Recovery Act (RCRA) and Toxics Substance Control Act (TSCA)
Several commenters identified aspects of EPA's hazardous waste management program as problematic for industry. Many comments noted concerns about coordination among co-regulators and permitting for facility operations and site-specific cleanups. EPA will amplify its efforts to streamline permitting processes with business process improvement tools and improve collaboration with state, tribal, and local governments.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
Comments on CERCLA generally focus on the upcoming CERCLA section 108(b) rules establishing financial responsibility for certain classes of facilities. EPA will address industry concerns about potential duplication and conflicting requirements in the regulatory development process.

Additional EPA actions to support the administration's regulatory reform agenda include creation of EPA's Regulatory Reform Task Force, launch of the agency's new Regulatory Reform website[1], and solicitation of public input on regulations that could be considered for repeal, replacement, or modification, including meetings and teleconferences to receive regulatory reform suggestions directly from the public.

In conclusion, EPA is reviewing all comments and may propose additional regulatory reforms and actions to streamline permits. Importantly, however, addressing some comments would necessitate statutory revisions, which require congressional action. Others pertain to programs delegated to states and tribes, thus demanding broader cooperative efforts. Additionally, EPA's response to the RFI comments will impact and be impacted by its responses on recent EOs.[2]

[1] https://www.epa.gov/laws-regulations/regulatory-reform

[2] EO 13771 on Reducing Regulation and Controlling Regulatory Costs; EO 13777 on Enforcing the Regulatory Reform Agenda; EO 13778 on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule; and EO 13783 on Promoting Energy Independence and Economic Growth.

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Kovacs, William
Sent: Tue 5/9/2017 2:19:53 PM
Subject: Your Comment Submitted on Regulations.gov (ID: EPA-HQ-OA-2017-0190-0042)
5.9.17- Comments to EPA on Evaluation of Existing Regulations.pdf

Brittany:

I trust you are having an exciting and interesting experience at your new job and I wish you and the administration well.

Today we submitted our comments to the administrator's request for suggestions on evaluating regulations and policies. Attached is a copy of our comments.

Best wishes,

Bill Kovacs

Senior Vice President, Environment, Technology & Regulatory Affairs

U.S. Chamber of Commerce

1615 H Street, NW

Washington, DC 20062-2000

(202) 463-5457

From: Regulations.gov [mailto:no-reply@regulations.gov]
Sent: Tuesday, May 09, 2017 9:57 AM
Subject: Your Comment Submitted on Regulations.gov (ID: EPA-HQ-OA-2017-0190-0042)

Please do not reply to this message. This email is from a notification only address that cannot accept incoming email.

Your comment was submitted successfully!

Comment Tracking Number: 1k1-8wad-d1jw

Your comment may be viewable on Regulations.gov once the agency has reviewed it. This process is dependent on agency public submission policies/procedures and processing times. Use your tracking number to find out the status of your comment.

Agency: Environmental Protection Agency (EPA)
Document Type: Nonrulemaking
Title: Evaluation of Existing Regulations
Document ID: EPA-HQ-OA-2017-0190-0042

Comment:
See attached file(s)

Uploaded File(s):

- 5.9.17- Comments to EPA on Evaluation of Existing Regulations.pdf

This information will appear on Regulations.gov:

None of the information will appear on Regulations.gov

This information will not appear on Regulations.gov:

Organization Name: U.S. Chamber of Commerce

Submitter's Representative: Bill Kovacs

For further information about the Regulations.gov commenting process, please visit https://www.regulations.gov/faqs.

To: Jackson, Ryan[jackson.ryan@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Hope, Brian
Sent: Fri 5/5/2017 4:36:06 PM
Subject: Re: Reg Reform Standard
Standard.Reg Reform.5.5.17.docx

Super. Thanks!

From: Jackson, Ryan
Sent: Friday, May 5, 2017 12:12 PM
To: Hope, Brian
Cc: Dravis, Samantha; Bolen, Brittany
Subject: Re: Reg Reform Standard

I'm fine with this.

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On May 5, 2017, at 11:57 AM, Hope, Brian <Hope.Brian@epa.gov> wrote:

Attached is a proposed reg reform standard to acknowledge comments routed to the Administrator instead of the docket. It would be good until the 15th when the docket closes.

Differences from the general response are the new first paragraph and modifications to the penultimate and last paras that eliminate the reference to the EPA website. Please let me know if you have changes or if we're good to go. Thanks, Ryan.

- Brian

Brian T. Hope

Acting Director

Office of the Executive Secretariat

Office of the Administrator

(202) 564-8212

<Standard.Reg Reform.5.5.17.docx>

To: Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Kelly, Kerry[KKelly5@wm.com]
From: McGuffey, Carroll Wade
Sent: Mon 5/1/2017 9:54:46 PM
Subject: RE: Follow Up
Comments on Evaluation of Existing Regulations per EO 13777.pdf

Dear Samantha, Mandy, and Brittany,

Thank you again for your continued interest in our concerns regarding the Section 111 air rules for MSW landfills. As indicated previously, we are planning to raise our concerns in comments on EPA's evaluation of existing regulations per executive order 13777. We plan to submit the comments to the docket by the deadline of May 15th, but we also thought you all might appreciate receiving a copy a bit earlier, given the time pressure I'm sure you are under with regard to these regulatory reform efforts. If you have questions, please don't hesitate to contact us at your convenience.

Mack McGuffey
TROUTMAN SANDERS
Direct: 404.885.3698 | Mobile: 770.402.0727
mack.mcguffey@troutmansanders.com

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CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM L. KOVACS
SENIOR VICE PRESIDENT
ENVIRONMENT, TECHNOLOGY &
REGULATORY AFFAIRS

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5457

May 9, 2017

VIA ELECTRONIC FILING

The Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 1803A
Washington, DC 20460

Re: Response to EPA's April 13, 2017, Request for Comments on Evaluation of Existing Regulations (Docket ID No. EPA-HQ-OA-2017-0190)

The U.S. Chamber of Commerce (Chamber), the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, offers these comments in response to Environmental Protection Agency's (EPA's) April 13, 2017, request to identify regulations that eliminate jobs or inhibit job creation, are outdated, impose costs exceeding benefits, create serious inconsistencies, or rely on data not publicly available or insufficiently transparent to meet the standard of reproducibility. Below are the comments of the Chamber that address your inquiry.

The Chamber has identified many such regulations in responses to the recent Request for Information (RFI) from the Department of Commerce.[1] The RFI stemmed from the January 24, 2017, Executive Memorandum regarding impacts of federal regulations on domestic manufacturing. Below is a link to the Chamber's comments to the Department of Commerce.

Perhaps as important as identifying bad regulations that should be modified or repealed is identifying bad regulatory policy that is embedded in agency programs. Once established, bad regulatory policy continues to affect future rulemakings and stacks the deck against the possibility of producing a good regulation by undermining open, transparent, careful, and well-informed regulatory processes. From the failure to conduct statutorily mandated §321(a) jobs analyses, to over-reliance on fine particulate matter co-benefits to justify virtually all of its rules, EPA over the years has embedded bad regulatory policy into the agency's programs. The

[1] Those comments can be found at https://www.regulations.gov/docket?D=DOC-2017-0001, with U.S. Chamber comments specifically found at https://www.regulations.gov/document?D=DOC-2017-0001-0107.

Chamber has reiterated the importance of fixing these programmatic deficiencies and continues to believe that correcting them will go a long way to improving EPA rulemaking outcomes.

1. **EPA Has for Decades Failed to Implement Congressional Mandates to Evaluate the Impact of Its Regulations on Jobs**

Since 2011 the Chamber has repeatedly requested that EPA implement §321(a) of the Clean Air Act (CAA), which requires EPA to continuously evaluate potential losses or shifts of employment resulting from administration or enforcement of the CAA.[2] Moreover, during that time period and up to April 7, 2017, members of Congress have written to EPA asking it to implement §321(a) of the CAA.[3] Finally, EPA, in responses to Freedom of Information Act requests submitted by the Chamber, admitted it could not find any documents establishing any activity to implement §321(a) of the CAA.[4] Without implementation of this provision neither EPA nor Congress will have relevant information about the impact of CAA regulations on jobs. Congress mandated that EPA provide this information on the impact of regulation on jobs and EPA should provide it.

On March 24, 2014, Murray Energy Corp. (Murray), in an attempt to have EPA implement §321(a) of the CAA, sued EPA for failing to comply with §321(a).[5] Murray argued that EPA has not evaluated the job losses and job shifts within the coal industry that have resulted from CAA rules. On October 17, 2016, the court granted summary judgment to Murray and entered a Memorandum Order requiring EPA to provide a plan and schedule for compliance with §321(a) within two weeks.

EPA responded to the court's order on October 31, 2016, stating that the agency would comply with §321(a) of the CAA only because of the court's order, but that the time frames ordered are too short and it will take EPA about two years to develop a methodology to use to comply.

The court issued a Final Order on January 11, 2017, that sharply rebuked the agency and ordered that specific actions be completed by court-ordered deadlines. The court noted that EPA's October 31, 2016, response "evidences the continued hostility on the part of the EPA to acceptance of the mission established by Congress."[6]

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[2] Testimony before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, Regulation Chaos: Finding Legislative Solutions to Benefit Jobs and the Economy, https://www.uschamber.com/testimony/testimony-regulating-chaos-finding-legislative-solutions-benefit-jobs-and-economy.

[3] Letter from Senators Vitter, Risch, Johanns, Inhofe, Ensign, and Hatch to EPA Administrator Lisa Jackson, October 13, 2009; Letter from Senator Fischer and Representative John Ratfliffe (cosigned with 52 additional members of Congress) to U.S. Attorney General Jeff Sessions and EPA Administrator Scott Priutt, April 7, 2017.

[4] Letter from Jim DeMocker, Acting Director, EPA Office of Policy Analysis and Review to William L. Kovacs, U.S. Chamber of Commerce, Freedom of Information Request No. EPA-HQ-2012-001352 (June 14, 2013).

[5] 42 U.S.C. §7621(a).

[6] Final Order at 2.

The court demonstrated through legislative history that "Congress unmistakably intended to track and monitor the effects of the Clean Air Act and its implementing regulations on employment in order to improve the legislative and regulatory processes."[7] For example, the court cites the House Committee Report accompanying the 1977 CAA amendments as clarifying that §321(a) was added to address concerns about "the extent to which the Clean Air Act or other factors are responsible for plant shutdowns, decisions not to build new plants, and consequent losses of employment opportunities."[8] EPA has never complied with the statutory mandate.

Considering the practical impact of §321(a), the court observed that EPA must both track and monitor the effects of the Clean Air Act and its implementing regulations on employment, and evaluate the **cause of specific** job dislocations.[9]

The court noted that evidence had been introduced that EPA itself had developed an evaluation tool called the Economic Dislocation Early Warning System (EDEWS), which the agency used beginning in 1972 to identify at-risk workers, track actual worker dislocations and potential community impacts, and identify root causes.[10] Through the EDEWS program, EPA was able to identify threatened, actual, and avoided worker dislocations. The program was intended to bring into play any government program available to provide financial assistance, which would **prevent plant closings or production curtailments**.[11] In the first 10 years, the EDEWS program identified actual closures or curtailments at 155 plants and the dislocation of 32,899 workers resulting from environmental requirements.[12]

The court next stated that "EPA cannot redefine statutes to avoid complying with them. The record in this case demonstrates hostility on the part of the EPA to doing what is ordered by §321(a)."[13]

The court ordered EPA to (a) prepare and submit to the Court a §321(a) evaluation of the coal industry and other entities affected by **the rules and regulations affecting the coal mining and power generating industries** as expeditiously as possible and by **no later than July 1, 2017**; (b) identify facilities at risk of closure or loss of employment because of regulations; (c) evaluate the impacts of plant closures or loss of employment on communities and families; (d) evaluate coal mines and coal-fired power plants that have closed or reduced employment since January 2009, and evaluate whether CAA requirements caused the impacts; and (e) identify impacts on subpopulations such as minority groups.[14]

EPA is further ordered to show by December 31, 2017, that it has adopted measures to comply with §321(a) in the future.

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[7] *Id.* at 3.
[8] H.R. Rep. 95-294, at 316, 1977 U.S.C.C.A.N. 1077,1395.
[9] Final Order at 9.
[10] *Id.*
[11] *Id.* at 11.
[12] *Id.*
[13] *Id.* at 21.
[14] *Id.* at 26–27.

On February 3, 2017, EPA appealed the court's order to the Fourth Circuit Court of Appeals. The agency requested that the appeals court set an expedited schedule for the case. EPA seeks an expedited schedule based on its assertion that the order imposes a "significant" burden. EPA specifically cites the difficulty in obtaining the data for a §321(a) analysis and complying with Office of Management and Budget's "OMB" information collection requirements and the Information Quality Act by July 1, 2017. Oral argument is to be held on May 9, 2017.

The Importance of the *Murray Energy* Decision

In 1977 Congress was clearly concerned that major environmental regulations were having major economic effects on key industries (steel, mining, autos, energy, etc.). Section 321 of the CAA, and equivalent sections of other statutes, were incorporated into environmental statutes to help manage the balance between economic growth and environmental protection. By getting essentially real-time data on prospective and retrospective employment effects of regulations, Congress and the public would access critical information about the desired stringency and timing of major new requirements. Major new requirements for a specific industry could be phased in and/or sequenced with contemporaneous rules to avoid overwhelming that industry. Workers in an industry likely to be hard hit by environmental rules could get early warning of difficult times ahead. And EPA would have a better sense of the economic tradeoffs anticipated as a result of new environmental restrictions.

The importance of §321(a) of the CAA is not merely theoretical. An April 17, 2017, report by the Institute for Energy, Economics, and Financial Analysis identifies a total of 24 coal-fired units at 14 plants set to be retired in 2017 and 22 more units at 11 plants in 2018.[15]

Recommended Action

EPA and the Department of Justice have the option to withdraw the appeal of the ***Murray Energy*** case. This would mean that EPA will agree to comply with the district court's January 11, 2017, order and conduct the continuous evaluation of the impact on jobs of its regulations.

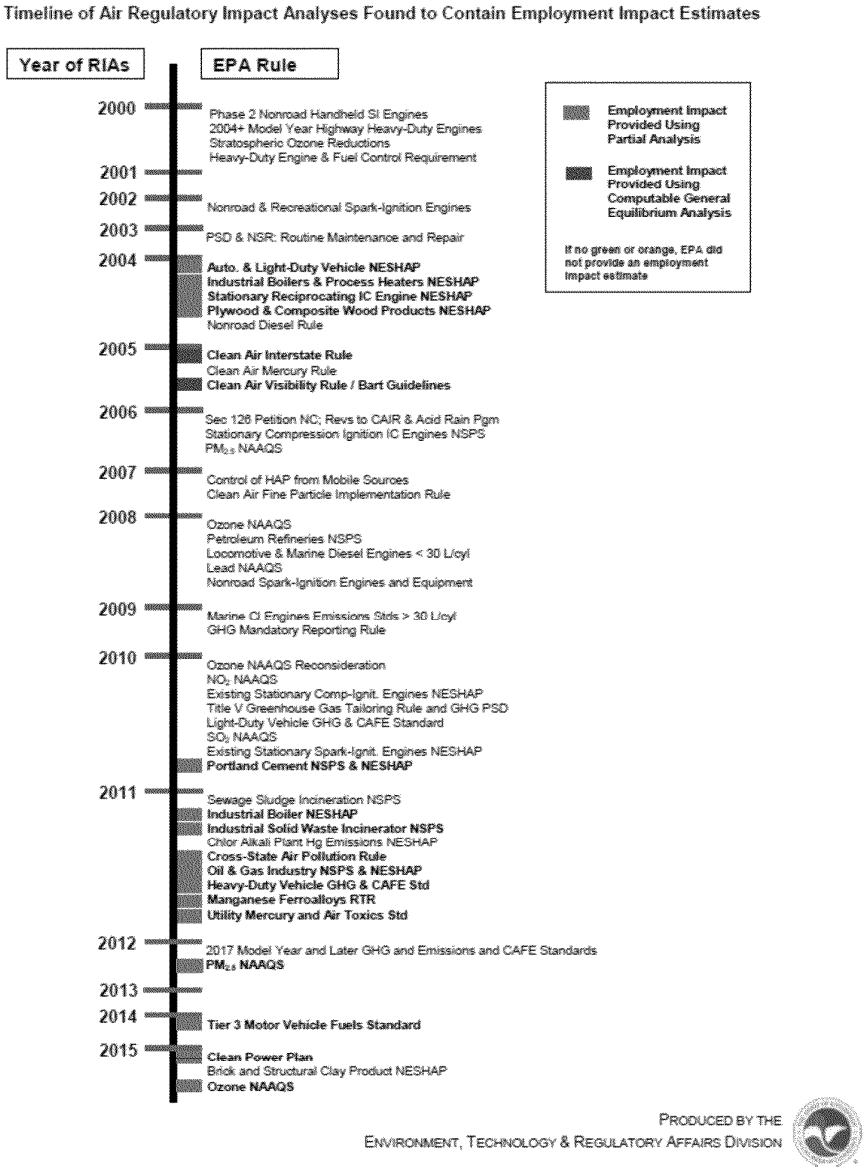
2. The Actual Cost of EPA Regulations Is Even Greater Than the Agency Estimates

Although EPA has never conducted a proper §321(a) evaluation of job losses from its regulations, in recent years it has routinely claimed that its regulations actually create new jobs. EPA accomplishes this sleight of hand "jobs analysis" by focusing on only one specific portion of the analysis while ignoring most of the impacts. Specifically, EPA consistently conducts only a partial equilibrium economic analysis so that it can assert that each regulation creates more jobs than it eliminates. A result of this partial equilibrium economic analysis is that EPA estimates only the jobs created to ensure compliance while completely ignoring the economy-wide impact of its regulations on jobs and the economy. In many cases this methodology even

[15] Link to report: http://ieefa.org/wp-content/uploads/2017/04/Research-Brief-U.S.-Coal-Phase-Out-Blow-by-Blow_April-2017.pdf.

allows EPA to claim that jobs within the regulated industry will not be lost, because it simply assumes that regulated firms can and will pay the costs of the regulation without changing how they conduct business. For instance, in the report *Impacts of Regulations on Employment: Examining EPA's Oft-Repeated Claims that Regulations Create Jobs*, NERA Economic Consulting modeled the economy-wide impacts of EPA's Mercury and Air Toxic Standards "MATS" rule on electric utility emissions. While EPA claimed that the rule would create a modest number of jobs from regulatory compliance and oversight activities, NERA found that the broader impacts of the rule would be massive economic costs from higher electricity prices, leading to the loss of as many as 215,000 jobs over initial years of compliance.

The chart below illustrates that out of 56 rules for which EPA prepared a Regulatory Impact Analysis from 2000 through 2015, EPA employed the whole economy or economy-wide model only twice.



3. Use of Economy-Wide Modeling Could Improve EPA's Consideration of Employment Impacts in Clean Air Act Rulemakings

In March 2015 EPA requested that the Science Advisory Board (SAB) form a panel to examine the use of economy-wide modeling in examining the costs and benefits of EPA air regulations. The SAB panel has held several meetings and teleconferences in the past year and a half.

The business community has supported and advocated for the use of economy-wide modeling in examining the costs and benefits of Clean Air Act regulations in order to more fully and accurately portray the effects of these regulations. Specifically, as noted previously, economy-wide modeling of CAA regulations could be used to fulfill EPA's congressionally mandated duties under §321(a). Economy-wide modeling could fulfill at least the statutory requirement to conduct prospective job loss and displacement analysis.

The SAB panel is scheduled to meet on May 24, 2017, to discuss the draft responses from EPA's National Center for Environmental Economics and the Office of Air and Radiation on economic analysis for air regulations.

Recommendation Action

It will be imperative that the new administration participate in the May 24, 2017, hearing and closely review any recommendations made by the panel. EPA should determine whether the SAB panel's recommendations will improve the agency's cost-benefit methodologies, particularly the accounting for employment impacts and the adequate consideration of both the benefits and the costs of any proposed air regulations.

4. Reforming EPA's Excessive Regulatory Overreach Will Result in Major Regulatory Reform

In April 2017 the Chamber released its report *Taming the Administrative State: Identifying Regulations that Impact Jobs and the Economy*.[16] The study analyzed the number and type of regulations that impose the greatest cost on the business community, consumers, and ultimately the U.S. economy. The analysis examined federal rules finalized from 2008 to 2016 and found that only 140 regulations out of more than 32,000 had costs exceeding $100 million annually. Also, it found that in the same time period only 28 regulations had a cost of more than $1 billion annually.

The report identifies the most costly and transformative regulations so that Congress and federal agencies are better able to develop a process that will ensure future regulations achieve congressional intent and avoid agency overreach. Additionally, the report identified each of the 140 regulations and the cost of those regulations, as estimated by the promulgating agency.

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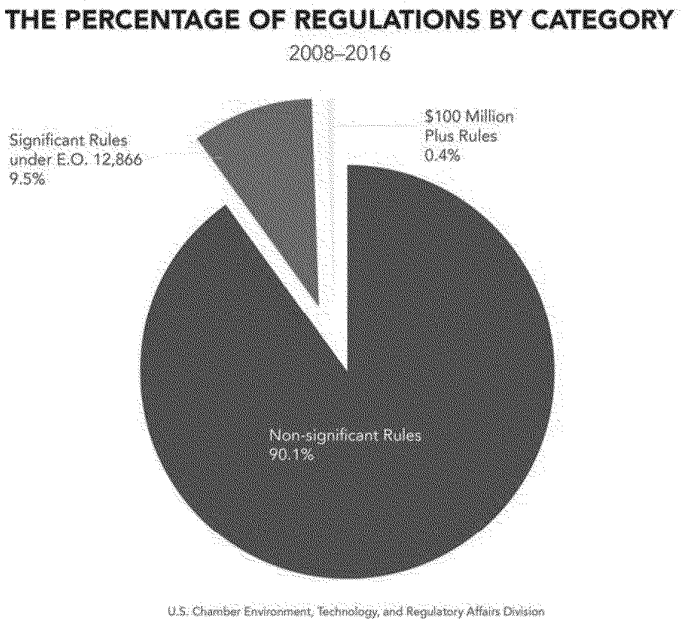
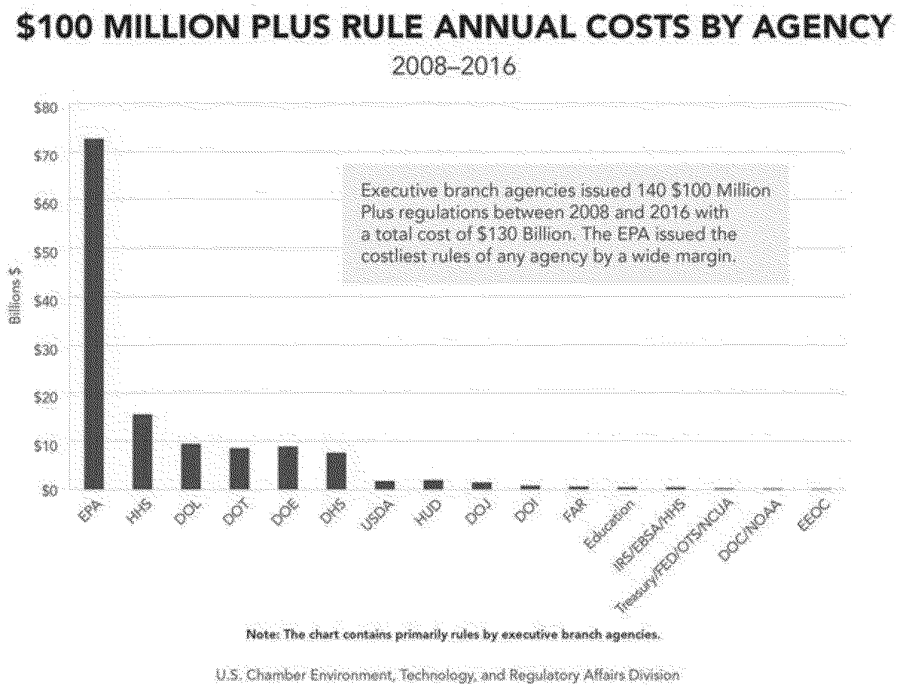
[16] Link to report:
https://www.uschamber.com/sites/default/files/taming_the_administrative_state_report_march_2017.pdf.

Findings: Taming EPA Is the Most Critical Step in Taming the Administrative State

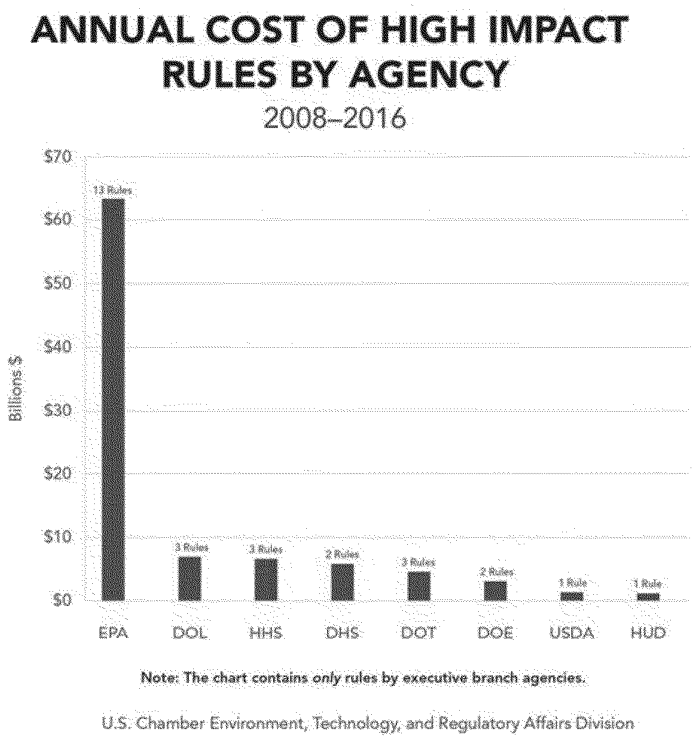
From 2008 through 2016, regulatory agencies issued 32,882 new rules. Of those, about 1 in 10 (3,261 total) were considered "significant" and subjected to greater scrutiny because they are more likely to impose compliance burdens. However, virtually all of the actual regulatory burden, as measured by the estimated annual cost of each rule, is borne by just 140 regulations over the nine-year study period. Thus, a very small percentage of rules, just 0.4% of the total, is responsible for most of the regulatory burden. The pie chart below illustrates just how few regulations are responsible for most of the regulatory costs.



The burden imposed by the 140 $100 million plus rules over the period 2008 through 2016 is $130 billion in annual cost. However, that cost is not evenly spread across all 140 rules, or across all of the issuing regulatory agencies. ***EPA produced the greatest number of costly rules, resulting in EPA being responsible for $73 billion in cost each year, or 56% of the total cost imposed***. The next chart illustrates that EPA exceeds all federal agencies in the issuance of costly regulations.



The final category of rules, high-impact rules, are those that impose more than $1 billion in annual costs and are responsible for the majority of all regulatory burdens despite the fact that there are very few of them. From 2008 to 2016, executive branch agencies produced just 28 of these high-impact rules, with ***EPA once again leading the way with 13 rules that cost $63 billion annually.*** Nearly half of the known regulatory costs imposed between 2008 and 2016 are from just 13 high-impact EPA regulations. The below chart illustrates this point.



Recommendation Action

In Appendix C of the April 2017 report the Chamber identifies by agency and cost the 140 most costly rules issued between 2008 and 2016. For its regulatory review and reform efforts, **EPA should give priority attention to the 13 rules imposing over $1 billion in annual costs**.

5. **EPA Should Apply the Risk Assessment Principles Required by Section 26 of the Frank Lautenberg Chemical Safety Act for the 21st Century Beyond the Revision of the Toxic Substances Control Act (TSCA)**

Section 26 of the Frank Lautenberg Chemical Safety for the 21st Century Act requires the EPA administrator to make all decisions under Title I of the act based on "scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science," and consider the following:

- The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;
- The extent to which the information is relevant for the administrator's use in making a decision about a chemical substance or mixture;

- The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;
- The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and
- The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.

Moreover, §26 also requires that those decisions be based on the weight of the scientific evidence.

Recommended Action

Because these risk analysis procedures are likely to produce more unbiased risk assessments, it is worthwhile to apply these procedures beyond TSCA. President Trump should issue an Executive Order requiring EPA and other federal agencies conducting chemical risk analyses to apply these procedures unless otherwise prohibited by statute.

6. PM 2.5 Incidental Benefits (Change of Circular A-4 to Require Benefits Only from Pollutant)

In 2003, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget produced Circular A-4 to provide federal regulatory agencies with guidance on how to conduct appropriate cost-benefit analysis to support their regulations as required by Executive Order 12866. On page 26, Circular A-4 discusses "ancillary benefits" of regulations, defined as "a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking." In recent years EPA has used ancillary benefits, which it terms co-benefits, as the primary justification for rules, designing the rules to maximize these co-benefits rather than to achieve the statutory purpose of the rulemaking. The best example is the 2012 Mercury and Air Toxics Standard, in which 99.4% of the benefits were ancillary benefits.

Recommended Action

The EPA administrator should ask President Trump to direct OIRA to amend Circular A-4 to clarify how both direct and ancillary benefits should be counted. Specifically, agencies could be required to craft regulations to address the statutory purpose of the rulemaking based only on the direct costs and benefits of such action. Only then, after choosing a justifiable standard based on analysis of direct impacts, could the ancillary benefits be counted. This requirement would prevent agencies like EPA from using a stated statutory purpose to justify a rulemaking that is actually designed to achieve often unrelated purposes, thereby increasing transparency and accountability in the regulatory process.

7. CASAC – A Look at Economic Impacts

The Clean Air Act directs the EPA administrator to convene a science advisory committee, the Clean Air Science Advisory Committee (CASAC), to advise the administrator on important technical issues relevant to setting an appropriate standard under the act. Section 109(d)(2)(C)(iv) further directs the advisory committee to "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards." In other words, the statute directs the advisory committee to analyze and inform the administrator of foreseeable adverse effects of setting the standards at the levels under assessment. However, EPA has failed to include questions related to this section of the statute when making a charge to the science advisory committee, arguing instead that because the courts have ruled that using economic costs to set the standard is forbidden, the advisory committee cannot consider any factors other than public health.

Recommended Action

EPA should craft the charge for any upcoming CASAC directing the committee to provide an assessment of adverse public health, welfare, social, economic, or energy effects of the various standards under review. Doing so would require the agency to include appropriate experts on the committee to address these subjects. While EPA would remain bound by statute to setting a standard that is protective of human health and welfare without consideration of costs, the additional information provided by considering economic impacts, or even negative, countervailing health impacts, could be used in determining an appropriate standard level when the scientific evidence alone does not recommend a definitive standard level.

8. Specific Regulations in Need of Reform

The following comments will not address all of the many regulations that shall be examined, since they have been addressed in comments to the Department of Commerce and as part of rulemakings over the years. However, the comments will focus on regulations that are very important to the business community but which may not be addressed by individual sectors.

a. Methane Regulations

The previous administration worked on regulations for methane emissions from the oil and gas sector. On May 12, 2016, EPA finalized a regulation under the Clean Air Act for reducing methane emissions from new oil and natural gas sources. The regulation was published in the *Federal Register* on June 3, 2016. Industry groups filed a lawsuit challenging that regulation. On April 18, 2017, EPA (under the new Trump administration) announced that it would be reconsidering portions of this rule. According to EPA, the reconsideration is based on the inclusion of certain provisions in the final rule that were not available for public comment during the proposal process, that is, the fugitive emissions monitoring requirements and the inclusion of low-production wells. Additionally, EPA issued a 90-day stay of the compliance date for the fugitive emissions monitoring requirements in the rule.

In March 2016 the administration announced that it would begin working on a rulemaking for regulating methane emissions from existing oil and natural gas sources. As the first step in that process, EPA issued a proposed Information Collection Request (ICR), which would seek information from the oil and gas industry on how best to reduce methane emissions from their existing sources. On November 10, 2016, EPA finalized the ICR. On March 2, 2017, EPA issued a notice withdrawing the ICR, stating that it would be reassessing the need for the information.

Recommended Action

Discontinue the defense of the EPA methane regulations from new oil and gas sources in pending litigation.[17] Proceed with the reconsideration of those regulations per the April 18, 2017, announcement.

Proceed with the reassessment of the ICR for the potential methane emissions rule for existing oil and natural gas sources.

b. Ozone Implementation

In October 2015 EPA finalized a new National Ambient Air Quality Standard (NAAQS) for ozone, tightening the standard from 75 ppb to 70 ppb.

Pursuant to an October 1, 2016, deadline, states submitted their recommendations for areas that would not be able to attain the 2015 ozone standard (nonattainment). Under the Clean Air Act, EPA has one year—until October 1, 2017—to finalize those nonattainment designations.

The 2015 ozone standard is being litigated right now; EPA, industry groups, and environmental groups are all parties to the lawsuit. Oral argument in the D.C. Circuit had been scheduled for February 16, 2017, but was recently postponed after EPA filed a motion seeking a delay of the hearing.

In the 114th Congress, the Ozone Standards Implementation Act of 2016 (H.R. 4475/S. 2882) passed the House and had a legislative hearing in the Senate Environment & Public Works Committee. The ozone implementation provisions in that legislation would harmonize the implementation deadlines for the 2008 ozone standard (75 ppb) and the 2015 ozone standard (70 ppb) by delaying the 2015 ozone deadlines for eight years.

In addition to addressing ozone implementation issues, the Ozone Standards Implementation Act of 2016 would, among other things, (1) change the review for an NAAQS from 5 to 10 years; (2) provide that when establishing or revising an NAAQS, the EPA administrator may consider technological feasibility as a secondary consideration; (3) require the

[17] *State of North Dakota v. United States Environmental Protection Agency*, Case No. 16-1242, in the U.S. Court of Appeals for the D.C. Circuit

EPA administrator to publish concurrently implementing guidance and regulations when establishing or revising an NAAQS in order to assist states, permitting authorities, and permitting applicants; and (4) require the EPA administrator to request advice on the adverse public health, welfare, social, economic, or energy effects from the Clean Air Science Advisory Committee before establishing or revising an NAAQS.

Recommended Action

Support immediate passage of H.R. 4475/S. 2882, the Ozone Standards Implementation Act, to provide regulatory relief to states, communities, and businesses affected by the 2015 ozone standard, and to make initial targeted, but impactful, reforms to the Clean Air Act.

c. CERCLA §108(b) Financial Assurance Program

EPA has recently proposed a new financial assurance requirement for several industries—beginning with hard rock mining, chemical manufacturing, and oil production. The new regulatory requirements are likely to require companies to set aside billions of dollars to deal with potential Superfund cleanup liabilities that are highly speculative and may never occur.

Per a court order from the D.C. Circuit Court of Appeals, EPA proposed the rule on December 1, 2016, and it was published in the *Federal Register* on January 11, 2017, with a 60-day comment period ending on March 24, 2017.

The comment period was extended 120 days to July 11, 2017, and the same court order requires that EPA publish the final rule by December 1, 2017.

Recommended Action

If the extended comment period for the proposed rule raises doubts about the technical feasibility of the standard due to the increased time for review and study of the impacts, EPA should petition the court for an extension of the December 1, 2017, deadline to issue a final rule. This would allow EPA to fully reconsider the rule and how to proceed by taking all available evidence into consideration.

d. EPA's Risk Management Program Rule

In following the directives of Executive Order 13650, EPA proposed in March 2016 certain amendments to its Risk Management Plan (RMP) regulations under the General Duty Clause of the Clean Air Act. Business and industry opposed or expressed serious concerns with these proposed amendments, including (1) the overlapping and conflicting regulatory burdens with regulations under the Occupational Safety and Health Administration; (2) the inadequacies of the "inherently safer technology" analysis; (3) the required disclosure of sensitive business and security data; (4) the infeasibility of requisite third-party audits; (5) the lack of an

appropriate cost-benefit analysis; and (6) the failure to comply with the Small Business Regulatory Enforcement Fairness Act.

The proposed RMP regulations were finalized on January 13, 2017. On March 13, 2017, EPA issued a 90-day stay of the regulations. More recently, EPA has proposed delaying the effective date of the RMP regulations until February 9, 2019. The agency held a public hearing on that proposal on April 19, 2017, and it is taking comments on the proposal until May 15, 2017.

Recommended Action

EPA should proceed with the stay of the regulations and the proposal to delay the effective date of the RMP regulations until February 9, 2019. This will enable EPA to review and reconsider the final RMP regulations, and potentially address the concerns raised by the regulated stakeholders.

e. New Source Review

EPA's New Source Review (NSR) permitting program is intended to ensure that construction and expansion of factories and power plants does not negatively impact air quality. However, it has long been recognized that the program and its implementation processes often impose unnecessary costs, uncertainties and delays on stakeholders that result in project cancellations. This has even created perverse incentives wherein some affected entities are inclined to continue operating older, less efficient facilities instead of investing in pollution-reducing upgrades and expansions that improve reliability, efficiency, and safety. These challenges have exacerbated in recent years as EPA's ratcheting down of National Ambient Air Quality (NAAQS) standards have made it increasingly difficult or even impossible to obtain permits for new or expanded operations. Ultimately, these obstacles serve to impede utility sector flexibility, inhibit growth and modernization of the U.S. industrial sector, and might actually undermine, rather than facilitate, the adoption of emissions-reducing technologies.

Recommended Action

Undertake a comprehensive analysis of administrative and legislative options to reduce unnecessary and ineffective New Source Review-related permitting obstacles while still maintaining the program's environmental benefits. Such a review should consider instituting improved definitions of NSR program triggers, such as what constitutes an emissions increase or facility modification.

f. Effluent Limitation Guidelines (ELGs) for Electric Power Plants

In late 2015, EPA finalized new rules setting strict federal limits on waterborne discharges from steam electric power plants. This rulemaking was plagued by inaccurate assumptions and a nontransparent public comment process that contributed to highly burdensome and potentially infeasible standards applicable to many affected entities. For example, because many facilities are unable to meet the rule's requirements with technologies

identified by EPA as sufficient for compliance, the agency significantly underestimated the actual costs of the regulation. As a result, the rule threatens to inappropriately force plant closures and drive significant job losses.

Responding to a petition submitted by industry stakeholders, the EPA announced on April 12, 2017 that it will institute an administrative stay of this regulation while it reconsiders the rule.

Recommended Action

We support EPA's decision to reconsider the rulemaking and urge the agency to pursue revisions that, consistent with the President's regulatory reform agenda, protect water quality through technologically and economically feasible means.

g. Effluent Limitations Guidelines (ELG) and Pretreatment Standards for the Oil and Gas Extraction Point Source Category

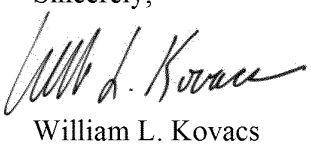
In June 2016, EPA finalized new regulations related to pretreatment standards for unconventional oil and gas (UOG) extraction waste water sent to publicly owned treatment works (POTWs). The rulemaking established a zero discharge standard prohibiting the treatment of hydraulic fracturing waste water by municipal sewage treatment facilities. EPA based this prohibition on a finding that alternative disposal options (underground injection and reuse) are currently widely available. However, this finding overstates the capacity of these alternative options and does not sufficiently consider their potential to be further limited in the future. Moreover, the Clean Water Act directs EPA to base any such restrictions not on the existence of alternative disposal options, but on a Best Available Technology Economically Achievable (BATEA) analysis of actual POTW waste water management technologies. EPA failed to undertake a thorough analysis to determine BATEA pretreatment potential, and in doing so based its zero discharge determination on inappropriate and insufficient information.

Recommendation

Undertake a thorough review of hydraulic fracturing-related waste water management technologies to determine if economically achievable pretreatment options are available, and consider revisions to the ELG rulemaking as appropriate based on this review.

The Chamber appreciates your consideration of these comments. If you have any questions, please contact me at 202-463-5533 or wkovacs@uschamber.com.

Sincerely,



William L. Kovacs

American Foundry Society
Comments on the U.S. Environmental Protection Agency
Evaluation of Existing Regulations Pursuant to Executive Order 13777, Enforcing the Regulatory Agenda
Docket ID No. EPA-HQ-OA-2017-0190

May 15, 2017

The American Foundry Society (AFS) hereby submits the following comments on the U.S. Environmental Protection Agency (EPA) Evaluation of Existing Regulations Pursuant to Executive Order 13777, Enforcing the Regulatory Agenda . AFS urges EPA to consider the se comments on burdensome regulations , and make appropriate recommendations to repeal, replace , or modify them to ensure the metalcasting industry continues to protect human health and the environment and to be globally competitive.

I. INDUSTRY OVERVIEW

AFS is the major trade and technical association for the North American metalcasting industry. AFS has more than 8 ,000 members representing nearly 2,000 metalcasting firms, their suppliers , and customers. The organization exists to provide knowledge and services that strengthen the metalcasting industry for the ultimate benefit of its customers and society. AFS seeks to advance the sciences related to the manufacture and utilization of metalcasting through research, education , and dissemination of techno logy. AFS also provides leadership in the areas of environmental, safety and industrial hygiene, government affairs, marketing, management , and human resources for the metalcasting industry.

The U.S. metalcasting industry is the second largest supplier o f castings in the world, after China. Metal castings are integral to virtually all U.S. manufacturing activities. In the U.S., castings are used to produce 90 percent of all manufactured durable goods and

nearly all manufacturing machinery . The industry is composed of 1,956 facilities manufacturing castings made from iron, steel, and aluminum alloys that have thousands of applications. In addition to the automotive, construction, and defense industries, other major sectors supplied by the metalcasting industry include agriculture, aerospace, energy exploration and conversion, oil and gas, mining, railroad, municipal/water infrastructure, transportation, and health care.

The American metalcasting industry provides employment for over 200,000 men and women directly and supports thousands of other jobs indirectly. The industry supports a payroll of more than $8 billion and sales of more than $20 billion annually. Metalcasting facilities are found in every state , and the industry is made up of predominately small businesses. Approximately 80 percent of domestic metalcasters have fewer than 100 employees.

II. REGULATORY IMPACT OVER THE PAST THIRTY YEARS

According to the Manufacturers Alliance for Productivity and Innovation (MAPI), since 1981 federal agencies have promulgated approximately 2,300 manufacturing -related regulations. This equates to 1.5 regulations every week for 30 years. About one half of the 2,300 federal rules impacting manufacturing were issued by the U.S. Environmental Protection Agency (EPA). Over the last 15 years, the compliance costs associated with these EPA rules are $177 billion, which is more than all other federal agencies combined over that same period.

These federal rules have imposed a significant regulatory burden on U.S. manufacturing without any formal assessment of the cumulative cost to industry. EPA was not required to conduct a cost-benefit analysis for over 90 percent of its rules, because they were not designated as "significant" (a significant rule is defined as a rule that has an impact of $100 million or greater on the U.S. economy). Accordingly, the cumulative impacts of these EPA rules (that separately make a small incremental addition to the regulatory

burdens on U.S. manufacturing) have been layered over 30 years to result in a significant impact.

Provided below are some specific regulations that need to be reviewed, revised , replaced, or eliminated to remove unnecessary burdens on the U.S. metalcasting industry.

III. SPECIFIC REGULATIONS IMPACTING THE METALC ASTING INDUSTRY

EPA Greenhouse Gas (GHG) Emissions from Electric Generating Utilities

In 2015, the U.S. Environmental Protection Agenc y (EPA) finalized new rules designed to limit GHG reductions from both existing and new power plants. The rule for existing plants mandates a 32 percent reduction in CO_2 emissions from the electric power sector by 2030, compared to 2005 levels. The final rule for newly constructed power plants will effectively require use of carbon capture and sequestration (CCS) technology to achieve these emissions goals, even though these control technologies have not yet been demonstrated to be commercially viable.

Metalcasting is one of the most energy -intensive industries in the U.S. As a significant energy consumer, the GHG rules could substantially increase energy costs for metalcasters and potentially disrupt the reliability of the energy grid. EPA should withdraw the rule and develop a more cost effective, reliable , and feasible approach to reduce CO_2 emissions to an appropriate level. A number of leading metalcasting producing states rely heavily depend on utilities where coal is used to generate electricity. EPA regulations that disproportionately impact coal-generated electricity put the affordability and reliability of electricity for foundries at risk.

Residual Risk and Technology Review (RTR) for Iron and Steel Foundry NESHAP for Major Sources

Air emissions from iron and steel foundry major sources are subject to the national emissions standards for hazardous air pollutants (NESHAP). EPA must conduct a

residual risk and technology review (RTR) for all NESHAPs eight years after promulgation. The RTR of the iron and steel foundry NESHAP is now due . Recently, EPA has issued more stringent and revised NESHAPs for several industry source categories, even though the RTR process determined that the risks associated with the controlled emissions from th ese sources were acceptable and that no new control technologies were identified. This regulatory overreach is not consistent with the letter and intent of the Clean Air Act (CAA), but nonetheless has been upheld by federal appeals courts applying the Che vron doctrine giving great deference to the actions of federal agencies, including EPA. AFS urges the EPA to implement the RTR process for iron and steel foundries that is consistent with the letter and intent of the CAA.

Stormwater Management

Metalcasters operate under a multi -sector general permit (MSGP), as is the case for most industrial stormwater dischargers, and must implement best management practices (BMPs) to meet stormwater benchmark concentration levels. If a benchmark level is exceeded, fac ilities must review their BMPs and determine if additi onal BMPs must be implemented, or if other corrective measures are needed.

Many of the benchmark concentration levels for metals have been set so low that it may not be possible for metalcasting opera tions to meet the benchmarks. In fact, many are so low that nearly all residential and commercial stormwater discharges would exceed them. As a result, many metalcasting operations could face unnecessary enforcement issues, even though their stormwater discharges are effectively controlled with BMPs.

Cost of Typical BMPs

As discussed above, facilities would need to implement one or more BMPs to control stormwater discharges to meet benchmarks . Typical BMPs to reduce suspended solids and metals levels in runoff and their associated capital and annual costs are identified below:

- Inlet protection such as catch basin inserts or filter socks ($6,000 to $10,000/yr);
- Vegetated bioswale or buffer strips ($30,0000 to $50,000, plus $1,000/yr);
- Detention ponds ($150,000 to $200,000, plus $5,000 to $10,000/yr);
- Filter systems ($100,000 to $750,000, plus $10,000 to $20,000/yr);
- Hydrodynamic separators ($75,000 to $300,000, plus $5,000 to $10,000/yr);
- Regular sweeping ($20,000 to $25,000/yr);
- General housekeeping and weekly inspections (as much as $50,000/yr); and
- Inside or covered storage (wood frame building, 3,200 SF at $60,000 to 80,000).

The decisions on which BMPs to implement at a foundry will depen d on the specific conditions and needs at each individual facility. If additional BMPs are still not achieving benchmarks (and if EPA required strict compliance or identified possible stream impairment), then end-of-pipe, mechanical/chemical stormwater treatment may be required. While this may appear to be an extreme option, it may be necessary if the facility must meet numeric limits as part of the MSGP or it may be forced to secure an individual facility permit outside the MSGP and thus meet new numeric limits set at or near benchmark values. EPA needs to provide for flexibility in and for enforcing benchmarks as permit levels. If left unchecked this permit process will be never -ending, extremely burdensome, and very expensive for our industry.

Startup, Shutdown, and Malfunction (SSM) Provisions

The CAA provides for some affirmative defenses for facilities that may exceed air emission limits during temporary periods of startup, shutdown , and malfunction (SSM). The U.S. Court of Appeals for the D.C. C ircuit vacated the rule that allows facilities to exceed applicable hazardous air pollutant emissions standards during periods of startup, shutdown, and equipment malfunctions (SSM). EPA is also in the process of removing these SSM provisions as part of its residual risk and technology reviews (RTRs) for NESHAPs.

In June 2015, EPA issued a final rule requiring states to revise their state implementation plans (SIPs) to control excess air emissions during periods of SSM and submit revised

plans that address new SSM provisions to EPA for approval by November 22, 2016 (SIP Call Rule). T his rule has been challenged in federal court. States and industry groups claim that: 1) EPA does not have the authority to ban affirmative defense for SSM; 2) it is not practical for facilities to comply with emissions standards during periods of SSM; and 3) it will lead to unnecessary violations for emissions over which facilities have no control.

The problem for metalcasting facilities is that even with the best control technologies, emissions may exceed the regulatory standard temporarily during these periods of startup, shutdown, and malfunction, despite the fact that facilities may have a plan in place to minimize emissions during these occur rences. Without some relief, facilities will be subject to enforcement actions that are beyond their control and state regulatory authorities may be faced with an unnecessary and unwanted administrative burden of enforcing such events.

National Ambient Air Quality Standards (NAAQS) for Fine Particulate Matter ($PM_{2.5}$) Air Emissions

In December 2012, EPA finalized its update to the $PM_{2.5}$ rule. The recent changes to the $PM_{2.5}$ standards were set so low that many areas in the country, including some rural areas with no industrial operations, have background $PM_{2.5}$ levels that are at, or near the NAAQS for $PM_{2.5}$. As a result, some foundries are unable to obtain air permits to build new, state -of-the-art metalcasting operations or to expand or update their existing facilities because such activities may contribute $PM_{2.5}$ emissions to an area that would then exceed the NAAQS.

$PM_{2.5}$ air emissions are reduced at metalcasting facilities with the use of baghouses and other pollution control devices. In most cases, more than 99 percent of the fine particulates are captured and no t emitted into the environment. Major flexibility is needed for metalcasters in implementing the $PM_{2.5}$ NAAQS, especially as it relates to completing any air dispersion modeling.

Ozone NAAQS Revision from October 2015

This rule set a very stringent emission standard for ozone emissions from all stationary sources in the U.S. This standard is just now starting to be implemented, and is expected to result in significant costs for communities. AFS is concerned that metalcasters will not be able to expand without a reduction of emission or shut down of operations from other businesses in the area. With the revised NAAQS, plans for expansion may be delayed or shelved.

On March 28, 2017 President Trump issued an Executive Order directing EPA to review for possible reconsideration any rule that could "potentially burden the development or use of domestically produced energy sources, with particular attention to oil, natural gas, coal, and nuclear energy sources." EPA is currently evaluating whether the 2015 ozone standard is potentially subject to the review process set forth in this Executive Order.

On April 11, 2017 the D.C. Circuit indefinitely delayed the legal challenge while EPA reconsiders the 2015 ozone standard. EPA should defer implementation of the new Ozone NAAQS standard by at least two years , perhaps more, to allow states and impacted sources more time to prepare to meet the new standard and have a smooth transition from efforts associated with meeting the 2008 Ozone standard.

Waters of the United States

This rule redefines the scope of the Clean Water Act (CWA) to state which waters (such as cooling ponds, catch basins) need to meet CWA standards to protect aquatic life. It is currently stayed while going through litigation, so it is not being implemented. If implemented, it would force foundries to meet CWA standards at waters on their facilities that are currently unregulated.

President Trump signed, Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule on February 28, 2017. The order directed EPA and the Corps to review the rule and issue a notice and comment for a proposed rule re scinding or revising the rule. With this new

rulemaking EPA should revise this rule to ensure that waters of the U.S. are defined appropriately to not broaden CWA jurisdiction and unnecessarily burden the metalcasting industry.

Definition of Solid Waste – Regulating the Recycling of Valuable Secondary Materials

On January 13, 2015, the U.S. Environmental Protection Agency (EPA) Administrator published the final revisions to the Definition of Solid Waste rule. The primary purpose of the revisions was to close perceived regulatory gaps in the 2008 definition of solid waste rule that allowed the recycling of hazardous secondary materials without onerous regulatory controls. The 2008 rule allowed that if secondary materials were recycled, they were not wastes. The new revisions provide that the recycling of secondary materials can occur only if specific regulatory requirements applicable to waste management are met.

The biggest change in the 2014 revisions is that EPA has withdrawn the "transfer-based" exclusion and replaced it with the "verified recycler" exclusion. Now, off site, third-party facilities that receive secondary materials for recycling must have a RCRA permit. In addition, generators must: 1) notify EPA or authorized state, 2) ensure that materials are contained, 3) maintain records of shipments of materials off site, and 4) meet emergency response and preparedness requirements. While the new revisions provide safeguards for the recycling of secondary materials, they make it more difficult and more expensive to recycle many secondary materials. EPA should revise the definition of solid waste regulations to facilitate the recycling and reuse of valuable secondary materials. This makes good economic sense as well as being protective of the environment and human health.

Chemical Data Reporting Rule

In August 2011, EPA updated the Inventory Update Reporting (IUR) rule and changed the name to the Chemical Data Reporting (CDR) rule. 76 Fed. Reg. 50816 (August 16, 2011). Facilities in the metalcasting industry need to review the chemicals used at the

plant and the applicable regulatory criteria to determine if reportable chemical substances are "manufactured" in amounts that exceed the production thresholds.

Manufacturers and importers of chemical substances that are listed on the TSCA Inventory must submit a CDR report if the chemical substance is:

- manufactured or imported for commercial purposes;
- manufactured or imported above production thresholds; and
- not otherwise exempt from reporting in the rule.

The term, "manufacture," is broadly defined in the rule to mean "manufacture, produce, or import, for commercial purposes. Manufacture includes the extraction, for commercial purposes, of a component chemical substance from a previously existing chemical substance or complex combination of chemical substances." 40 CFR § 711.3. The term, "manufacture for commercial purpose" also applies to "chemicals that are produced coincidentally during manufacture, processing, use or disposal of another substance or mixture, including both by -products that are separated and impurities that remain in a substance or mixture." 40 CFR § 704.3. Many facilities may be subject to the CDR rule as a result of recycling, reprocessing, or reusing a reportable chemical substance.

The CDR rule includes specific provisions for by -products, mixtures, and impurities of chemical substances to determine if they meet the criteria for manufacturing. Metal -bearing compounds, solvents, and other reportable chemical substances that are rec ycled, reprocessed, or reused may trigger the reporting requirements. For instance, some by -products may be reportable if they are sent off site for recycling or reuse, but would not be reportable if disposed.

This reporting requirement provides a disi ncentive to recycling and reclamation of valuable secondary materials. In addition, the information that facilities must report pursuant to this rule is duplicative of other information that EPA requires, such as the Toxic Release Inventory (TRI), and in the case of many foundries only requires reporting a very benign by -product (*i.e.*, slag). EPA should consider eliminating this burdensome regulation as there are no environmental benefits.

EPA Spill Prevention Control and Countermeasure (SPCC) - 40 CFR Part 112

The EPA SPCC rule established requirements for facilities to prevent a discharge of oil into navigable waters or adjoining shorelines. It was designed primarily to cover onshore and offshore oil drilling and production facilities, oil refining or storage facilities, and other oil-intensive industries with a high probability of significant damage should an oil release occur. Current SPCC regulations require a comprehensive, detailed plan developed and certified by an engineer, dedication of adequate resources and manpower to react to an unforeseen spill, storage tank testing and evaluation for integrity, and many other elements. While metalcasters and manufacturers do use oils for machining and lubrication, they do not generate nearly the same amounts that are present in the oil production, refining, storage, and distribution sectors. While there is a "streamlined" process for smaller facilities with less than 10,000 gallons of onsite oil storage, many small- and medium-sized manufacturers miss that cutoff, and are essentially held to the same standard as large multi-national corporations and other major producers. The agency should offer more flexibility for smaller scale manufacturing facilities, with multiple lubricant-containing machines, that are above the 10,000-gallon threshold.

IV. CONCLUSION

AFS appreciates the opportunity to provide these comments on EPA's process to evaluate existing regulations. If you have any questions or would like additional information about the comments, please contact Christian Richter or Jeff Hannapel with our AFS Washington office at crichter@thepolicygroup.com or jhannapel@thepolicygroup.com. We look forward to working with you on this process to reduce regulatory burdens impacting the metalcasting industry and domestic manufacturers.

May 5, 2017

«Salutation» «Firstname» «Lastname»
«Address»
«City», «State» «Zip»

Dear «Salutation» «Lastname»:

Thank you for writing to me about the U.S. Environmental Protection Agency's efforts in response to Executive Order 13777: Enforcing the Regulatory Reform Agenda. I have forwarded a copy of your communication to EPA Docket EPA-HQ-OA-2017-0190, which is collecting public input on regulations that may be appropriate for repeal, replacement or modification. I hope you will follow the progress of our efforts at https://www.epa.gov/laws-regulations/regulatory-reform.

It is an honor and privilege to lead the EPA. Promoting and protecting a strong and healthy environment is one of government's lifeblood priorities, and the EPA is vital to that mission. I look forward to working with the agency's dedicated employees, stakeholders and our state partners on a shared vision to protect our environment for future generations.

We as an agency will always strive to strike a balance between protecting our water, air and natural resources and building our economy. We do not have to choose between them. Our nation has a stellar history of protecting our natural resources and our environment while also respecting economic growth and jobs, and we will continue to do that.

Among my top priorities are improving America's water infrastructure and focusing on the EPA's core mission of protecting our nation's air, water and land. We need to shape the work of the EPA by setting national standards and finding neighborhood solutions. We will also strive for regulatory certainty so regulated industries will know exactly what is expected of them.

I am a firm believer in the EPA's mission to protect human health and the environment and look forward to the opportunity to help provide future generations with a better and healthier environment. On behalf of everyone at the EPA, I thank you for your interest in our work and your support for protecting the environment.

Respectfully yours,

E. Scott Pruitt

May 1, 2017

Transmitted electronically: ***www.regulations.gov***
Dravis.samantha@epa.gov

Ms. Samantha K. Dravis, Regulatory Reform Officer
Associate Administrator for Policy
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code 1804-A
Washington, DC 20460

Comments to Docket ID No. EPA-HQ-OA-2017-0190, Evaluation of Existing Regulations

Dear Ms. Dravis:

The National Waste & Recycling Association ("NWRA"), the Solid Waste Association of North America ("SWANA"), Waste Management, Inc. ("WM"), and Republic Services (collectively, the "Solid Waste Working Group" or "Working Group") appreciate the opportunity to provide input to the Agency on "Evaluation of Existing Regulations," 82 Fed. Reg. 17793 (April 13, 2017) to identify regulations that are appropriate for repeal, replacement or modification under Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

In particular, we ask EPA to review the New Source Performance Standards ("NSPS") and Emission Guidelines for Municipal Solid Waste ("MSW") Landfills (the "Landfill Air Rules"). The United States Environmental Protection Agency ("EPA" or the "Agency") has adopted two versions of those two rules—one in 1996 ("Subparts WWW and Cc" or the "1996 Rules")[1] and one in 2016 ("Subparts XXX and Cc" or the "2016 Rules").[2] **Based on our analysis of the rules and evaluation criteria, we strongly urge the Agency to administratively stay the 2016 Rules, and undertake rulemaking actions to address problematic provisions and evaluate cost-effective reforms.** These comments are consistent with our petition for Rulemaking, Reconsideration, and Administrative Stay of the 2016 Rules, submitted to EPA on October 27, 2016 (the "Administrative Petition"), which remains pending.[3] In addition, we ask EPA to review the 1996 Rules alongside the review of the 2016 Rules that is now required by executive order. Only through reviewing all of the Landfill Air Rules together will EPA and the industry be able to craft a reasonable set of regulations to protect human health and the environment while minimizing regulatory burden and cost.

The Solid Waste Working Group represents a broad base of the waste management sector, with NWRA as the leading trade association, and SWANA as the leading professional association for public and private waste management officials in the sector. WM and Republic are leading waste service providers, with over 400 active MSW landfills between them, many of which have been subject to the Landfill Air Rules, as well as the *National Emission Standards for Hazardous Air Pollutants* at 40 C.F.R. Part 63, Subpart AAAA (the "Landfill NESHAP"). The members of the Working Group have gained over two decades of valuable insight and experience in complying with those rules. Further, the members of the Working Group have actively engaged with EPA in the implementation of the rules, working closely with EPA's Office of Air Quality, Planning and Standards personnel for over a decade to accomplish necessary revisions and clarifications to the rules. The members of the Working Group commented extensively on rulemaking proposals published in 2002 and 2006, and more recently in 2014 and 2015.[4]

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[1] 40 C.F.R. Part 60, Subparts WWW & Cc. *See also* 40 C.F.R. Part 62, Subpart GGG (EPA's Federal Plan implementing the MSW Landfill emission guidelines).

[2] 40 C.F.R. Part 60 Subparts XXX & Cf; *see also "Standards of Performance for Municipal Solid Waste Landfills,"* 81 Fed. Reg. 59332-59384 (Aug. 29, 2016); and *"Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,"* 81 Fed. Reg. 59276-59330 (Aug. 29, 2016).

[3] Petition for Rulemaking, Reconsideration, and Administrative Stay (Oct. 27, 2016) (filed by NWRA, SWANA, Republic Services, WM, and Waste Management Disposal Services of Pennsylvania, Inc.).

[4] *See* NWRA & SWANA Comments on 2014 Proposal, EPA-HQ-OAR-2003-0215-0108 & EPA-HQ-OAR-2014-0451-0062 and Comments on 2015 Supplemental Proposal, EPA-HQ-OAR-2003-0215-0196 & EPA-HQ-OAR-2014-0451-0186; Republic Services, Comments on Proposed Standards of Performance for Municipal Solid Waste Landfills, EPA-HQ-OAR-2003-0215-0099, Comments on Supplemental Proposal, EPA-HQ-OAR-2003-0215-0202, Comments on the Advanced Notice of Proposed Ruling Making for Emission Guidelines, EPA-HQ-OAR-2014-0451-0061, and Comments on Proposed Rules; Emission Guidelines, EPA-HQ-OAR-2014-0451-0176; Waste Management, Inc., Comments on 2014 Proposal, EPA-HQ-OAR-2003-0215-0100 and Comments on 2015 Supplemental Proposal, EPA-HQ-OAR-2003-0215-0198 & EPA-HQ-OAR-2014-0451-0192. Additionally, members of the Working Group provided supplemental information at EPA-HQ-OAR-2003-0215-0003, EPA-HQ-OAR-2003-0215-0007, EPA-HQ-OAR-2003-0215-0053, EPA-HQ-OAR-2003-0215-0055, EPA-HQ-OAR-2003-0215-0057, & EPA-HQ-OAR-2003-0215-0058.

Although the Working Group supports EPA's regulatory reform efforts, we are not seeking a complete repeal of all regulations governing the control and management of MSW landfill gas. On the contrary, the members of the Working Group view proper landfill gas management as a fundamental requirement of providing competent and reliable waste management services and have a strong commitment to environmental stewardship and full regulatory compliance, as illustrated by the success of the industry in reducing landfill gas emissions substantially and continuously for many decades. In short, we recognize the necessity of regulation, but support EPA's effort to ensure all regulations are, indeed, necessary.

We believe that the Landfill Air Rules present significant opportunities for regulatory reform, consistent with EPA's request for information and Executive Order 13777, because they are confusing, inconsistent, unnecessarily burdensome, impose costs far greater than benefits, and are based on Executive actions that have been repealed. Although EPA determined that the best system of emission reduction ("BSER") underlying the rules had not changed, EPA nevertheless inappropriately finalized more stringent compliance obligations for both new and existing sources in accordance with President Obama's now-rescinded Climate Action Plan and strategy to Reduce Methane Emissions.[5] Further, EPA justified the new, more stringent standards using the Social Cost of Carbon and Methane, which no longer represents an authorized policy for regulatory decision-making. The 2016 Rules also fail to include reasonable streamlining provisions that the industry and EPA have worked cooperatively over many years to address a variety of concerns identified in the 1996 Rules.

For these reasons, as further discussed below, we believe that the best means of remedying the significant flaws and reforming the Landfill Air Rules is an immediate administrative stay of the 2016 Rules, and an Agency commitment to a new rulemaking process. We look forward to working with EPA in developing the revisions needed to ensure the regulations governing the control of landfill gas are appropriate, regular, and effective.

A. <u>The 2016 Rules Derive From and Implement Executive Orders and Presidential Directives That Have Been Rescinded.</u>

The 2016 Rules—Subparts XXX and Cf—must be repealed, replaced, or modified because the rules are based in substantial part on three Obama-era executive actions that have been rescinded by President Trump, including: (1) President Obama's Climate Action Plan,[6] (2) President Obama's Methane Strategy,[7] and (3) the Social Cost of Methane.[8]

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[5] Climate Action Plan-Strategy to Reduce Methane Emissions, March 2014, at 5.
[6] "The President's Climate Action Plan," Executive Office of the President, June 2013 (*https://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf*).
[7] "Climate Action Plan Strategy to Reduce Methane," Executive Office of the President, March 2014 (*https://www.whitehouse.gov/sites/default/files/strategy_to_reduce_methane_emissions_2014-03-28_final.pdf*).
[8] Social Cost of CH_4, Marten et al. (2014).

When finalizing the 2016 Rules, EPA stated that the rules are "consistent with the President's 2013 Climate Action Plan" and "the President's Methane Strategy" and that the rules are "an important element of the United States' work to reduce emissions that are contributing to climate change."[9] As discussed in greater detail below, EPA was not required to modify or revise the Landfill Air Rules, but did so anyway in order to advance President Obama's climate policies. Furthermore, in justifying the costs of EPA's burdensome and unnecessary revisions to the Landfill Air Rules, EPA quantified the supposed benefits of its 2016 Rules by relying on the Social Cost of Methane, without which the Agency could not have justified the costs of the rules.

On March 28, 2017, President Trump signed the "Presidential Executive Order on Promoting Energy Independence and Economic Growth," E.O. 13783. Executive Order 13783 revokes several earlier climate-related Executive actions, including the Climate Action Plan and the Methane Strategy.[10] Furthermore, the Executive Order withdraws the use of the Social Cost of Methane for regulatory decision making and declares that the framework "is no longer representative of government policy."[11] Because the Executive Order has revoked the climate-related policies that serve as the basis for EPA's 2016 Rules, EPA should immediately suspend the rules and promptly convene a proceeding to review and revise them.

B. The 2016 Rules Are Unnecessary and Ineffective.

The 2016 Rules are unnecessary or ineffective regulations that are appropriate candidates for repeal, replacement, or modification because: (1) they increased the stringency of existing Clean Air Act ("CAA") Section 111 standards governing MSW landfills based on the directives contained in President Obama's now-rescinded Climate Action Plan and Methane Strategy, rather than on any statutory mandate to do so; and (2) many aspects of the 2016 Rules have added significant compliance burdens to the existing standards, creating inconsistent, inappropriate, or unworkable conditions for regulated MSW landfills.

1. The 2016 Rules Unnecessarily Reduced the NMOC Emission Threshold.

Since 1996, MSW landfills have been subject to standards promulgated under Sections 111(b) and 111(d) of the CAA: the Standards of Performance for Municipal Solid Waste Landfills set forth at 40 C.F.R. Part 60, Subpart WWW governing new sources; and the Emission Guidelines and Compliance Times for Existing Municipal Solid Waste Landfills set forth at 40 C.F.R. Part 60, Subpart Cc governing existing sources. The primary compliance mechanism under the 1996 Rules was the installation and operation of a gas collection and control system ("GCCS") for landfills that meet certain size and non-methane organic compound ("NMOC")

[9] 81 Fed. Reg. at 59333;81 Fed. Reg. at 59277.
[10] E.O. 13783, Section 3.
[11] *Id.* at Section 5.

emission rate thresholds. In 2003, EPA promulgated the Landfill NESHAP under Section 112 of the CAA, which references and requires compliance with the substantive requirements of the 1996 Rules (Subparts WWW and Cc). Through the obligation to install and maintain a GCCS, the 1996 Rules and the Landfill NESHAP have been largely effective at controlling emissions from MSW landfills, reducing emissions substantially and continuously for two decades.

EPA promulgated Subpart XXX in 2016 pursuant to CAA Section 111(b), governing new sources, which requires EPA to review each NSPS once every eight years.[12] After concluding such review, EPA is not required to revise an NSPS unless the Agency determines that it is appropriate to do so. Even as it adopted the new 2016 Rules, EPA acknowledged that the 1996 Rules already effectively controlled landfill gas emissions. For example, in the preamble to EPA's 2014 proposal, EPA stated that a well-designed and well-maintained GCCS remains BSER for MSW landfills and observed that the obligations in the 1996 Rules concerning operation of a GCCS "continue to ***ensure that the collection system efficiently collects landfill gas.***"[13] EPA further noted that the GCCS design and operation standards in the 1996 Rules remain "the best format" for regulating air emissions from MSW landfills.[14] Despite conceding that the regulatory framework in the 1996 Rules continues to be appropriate and that the GCCS requirement remains BSER for the landfill sector, EPA nevertheless decided to promulgate the 2016 Rules, reducing the NMOC emission threshold for installing a GCCS from 50 Mg/year to 34 Mg/year. EPA cited President Obama's Climate Action Plan and Methane Reduction Strategy as an important impetus for these reductions.

Likewise, with the promulgation of Subpart Cf, EPA determined to increase the stringency of requirements governing existing MSW landfills under Section 111(d) of the Clean Air Act, despite any authority in that section to do so, and despite the Agency's determination that the 1996 Rules continue to reflect BSER. Unlike CAA Section 111(b) governing new sources, CAA Section 111(d) does not permit EPA to review and revise Emission Guidelines applicable to existing sources.[15] In promulgating Subpart Cf, EPA claimed that the Agency has "discretion to [conduct a review of Emission Guidelines] when circumstances indicate that it is appropriate."[16] Until the promulgation of the 2016 Rules, however, EPA had never before revised and tightened already existing final Emission Guidelines published under CAA Section 111(d). As a direct result of EPA's unprecedented action, existing sources with emissions below the 50 Mg/yr threshold may now be required to add controls that they had not planned for and that would not have been required under the 1996 Rules.

EPA justified the costs of installing a GCCS at a lower NMOC threshold on the basis that "substantial reduction in emissions of landfill gas and its constituent components, ***including***

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[12] 42 U.S.C. § 7411(b).
[13] *Standards of Performance for Municipal Solid Waste Landfills*; Proposed Rule, 79 Fed. Reg. 41796, 41802 (July 17, 2014).
[14] *Id.* at 41802.
[15] *Compare* 42 U.S.C. § 7411(b) and 7411(d).
[16] 81 Fed. Reg. at 59277.

methane, will result."[17] According to EPA, further reductions of methane emissions (which is not the regulated pollutant under the rules) is important because "MSW landfills continue [ ] to be the third-largest source of methane emissions in the U.S.," which represents "1.9 percent of total U.S. GHG emissions in carbon dioxide equivalent."[18] It is "***[f]or these reasons . . . EPA is finalizing changes to the Emission Guidelines***."[19] If the Agency's motivations were in doubt, the next five pages of the Subpart Cf Preamble discuss climate impacts associated with methane emissions, while the public health effects associated with NMOC emissions – the regulated pollutant under these rules – are limited to a single paragraph of discussion.[20]

Finally, after essentially conceding that the 2016 Rules were adopted only to advance the Climate Action Plan and Methane Reduction Strategy, EPA justified the costs associated with the NMOC emission threshold primarily by relying on the now-rescinded Social Cost of Methane, which purports to quantify the climate-related benefits of methane reduction. This controversial and unproven metric, derived from the Agency's Social Cost of Carbon framework, far overstated the benefits of reducing the NMOC emission rate trigger for the GCCS requirement. As discussed in greater detail in Section E, below, EPA cannot justify the costs of the 2016 Rules without the Social Cost of Methane, and should therefore restore the NMOC emission threshold to 50 Mg/yr.

2. <u>The Landfill Air Rules Are Ineffective.</u>

In its preamble to the final 2016 Rules, EPA noted that one basis for promulgating the rules was the need for clarification of certain aspects of the 1996 Rules.[21] Indeed, over the past decade, many stakeholders, including members of the Working Group, have worked with EPA to identify necessary revisions and clarifications to the 1996 Rules.[22] With the proposed issuance of revised Landfill Air Rules, we were hopeful that EPA would improve the rules in a manner that provides clear and achievable compliance expectations for the regulated community. Instead, some of the provisions in the 2016 Rules actually exacerbate or simply fail to address many of the problems that regulated landfills faced under the 1996 Rules. A comprehensive discussion of some of the major problems with new 2016 Rules can be found in the Working Group's Administrative Petition.

Rather than highlight the many issues in the rules that are in dire need of correction, the remainder of this section focuses on provisions in the 2016 Rules that relate to approval of GCCS design plans, wellhead monitoring parameters, and corrective action procedures. These

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[17] *Id.* at 59278.
[18] *Id.* at 59281.
[19] 81 Fed. Reg. 59281.
[20] *See id.* at 59282-59287.
[21] 81 Fed. Reg. at 59333.
[22] For a discussion of the numerous issues that stakeholders worked to address with EPA since the issuance of the 1996 Rules, we refer EPA to the submissions referenced in footnotes 3 and 4 above, and incorporated fully by reference into this letter.

issues are among the most significant problems that stakeholders have identified for EPA over the course of two decades of implementing the 1996 Rules and demonstrate that the 2016 Rules are ineffective at addressing these issues.

a. Gas Collection and Control System (GCCS) Design Plan

Given the site-specific nature of landfills, each owner/operator is required to prepare a GCCS design plan that applies the collection and control requirements to the unique circumstances presented at each landfill. A GCCS design plan, prepared with the assistance of a licensed, third-party professional engineer, essentially operates as a landfill's user manual, specifying how the GCCS should operate, and is therefore the primary means for complying with the Landfill Air Rules. Under the 1996 Rules, landfills experienced a very low rate of agency review and approval of GCCS design plans, including alternatives to the design standards and operating parameters, leaving many facilities without any certainty as to whether the GCCS design plan requirements were met or whether their alternatives are appropriate. Presumably to correct these issues, EPA solicited comments on streamlining the GCCS design plan approval process. Rather than make improvements to the rules, however, the 2016 Rules ***have significantly worsened the compliance uncertainty associated with GCCS design plan review and approval***.

For example, the 2016 Rules require that each GCCS design plan be approved, but leaves the decision to review a submitted design plan entirely to the discretion of EPA or the delegated state authority.[23] EPA has thus created a system by which a landfill owner/operator is required to submit a GCCS design plan for agency approval, but neither EPA nor its state or local counterparts are held accountable for actually reviewing and approving, or disapproving, those plans.

This uncertainty is compounded by the failure of the 2016 Rules to provide clarity on whether landfills must proceed with installation of a GCCS without agency approval. For example, the rules state that without having obtained approval, a landfill *may* continue with implementation of the design plan, recognizing that they would "be proceeding at their own risk."[24] This permissive and unprecedented language fails to inform the regulated entity what it should or must do when the relevant agency has not provided approval, and is directly at odds with other provisions in the rules that expressly require actions to be taken in accordance with an approved design plan.[25]

Further, the 2016 Rules do not suspend a landfill's compliance obligations pending design plan approval, including the obligation to seek applicable permits, award contracts, and

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[23] *See* 40 C.F.R. §§ 60.767(c)(5)-(6) & 60.38f(d)(5)-(6).
[24] 40 C.F.R. § 60.767(c)(6); 40 C.F.R. § 60.38f(d)(5) and (6).
[25] 40 C.F.R. § 60.765(b) ("each owner or operator of a controlled landfill must place each well or design component as specified in the ***approved*** design plan").

install and start up a GCCS within 30 months of the regulatory trigger. The net result of the revised design plan approval process is a Kafkaesque choice for landfill owners/operators: face potential enforcement risk for missing the 30-month compliance deadline in the rules, or face potential financial *and* enforcement risk for installing and operating a multi-million-dollar gas collection system in accordance with a design plan that may later be disapproved.

The 2016 Rules create even further confusion by concluding the design plan approval process with the following statement:

> In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.[26]

This unintelligible language does not explain how "prior actions" can be conformed to a newly imposed requirement and does not state whether the resulting enforcement risk is retroactive, prospective, or both. Furthermore, it makes clear that EPA did not consider the significant financial risks associated with installing a multi-million dollar gas collection system pursuant to a plan that may later be deemed insufficient. This risk is particularly acute for landfills that need alternative designs to operate a GCCS, given that alternatives must be approved by the relevant agency.

Thus, the 2016 Rules fail to provide the essential regulatory element of fair and timely notice of compliance obligations and therefore must be revised to provide certainty to regulated landfills. The Working Group suggests that EPA eliminate the need for agency review and approval of GCCS plans, which is a system that has simply not worked to date. Instead, we recommend that delegated authorities should be allowed to rely upon a licensed, third-party professional engineer's certification of design plans and revisions in lieu of an agency review and approval process, with certified plans maintained onsite for inspection and/or submittal to the implementing agency, consistent with other standards adopted by EPA.[27] In the event EPA continues to believe that design plan review and approval is necessary, we ask the Agency to consider a defined timeframe for such review and a deemed approval in the event that the reviewing agency fails to respond in a timely manner.

b. Temperature Well-Head Parameter

The 1996 Rules require landfills to conduct regular monitoring to verify that each GCCS wellhead meets certain operating parameters, including limits for pressure, temperature, and either oxygen or nitrogen. In working with EPA on improvements to the 1996 Rules, members

[26] 40 C.F.R. § 60.767(c)(5) and 40 C.F.R § 38f(d)(5).

[27] The Working Group identified 62 other CAA rules with similar provisions in the supplemental comments cited in footnote 4, above.

of the Working Group expressed their concerns that the temperature and oxygen/nitrogen wellhead monitoring parameters are counterproductive to optimal operation of a GCCS. In response to these concerns, EPA proposed to eliminate both the oxygen/nitrogen parameter and the temperature parameter. We submitted comments supporting EPA's proposal because it recognized that the parameters are not good indicators of a well-functioning GCCS. Unfortunately, EPA retained the temperature parameter in the 2016 Rules and only eliminated the oxygen/nitrogen parameter.

Although the Working Group appreciates EPA's decision to remove from the 2016 Rules the oxygen/nitrogen parameter, nearly two decades of experience implementing the rules has demonstrated that the temperature parameter is a poor indicator of landfill fires or inhibited waste decomposition. To comply with this arbitrary temperature parameter, sites must often reduce landfill gas flow to the affected well, thereby decreasing system performance and ***potentially increasing emissions***. Furthermore, conforming operations to satisfy the temperature parameter imposes significant administrative burdens on both regulatory agencies and the regulated community. The Preambles to the 2016 Rules claim that EPA retained the temperature parameter because of concerns raised by commenters about landfill fires. Wellhead temperature values, however, are not an indicator of GCCS performance or landfill fires. Given that wellhead temperature is not a good indicator of system performance, EPA should eliminate it from the Landfill Air Rules.

c. Corrective Action Procedures

The 1996 Rules require landfills to take corrective actions when exceedances of wellhead operating parameters are discovered. Under those rules, corrective actions must be completed within 15 days, and an alternative timeline prepared if that schedule cannot be met. Under the 1996 Rules, a landfill is not required to obtain agency approval for alternative timelines that do not exceed 120 days. Nonetheless, inconsistent implementation of these requirements by states and EPA regions led to confusion and unanswered alternative timeline requests. Despite EPA's goal to clarify these procedures, the corrective action procedures in the 2016 Rules, much like the design plan procedures discussed above, have become more complicated and leave regulated landfills subject to increased compliance burden and even greater uncertainty.

The corrective action schedule in the 2016 Rules is far more complex, requiring a root cause analysis and submission of a corrective action plan to the relevant agency for review and approval if certain stringent timeframes cannot be met. For example, under the 2016 Rules, a corrective action must be taken within five days of an exceedance of a wellhead parameter. If a corrective action cannot be completed within 15 calendar days of the first measured exceedance, the owner/operator is required to "conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after" the exceedance was

measured.[28] For any corrective action that is not completed within 60 days, the owner/operator must notify EPA "as soon as practicable but no later than 75 days" after measuring the exceedance.[29] If the owner/operator expects the corrective action to take longer than 120 days to complete, the owner/operator must submit to EPA all of the following: (1) the root cause analysis; (2) the corrective action analysis; and (3) a corresponding implementation timeline.[30] These materials must be submitted "as soon as practicable, but not later than 75 days after the first" measured exceedance.[31] The Administrator "must approve the plan for corrective action and the corresponding timeline."[32] These procedures are highly complicated, overly burdensome, and like the design plan procedures, do not require agencies to respond to such submittals.

Because these new procedures significantly increase administrative burdens for both affected facilities and agencies, EPA must simplify the corrective action procedures in the Landfill Air Rules. The Working Group suggests that EPA eliminate the approval process for alternative corrective action procedures and timeframes altogether. This approach would be consistent with 40 C.F.R. Part 60, Subpart Ja (NSPS for petroleum refineries), which obligates sources to conduct root cause analyses but does not require agency approval of corrective actions.

C. The 2016 Rules Create a Serious Inconsistency and Interfere with Regulatory Reform Initiatives and Policies.

In promulgating the 2016 Rules without terminating the applicability of the 1996 Rules, the Agency has created an unintelligible web of regulation that now imposes two inconsistent standards on every landfill. In addition, the 2016 Rules ignore efforts made over many years by EPA and the solid waste industry to streamline the 1996 Rules, and instead render the rules more stringent based solely on the now-rescinded Climate Action Plan and Methane Reduction Strategy. These concerns likewise justify a full review of the Landfill Air Rules under Executive Order 13777.

1. The Landfill Air Rules Impose Inconsistent Requirements on All Landfills.

In the 2016 Rules, EPA adopted applicability provisions that fail to consider the applicability provisions of the 1996 Rules. EPA also failed to consider the Landfill NESHAP, which requires compliance with either Subparts WWW or Cc of the 1996 Rules. In its rule preamble, EPA acknowledged that the "updates" and "revisions" that it intended to make could have been adopted within the existing Subparts WWW and Cc by updating and revising those

[28] 40 C.F.R. § 60.765(a)(3)(i) & (5)(i) & 40 C.F.R. § 60.36f(a)(3)(i) & (5)(i).
[29] 40 C.F.R. § 60.767(j)(2) & 40 C.F.R. § 60.38f(k)(2).
[30] 40 C.F.R. § 60.765(a)(3)(iii) & (5)(iii) & 40 C.F.R. § 60.36f(a)(3)(iii) & (5)(iii).
[31] 40 C.F.R. § 60.767(j)(1) & 40 C.F.R. § 60.38f(k)(1).
[32] *Id.*

subparts.[33] Instead, EPA forged a more complicated path by promulgating two entirely new subparts—Subparts XXX and Cf. Thus, the applicability provisions for all five rules (the 1996 and 2016 versions of the NSPS and EG, plus the landfill NESHAP) are now codified as follows:

- **Subpart Cc:** landfills constructed / modified "before May 30, 1991"[34]
- **Subpart WWW:** landfills constructed / modified "on or after May 30, 1991"[35]
- **Subpart Cf:** landfills constructed / modified "on or before July 17, 2014"[36]
- **Subpart XXX:** landfills constructed / modified "after July 17, 2014"[37]
- **Subpart AAAA:** landfills that are major sources or area sources meeting certain design capacity thresholds must comply with WWW or Cc[38]

Because of these overlapping applicability provisions, every single landfill in the country will necessarily meet the applicability criteria of two inconsistent subparts—one from 1996, and one from 2016—as illustrated in the table provided below:

Landfills that were last constructed / modified…	Emission Guidelines for 111(d) "Existing Sources"		NSPS for 111(b) "New Sources"	
	Cc (1996)	Cf (2016)	WWW (1996)	XXX (2016)
… before May 30, 1991	✖	✖		
… on or between May 30, 1991 & July 17, 2014		✖	✖	
… after July 17, 2014			✖	✖

This overlapping applicability is unreasonable because it would require landfills to simultaneously comply with different and overlapping provisions from both the 1996 and 2016 Rules. In doing so, EPA is forcing landfills to meet all provisions of the 2016 Rules without allowing landfills to benefit from the regulatory provisions that EPA intended to update and streamline, since the 1996 Rules still apply as originally adopted. As just one example, EPA eliminated the oxygen parameter as a basis for requiring corrective action in the 2016 Rules, but the 1996 Rules continue to require all landfills to take corrective action for any oxygen exceedances.

[33] *See* 81 Fed. Reg. at 59333, FN 3.
[34] 40 C.F.R. § 60.32c.
[35] 40 C.F.R. § 60.750.
[36] 40 C.F.R. § 60.31f.
[37] 40 C.F.R. § 60.760.
[38] 40 C.F.R. §§ 63.1935; 63.1955.

These overlapping applicability provisions also contravene the CAA because they have the effect of simultaneously regulating most landfills—those last modified between 1991 and 2014—as both "new" landfills subject to an NSPS and "existing" landfills subject to an emission guideline. That result is not only logically inconsistent, but prohibited by the CAA, which defines the two terms "new source" and "existing source" in mutually exclusive fashion[39] and establishes separate programs for "new" and "existing" sources (Section 111(b) for new sources, and Section 111(d) for existing sources).

EPA's own statements confirm that the Agency did not intend for landfills to comply with both the 1996 Rules and 2016 Rules simultaneously. The most obvious indication of EPA's intent is the reference to the 2016 Rules as a "revision," "update," or "changes" to the 1996 Rules.[40] However, EPA's failure to enact appropriate applicability provisions in the 2016 Rules renders them inconsistent with the 1996 Rules that still apply. Landfills are thus left with a set of regulations unlike any EPA has ever imposed on any industry. All of the other NSPS revisions that EPA has ever adopted make clear that only one NSPS subpart should apply at a time (and EPA has never before revised an emission guideline). For example, when EPA revised the standard for stationary combustion turbines by adopting a new Subpart KKKK, EPA confirmed that sources subject to that new subpart would be "exempt" from the provisions of the pre-existing requirements of Subpart GG.[41] Similarly, after EPA adopted a new standard in Subpart Da for fossil fuel-fired steam generators, EPA revised the old Subpart D to make clear that any facility subject to the new standard "is not subject" to the old standard.[42] Many other subparts contain language of similar effect to avoid the overlap of pre-existing and newly revised standards.[43]

Due to the serious regulatory inconsistencies that EPA created in 2016 when it adopted different requirements in new Subparts XXX and Cc without terminating the applicability of the 1996 Rules, the 2016 Rules easily qualify as rules that contain severe inconsistencies, which must be reviewed under Executive Order 13777.

2. The Landfill Air Rules Interfere with Decade-Long Efforts to Reform the MSW Landfill NSPS and Emission Guidelines.

Executive Order 13777 also requires the review of rules that "otherwise interfere with regulatory reform initiatives and policies." The 2016 Rules meet that criterion because they interfere with and ignore numerous streamlining provisions that EPA and the landfill industry

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[39] The CAA defines "existing source" as "any stationary source other than a new source." 42 U.S.C. §7411(a)(6).
[40] *See e.g.*, 81 Fed. Reg. at 59276 ("Based on this review, the EPA has determined that it is appropriate to revise the Emission Guidelines.").
[41] 40 C.F.R. § 60.4305 ("Stationary combustion turbines regulated under this subpart [KKKK] are exempt from the requirements of subpart GG of this part.").
[42] 40 C.F.R. § 60.40 ("Any facility subject to . . . subpart Da . . . of this part is not subject to this subpart.").
[43] *See, e.g.*, 40 C.F.R. Part 60, Subparts Ea, Eb, K, Ka, Kb, AA, AAa, J, Ja, VV, VVa, GGG, GGGa, AAAA, BBBB, CCCC, DDDD, EEEE, & FFFF.

had developed over many years. Efforts at streamlining the 1996 Rules began in 2002—fifteen years ago—based on a shared concern and understanding that the 1996 Rules were unnecessarily burdensome in several ways. For example, at various points in the rule development process, both EPA and the industry agreed that the corrective action requirements for any exceedances of an oxygen or temperature wellhead parameter were not only unnecessary, but potentially counter-productive to effective landfill gas control.

However, in the 2016 Rules, EPA ignored many of the streamlining provisions it had previously considered and evaluated with input from the solid waste sector, and instead focused primarily on implementing President Obama's Climate Action Plan and Methane Reduction Strategy. As a result, the 2016 Rules became more onerous than the 1996 Rules, not less. In addition, it appears many of the streamlining provisions were dropped or significantly altered at the last moment in the rulemaking process, long after they had been proposed and supported by many favorable comments. For example, even though EPA had proposed to eliminate from the 1996 Rules the requirement for corrective action following exceedances of an arbitrary temperature parameter, the final 2016 Rules retained that requirement.

Since the 2016 Rules failed to include important revisions needed to correct various flaws in the 1996 Rules, the 2016 Rules interfered with the efforts at reforming those rules. Therefore, the 2016 Rules must be reviewed under Executive Order 13777, and EPA should initiate a new review of the 1996 Rules to make the reforms needed to minimize the regulatory burdens they impose.

D. The Data Underpinning the Reduced NMOC Threshold, the Wellhead Temperature Operating Standard, and the Tier 4 Wind Speed Restrictions do not meet Federal Requirements for Transparency or Reproducibility.

1. NMOC Threshold

EPA provided no technical or scientific justification for finalizing the reduced NMOC regulatory standard of 34 Mg/year in the 2016 Rules. EPA provided no substantiation that the original requirement to install landfill gas controls where NMOC emissions exceeded 50 Mg/year, as required by the 1996 Rules, is no longer appropriate. In reviewing the technical, policy and economic materials in the rulemaking docket, the Working Group was unable to obtain the underlying data supporting EPA's decision to lower the NMOC threshold, and we were unable to reproduce the Agency's analysis. Our comments on the proposed rules described our concerns in detail.[44] EPA responded by indicating that it provided technical justification for lowering the NMOC threshold in the rule preambles, but the Agency did not respond to the concerns about lack of transparency, access to data, or problems with reproducibility of their analysis and conclusions.

[44] *See* EPA-HQ-OAR-2003-0215-0099.1 (comment excerpt 20, and comment response).

We were not alone in criticizing the lack of robust and transparent data underpinning the rulemakings. In their Petition for Reconsideration, Sierra Club, Friends of the Earth, Institute for Local Self-Reliance and Center for a Competitive Waste Industry wrote,

> The underlying documentation used in the development of the rule that was released online with the Federal Register notices did not provide sufficient detail to replicate the calculation of the methane reductions attributed to the rule change claimed by EPA.[45]

And further,

> Petitioners disputed EPA's claimed methane reductions in part on the basis that the documentation was too obscure to make it possible for anyone else to replicate the calculations, which is a necessary step to validate the claimed emission reductions.[46]

EPA itself described the lack of robust data used in assessing potential emissions reductions in the preamble to the final Emission Guidelines Rule:

> With the data available, we are not able to provide health benefit estimates for the reduction in exposure to HAP, ozone, and PM2.5 for this rule. This is not to imply that there are no such benefits of the rule; rather, it is a reflection of the difficulties in modeling the direct and indirect impacts of the reductions in emissions for this sector with the data currently available.[47]

Without having otherwise justified the revisions to the rules, EPA relied heavily on the President's Climate Action Plan, Methane Strategy, and Social Cost of Methane to rationalize the increased costs of the lowered standard in the 2016 Rules; however, these documents have been rescinded.

Furthermore, the Agency's regulatory and cost analysis was based on a total of five modeled landfills to represent landfills opening during 2010-2014, combined with five landfills for which construction was already planned. This led EPA to project 10 future landfills subject to the revised Emission Guidelines. In addition, 11 model landfills were created that would be subject to the NSPS. As Sierra Club et. al further noted:

> However, the models used to calculate the claimed emission reductions remained obscure. No details were provided to explain anything about what those models (or more accurately "surrogates") consisted of or how they were constructed or validated. Nor did EPA state why it did not simply directly calculate the changes in emissions at the

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[45] Petition for Reconsideration by the Sierra Club, Friends of the Earth, Institute For Local Self-Reliance And Center For a Competitive Waste Industry, at 4 (Oct. 29, 2016) (the "Sierra Club Petition").
[46] *Id.* at 4-5.
[47] 81 Fed. Reg. at 59280.

landfills it said it had identified as being affected by the rules, rather than resorting to inapposite, and nontransparent "surrogates."[48]

2. Wellhead Temperature Operating Standard

In the 2015 Supplemental Proposal for the NSPS, EPA proposed to remove the operational standards for temperature and nitrogen/oxygen from the 1996 Rules, but would still have required monthly monitoring for the parameters. The Working Group commented favorably on EPA's proposal and stated that by removing these parameters, EPA would be eliminating the most significant barriers to installation of interim gas control measures. The Working Group also commented that the parameters often required landfill owner/operators to request higher operating values ("HOVs"), the granting of which created administrative burdens for state regulators and the industry, and the requests were often delayed or refused by state agencies due to lack of expert resources.

EPA asserted in the preambles of the final 2016 Rules that the reason the temperature parameter was retained is due to EPA's concerns about landfill fires. However, the Working Group submitted lengthy comments demonstrating that the 55-degree Celsius wellhead operating parameter is an arbitrary limit that is unrelated to landfill fires or anaerobic decomposition. Although EPA acknowledged the comments as a rationale for eliminating the temperature limit from the 1996 Rules, the Agency reversed course in the final 2016 Rules with little explanation beyond citing in a footnote a study entitled "Subsurface Heating Events at Solid Waste and Construction and Demolition Debris Landfills: Best Management Practices."[49] An assessment of the study was not available in the docket, nor did EPA explain how the study supported the Agency's decision to reverse course in the 2016 Rules.

Further, there is nothing in the record or docket to support setting a temperature standard and EPA did not provide a valid reason for deviating from its proposal to eliminate the temperature well-head parameter. In fact, the temperature parameter undercuts EPA's BSER determination for the landfill sector (i.e. a well-designed and well-operated GCCS). As discussed in Section B, above, temperature is an arbitrary parameter that may actually hinder optimal GCCS operation because sources may need to capture less gas in order to avoid exceeding the temperature limit. Given that the temperature parameter contributes to poor operation of a GCCS, EPA must remove the temperature-based corrective action requirements from the Landfill Air Rules.

3. Tier 4 Wind Speed Restrictions

In the 2016 Rules, EPA altered the proposed methodology for conducting Tier 4; *i.e.*, the collection of site-specific data to more precisely determine NMOC emissions for purposes of

[48] Sierra Club Petition, at 4.
[49] 81 Fed. Reg. at 59349, fn 39.

evaluating when a GCCS must be installed. Although the development of a Tier 4 methodology was well received in concept, the final rules included unnecessary and ineffective restrictions on the use of Tier 4. These new requirements rendered the Tier 4 monitoring technically impracticable to implement. EPA proposed to limit the use of Tier 4 when the average wind speed exceeds 5 miles per hour and the instantaneous wind speed exceeds 10 miles per hour.[50] The Working Group, among other commenters, submitted comments urging EPA not to finalize the proposed wind-speed restrictions, which members of the Working Group identified as unsupported by the available science and unduly restrictive.[51] Neither the Working Group nor any other commenters had any opportunity to comment on use of a wind barrier as an alternative to the wind speed restrictions because there was no indication in any of EPA's proposals that would suggest wind barriers were under consideration.

In the Final 2016 Rules, EPA reduced the wind speed restriction from 5 mph to 4 mp and added a new requirement to use a wind barrier.[52] EPA failed to support the wind-speed restrictions with required and relevant analysis, did not undertake to demonstrate that wind barrier technology is available to be implemented at subject landfills, and has greatly underestimated the increased burden such requirements will impose on sites with low site-specific emission rates.

E. The Landfill Air Rules Impose Costs that Exceed Benefits.

Executive Order 13777 requires EPA to review the 2016 Rules because the costs of the rules far exceed their benefits. Not only are the costs far more significant than the benefits, they are also far more real, in that the rules will require existing and new landfills to incur significantly higher operating and compliance expenses. In contrast, EPA has made no effort to explain how the relatively miniscule emission reductions that the rules are intended to achieve will improve the lives of anyone in the real world. Instead, the alleged benefits of the rule are entirely dependent on a speculative and flawed "social cost" analysis that has now been rescinded by Executive Order 13783.[53] Since the real costs far outweigh the essentially non-existent benefits, the 2016 Rules impose an "unnecessary regulatory burden" that EPA must review. In addition, the Working Group asks EPA to review the 1996 Rules alongside the review of the 2016 rules required under Executive Order 13777 because many individual provisions of the 1996 rules likewise impose unnecessary costs.

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[50] *See* 80 Fed. Reg. at 52135-36.
[51] *See* e.g. WM 2015 Comments at 15-16.
[52] 40 C.F.R. §§ 60.764 (a)(6)(iii)(A) & 40 C.F.R. 60.35f(a)(6)(iii)(A).
[53] Note that Executive Order 13783 also expressly requires EPA to "as soon as practicable" suspend, revise, or rescind the Landfill Air Rules because they are related to an arose out of President Obama's Climate Action Plan and Strategy to Reduce Methane Emissions.

1. The Costs of the 2016 Rules Are Significant and Real.

EPA's own cost estimates confirm that the 2016 Rules represent an "economically significant regulatory action"[54] as defined in Executive Order 12866—*i.e.*, a regulation imposing more than $100 million in cost. Specifically, EPA estimated that the reduction in the NMOC emission rate trigger would require more landfills to install a GCCS, adding $93 million in cost *each year* for existing landfills and $11 million in cost *each year* for new landfills.[55] Although new control installations on lower-emitting landfills are only one possible source of additional costs imposed under the 2016 Rules, these costs alone are significant and confirm that the rules warrant further review. These significant cost increases exacerbate a total regulatory burden already borne by the industry of more than $700 million per year under the 1996 Rules, according to EPA's own estimates.[56]

In addition to more stringent control requirements, the 2016 Rules also impose costly new procedural requirements. EPA estimated the new testing and monitoring costs necessary to comply with the 2016 Rules at around $840,000 for all landfills,[57] but those estimates are woefully low because they only reflect the additional costs for landfills that must install a control system for the first time under the new rules. EPA's estimates thus fail to account for many new requirements that apply to all landfills with a control system, regardless of when it was installed.

The most significant of the new monitoring requirements imposed under the 2016 Rules is the requirement to monitor all cover penetrations quarterly. EPA ignored the costs associated with the new cover penetration monitoring requirement because EPA characterized it as a mere "clarification" of the 1996 Rules, which already require quarterly surface monitoring. However, the 1996 Rules make abundantly clear that penetration monitoring is *only* required where elevated gas concentrations have been observed, not at *every* penetration,[58] and that approach has been standard industry practice for decades. In reality, the new requirement to monitor *all* cover penetrations under the 2016 Rules[59] will likely at least double the quarterly monitoring costs for every landfill in the country. EPA took no account of that significant cost increase in its regulatory impact analyses.

EPA's estimates also take no account of the many new recordkeeping and reporting requirements imposed by the 2016 Rules, including a completely new corrective action root cause analysis procedure. Although EPA may have assumed that these new procedures would

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[54] 81 Fed. Reg. at 59366; 81 Fed. Reg. at 59309.
[55] 81 Fed. Reg. at 59362, Table 2, note e; 81 Fed. Reg. at 59305, Table 2, note e.
[56] *Id.* at Table 2.
[57] *Id.* at Table 2, note e.
[58] 40 C.F.R. § 60.753(d) (requiring monitoring "where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover").
[59] 40 C.F.R. § 60.763(d) (requiring monitoring "where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations").

not add significant new costs because they were intended to replace the procedures already required under the 1996 Rules, the 2016 Rules require entirely new records and reports on a entirely different schedule, adding significant cost while providing no additional health or environmental benefits. Further, EPA's failure to terminate the 1996 Rules leaves landfills subject to an overlapping and confusing set of duplicative requirements that exacerbate the costs of the new procedures.

As another example, the 2016 Rules require any landfills that have recirculated liquids to submit an annual report that contains voluminous information about liquids addition practices. However, EPA has conceded that it does not have sufficient information to justify imposing a specific standards on landfills that add liquids,[60] and so the 2016 Rules do not impose any different substantive requirements on such landfills. Thus, EPA has imposed a significant recordkeeping and reporting burden that provides absolutely no real benefit. To the extent EPA wishes to gain a better understanding of how liquids addition may affect emissions, EPA should rely on its information gathering authority, instead of imposing an unjustified compliance obligation under a program that only authorizes EPA to establish standards based on adequately demonstrated control technology and practices.[61]

In its regulatory impact analysis for the 2016 Rules, EPA attempted to offset the increased regulatory burden somewhat by claiming that many landfills newly required to install controls would be able satisfy that requirement by constructing landfill-gas-to-energy projects. EPA assumed that the sale of electricity generated by those projects would provide a revenue stream that would offset the additional regulatory costs associated with the 2016 Rules. However, EPA's assumption is incorrect, in that it fails to recognize that most of the landfills that would be required to control emissions for the first time under the new rules would be lower-emitting landfills that likely would not generate enough landfill gas to make an energy project economically viable. Further, the economics of siting landfill gas-to-energy projects are complicated, require much more gas to be viable than EPA assumes, and often involve third parties that are not governed by the Landfill Air Rules. EPA's assumption that gas-to-energy income would offset increased compliance costs is vastly overstated and oversimplified. Thus, EPA should ignore those purported offsets in evaluating the regulatory burden imposed by the 2016 Rules.

In sum, EPA's own cost estimates for the 2016 Rules, although significant, severely underestimate the real costs that landfills will incur. However, even those underestimated costs significantly outweigh the essentially non-existent benefits of the 2016 Rules, which are briefly described below.

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[60] *See* 81 Fed. Reg. at 59345 & 81 Fed. Reg. at 59289 ("EPA did not receive sufficient data to support a separate subcategory for landfills adding leachate or other liquids.")

[61] *See* 42 U.S.C. § 7411(a) (defining "standards of performance" as those the Administrator has determined to be "adequately demonstrated").

2. The Alleged Benefits of the 2016 Rules Are Insignificant and Illusory.

Even at face value, the benefits that EPA sought to achieve with the 2016 Rules are minimal. For all of the additional cost imposed by the rules, EPA projected only a three percent reduction in emissions.[62] And, unlike most other significant rules that EPA has adopted in recent years, EPA made no attempt to assign a health-based value to explain how these minor reductions will provide any real health or environmental benefits.

Instead, EPA claimed that "climate benefits" justify the 2016 Rules. However, even after converted to 8.2 million tons per year (tpy) of carbon dioxide equivalent (CO_2e), using a relatively high multiplier for the "global warming potential" of methane, the result remains inconsequential once put into context. Though perhaps a large value in appearance, the promised CO_2e reduction is a small fraction of total landfill methane emissions of 115.7 million tpy CO_2e. The projected reduction appears even smaller when compared to total U.S. methane emissions of 655.7 million tpy CO_2e, largely due to the fact that landfills only account for 17.6 percent of the country's methane emissions (landfills are only the third largest anthropogenic source of methane emissions, behind oil and gas production and enteric fermentation).[63]

The methane reductions that EPA attributed to the 2016 Rules also appear miniscule in comparison to total anthropogenic greenhouse gas (GHG) emissions in the United States. In spite of the higher global warming potential assigned to methane, that pollutant still only accounts for 10 percent of the country's total GHG emissions.[64] As such, the relatively small methane reduction that EPA projected as a result of the 2016 Rules is only a tiny portion of the total U.S. GHG emissions of over 6,500 million tpy CO_2e. Moreover, U.S. GHG emissions are only about 15 percent of total global anthropogenic GHG emissions,[65] which reached 49 gigatons CO_2e in 2010, a massive total that the 2016 Rules could not possibly influence enough to provide actual, real-world benefits to anyone.[66]

In spite of the clear and obvious fact that the GHG emission reductions projected by EPA will not have any real effect on global climate trends, EPA relied on the "social costs" of methane and CO_2 in attempting to justify the 2016 Rules with a monetized value. Specifically, EPA concluded that, based on those "social costs" analyses, the 2016 Rules would provide a net benefit of $390 million and $62 million (for the NSPS and emission guidelines, respectively).[67] In those calculations, EPA even claimed additional benefits based on CO_2 reductions from power plants that have nothing to do with landfills, again based on the false assumption that

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[62] 81 Fed. Reg. at 59362; 81 Fed. Reg. at 59305.
[63] *See* Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015, at ES-15.
[64] *Id.* at ES-8.
[65] https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data
[66] IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.
[67] 81 Fed. Reg. at 59366 (NSPS); 81 Fed. Reg. at 59309 (EG).

the 2016 Rules would encourage new landfill-gas-to-energy projects, which EPA counted as an offset to overall power plant demand.

In determining whether the 2016 Rules warrant review under Executive Order 13777, EPA should ignore all of these illusory benefit calculations. If nothing else, Executive Order 13783 clearly prohibits EPA from relying on the "social cost" analyses, which should eliminate from consideration all of the benefits that EPA was able to monetize when it adopted the rules. That result is appropriate in light of the many fundamental flaws inherent in the "social cost" analyses, chief among them the unfairness inherent in comparing a short-term U.S. cost estimate to a highly speculative and extraordinarily long-term guess about potential global benefits. And even those "social cost" analyses actually admit that reducing all U.S. GHG emissions to zero "would be far from enough to avoid substantial climate change,"[68] further confirming that the minor reductions required by the 2016 Rules would be meaningless. Although EPA also claimed that the rules would produce some forms of benefits that could not be monetized, the inability to quantify those benefits suggests they must be truly infinitesimal.

3. The 2016 Rules' Real Costs Far Exceed the Alleged Benefits.

All told, the costs of the 2016 Rules are real and significant—at least $100 million by EPA's own estimate, and perhaps many times that amount—while the benefits are essentially zero, given that they are based entirely on a flawed, and now rescinded, "social cost" analysis. Accordingly, the 2016 Rules easily qualify as rules that "impose costs that exceed benefits" and therefore warrant a full review under Executive Order 13777.

4. EPA Should Also Review the Provisions of the 1996 Rules that Impose Costs Greater Than Benefits.

To ensure the 1996 Rules are no more burdensome than necessary to ensure appropriate control of landfill gas, the Working Group asks EPA to review the 1996 Rules alongside the review of the 2016 Rules that is now required by executive order. Only through reviewing all of the Landfill Air Rules together will EPA and the industry be able to work together in crafting a reasonable set of regulations to protect human health and the environment while minimizing regulatory burden and cost.

* * *

The Working Group appreciates your consideration of our comments and recommendations. We look forward to continuing to work with you on the development of regulatory proposals for revising the Landfill Air Rules. If you have any questions, please do not hesitate to contact any of the undersigned Working Group representatives at your earliest convenience.

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[68] Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (revised 2015), at 14.

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Curry, Bridgid[Curry.Bridgid@epa.gov]
From: Nickerson, William
Sent: Fri 4/21/2017 7:45:56 PM
Subject: updated talking points and Q&A doc for your review
Reg Reform Stakeholder Meetings_talking points_QAs v2.docx

Brittany,

Here is a revised document with draft answers to the CPP, WOTUS, and 2 for 1 questions included.

Bill

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Germann, Sandy
Sent: Fri 4/21/2017 1:43:27 PM
Subject: Follow-up on press / stakeholder meetings
Public Meeting summary.xlsx

Brittany, Good morning. I think the reg team is waiting for input from you or Samantha on this matter. After thinking about some more, I'd like to offer a response that could be given to OPA for any press inquiries and to all the offices that are hosting meetings. We - or OPA - could provide the latter to the programs. Please advise. Thank you!

Response to reporters asking about attendance:

If the location and participation information is provided, the meeting is open to the public. Plans for each meeting vary, and registration is required for some of them. Please check the regulatory reform website for more information about each meeting.

Meetings without that information are not open as the regulatory reform discussion is being incorporated into the agenda of another meeting, most of which are longstanding or regularly occurring.

Direction for all offices hosting meetings:

We would like to identify any press that are attending or listening in to regulatory reform stakeholder meetings, so we can follow-up with them, if needed. If you have announced an open meeting, please set up a press "sign-up" table for in person meetings and make arrangements to record any press participants that sign on to a teleconference.

Sandy Germann

US EPA Office of Policy

202-631-0272

germann.sandy@epa.gov

From: Germann, Sandy
Sent: Thursday, April 20, 2017 4:10 PM
To: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: OPA request for reg reform public meeting registration information

All, OPA received a request from a reporter about press attendance at the reg reform stakeholder meetings. Liz Bowman indicated they would like all reporters to register so they can follow-up. At OPA's request, I've gone through the reg reform meeting schedule website to summarize whether registration is being conducted. In some cases, it is not, but they are in person meetings at EPA, and they will need to identify themselves in some way to get information about entering the building and then have to sign-in. So, as the last column reflects, it appears we should be able to identify all reporters, except in the case of two call-in meetings (the OITA teleconference and OW virtual listening session). They (OPA) may decide to provide additional guidance to those offices about how to manage that. Before I send back to them, I wanted to touch base to see if any of you have any more details that should be reflected. Please let me know if you have a few minutes this afternoon or in the morning. Thanks!

Sandy Germann

US EPA Office of Policy

202-631-0272

germann.sandy@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Kime, Robin[Kime.Robin@epa.gov]
From: Rees, Sarah
Sent: Tue 7/18/2017 9:10:29 PM
Subject: Reg Reform Stakeholder Meetings_talking points_June 2017.docx
Reg Reform Stakeholder Meetings_talking points_June 2017.docx

;
Hi Brittany – attached are reg reform talking points for Thursday's SLC meeting. Let me know if you need anything else.

Cheers,

Sarah

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Rees, Sarah
Sent: Fri 7/21/2017 6:50:13 PM
Subject: FW: Completion of the Regulatory Reform docket, OA-2017-0190

Purely FYI. We broke a record!

From: Curry, Bridgid
Sent: Friday, July 21, 2017 10:38 AM
To: Nickerson, William <Nickerson.William@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: FW: Completion of the Regulatory Reform docket, OA-2017-0190

From: Muellerleile, Caryn
Sent: Friday, July 21, 2017 9:55 AM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: FW: Completion of the Regulatory Reform docket, OA-2017-0190

From: Bernales, Barbara
Sent: Thursday, July 20, 2017 6:01 PM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Scully, Carolyn <Scully.Carolyn@epa.gov>; Kerwin, Courtney <Kerwin.Courtney@epa.gov>
Subject: Completion of the Regulatory Reform docket, OA-2017-0190

Hi Caryn!

First, I'd like to quickly apologize for not reaching out to you earlier on the status of the Reg Reform docket.

Second, I want to make you aware that on June 30th, the Docket Center completed processing all public submissions received in response to this action. Yay! In total, this docket received 467,143 comments. The majority of them representing mass mail campaigns. You may already know, mass mail campaigns are comments received that are similar or nearly identical (duplicates) in nature. Duplicates of a mass mail campaign are not posted. Instead, a single representation of each campaign is posted and a tally is kept for the total number of comments received for each campaign.

Most noteworthy about this docket is that it was record setting! More individual comments were posted for the Reg Reform docket (63,346) than the CPP docket--our largest docket ever. In fact, it even surpassed the combined total of individual comments posted (52,973) in response to all dockets that were open for comment during FY 16. I'd say that is pretty amazing.

So, I'm hoping that this good news overshadowed the delayed update. ☺ And, if you have any questions, please let Carolyn and I know. We're happy to be of assistance.

Best,

Barbara Bernales

Regulatory Support Division

Office of Enterprise Information Programs

Office of Environmental Information

U.S. Environmental Protection Agency

202-566-2985

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Mon 8/7/2017 2:30:44 PM
Subject: 13777 Summary of Energy Actions
13777 Summary of Energy Actions.pdf

Please see attached.

Will Lovell

Policy Assistant, Office of Policy

U.S. Environmental Protection Agency

(202) 564-5713

Lovell.William@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Fri 8/11/2017 11:23:19 PM
Subject: Reg Reform 1-pager
Reg Reform 1-page (5-BB).docx

Please see attached!

Will Lovell

Policy Assistant, Office of Policy

U.S. Environmental Protection Agency

(202) 564-5713

Lovell.William@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Clint Woods
Sent: Thur 7/20/2017 1:26:58 AM
Subject: RE: AAPCA Releasses New Report on Clean Air Act Regulatory Reform

Thanks!!

From: Bolen, Brittany [mailto:bolen.brittany@epa.gov]
Sent: Wednesday, July 19, 2017 7:27 PM
To: Clint Woods; Jackson, Ryan; Dravis, Samantha; Brown, Byron
Cc: sean.alteri@ky.gov
Subject: RE: AAPCA Releasses New Report on Clean Air Act Regulatory Reform

Clint –

Thanks for your email. I circulated this report to other members of our team, too.

Best,

Brittany

From: Clint Woods [mailto:cwoods@csg.org]
Sent: Wednesday, July 19, 2017 8:49 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: sean.alteri@ky.gov
Subject: AAPCA Releasses New Report on Clean Air Act Regulatory Reform

Members of the U.S. EPA Regulatory Reform Task Force,

Today, the Association of Air Pollution Control Agencies (AAPCA) released a new report, *The State of Regulatory Reform: Navigating State Perspective on Clean Air Act Regulations Under Executive Order 13777*. Following the issuance of Executive Order

13777 on Enforcing the Regulatory Reform Agenda and a public comment period from the U.S. Environmental Protection Agency (EPA) on regulations that may be appropriate for repeal, replacement, or modification under the order, AAPCA compiled state and local environmental agency and association comments on our website and today releases an accompanying report, entitled *The State of Regulatory Reform*, to help navigate intergovernmental priorities for regulatory reform on Clean Air Act and cross-media issues at U.S. EPA. In particular, Clean Air Act regulations and themes discussed by at least three state environmental agencies are included, accompanied by links to illustrative comments and excerpts from state and local agencies and associations.

These air quality regulations and themes include: "Once In, Always In" Policy for Major Source Maximum Available Control Technology Standards (pg. 3); Treatment of Data Influenced by Exceptional Events (pg. 4); Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (pg. 4 -5); Standards for Stationary Compression Ignition Internal Combustion Engines, Stationary Spark Ignition Internal Combustion Engines, and Reciprocating Internal Combustion Engines (pg. 5); Startup, Shutdown, and Malfunction State Implementation Plan Call (pg. 6); Title V Permitting Requirements for Air Curtain Incinerators/Destructors (pg. 7); Regional Haze (pg. 7 - 8); Nitrogen Oxides State Implementation Plan Call (NOx SIP Call)(pg. 8); Interstate Ozone Transport (pg. 9); Clean Power Plan and Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units (pg. 10); Modeling Issues & Appendix W (pg. 10 -11); Implementation of the 2015 NAAQS for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements (pg. 11); 2015 National Ambient Air Quality Standards for Ground-Level Ozone (pg. 12); Cross-Media Electronic Reporting Rule and Other Electronic Reporting Requirements (pg. 13 – 14); Monitoring Requirements (pg. 14); Other Title V Permit Review/Petition Issues (pg. 15); Guidance as De Facto Rulemaking (pg. 15); and General National Ambient Air Quality Standards & State Implementation Plan Process Improvements (pg. 16).

You can find a copy of *The State of Regulatory Reform: Navigating State Perspective on Clean Air Act Regulations Under Executive Order 13777* here.

AAPCA and its members look forward to working with U.S. EPA and the Regulatory Reform Task Force as you continue to carry out Executive Order 13777 and related initiatives. Please let us know if there is any additional information that would be helpful.

Thanks!

Clint Woods

Executive Director

Association of Air Pollution Control Agencies

1776 Avenue of the States

Lexington, KY 40511

859.244.8040 – office

cwoods@csg.org

http://www.cleanairact.org

AAPCA ASSOCIATION OF AIR POLLUTION CONTROL AGENCIES

2017 FALL BUSINESS MEETING

September 20–22 | Doubletree by Hilton | Raleigh, North Carolina

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Bowman, Liz
Sent: Mon 5/15/2017 10:54:09 PM
Subject: RE: Regulatory Reform recommendations

Great, thank you.

From: Bolen, Brittany
Sent: Monday, May 15, 2017 6:54 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>
Subject: Re: Regulatory Reform recommendations

They are on the public docket. They can look them up there on regulations.gov.

Sent from my iPhone

On May 15, 2017, at 6:52 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Are the Reg Reform task force recommendations public? We are getting some requests to see them, since I guess today was the deadline for them being submitted.

---------- Forwarded message ----------
From: **Ivory, Danielle** <danielle.ivory@nytimes.com>
Date: Mon, May 15, 2017 at 12:39 PM
Subject: Regulatory Reform recommendations
To: "Jones, Enesta" <Jones.Enesta@epa.gov>

Hi Enesta,

Recommendations to the Regulatory Reform Task Force by the Offices of Air and Radiation, Land and Emergency Management, Chemical Safety and Pollution Prevention, Water, Environmental Information, Congressional and Intergovernmental Relations and Small and Disadvantaged Business Utilization are due today, May 15. Would it be possible to send me copies of those recommendations?

If I will need to file a FOIA for this, that is fine -- just let me know. I'll assume if I don't hear from you by the end of the day today that I should file a FOIA.

Many thanks,

Danielle

--

Danielle Ivory
The New York Times
Office: 212-556-1596
Cell: 917-280-2607
Fax: 646-349-2536
PGP Key: 4F0C8AF6FB9B5DBE
Signal encrypted chat: 917-280-2607

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PGP Key: 4F0C8AF6FB9B5DBE
Signal encrypted chat: 917-280-2607

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Dravis, Samantha
Sent: Fri 6/23/2017 5:27:38 PM
Subject: Seeking suggestions from your office by June 28 to inform the draft report under EO 13783
OW Energy EO Examples.pdf

The following and attached information for your review is close hold. **Please do not distribute this.** Feel free to contact me directly with any questions or concerns (564-4332).

Pursuant to Executive Order 13783, "Promoting Energy Independence and Economic Growth," EPA is to submit a draft final report by July 26, 2017, to the Vice President, the OMB Director, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of CEQ that includes specific recommendations that could alleviate or eliminate aspects of agency actions that burden the use or production of domestic energy.

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In order to make sure we stay on track in developing the draft report, we ask that you please identify a single staff point of contact who can work directly with Sarah Rees, the Director for the Office of Regulatory Policy and Management in OP. Thank you.

To: Dunham, Sarah[Dunham.Sarah@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Dravis, Samantha
Sent: Fri 6/23/2017 5:27:29 PM
Subject: Seeking suggestions from your office by June 28 to inform the draft report under EO 13783
OAR Energy EO Examples.pdf

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To: Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Dravis, Samantha
Sent: Fri 6/23/2017 5:27:19 PM
Subject: Seeking suggestions from your office by June 28 to inform the draft report under EO 13783
OCSPP Energy EO Examples.pdf

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To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, William
Sent: Mon 6/19/2017 2:26:34 PM
Subject: RE: another comment
NRECA Comment.pdf

They did – please see attached. Would you like this printed off?

From: Bolen, Brittany
Sent: Monday, June 19, 2017 10:25 AM
To: Lovell, William <lovell.william@epa.gov>
Subject: another comment

Hey Will, did NRECA comment on our reg reform docket?

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Howell, William[howell.william@epa.gov]
From: Rees, Sarah
Sent: Mon 6/19/2017 2:24:40 PM
Subject: FW: reg reform docket
NRECA Comment.pdf
EEI Comment.pdf

Hey Brittany – Billy pulled these together for you. Feel free to ask Billy directly if you need other comment letters pulled.

Cheers,

Sarah

From: Howell, William
Sent: Monday, June 19, 2017 10:10 AM
To: Rees, Sarah <rees.sarah@epa.gov>
Subject: RE: reg reform docket

Here you go!

From: Rees, Sarah
Sent: Monday, June 19, 2017 7:45 AM
To: Howell, William <howell.william@epa.gov>
Subject: Fwd: reg reform docket

Hey Billy - can you pull comments from these guys? EEI is Edison Electric Institute; NRECA is the National Rural Electric Cooperative Association. You can just email me pdfs of the comment letters.

Thanks!

Sarah

Begin forwarded message:

From: "Bolen, Brittany" <bolen.brittany@epa.gov>
Date: June 19, 2017 at 7:38:03 AM EDT
To: "Rees, Sarah" <rees.sarah@epa.gov>
Subject: reg reform docket

Hey Sarah, Good Mornin. Could you please send me EEI and NRECA's submissions to our reg reform docket?

Thanks,

Brittany

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Rees, Sarah
Sent: Fri 5/26/2017 5:49:25 PM
Subject: RE: DoD comments
DoD comment.pdf

I saw that too and yes it has a draft watermark, which is pretty weird. And it didn't have a cover letter - also weird.

I think we'll need to follow up with DoD. The comments look DoD-like, although they are usually a lot more diplomatic and I was surprised to see something like this in the public docket - we do have interagency ways of working through things. I've attached it just so you can see.

Cheers,
Sarah

-----Original Message-----
From: Bolen, Brittany
Sent: Friday, May 26, 2017 1:42 PM
To: Rees, Sarah <rees.sarah@epa.gov>
Subject: DoD comments

Hey Sarah, I'm hearing some mumbling of a DoD comment on our docket posted today that is pretty critical though it has a watermark draft. Have you seen it? Is it official or could it have been fake?
Thank you,
Brittany

To: Section.2.EO13783@omb.eop.gov[Section.2.EO13783@omb.eop.gov]; Szabo, Aaron L. EOP/OMB[Aaron_L_Szabo@omb.eop.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]; Lovell, Will (William)[lovell.william@epa.gov]
From: Rees, Sarah
Sent: Fri 7/28/2017 9:38:52 PM
Subject: EPA's Draft EO 13783 Report
EPA EO 13783 Draft Final Report.docx
EO 13783 Action List Spreadsheet.xlsx
Cover letter to 7-26-2017 EO 13783 draft Report final.docx

Please find attached a cover letter, EPA's draft report pursuant to Section 2 of EO 13783, and accompanying spreadsheet. Please feel free to contact me if you have any questions.

Sincerely,

Sarah L. Rees, Ph.D.

Director, Office of Regulatory Policy & Management

US EPA – Office of Policy

(202) 564-1986 (o) | (202) 407-5074 (m)

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lovell, Will (William)
Sent: Thur 7/27/2017 12:40:19 AM
Subject: RE: EO 13783 Draft Final Report
EO 13783 Draft Final Report Purple Comments.docx

Please find attached another update incorporating the newest edits.

From: Lovell, Will (William)
Sent: Wednesday, July 26, 2017 6:07 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: EO 13783 Draft Final Report

Please find attached the most current version of the draft final report for EO 13783.

Will Lovell

Policy Assistant, Office of Policy

U.S. Environmental Protection Agency

(202) 564-5713

Lovell.William@epa.gov

To: Breen, Barry[Breen.Barry@epa.gov]; Davis, Patrick[davis.patrick@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Dravis, Samantha
Sent: Fri 6/23/2017 5:27:09 PM
Subject: Seeking suggestions from your office by June 28 to inform the draft report under EO 13783
OLEM Energy EO Examples.pdf

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To: Dravis, Samantha[dravis.samantha@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
From: Beck, Nancy
Sent: Thur 6/29/2017 6:59:12 PM
Subject: OCSPP suggestions to inform the draft report under EO 13783
OCSPP Energy Related EO 13777 initiatives.docx

See attached from OCSPP.

For some of these suggestions, we have already completed the action and addressed the concern. For a few of the others, we can incorporate into ongoing processes.

Please let me know if you have questions.

Nancy

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

P: 202-564-1273

M: 202-731-9910

beck.nancy@epa.gov

From: Dravis, Samantha
Sent: Friday, June 23, 2017 1:27 PM
To: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Subject: Seeking suggestions from your office by June 28 to inform the draft report under EO 13783

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To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Lovell, William[lovell.william@epa.gov]
Cc: Kime, Robin[Kime.Robin@epa.gov]
From: Rees, Sarah
Sent: Wed 6/28/2017 2:36:13 PM
Subject: FW: Questions
Class of 85 questions talking points.docx

Hi Samantha – suggested talking points for the questions Megan posed below – these are just my thoughts – hope these are helpful. At the end, I've added quick bullets on the public-facing state of play on WOTUS, Steam Electric, and CPP in case those details come up.

Cheers,

Sarah

From: Rees, Sarah
Sent: Wednesday, June 28, 2017 7:34 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Lovell, William <lovell.william@epa.gov>
Subject: Fwd: Questions

Hi Samantha - Megan sent me some specific questions that the Class of 85 have for us; I'll draft some bullets for each one.

Cheers,

Sarah

Begin forwarded message:

From: <megan.berge@bakerbotts.com>
Date: June 28, 2017 at 12:33:38 AM EDT
To: <Rees.sarah@Epa.gov>
Subject: Questions

Sarah –

The Group is looking forward to meeting with you all tomorrow. We asked them about what questions they might have for Samantha (and your team). They came back with:

- How is EPA tackling the myriad comments submitted in the docket (putting them in buckets? assigning teams?)

- What are EPA's priorities for the coming year?

- Can EPA share how it is tackling some of the "big policy" reforms, such as WOTUS and the CPP? Are they being handled by your office, or driven by the program offices?

- For the issues that already are under review (*e.g.* ELGs), does the agency have any deadlines internal or otherwise for completing those reviews?

- Is there anything you can share about staffing? It seems as though the Office of Policy is pulling double duty; is there a plan to spread the pain (essentially was the question).

- Speaking to the big policy issues, has the agency begun to look at the CSAPR Update rule and the pending petitions for reconsideration?

- How can we help?

- What can industry do that would be most helpful as you go through both the big and the day-to-day reforms?

We fully understand that you guys may not be able to speak to all of these issues.

Thank you again,

Megan

Megan Heuberger Berge
Partner
BAKER BOTTS L.L.P.
The Warner | 1299 Pennsylvania Ave., NW | Washington, DC 20004

1.202.639.1308 (direct) | 1.202.256.0827 (cell)

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To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Burhop, Anna
Sent: Wed 5/24/2017 1:34:22 PM
Subject: ACC Comments on EPA Evaluation of Existing Regulations (May 15, 2017)
ACC Comment on EPA Evaluation of Existing Regulations 5.15.17.pdf
ACC Formaldehyde Panel Letter to EPA on Regulations and the Formaldehyde....pdf
ACC Biocides Regulatory Reform May 15.docx
ACC_Hexavalent_Chromium_Panel_Comment.pdf
ACC-CPTD TCE response to EPA-HQ-OA-2017-0190.pdf
ACC-PCB Panel response to EPA-HQ-OA-2017-0190.pdf
EPA Reg Reform - DII Comments 051117.docx
Revisit EGBE TRI Delisting Petition Final May 2017.pdf

Samantha,

As we discussed yesterday, attached are the comments that ACC submitted last Monday. In addition to the broader comments, our panels also submitted chemical-specific comments:

- Formaldehyde
- Biocides
- Hexavalent Chromium
- PCBs
- TCE
- Diisocyanates
- Glycol Ethers

Thanks again for taking the time to come to the meeting yesterday. The group really appreciated it and enjoyed having the time to pick your brain a bit.

It was great to finally meet you!

-Anna

Anna Burhop| American Chemistry Council

Director, Environment

Regulatory and Technical Affairs

700 2nd Street NE | Washington, DC | 20002

(202) 249-6440

anna_burhop@americanchemistry.com

www.americanchemistry.com

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To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: McGartland, Al
Sent: Fri 5/19/2017 3:29:48 PM
Subject: FW: Regulatory Reform -- Comments to US EPA
Input of Ad-Hoc Industry Natural Resource Managemnt Group to EPA RRO_May 15 2017.pdf

If you want to know more about Barbara's group, I can provide some intel. We have engaged in the past (Bush years).

From: Barbara J. Goldsmith [mailto:bjg@nrdonline.org]
Sent: Monday, May 15, 2017 6:12 PM
To: McGartland, Al <McGartland.Al@epa.gov>
Subject: FW: Regulatory Reform -- Comments to US EPA

Hello Al — It has been a while… I hope this message finds you well. I noted that you were copied on Administrator Pruitt's March 24 Memorandum. This is FYI and I look forward to engaging with you and your colleagues as you proceed in this important activity. Best, Barbara

From: Barbara J. Goldsmith <bjg@nrdonline.org>
Date: Monday, May 15, 2017 at 3:01 PM
To: <Laws-Regs@epa.gov>
Cc: <dravis.samantha@epa.gov>
Subject: Regulatory Reform -- Comments to US EPA

Dear Ms. Dravis —

I am pleased to provide the attached comments of the Ad-Hoc Industry Natural Resource Damage Group ("Group") as input to US EPA's Regulatory Reform activities in accordance with Executive Order 13777.

Kind regards,

Barbara Goldsmith

Barbara J. Goldsmith

President, Barbara J. Goldsmith & Company

Executive Director, Ad-Hoc Industry Natural Resource Management Group

Washington + 1 202 628 6818

Brussels + 32 (0) 2 234 6390

Mobile +1 202 641 1648

BJG@bjgco.com or BJG@nrdonline.org

www.bjgco.com

www.nrdonline.org

To: Bolen, Brittany[bolen.brittany@epa.gov]; David Darling[ddarling@paint.org]
Cc: Andy Doyle[adoyle@paint.org]
From: Heidi McAuliffe
Sent: Wed 5/17/2017 5:00:21 PM
Subject: ACA's Comment Letter on EPA Reg Reform
Dravis Ltr. Reg Reform 5.15.17 final.pdf

Hi Brittany, I hope you are doing well and that you have a lot of help sifting through the 55,000 + submissions to the reg reform docket!!

I am sharing ACA's comments with you directly as we discussed. Our comments stick to the format that we talked about so that you can discern the issue, impact, costs and suggested solution quickly. We would be happy to follow up with you and provide additional information on any of the issues that we have highlighted. In a recent coalition meeting, Samantha Dravis suggested that trade associations point out some of the smaller regulatory distractions that impede innovation and are burdensome. I believe that we have provided several examples of significant issues like the Ozone rule but also some of the smaller ones like the triennial reporting in the aerosol coatings regulation.

Thank you for your willingness to take a look at our suggestions. I would like to follow up with you in the next few weeks to discuss any priority issues that catch your eye.

Please let me know if you have any questions at all,

Heidi

Heidi K. McAuliffe ▪ American Coatings Association ▪ Vice President, Government Affairs

202- 719-3686 | 202-329-1065 (m) | 202-263-1102 (fax) | hmcauliffe@paint.org | www.paint.org

901 New York Ave. NW, Suite 300 West ▪ Washington, DC 20001

Coatings protect. Coatings preserve. Coatings provide.

From: Bolen, Brittany [mailto:bolen.brittany@epa.gov]
Sent: Wednesday, May 3, 2017 6:27 PM
To: David Darling <ddarling@paint.org>
Cc: Heidi McAuliffe <hmcauliffe@paint.org>
Subject: RE: Once-in, Always-in rule

Thanks, David. It was a pleasure meeting you, too.

From: David Darling [mailto:ddarling@paint.org]
Sent: Wednesday, May 3, 2017 8:50 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Heidi McAuliffe <hmcauliffe@paint.org>
Subject: Once-in, Always-in rule

Hi Brittany, it was a pleasure speaking with you yesterday, I wanted to follow-up with the 2007 proposed "once-in always in" policy rule - the citation is 72 Federal Register 69 (January 3, 2007) - docket number EPA-HQ-OAR-2004-0094- here is a link to the rule - https://www3.epa.gov/ttn/atw/gp/fr03ja07.pdf

Best regards,

David Darling

Sent from my iPhone

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Nickerson, William
Sent: Wed 5/17/2017 3:39:28 PM
Subject: and here is a draft of the RRTF submittal from OEI
Response to Task Force Memo on Reg Review OIM 4-14-17 (003).docx

An early preview; not yet cleared through OEI management.

With this from OEI and the new info from OCIR, we have received all the submittals.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Lyons, Troy[lyons.troy@epa.gov]; Bennett, Tate[Bennett.Tate@epa.gov]; Palich, Christian[palich.christian@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Kenny, Shannon[Kenny.Shannon@epa.gov]; Bowles, Jack[Bowles.Jack@epa.gov]; Osinski, Michael[Osinski.Michael@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]
From: Richardson, RobinH
Sent: Wed 5/17/2017 3:07:23 PM
Subject: OCIR's E.O. 13777 Submission
Regulatory Reform; Regional Recommendations -Final-5.16.17 (003).docx
EO13777OCIR.docx

Hi Ryan, Samantha, Byron & Brittany –

As directed by the Administrator's March 24 memorandum on enforcing the regulatory reform agenda, please find attached a summary of OCIR activities and corresponding discussion and comments received from state and local elected officials and the recommendations provided by the regions regarding rules that should be considered for repeal, replacement, or modification.

As of close of business on May 15, OCIR received recommendations from Regions 1,3, and 8, and coordinated recommendations from all ten regions through the Lead Region Coordinator for air programs. Recommendations from the regional water programs were submitted through the Lead Region Coordinator directly to the Office of Water. The regional recommendations for programs under the Offices of Land and Emergency Management and Chemical Safety and Pollution Prevention were provided by the individual regions.

If you have any questions or would like to discuss further please let us know.

Thank you, Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

To: Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
From: Bennett, Tate
Sent: Tue 5/16/2017 5:43:24 PM
Subject: FW: Regulatory Reform
NCGA Comments Docket ID No. EPA-HQ-OA-2017-0190 .pdf
EPA-Final17.0515.pdf
EPA-HQ-OA-2017-0190 PPC Comments re Regulatory Reform.pdf
Atrazine Regulatory Review Comment.pdf

Just wanted to flag! The Corn Growers' Reg Reform comments were sent to me by way of KY Corn earlier today.

From: Laura Knoth [mailto:laura@kycorn.org]
Sent: Tuesday, May 16, 2017 11:55 AM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Cc: Adam Andrews <adam@kycorn.org>; 'Mick Henderson (mhenderson@kyethanol.com)' <mhenderson@kyethanol.com>
Subject: Regulatory Reform

Hi Tate,

Hope you're doing well and taking care of yourself as I'm sure you are working enormous hours!

Sorry we couldn't connect a few weeks ago while Mick, Wayne and I were in town. We definitely need to catch up.

Since it's hard to find meeting time, I thought I could get our conversation started with these comment letters that were submitted to the EPA docket on Regulatory Reform. When you have a few minutes to review, they are in depth but, clear and concisely written. The first one is from National Corn Growers, the second, a coalition of ag groups led by AFBF, the third, the Pesticide Policy Coalition – which NCGA is part and the fourth is from the Triazine Network – which we are a part. The letters address some of our biggest regulatory issues at EPA. Most of them are long overdue for review. The issues range from WOTUS to RFS to Atrazine. It's the same topics we discussed during your time in Senator McConnell's office so you'll recognize them all. The letters are good, I'm keeping them on my desk for reference!

Any questions, let's talk – whenever you have time. □

Warmest regards,

Laura

Laura M. Knoth

Executive Director

Ky Corn Growers and Ky Small Grain Growers Associations

PO Box 90

Eastwood, KY 40018

502 243-4150 office

502 243-4149 fax

From: Laura Knoth
Sent: Tuesday, May 16, 2017 11:38 AM
To: 'Vaughan, Aubrey (Paul)' <Aubrey_Vaughan@paul.senate.gov>
Cc: 'Adam Andrews (adam@kycorn.org)' <adam@kycorn.org>; 'Mick Henderson (mhenderson@kyethanol.com)' <mhenderson@kyethanol.com>
Subject: RE: Organic corn/soy

Hi Aubrey,

This is a very frustrating system for sure. We don't need actions like this that weaken our US labeling

system. I hope they get to the bottom of it.

Glad you emailed this morning. I have several thing to share with you that were submitted to EPA as part of their Regulatory Reform docket. We have signed onto 4 different letters. The first one is from National Corn Growers, the second, a coalition of ag groups led by AFBF, the third, the Pesticide Policy Coalition – which NCGA is part and the fourth is from the Triazine Network – which we are a part. Each of these sets of comments clearly define some of our biggest regulatory issues that EPA can address. Most of them are long overdue! The issues range from WOTUS to RFS to Atrazine. It's the same topics we discuss each time we visit but, these letters provide detailed specifics on each issue. I'm keeping them on my desk for reference!

Hope you find them useful in helping us with these regulatory reform efforts. I you have questions or feedback, please give me a call.

Thank you,

Laura

Laura M. Knoth

Executive Director

Ky Corn Growers and Ky Small Grain Growers Associations

PO Box 90

Eastwood, KY 40018

502 243-4150 office

502 243-4149 fax

From: Vaughan, Aubrey (Paul) [mailto:Aubrey_Vaughan@paul.senate.gov]
Sent: Tuesday, May 16, 2017 11:07 AM
To: Laura Knoth <laura@kycorn.org>
Subject: Organic corn/soy

Hi Laura,

You likely already saw this, but I thought you would find this interesting based on the conversation we had a few months ago.

https://www.washingtonpost.com/business/economy/the-labels-said-organic-but-these-massive-imports-of-corn-and-soybeans-werent/2017/05/12/6d165984-2b76-11e7-a616-d7c8a68c1a66_story.html?utm_term=.8bffcc4ae1a4&wpisrc=nl_headlines&wpmm=1

Hope all is well!

Thanks,

--

Aubrey Vaughan

Legislative Counsel

Office of Senator Rand Paul

(202) 224-6515

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Nickerson, William
Sent: Tue 5/16/2017 2:11:26 PM
Subject: RRTF submissions
Transcript of EPA Office of Air and Radiation Stakeholder Conference Call (held 4.24.2017).pdf
OAR Memo Executive Order 13777 FINAL_5_15_17.pdf
OW response May 15 EO 13777.docx
EPA-HQ-OW-5-2-2017UPDATED_for_docket_May_15.docx
OLEM Outreach and Meeting Summaries EO 13777_May_15_2017.docx
OLEM Stakeholder Comments EO 13777_May_15_2017.xlsx
RegulatoryReformOptions-OCSPP_2070-05-15.pdf
OSDBU Regulatory Reform Recommendations 5.15.17.docx
OSDBU Executive Order 13777 Public Feedback Matrix1.xlsx
EO13777OCIR.DOCX

I haven't seen one yet from OEI or regional comments compiled by OCIR.

Attached are

OAR (RRTF submittal and transcript of the meeting)

OW (RRTF submittal and transcript of the meeting)

OLEM (RRTF submittal and summary of comments from their meeting)

OCSPP (RRTF submittal)

OSDBU (RRTF submittal and summary of comments from their meeting)

OCIR (summary of the Big 10 and NGA meetings)

- **Revision to the Social Cost of Carbon (and Social cost of Methane).** President Trump's Executive Order 13783, "Promoting Energy Independence and Economic Growth," instructed agencies to re-estimate the Social Cost of Carbon (SCC) based on the guidance and principles established in OMB's Circular A-4 – Guidance on performing Economic Analysis. Required changes include using the higher 7 percent discount rate and limiting the estimate to domestic damages only). EPA will be the first agency to re-estimate and use the revised estimates.
- **Accounting for Uncertainty in air quality benefits assessments.** EPA ignores many sources of uncertainty in their main estimates of benefits from air quality regulations. EPA is developing a new methodology to explicitly account for the possibilities that air quality improvements at levels below the National Ambient Air Quality Standards would not produce any additional health benefits.
- **Accounting for State Leadership on the Environment in our regulatory analyses (Federalism).** For prior regulations, EPA implicitly assumed that States would abandon their role to wisely protect the environment. Our new assessments will build in a cooperative Federalism model that assumes states will be leaders in cost-effective environmental protection.
- **Reforming Regulatory Economics.** EPA is launching some major reforms and updates to our internal ***Guidelines for Producing Economic Analysis***. These guidelines govern how EPA does benefit-cost analysis and other regulatory impact analyses.
    - **Broadening the consideration of involuntary employment changes caused by regulation.** The agency will mandate that job losses are an important regulatory impact and the impact on facilities, communities, and various working populations must be assessed in as detailed a way as the data and modeling allow. EPA will also account how regulatory-induced unemployment affects the health and welfare of specific workers.
    - **Who bears the costs (high prices) and employment impacts of regulation will be addressed explicitly in our new regulatory analyses.**
    - **For large, costly regulations, EPA will model the economy-wide impacts, including the costs to upstream and downstream sectors.**

- **EPA will conduct retrospective studies of past regulations to examine the real costs to the economy, and to review how well EPA initially estimated regulatory costs and benefits.**

Environmental Protection Agency Regulatory Reform Task Force 90-Day Progress Report Under Executive Order 13777 – Enforcing the Regulatory Reform Agenda

On February 24, 2017, President Trump signed Executive Order 13777 on "Enforcing the Regulatory Reform Agenda," which established a national policy to alleviate unnecessary regulatory burdens on the American people. In order to identify such burdens, the EO directs federal agencies to create a Regulatory Reform Task Force to "evaluate existing regulations…and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."[1] Among other requirements, the EO calls for the Task Force to provide a 90-day progress report on steps taken to 1) implement the regulatory reform initiatives and priorities identified in the EO, and 2) identify regulations that are candidates for repeal, replacement, or modification. This report provides the required 90-day status update regarding progress toward those two goals.

While 90 days is a relatively short period of time, the U.S. Environmental Protection Agency has made substantial progress in implementing the EO, including: (1) designating a Regulatory Reform Officer; (2) establishing a Regulatory Reform Task Force; (3) initiating review and/or reconsideration of more than a dozen actions; (4) reviewing information pertinent to EPA's regulatory actions from comments received by the Department of Commerce on permit streamlining; and, (5) running an open and transparent public outreach process, including public meetings and establishing a public comment period, to solicit input on regulatory actions to reconsider.

This report provides an overview of the directives and deliverables required by the order, the progress the EPA has made to date in implementing the order, preliminary recommended actions for consideration, and suggested next steps.

I. Overview of EO 13777 Directives and Deliverables

The overall policy goal of EO 13777 is to lessen or alleviate unnecessary regulatory burdens placed on the American people by implementing and enforcing the regulatory reform agenda. Section 2 of the EO provides certain initiatives and policies as part of the President's regulatory reform agenda. These initiatives and policies include:

- Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs, regarding offsetting the number and cost of new regulations, which is otherwise known as the "2 for 1" EO, issued January 30, 2017;
- Executive Order 12866 – Regulatory Planning and Review, regarding Administration-wide regulatory planning and review, which provides the framework for cost-benefit analysis underpinning regulatory actions, issued September 30, 1993 and subsequently amended;

[1] EO 13777, Section 3(d).

- Executive Order 13563 – Improving Regulation and Regulatory Review, regarding (as per Section 6) retrospective review of existing regulations, issued January 18, 2011; and
- The termination of programs and activities that derive from or implement directives that have been rescinded, such as Executive Orders, guidance documents, policy memoranda, rule interpretations and similar documents.

To oversee the implementation of EO 13777, each agency was asked to name a Regulatory Reform Officer who is tasked with periodically reporting to the agency head and regularly consulting with agency leadership. Additionally, each agency was to establish a Regulatory Reform Task Force to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.

Section 3(d) of the EO provides the Task Force with a targeted set of criteria on which to focus their evaluation and recommendations, including regulations that: "(i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with [the Information Quality Guidelines]; or, derive from Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified." In order to help identify such regulations, Section 3(e) of the EO directs the Task Force to seek input from "entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations."

Section 3(f) of the EO also directs each agency to prioritize regulations that the Task Force has identified as outdated, unnecessary, or ineffective, as part of its implementation of the regulatory offsets required under EO 13771.

Last, Section 3(g) of the EO provides that within 90 days of its issuance, the Task Force is required to report to the agency head detailing the agency's progress toward implementing the regulatory reform initiatives and policies identified above and identifying regulations for repeal, replacement, or modification. The EO also provides that future status updates be provided on a schedule to be determined by the agency head.

II. Progress to Date

Pursuant to EO 13777, the EPA Administrator designated a RRO and established a Regulatory Reform Task Force, which was memorialized in a March 27, 2017, agency-wide memorandum. Samantha Dravis, Senior Counsel and Associate Administrator for Policy, was designated to serve as EPA's RRO. Ryan Jackson, Chief of Staff, was designated to serve as the Chair of the Task Force. Additional members of the Task Force include Byron Brown and Brittany Bolen, Deputy Chief of Staff for Policy and Deputy Associate Administrator for Policy, respectively.
In order to fulfill the EO's requirement for stakeholder input, the March 27, 2017, agency-wide

memorandum included a request for program and regional offices to conduct public meetings or teleconferences on opportunities for regulatory reform. Program and regional offices were asked to provide the Task Force feedback from this outreach by May 15, 2017. In April and May, these offices conducted 11 public outreach meetings and provided feedback to the Task Force, as requested. Information on these meetings and program office feedback is detailed below.

The Agency also initiated an open and transparent process to seek public input on EPA's regulations. On April 11, 2017, EPA issued a request for public comment to an online docket, which was published in the Federal Register (83 Fed. Reg. 17793, April 13, 2017). The public comment period closed May 15, 2017, with over 190,000 comments filed.

Notably, the Task Force has been committed to increase transparency and public engagement throughout this effort. On April 11, 2017, the Agency launched a new website dedicated to providing the public information regarding its regulatory reform efforts, located at https://www.epa.gov/laws-regulations/regulatory-reform. Access to public comments and program office feedback to the Task Force is also available through the online docket at https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190.

The Task Force has made further progress by coordinating its efforts with the EPA's Office of Policy and key program and regional offices to identify regulations captured by previous reviews and other current Trump Administration EOs and directives. Key Trump Administration initiatives that complement the Task Force's work under EO 13777 review include:

- Presidential Memorandum regarding Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017;
- EO 13771 – Reducing Regulation and Controlling Regulatory Costs, issued January 30, 2017;
- EO 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule, issued on February 28, 2017;
- EO 13783 – Promoting Energy Independence and Economic Growth, issued March 28, 2017; and
- EO 13790 – Promoting Agriculture and Rural Prosperity in America, issued April 25, 2017.

The following sections describe these steps in further detail and identify specific actions the Agency has already taken to review or reconsider regulations, key actions pursuant to the Trump Administration directives listed above, and input received at public meetings on regulatory reform held by EPA program offices.

A. Agency Actions Under Review or Reconsideration

As outlined below, the Agency has already taken action to initiate the review or reconsideration of specific regulations and the withdrawal of proposed actions.

Review of the Waters of the United States Rule – EO 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule, issued February 28, 2017, directed the EPA and the U.S. Army Corp of Engineers to review the WOTUS rule. EPA has initiated its review of the rule.

- *WOTUS* - ''Clean Water Rule: Definition of 'Waters of the United States,''' (80 Fed. Reg. 37054; June 29, 2015). On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on March 6, 2017. (82 Fed. Reg. 12532.) On May 2, 2017, EPA submitted a proposed withdrawal of the final rule to the Office of Management and Budget for EO 12866 interagency review.

Withdrawal of Methane ICR – In 2016, EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. On March 2, 2017, EPA withdrew this information collection request (82 Fed. Reg. 12817; March 7, 2017). The agency expects this will lead to cost savings of approximately $37,000,000.

Risk Management Plans – Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, published on January 13, 2017 (82 Fed. Reg. 4594), is under review. On April 3, 2017, EPA published a proposed rule to delay the effective date of the RMP rule amendments until February 19, 2019 (82 Fed. Reg. 16146). This action will allow EPA to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action on the RMP rule.

Light-duty Mid-Term Evaluation – "Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation," signed January 12, 2017, is under review. On March 15, 2017, EPA and DOT announced that EPA intends to reconsider the final determination that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025 (82 Fed. Reg. 14671; March 22, 2017).

Review of Clean Power Plan and Related Actions – EO 13783, "Promoting Energy Independence and Economic Growth," signed March 28, 2017, directed the EPA to review the Clean Power Plan and related rules. EPA initiated a review of two of the identified final rules and withdrew one proposed rule:

- *Clean Power Plan* – "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (80 Fed. Reg. 64661; October 23, 2015) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16329).

- *NSPS for GHGs at Electric Generating Units* – "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units" (80 Fed. Reg. 64509; October 23, 2015) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16330).

- *Federal Plan/Trading Rule/Framework Amendments* – "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule" (80 Fed. Reg. 64966; October 23, 2015) were withdrawn. On the day the EO was signed, Administrator Pruitt signed a notice withdrawing this proposed rule. The notice was published in the Federal Register on April 3, 2017 (82 Fed. Reg. 16141).

Review of Methane Oil and Gas Rule – EO 13783, "Promoting Energy Independence and Economic Growth," signed March 28, 2017, directed the EPA to review the methane NSPS for the oil and gas sector. EPA initiated a review of the rule and has submitted a proposed extension of compliance deadlines to the Office of Management and Budget for review.

- *Methane Oil & Gas Rule* – "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources" (81 Fed. Reg. 35824; June 3, 2016) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16331). On May 24, 2017, EPA submitted a proposed 2-year extension of the compliance deadlines for the rule to OMB for interagency review.

Review of Steam Electric ELG – "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category," (80 Fed. Reg. 67838; November 3, 2015). On April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule and to postpone compliance dates that have not yet passed (82 Fed. Reg. 19005; April 25, 2017). On May 25, 2017, EPA issued a proposed postponement of the rule's compliance deadlines for publication in the Federal Register.

Review of Landfill Methane Rules – "Standards of Performance for Municipal Solid Waste Landfills," (81 Fed. Reg. 59332) and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills," (81 Fed. Reg. 59276), both published August 29, 2016. On

May 5, 2017, EPA convened a proceeding for reconsideration of the final rules and issued a 90-day stay of the effectiveness of these final rules limiting methane emissions from municipal solid waste landfills. On May 23, 2017, EPA announced a 90-day administrative stay for the final rules and a proposal to stay both rules until March 13, 2020.

Certified Pesticide Applicators Rule – On May 15, 2017, EPA solicited public comments on extending the effective date of this rule 12 months to May 22, 2018 (82 Fed. Reg. 22294). Comments were due by May 19, 2017. To provide time to consider those public comments, EPA provided a third interim extension of the effective date from May 22, 2017 until June 5, 2017 (82 Fed. Reg. 23148) EPA has initiated a review of the rule.

Formaldehyde Emission Standards for Composite Wood Products – On May 24, 2017, EPA issued a direct final rule and parallel proposed rule to extend compliance dates in the final rule (82 Fed. Reg. 23735 and 82 Fed. Reg. 23769, respectively).

B. Department of Commerce Request for Information as per Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017

As directed by the President's January 24, 2017, Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, the Department of Commerce issued a formal request for information on the impact of Federal permitting requirements and on regulations that adversely impact domestic manufacturers. DOC received 170 public comments in response to the RFI. Based on the comments, DOC identified key areas for EPA to review, mostly focused on air permitting programs, including:

- New Source Review (NNSR and PSD) permits;
- Title V Operating Permits;
- National Emissions Standards for Hazardous Air Pollutants;
- Start-up, Shutdown and Malfunctions;
- National Ambient Air Quality Standards;
- Waters of the United States Rule; and
- Section 404 and NPDES permits.

EPA has further screened the 170 comments for those relevant to the Agency. Commenters included many actions already subject to EPA review, reconsideration, or extensions including the Clean Power Plan and related rules, WOTUS, Risk Management Plans, and the Certified Pesticides Applicators rule. Beyond those rules, commenters identified specific concerns with existing regulations in nearly every major EPA program, including most prominently:

Office of Air and Radiation:

- Ozone NAAQS Implementation
- Leak Detection and Repair Rules
- Once-in-Always-in Policy for major sources in the hazardous air program
- Renewable Fuels Standard Program

Office of Chemical Safety and Pollution Prevention:

- Worker Protection Standards
- Formaldehyde Emission Standards for Composite Wood Products
- Lead Renovation, Repair, and Painting Rule
- Nanoscale Reporting Rule

Office of Land and Emergency Management:

- Hazardous Waste Generator Requirements
- Spill Prevention, Control, and Countermeasure program
- CERCLA §108(b) Financial Responsibility

Office of Water:

- Water Quality Criteria
- Storm Water Management program requirements
- Wastewater Treatment – pretreatment program and Effluent Limitation Guidelines

C. EPA's Outreach and Public Meetings as per EO 13777

As indicated above, EPA opened a 30-day public comment period and key program offices held 11 public meetings to receive input that could inform the Task Force's regulatory review. More than 200,000 stakeholders were independently invited by the program offices to participate in teleconferences and public meetings, and over 190,000 comments have been received in the public comment docket.

Specifically, the following program office meetings were held:

- The Office of Air and Radiation held a public meeting via teleconference on April 24, 2017.
- The Office of International and Tribal Affairs hosted an outreach call with tribal representatives on April 24, 2017.
- The Office of Small and Disadvantaged Business Utilization held a meeting on April 25, 2017.
- The Office of Congressional and Intergovernmental Relations hosted a meeting with intergovernmental representatives on April 26, 2017.

- The Office of Chemical Safety and Pollution Prevention hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to the Toxic Substance Control Act (TSCA) Subchapters I (Control of Toxic Substances), II (Asbestos Hazard Emergency Response) and VI (Formaldehyde Standards for Composite Wood Products) rules as well as EPCRA Subchapter II §11023 (Toxic Release Inventory program) rules.
- OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to TSCA Subchapter IV (Lead Exposure Reduction) rules.
- The Office of Water hosted a virtual listening session for the public on May 2, 2017.
- OCSPP held a public meeting with the Pesticide Program Dialogue Committee on May 4, 2017.
- The Office of Land and Emergency Management hosted a public meeting on May 9, 2017.

Program offices were asked to provide the Task Force with initial high-level summaries of the input they received from these meetings, as well as preliminary recommendations regarding specific rules that should be considered for repeal, replacement, or modification by May 15, 2017. Information on these summaries and recommendations are provided in the following section.

III. Preliminary Recommendations for Consideration

Based on an initial review of issues raised in public outreach meetings, the Department of Commerce's permit streamlining initiative, and EPA program offices' submissions to the Task Force, the Task Force offers preliminary recommendations for actions to consider reviewing as listed by program office, below.

It is important to note that these preliminary ideas are not yet informed by the extensive written comments received in the agency-wide public docket that closed May 15, 2017. Those comments are still being compiled and summarized. As discussed in the next section, the Task Force, the Office of Policy, and the program offices will continue to evaluate all public input and conduct additional internal analysis to better refine the list of regulations for consideration, and ensure proper coordination with all regulatory reform initiatives.

OAR:

- **"Once In, Always In" Policy:** EPA's long-standing policy (originating in a 1995 guidance memo) states that once a source becomes subject to a hazardous air pollutant standard it must always remain subject to that standard, notwithstanding the subsequent reduction in emissions below major source thresholds. States and many industry stakeholders have long expressed concerns about this 1995 policy.
- **Mobile Source Fuels Regulations:** Substantial opportunities exist to streamline EPA's

existing regulations regarding gasoline, diesel, and other fuels. Doing so would reduce burden and compliance costs for industry, and improve compliance assurance while maintaining environmental performance.

- **Exceptional Events Guidance:** Exceptional events are unusual or naturally occurring events that can affect air quality episodes that are beyond the control of state, tribal or local air agencies. Exceptional events include wildfires, stratospheric ozone intrusions and volcanic and seismic activities. The tightened ozone and PM2.5 standards increased the impact of exceptional events on attainment status and design value, as a result the Exceptional Events Guidance has become more important to states struggling to meet the standard. States and industry have many outstanding concerns about the process for excluding air quality data from consideration in regulatory decisions.
- **NAAQS Implementation:** Each new or revised NAAQS requires a host of supporting rules, guidance, and technical support documents to be used by Federal, state, local, and tribal regulators and planners, as well as by business and industry. The increased frequency of NAAQS revisions results in overlapping requirements to be implemented in short time spans. Regulators are confronted with obstacles to implementing the rules, planned and permitted facilities are subject to much uncertainty, making it difficult to appropriately plan for the preservation of air quality along with needed economic growth.

OCSPP:

- **Worker Protection Standard Rules:** In 2005, EPA updated the Agricultural Worker Protection Program with revisions to the Worker Protection Standards Rule providing training, information and safety requirements, as well as extending protections to families of pesticide workers and establishing a minimum age for handlers and workers performing early entry activities
- **Pesticide Registration Data Driven Decisions:** Commenters have asked EPA to reduce the need for new or extraneous data when sufficient data exists to make regulatory decisions. EPA was also asked to group similar crops or use other countries' data for tolerance setting, and to exclude certain biotechnology pesticides from data requirements. Commenters also suggest EPA allow for self-certification on product chemistry.
- **Nanomaterials Reporting under TSCA §8(a):** On January 12, 2017, EPA issued a rule requiring the reporting for certain existing nanoscale materials, as well as for new nanoscale materials, before manufacture is commenced. Commenters have said the one-time reporting requirements need to be revised to lower burden on small businesses. Several definitions in the rule are unclear and need to be revised.
- **TSCA:** TSCA was recently amended by the Lautenberg Chemical Safety Act. The new and revised requirement raise numerous regulatory and implementation issues.

OLEM:

- **Coal Combustion Residuals Rule:** The CCR Rule establishes minimum national criteria under Subtitle D of RCRA for coal combustion residuals landfills and surface

impoundments at active coal fired power plants. Commenters have noted that that 2015 rule is overly restrictive and does not provide states needed flexibility to identify risks. Portions of the rule have been remanded.

- **CERCLA §108(b) Financial Responsibility:** CERCLA §108(b) directs EPA to develop regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. On December 1, 2016, EPA proposed regulations for the hardrock mining industry. Commenters stated they believed the rule is unnecessary and duplicative of other Federal requirements.
- **Hazardous Waste Generator Improvement Rule:** On November 28, 2016, EPA revised the condition for exemption under RCRA's hazardous waste generator program that pose additional requirement for large and small generators (particularly retailers) that result in overly burdensome recordkeeping beyond what is currently required to demonstrate exemption.

OW:

- **Stormwater Management:** The NPDES stormwater program regulates some stormwater discharges from three potential sources: municipal separate storm sewer systems, construction activities, and industrial activities. Commenters noted a lack of flexibility in EPA rules and permits, as well as duplicative requirements with other Agency rules. The Combined Sewer Overflow policy was noted specifically by commenters.
- **Water Quality Criteria:** Commenters are concerned that EPA's national criteria and policy decisions require states to adopt stringent water quality standards that have high compliance cost (or are unattainable) and result in no additional human health protection.

IV. Recommended Next Steps

Given that the public comment period ended on May 15, 2017, the Task Force, OP, and the program offices have not yet had the opportunity to review and evaluate the tens of thousands of public comments received. The Task Force will request that each major program office continue to analyze the public comments and submissions, and use that information to identify and notify the Task Force of existing regulations that could be repealed, replaced, or modified consistent with the criteria in EO 13777:

- The regulation is outdated, unnecessary, or ineffective.
- The regulation eliminates jobs, or inhibits job creation.
- The regulation imposes costs that exceed benefits.
- The regulation is inconsistent with regulatory reform initiatives or policies.
- The regulation is inconsistent with the Information Quality Guidelines.

- The regulation derives from Executive Orders or other Presidential directives that have been subsequently rescinded.

The Task Force will work with program offices to prioritize the identified regulations based on strategic factors such as the following:

- The timing and urgency of the needed regulatory relief. Offices should consider the compliance deadlines of actions, and whether delay of such deadlines could significant reduce burdens while the action is under review.
- The associated costs and employment impacts. Offices should consider the estimated costs and employment losses associated with an action, including the original EPA estimates on impacted parties. Actions deemed economically significant (i.e. estimated impact of $100 million or more per year) should be prioritized for review.
- Associated with a Presidential directive or initiative. As indicated above, there are several executive orders and memoranda that are part of the President's regulatory reform agenda. Actions associated with the President's agenda should be prioritized (e.g., action may impact domestic energy resources or could reduce burdens on domestic manufacturers).
- Review would be swift and simple. Actions that could be repealed, replaced, or modified in a swift and simple fashion should be considered. These actions may include those that are non-controversial (e.g. viable for a direct final rule) or non-regulatory (e.g. a non-significant guidance document or an information collection request).

The Task Force will provide program offices with further, specific guidance on the information requirements and format to use when identifying priority reform opportunities. Program offices should work with the Office of Policy to assemble, review, and submit this information to the Task Force for their review by August 25, 2017.

The Task Force will review these program office submissions and approve or modify them. The Task Force will report back to the Administrator with additional recommendations and progress by November 24, 2017.

V. Conclusion

The Task Force believes EO 13777 offers an important and unique opportunity for EPA to revisit its regulations and identify and remedy those that are outdated or impose unnecessary burdens, that inhibit job growth, and those that impose costs that exceed benefits. The information provided so far by EPA offices and the public has provided valuable insights on which the Task Force will build firm recommendations.

EO 13777 has provided EPA an important spur to strengthen its institutionalization of regulatory reform initiatives and processes. There is much opportunity to reduce burden while maintaining

a healthy environment based on the preliminary input the agency has already received. Regulatory reform should be a natural way of doing business for EPA, continually looking for ways to improve regulations and remove unneeded and counterproductive obstacles to fulfilling the Agency's critical mission.

MEMORANDUM

SUBJECT: Executive Order 13777 – Enforcing the Regulatory Reform Agenda Task Force 90-Day Status Report

FROM: Samantha K. Dravis /s/
Senior Counsel and Associate Administrator

TO: E. Scott Pruitt
Administrator

I am transmitting to you a 90-Day Status Report on our progress in implementing Executive Order 13777 – Enforcing the Regulatory Reform Agenda as required under Section 3(g).

The report provides an overview of Executive Order 13777, outlines regulatory reform actions that have taken place to date, discusses what has been learned from public comments in response to the Department of Commerce's request for information regarding streamlining permitting and EPA's request for comment and public outreach meetings in regards to EO 13777. Based on what we have learned, the report provides preliminary recommendations for regulatory actions to consider changing or repealing and closes with our recommendations for next steps.

The Task Force believes this and related Executive Order and Presidential directives offers an important and unique opportunity for the Agency to revisit its regulations and remedy those that are outdated or impose unnecessary burdens, inhibit job growth, and those that impose costs that exceed benefits.

The Task Force looks forward to discussing our work with you.

REGULATORY REFORM AT EPA – Internal/Deliberative Process – 8/9/2017

Background: President Trump has issued several directives on regulatory reform, including Executive Orders directing EPA to review certain rules. In response, EPA has renewed its focus on providing regulatory certainty and developing sensible regulations that promote clean air and water.

- I applaud President Trump's leadership on regulatory reform and am proud of EPA's progress.
    - I have encouraged an unprecedented level of public participation to inform our regulatory reform efforts.
    - This spring, EPA held more than a dozen public meetings on regulatory reform, in which more than 200,000 stakeholders were independently invited to participate.
    - In April, EPA opened a 30-day public comment period to solicit input on regulatory reform and received over 460,000 comments, including a record-breaking number of individual comments (63,346).

- I established a Regulatory Reform Task Force in March, which has been busy advancing our regulatory reform agenda and compiling the reports required by EOs 13777 on enforcing the regulatory agenda and 13783 on promoting energy independence.

- The Task Force is also working closely with the Department of Commerce to provide information and feedback for its forthcoming plan to reduce regulatory burdens for domestic manufacturing through permit streamlining.

- EPA has initiated a review of and taken action regarding several specific regulations.
    - For example, in March, I signed a notice to review the Clean Power Plan (CPP) and the New Source GHG rule, and withdrew the proposed Federal Plan/Trading Rule/Framework Amendments to the CPP.
        - On June 8, EPA sent a CPP proposal to OMB that is currently under review.
    - On June 12, I signed a proposal to stay the methane oil and gas rule under reconsideration.
    - On June 28, I signed a proposal to withdraw the WOTUS rule.
    - On April 12, I delayed the ELG rule under reconsideration.

- In addition, EPA is working to improve our internal rulemaking process by updating our *Guidelines for Producing Economic Analysis*, which govern how EPA conducts benefit-cost analysis and other regulatory impact analyses.
    - EPA is developing a new methodology to account for the uncertainty associated with certain actions.
    - EPA is developing a Cooperative Federalism model that assumes states will lead in cost-effective environmental protection.

- These are just some of the steps we are taking toward regulatory reform at EPA. Robust analysis will lead to better decision-making and more effective regulations that protect our environment.

Environmental Protection Agency
Draft Final Report on the Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783

I. Introduction

a. Overview of Executive Order 13783

On March 28, 2017, President Trump signed Executive Order 13783, Promoting Energy Independence and Economic Growth.[1] The Executive Order established a national policy to promote the clean and safe development of domestic energy resources while reducing unnecessary regulatory burdens and directs federal agencies to undertake several actions to further this goal. Specifically, the Executive Order directs federal agencies to "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources[.]" Accompanying the call for a general review of regulations, EO 13783 specifically directed the EPA to review the Clean Power Plan suite of rules and the Oil and Gas New Source Performance Standards rule.[2,3] The Executive Order further directs agencies to develop a plan to carry out this review.

Agencies are to "appropriately suspend, revise, or rescind those [existing regulations] that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." This draft report details the specific actions the EPA has taken and will take in response to EO 13783 and other Administration initiatives to address regulatory burdens on domestic energy resources.

b. Background on Other Key Administration Initiatives

The Trump Administration is undertaking other regulatory review and management initiatives in addition to EO 13783. The EPA has utilized the information gathered from these activities to identify and prioritize additional energy-related actions that may be appropriate for repeal, replacement, or modification to make them less burdensome. These key initiatives include:

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[1] 82 Fed. Reg. 16093 (March 31, 2017).

[2] The Clean Power Plan suite of rules includes the following final or proposed rules: (i) The final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," (80 Fed. Reg. 64661; October 23, 2015) (Clean Power Plan); (ii) The final rule entitled "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," (80 Fed. Reg. 64509; October 23, 2015); and (iii) The proposed rule entitled "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule," (80 Fed. Reg. 64966; October 23, 2015).

[3] "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," (81 Fed. Reg. 5824; June 3, 2016), and any rules and guidance issued pursuant to it.

Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017. As directed by the Presidential Memorandum, the Department of Commerce issued a formal request for information (RFI) seeking information on the impact of Federal permitting requirements on the construction and expansion of domestic manufacturing facilities and on regulations that adversely impact domestic manufacturers. The EPA is analyzing the 170 entries in the public docket received by Commerce for those that are relevant to the EPA's permitting and/or regulatory requirements. Public comments identified as relevant to the EPA and related to domestic energy production and use will inform the review of Agency actions under EO 13783.

EO 13777 – Enforcing the Regulatory Reform Agenda, issued February 24, 2017.[4] As directed by EO 13777, Administrator Pruitt designated Samantha Dravis, Senior Counsel and Associate Administrator for Policy to serve as the EPA's Regulatory Reform Office (RRO) and a member of the Regulatory Reform Task Force (RRTF). Ryan Jackson, Chief of Staff, will serve as the Chairman of the RRTF. Other members of the RRTF include Byron Brown and Brittany Bolen, Deputy Chief of Staff for Policy and Office of Policy Deputy Associate Administrator, respectively.

Under EO 13777, the RRTF is charged with evaluating existing regulations and making recommendations to the Administrator regarding those that can be repealed, replaced, or modified to make them less burdensome. Specifically, the RRTF should identify regulations that: eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; are inconsistent with the requirements of the Information Quality Act or guidance issued pursuant to that law; or derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Because the RRTF is already charged with identifying and reviewing regulations across the EPA for burden reduction, it is well positioned to identify the regulations that are specifically burdensome for the energy sector. Accordingly, in an April 19, 2017, Agency-wide memorandum, the Administrator directed the RRTF to lead the Agency's EO 13783 review as well.

EO 13777 also requires that the RRTF seek input from entities significantly affected by the Agency's regulations, including state, local, and tribal governments, small businesses, consumers, non-governmental organizations and trade associations. In response, the EPA issued a request for comments on April 11, 2017, soliciting public input to inform the EPA's RRTF.[5] Additionally, key program offices conducted more than a dozen public outreach meetings to solicit comments on EPA regulations and opportunities for reform. The EPA received over 460,000 comments as a result of this outreach.

[4] 82 Fed. Reg. 12285 (March 31, 2017).
[5] 83 Fed. Reg. 17793 (April 13, 2017).

c. The EPA's Review Process for the Identification of Actions Unnecessarily Burdening Domestic Energy Use and Production

The RRTF, working with EPA program offices, has begun to identify major and recurrent themes from public meetings regarding the EPA's energy-related regulations. Internal analysis, as well as public input, have honed in on specific rulemakings and/or specific provisions of rulemakings that unduly burden domestic energy production and use. The RRTF has used this public input to select an initial set of regulations, in addition to those identified in EO 13783 related to the Clean Power Plan and the Oil and Gas NSPS, which should be suspended, revised, or rescinded.

The RRTF, working with the EPA program offices, will prioritize the identified regulations based on strategic factors such as the following:

- The timing and urgency of the needed regulatory relief. Considering the compliance deadlines of actions, whether delay of such deadlines could significant reduce burdens while the action is under review.
- The associated costs and employment impacts. Actions likely to be determined to be economically significant (i.e., estimated impact of $100 million or more per year) should be prioritized for review.
- Associated with a Presidential directive or initiative. As indicated above, there are several executive orders and memoranda that are part of the President's regulatory reform agenda. Actions associated with the President's agenda should be prioritized (e.g., actions that may streamline permitting processes, or that could reduce burdens on domestic manufacturers).
- The review would be swift and simple. Actions that could be repealed, replaced, or modified in a swift and simple fashion should be considered. These actions may include those that are non-controversial (e.g., viable for a direct final rule) or non-regulatory (e.g., a non-significant guidance document or an information collection request).

II. Status of Actions Identified in §4 and §7 of EO 13783

The EPA has made progress towards fulfilling the policies outlined in Executive Order 13783. Below is a summary of actions already taken regarding specific EPA regulations that have significant impacts on domestic energy production and use.

<u>Clean Power Plan and Related Rules</u>

EO 13783 §4 addresses the Clean Power Plan (CPP) and related rules that affect the electric utility sector, particularly utilities' fossil fuel-fired power plants – i.e., primarily coal and natural gas. The EPA has initiated a review of two of the identified final rules and withdrew a proposed rule:

- ***Clean Power Plan* – "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units."[6]**

The CPP was promulgated under Clean Air Act (CAA) §111, which authorizes the EPA to issue nationally applicable New Source Performance Standards (NSPS) limiting air pollution from "new sources" in source categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under this authority, the EPA had long regulated new fossil fuel-fired power plants to limit air pollution other than carbon dioxide (CO_2), including particulate matter (PM), nitrogen oxides (NO_x), and sulfur dioxide (SO_2). In 2015, the EPA issued a rule that for the first time set CO_2 emission limits for new fossil fuel-fired power plants. Under certain circumstances, when the EPA issues standards for new sources under §111(b), the EPA has the authority under §111(d) to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category. The EPA relied on that authority to issue the CPP, which, for the first time, required states to submit plans specifically designed to limit CO_2 emissions from existing fossil fuel-fired power plants. As part of the promulgation of the CPP, the EPA prepared a legal memorandum that supplemented the legal analysis provided by the Agency in the preamble to the final CPP.

Due to concerns about the EPA's legal authority and record, 27 states and a number of other parties sought judicial review of the CPP in the D.C. Circuit.[7] On February 9, 2016, the Supreme Court stayed implementation of the CPP pending judicial review.[8] Following full merits briefing, oral argument was held before the D.C. Circuit, sitting en banc, on September 27, 2016. That case is currently pending in the D.C. Circuit.

On March 28, 2017, pursuant to EO 13783, the EPA initiated its review of the CPP, including the accompanying legal memorandum. If the EPA's review concludes that suspension, revision, or rescission of the CPP may be appropriate, the EPA's review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.

As part of the review, the EPA will consider returning to an interpretation of the EPA's statutory authority consistent to how it has been historically applied. CAA §111(d) authorizes the Agency to promulgate emission guidelines for existing sources that reflect the "best system of emission reduction" (BSER). Other than the CPP, all of the EPA's other CAA §111(d) regulations are based on a BSER consisting of technological or operational measures that can be applied to, or at, a single source. The EPA will consider a return to a reading of the statute such that this phrase must be based on measures that can be applied to the source, rather than "beyond-the-fenceline" measures.

As part of the review of the CPP, the EPA will be reviewing the compliance dates that were set in the CPP. Under the Supreme Court's stay of the CPP, states and other interested parties have

[6] 80 Fed. Reg. 64661 (October 23, 2015).
[7] *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.).
[8] *West Virginia v. EPA*, U.S., No. 15A773 (February 9, 2016).

not been required nor expected to work towards meeting the compliance dates set in the CPP. Indeed, some compliance dates have passed or will likely pass while the CPP continues to be stayed. For these reasons, the compliance dates in the CPP will need to be re-evaluated. Once the EPA completes its review and decides what further action to take on the CPP, the EPA will ensure that any and all remaining compliance dates will be reasonable and appropriate in light of the Supreme Court stay of the CPP and other factors.

In conducting this review, the EPA will follow each of the principles and policies set forth in EO 13783, as consistent with the EPA's statutory authority. The Agency will reevaluate whether the CPP and alternative approaches are appropriately grounded in the EPA's statutory authority and consistent with the rule of law. The EPA will assess whether the CPP or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved for the states. The EPA will also examine whether the CPP and alternative approaches affect the Administration's dual goals of protecting public health and welfare while also supporting economic growth and job creation and whether the CPP or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security. Furthermore, the EPA will assess the CPP and alternative approaches to determine whether they will provide benefits that substantially exceed their costs.

The following actions have taken place as part of the EPA's review of the CPP:

- On March 28, 2017, the day EO 13783 was issued, Administrator Pruitt signed a notice to review this final rule.[9]
- On March 28, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the Clean Power Plan. On April 28, 2017, the D.C. Circuit ordered the litigation regarding the Clean Power Plan be held in abeyance for 60 days.[10]
- On March 30, 2017, Administrator Pruitt sent a letter to governors of the 47 states subject to the CPP, advising them that, as per the U.S. Supreme Court's stay of the rule, states and other interested parties have neither been required nor expected to work towards meeting the compliance dates set in the CPP rule and that it is the policy of the EPA that the states have no obligation to spend resources to comply with a rule that has been stayed by the U.S. Supreme Court.

The EPA received several comments identifying the CPP as burdensome and a candidate for review in response to the EPA's request for comments as part of EO 13777.

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final CPP rule (Review of the Clean Power Plan; RIN 2060-AT55). The proposed rule was accepted by OMB for interagency review under EO 12866 on June 6, 2017. The workgroup intends to issue a notice of

[9] 82 Fed. Reg. 16329 (April 4, 2017).
[10] *West Virginia v. EPA*, D.C. Cir. en banc, No. 15-1363.

proposed rulemaking and a final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Timeframe for completion]

The Regulatory Impact Analysis of the 2015 CPP indicated annualized cost of about $8 billion (2011$) through 2030. A revised analysis of the cost savings is likely to be significantly higher. [Note – the RIA currently at OMB shows annualized savings of $27 billion. – Under review at OMB as of 6/27/2017. But until it clears OMB review we likely can't include this information]

- ***NSPS for GHGs at Electric Generating Units – "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units."***[11]

The NSPS for GHGs at Electric Generating Units rule was promulgated under the authority of CAA §111, which authorizes the EPA to issue nationally applicable performance standards limiting air pollution from "new sources" in source categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under this authority, the EPA had long regulated new fossil fuel-fired power plants to limit air pollution other than CO_2, including PM, NO_x, and SO_2. In the NSPS for GHGs at Electric Generating Units rule, the EPA for the first time used CAA §111(b) to limit CO_2 emissions from new power plants.

Due to concerns about the EPA's legal authority and record, 24 states and a number of other parties sought judicial review of the NSPS for GHGs at Electric Generating Units rule in the D.C. Circuit.[12] The case has been fully briefed and is currently pending before the D.C. Circuit.

As noted above, on March 28, 2017, pursuant to EO 13783, the EPA initiated its review of the CPP, including the NSPS for GHGs at Electric Generating Units rule. In conducting this review, the EPA will follow each of the principles and policies set forth in EO 13783, as consistent with the EPA's statutory authority. The Agency will reevaluate whether the NSPS for GHGs at Electric Generating Units rule and alternative approaches are appropriately grounded in the EPA's statutory authority and consistent with the rule of law. The EPA will assess whether the NSPS for GHGs at Electric Generating Units rule or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the states. The EPA will also examine whether the NSPS for GHGs at Electric Generating Units and alternative approaches affect the Administration's dual goals of protecting public health and welfare while also supporting economic growth and job creation and whether the NSPS for GHGs at Electric Generating Units or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security. Furthermore, the EPA will assess the NSPS for GHGs at Electric Generating Units and alternative approaches to determine whether they will provide benefits that substantially exceed their costs.

[11] 80 Fed. Reg. 64509 (October 23, 2015).

[12] *State of North Dakota v. EPA*, No. 15-1381 (and consolidated cases) (D.C. Cir.).

The following actions have taken place as part of the EPA's review of the NSPS for GHGs at Electric Generating Units:

- On March 28, 2017, the day the EO 13783 was signed, Administrator Pruitt signed a notice to review the final rule.[13]
- On March 28, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the NSPS for GHGs at Electric Generating Units rule, including the scheduled April 17, 2017 oral arguments. The court granted the request to hold the litigation in abeyance on March 30, 2017.[14]

Several commenters also identified this NSPS as potentially burdensome and a candidate for review in response to the EPA's request for comments as part of EO 13777.

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule (Review of NSPS for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: EGUs; RIN 2060-AT56). The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Timeframe for completion]

The Regulatory Impact Analysis of the 2015 NSPS for GHGs at Electric Generating Units rule stated there would not be any notable compliance costs. [We need to verify that someone is or is not working on a cost savings estimate? Will it remain as no cost savings as per the original rule, or revised analysis showing something different?]

- ***Federal Plan/Model Trading/Framework Rule – "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule.***[15]

On October 23, 2015, in connection with the CPP, the EPA published a proposed rule for a Federal plan to implement the CPP emission guidelines, for model trading rules to aid implementation of the guidelines, and for amendments to the existing framework regulations implementing CAA §111(d).

The CPP was promulgated under CAA §111, which authorizes the EPA to issue nationally applicable NSPS limiting air pollution from "new sources" in source categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

[13] 82 Fed. Reg. 16330 (April 4, 2017).
[14] *North Dakota v. EPA*, D.C. Cir., No. 15-1381.
[15] 80 Fed. Reg. 64966 (October 23, 2015)

Under this authority, the EPA had long regulated new fossil fuel-fired power plants to limit air pollution other than CO_2, including PM, NO_x, and SO_2. In 2015, the EPA issued a rule that for the first time set CO_2 emissions limits for new fossil fuel-fired power plants.

Under certain circumstances, when the EPA issues standards for new sources under CAA §111(b), the EPA has the authority under CAA §111(d), to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category. Should a state fail to submit a plan within two years, CAA §111(d) requires that the EPA issue a Federal plan applicable to those states that have not adopted an approved plan. The October 23, 2015, notice proposed two approaches to a Federal plan for states and other jurisdictions that do not submit an approvable plan to the EPA: a rate-based emission trading program, and a mass-based emission trading program.

The October 23, 2015 notice also proposed model trading rules that states could adopt or tailor for implementation of the final CPP emission guidelines as well as amendments to the CAA §111(d) framework regulations related to the process and timing for state plan submissions and EPA actions.

Due to concerns about the EPA's legal authority and record, 27 states and a number of other parties sought judicial review of the CPP in the D.C. Circuit.[16] On February 9, 2016, the Supreme Court stayed implementation of the CPP pending judicial review.[17]

The various provisions in the October 23, 2015 proposal were issued at the EPA's discretion to implement the CPP; there is not a time-sensitive need for them given the Supreme Court's stay of the CPP and this Administration's decision to review the CPP and NSPS for GHGs at Electric Generating Units. Because the CPP-related proposed rules are designed to provide implementation details related to the specific requirements of the CPP, any changes to the CPP or new emission guidelines would most likely require changes to these CPP-related proposals. Thus, this preliminary action to withdraw these CPP-related proposals will allow the EPA to review them in light of its review of the CPP and, if they are still needed, to determine the appropriate next steps for these proposals, which may be to develop new proposals with revisions to ensure that they are consistent with and appropriately implement revised emission guidelines, if any.

The following action has taken place as part of the EPA's review of the Federal Plan/Model Trading/Framework rule:

- On March 28, 2017, the day the EO 13783 was issued, Administrator Pruitt signed a notice withdrawing this proposed rule.[18] (The notice also included the withdrawal of the proposed design details of the Clean Energy Incentive Program (CEIP), an optional program that states could use to incentivize early emission reduction projects under the

[16] *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.).
[17] *West Virginia v. EPA*, U.S., No. 15A773 (February 9, 2016).
[18] 82 Fed. Reg. 16141 (April 3, 2017).

CPP, which had been proposed separately.)[19]

Actions Related to Oil and Gas Production

EO 13783 §7 addresses rules related to oil and gas development. The EPA has initiated a review of the one identified final rule, which affects oil and gas production:

- ***Methane Oil & Gas Rule – "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources."***[20]

As a discretionary rulemaking, on September 18, 2015, the EPA issued a notice of proposed rulemaking to set NSPS for certain pollutants emitted from new and modified sources from oil and natural gas facilities.[21] The final 2016 Methane rule included minor amendments to the existing standards for the oil and natural gas source category (subpart OOOO) and set first-time standards for both GHGs (specifically methane) and volatile organic compounds (VOC) (subpart OOOOa). The OOOOa regulations added sources not covered by the OOOO regulations, including hydraulically fractured oil well completions, pneumatic pumps, and fugitive emissions from well sites and compressor stations. They also required methane controls at certain sources already covered by OOOO, including hydraulically fractured gas well completions and equipment leaks at natural gas processing plants.

On August 2, 2016, the EPA received petitions for administrative reconsideration that raised numerous objections to the 2016 Methane rule. Petitions were received from the American Petroleum Institute, GPA Midstream Association, Spilman Thomas & Battle representing numerous national and state level trade associations, the Texas Oil & Gas Association, and other organizations. The EPA recently granted reconsideration of several issues identified in the petitions (see bulleted timeline, below). The reconsideration covers several issues: (1) fugitive emissions monitoring and control requirements, including the inclusion of low-production wells and provisions relating to approvals for alternative means of emission limitation (AMEL); (2) the requirement that the design and capacity assessment of a closed vent system used to demonstrate compliance with a number of emission standards at affected facilities (i.e., centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels) be performed by a professional engineer; and (3) the requirement that the determination be made and certified by a professional engineer that it is technically infeasible to route a pneumatic pump to a control device or process.

Several administrative reconsideration petitions raised issues and questions regarding the AMEL provisions relative to the fugitive emissions requirements (e.g., who can apply for and who can use an approved AMEL), particularly as it relates to low production well sites. These inquiries and

[19] 81 Fed. Reg. 42940 (June 30, 2016).
[20] 81 Fed. Reg. 35824 (June 3, 2016).
[21] 80 Fed. Reg. 56593 (September 18, 2015).

concerns suggest that the AMEL provisions included in the 2016 Methane rule may not be sufficiently clear to facilitate effective application and approval of AMEL and may make it difficult for states to develop their own control programs that achieve equivalent, or greater, emission reduction from their affected sources than the required reduction under the 2016 Methane rule.

The 2016 Methane rule requires certification by a professional engineer that a closed vent system design and capacity assessment was conducted under his or her direction or supervision and that the assessment and resulting report were conducted pursuant to the requirements of the 2016 Methane rule. This certification requirement must be met in order comply with the emissions standards for centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels; as such, this requirement impacts a wide range of sources with respect to their ability to show compliance. In addition to the closed vent system certification requirement, there are other issues that the EPA is reconsidering that may further complicate a source's ability to comply with the well site pneumatic pump standards. Specifically, the 2016 Methane rule requires certification by a professional engineer of technical infeasibility in order for a well site pneumatic pump to qualify for an exemption from controlling emissions using an existing control or process.

Based on the great interest expressed by stakeholders (including states, industry, and manufacturers of emerging monitoring technology), in particular on the AMEL, the EPA anticipates receiving a large amount of information during the reconsideration proceeding. During the reconsideration proceeding, the EPA intends to request comment on the cost and other compliance burdens, among other relevant information, associated with the requirement for certification by a professional engineer. The EPA believes that it is in the public interest that it addresses these other related issues at the same time it reconsiders the fugitive emissions requirements, well site pneumatic pumps standards, and the certification by professional engineer requirements, thereby providing clarity and certainty for the public and regulated community with regard to these requirements.

Subsequent to the issuance of the final rule and receipt of the petitions for reconsideration, the following activity has taken place:

- On March 28, 2017, the day EO 13783 was signed, Administrator Pruitt signed a notice to review this final rule.[22]
- On April 7, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the oil and gas methane rule, including the scheduled oral arguments.
- On April 18, 2017, Administrator Pruitt signed a letter, based on the criteria in CAA §307(d)(7)(B), that convened a proceeding for reconsideration of the following objections relative to the fugitive emissions requirements: (1) the applicability of the fugitive emissions requirements to low production well sites, and (2) the process and criteria for requesting and receiving approval for the use of an alternative means of emission

[22] 82 Fed. Reg. 16331 (April 4, 2017).

limitations (AMEL) for purposes of compliance with the fugitive emissions requirements in the 2016 rule.

- On May 26, 2017, Administrator Pruitt signed a notice of reconsideration and partial stay. It noted that since issuing the April 18, 2017 letter, the EPA had identified objections to two other aspects of the 2016 rule that met the criteria for reconsideration under CAA §307(d)(7)(B). These objections relate to (1) the requirements for certification of closed vent system by a professional engineer, and (2) the well site pneumatic pump standards. In addition, the EPA stayed for three months the rule requirements pending reconsideration.[23]
- On June 12, 2017, Administrator Pruitt signed a notice proposing a second three-month stay and a separate notice proposing a two-year stay. The second three-month stay would extend beyond the initial three-month stay and serve as a stop-gap for the separately proposed two-year stay. Since the rulemaking for the two-year stay would likely be determined to be a major rule under the Congressional Review Act, it will not take effect until sixty days after publication of the final rule or after Congress receives the rule report, whichever is later. That extra time will extend beyond the initial three-month stay.[24]

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Timeframe for completion]

Based on analysis accompanying the proposed stay, administratively staying the provisions for which reconsideration has been granted will reduce cost in 2018 by $146 million (2016$); $21 million in reduced capital costs plus $153 million in reduced operating costs minus $28 million in lost product recovery revenue.

In addition to the petitions for reconsideration, the EPA has received several comments regarding the 2016 rule in response to the EPA's request for comments as part of EO 13777.

III. Status of Other Energy-Related Actions

As noted previously, the Trump Administration has several regulatory reform initiatives underway, allowing the EPA to leverage the ideas and information gleaned from those efforts to support and focus its activities to alleviate unneeded burdens on the domestic energy sector. Public input has been received in response to both the Department of Commerce's request for information regarding streamlining permitting and reducing the regulatory burden on domestic manufacturing, and the EPA's request for comment regarding a general call to identify regulations that can be repealed,

[23] 82 Fed. Reg. 25734 (June 5, 2017). Note that the D.C. Circuit vacated the 90 day stay on July 3, 2017. A July 13, 2017, order delayed the vacature for a period of 14 days.
[24] 82 Fed. Reg. 27641 and 82 Fed. Reg. 27645 (June 16, 2017).

replaced, or modified. The EPA has screened each docket for comments with substantive, specific suggestions to remove regulatory burdens on the development or use of domestic energy.

Working with the EPA's program office, the RRTF has identified the following additional priority energy-related regulations for review:

Actions Related to Oil and Gas Production

- ***Oil & Gas ICR* – EPA ICR No. 2548.01; released November 10, 2016.**

In November 2016, the EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. This information collection conducted pursuant to CAA §114 was to assist the Agency in developing emissions standards for existing oil and gas facilities pursuant to CAA §111(d).

On June 3, 2016, the EPA promulgated a final NSPS for the oil and natural gas source category, which included minor amendments to the previous standards (subpart OOOO), and set first-time standards for both GHGs (specifically methane) and volatile organic compounds (VOC) (subpart OOOOa) (i.e., the 2016 Methane rule).[25] Under certain circumstances, when the EPA issues standards for new sources under CAA §111(b), the EPA has the authority under §111(d) to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category.

The November 2016 information collection request encompassed two parts. Part 1, referred to as the operator survey, was specifically designed to obtain comprehensive information from onshore petroleum and natural gas production facilities to better determine the quantity and types of equipment at production facilities. Part 1 sought to collect information regarding production operators (e.g., facility name, address, and contact information) as well as information on the location and types of equipment (e.g., number of wells, tanks, dehydrators, and compressors) present at well surface sites and centralized production surface sites. Part 1 was sent to all known U.S. operators of oil and gas production wells. The operators were to complete the Part 1 survey and provide equipment counts for all production facilities that they operate except for facilities selected to complete Part 2.

Part 2, referred to as the detailed facility survey, was sent to selected oil and gas facilities (production, gathering and boosting, processing, compression/transmission, pipeline, natural gas storage, and LNG storage and import/export facilities) based on statistical sampling method. Part 2 was to collect detailed, unit-specific information on emission sources at the facility and any emission control devices or management practices used to reduce emissions.

[25] 81 Fed. Reg. 35824 (June 3, 2016).

- On March 1, 2017, the EPA received letters from nine state Attorneys General and the Governors of Mississippi and Kentucky expressing concern with the burdens on businesses imposed by the pending requests. The EPA takes these concerns seriously and is committed to strengthening its partnership with the states. In response, the EPA withdrew its information collection request on March 2, 2017.[26]

The withdrawal will allow the EPA to assess the need for the information that the Agency was collecting through these requests, and reduce burdens on businesses while the Agency assesses such need. The EPA estimated the burden of the information collection to be 284,751 hours, costing $42,453,050. (However, because some facilities submitted responses to the collection request prior to the withdrawal, the EPA now estimates that the withdrawal would avoid approximately $37 million in reporting burden.)

- ***Light-duty Vehicle Mid-Term Evaluation – "Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation,"* cover letter announcing the determination signed by Administrator McCarthy, January 12, 2017.**

The Mid-Term Evaluation was established to review standards set in a 2012 joint rulemaking by the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA), which set federal GHG emissions and Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2017 and beyond for light-duty vehicles.[27] These standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles (i.e., sport utility vehicles, crossover utility vehicles, and light trucks), collectively referred to as light-duty vehicles.

The EPA and NHTSA finalized separate sets of standards under their respective statutory authorities. The EPA set GHG emission standards (including standards for emissions of CO_2, NO_x, methane, and air conditioning refrigerants) for MY 2017-2025 passenger cars and light-trucks under CAA §202(a). NHTSA sets national CAFE standards under the Energy Policy and Conservation Act (EPCA) for MY 2017-2021 light-duty vehicles and issued augural standards for MY 2022–2025.

The 2012 joint rulemaking establishing these standards included a regulatory requirement for the EPA to conduct a Mid-Term Evaluation of the GHG standards established for MY 2022-2025. In July 2016, the EPA, NHTSA, and the California Air Resources Board (CARB) released for public comment a jointly prepared Draft Technical Assessment Report, which examined a range of issues relevant to GHG emissions and CAFE standards for MY 2022-2025.[28] In November 2016, the EPA issued a proposed determination for the Mid-Term Evaluation.[29]

[26] 82 Fed. Reg. 12817 (March 7, 2017).
[27] 77 Fed. Reg. 62624 (October 15, 2012).
[28] 81 Fed. Reg. 49217 (July 27, 2016).
[29] 81 Fed. Reg. 87927 (December 6, 2016).

On January 12, 2017, EPA Administrator Gina McCarthy signed the Final Determination of the Mid-Term Evaluation of light-duty vehicle GHG emissions standards for MY 2022-2025.

Under the 2012 joint rulemaking regulations, no later than April 1, 2018, the EPA Administrator must determine whether the GHG standards established under 2012 joint rule for MY 2022-2025 are appropriate under CAA §202(a) in light of the record then before the Administrator. Given that CO_2 makes up the vast majority of the GHGs that the EPA regulates under §202(a), and given that the technologies available for regulating CO_2 emissions do so by improving fuel economy (which NHTSA regulates under EPCA/EISA), NHTSA's views with regard to what CAFE standards would be maximum feasible for those model years is an appropriate consideration in the EPA's determining what GHG standards would be appropriate under the CAA.[30] However, NHTSA has not yet considered what CAFE standards would be the maximum feasible standards for MY 2022-2025. Accordingly, the EPA has concluded that it is appropriate to reconsider its Final Determination in order to allow additional consultation and coordination with NHTSA in support of a national harmonized program.

For its part, NHTSA will continue to engage with stakeholders as it works to develop a notice of proposed rulemaking to set CAFE standards for MY 2022-2025. As explained in the 2012 final joint rule, this proposal will be part of "a de novo rulemaking conducted . . . with fresh inputs and a fresh consideration and balancing of all relevant factors, based on the best and most current information before the agency at that time."[31] A final rule for MY 2022 is statutorily required to be issued by NHTSA by April 1, 2020.

In accordance with the schedule set forth in the EPA's regulations, the EPA intends to make a new Final Determination regarding the appropriateness of the MY 2022-2025 GHG standards no later than April 1, 2018. As a part of this process, the EPA is examining a wide range of factors, such as developments in powertrain technology, vehicle electrification, light-weighting and vehicle safety impacts, the penetration of fuel efficient technologies in the marketplace, consumer acceptance of fuel efficient technologies, trends in fuel prices and the vehicle fleet, employment impacts, and many others.

- On March 15, 2017, Administrator Pruitt and Department of Transportation Secretary Elaine Chao announced that the EPA intends to reconsider the final determination, issued on January 12, 2017, that recommended no change to the greenhouse gas standards for light-duty vehicles for model years 2022-2025.[32]

[30] See 40 CFR 86.1818–12(h)(1)(vii) (listing as one of the factors the EPA should consider in the Mid-Term Evaluation "[t]he impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program").
[31] 77 FR 62624, at 62652 (October 15, 2012).
[32] 82 Fed. Reg. 14671 (March 22, 2017).

This joint EPA/DOT determination will have an effect on energy resources used to fuel and/or power automobiles.

The January 12, 2017 unilateral EPA determination projected lifetime cost of between $26 billion to $36 billion (or $875 average per vehicle) to meet the MY 2022-2025 GHG standards (net present value in 2015$).

The EPA has initiated a workgroup to reconsider the full suite of issues and information regarding the determination on the appropriateness of the MY 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Air and Radiation will lead the workgroup with Christopher Grundler, Director, Office of Transportation and Air Quality, as the primary contact. [Note - ADP has not been initiated as of 6/27/2017.] [Timeframe for completion - 4/1/2018?]

- ***Landfill Methane Rules – "Standards of Performance for Municipal Solid Waste Landfills," and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills."***[33]

On August 29, 2016, the EPA promulgated a final rule establishing an NSPS intended to reduce emissions of landfill gas from new, modified, and reconstructed municipal solid waste (MSW) landfills, thereby updating standards that were issued in 1996. In a separate action, the EPA also promulgated a final rule revising guidelines for reducing emissions from existing MSW landfills, thereby updating the previous emissions guidelines, which also were issued in 1996.

On October 27, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of both rules pursuant to CAA §307(d)(7)(B). In response, the EPA took the following actions:

- On May 5, 2017, the EPA sent a letter announcing it was convening a proceeding for reconsideration of the final rules and its intention to issue a 90-day stay of the effectiveness of both final rules.
- On May 31, 2017, the EPA issued a 90-day stay for the regulatory provisions added or revised by the two rules.[34] [Longer stay to be announced shortly, but currently pending completion of OMB review.]

Both rules were included as initiatives in two reports identified for rescission in §3(b) of EO 13783 – The President's Climate Action Plan (June 2013) and the Climate Action Plan Strategy to Reduce Methane Emissions (March 2014).

[33] 81 Fed. Reg. 59332 and 81 Fed. Reg. 59276 (August 29, 2016).
[34] 82 Fed. Reg. 24878 (May 31, 2017).

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Note - no reconsideration action has been tiered] [Timeframe for completion]

- ***Oil and Gas Control Technique Guidelines (CTG) Rescission***[35]

CAA §183 (Federal Ozone Measures) provides the EPA authority to issue, review, and update as necessary Control Technique Guidelines (CTG) for VOC sources, including stationary sources as well as consumer and commercial products. A CTG is a document that provides recommendations to state and local air agencies on establishing reasonably available control technology (RACT) for reducing emissions from covered stationary source equipment and processes.

CAA §182 requires that moderate or higher ozone nonattainment areas or areas within an ozone transport region must revise their state implementation plans (SIPs) to include RACT for each category of VOC sources covered by a CTG. The measures identified in the CTG are recommendations only and are not legally binding. States may use the recommendations in the CTG to inform their determinations as to what constitutes RACT for VOC and are free to implement other technically-sound approaches that are consistent with the CAA and the EPA's regulations. CAA §182(b)(2) requires that CTG include a date by which states must submit SIP revisions in response to the CTG.

The EPA issued Oil and Gas Control Technique Guidelines on October 27, 2016. In general, the RACT recommendations are based on the control options contained in the 2012 Oil & Gas NSPS (including its subsequent amendments) (subpart OOOO)[36] and the 2016 Oil & Gas NSPS (subpart OOOOa).[37] (Some control requirements in the 2016 rule applied only to methane emissions and were not included in the 2016 CTG, which, as per the CAA, only includes VOC controls.)

Because the EPA is reconsidering various provisions of the 2016 Oil & Gas NSPS that relate to the control of both methane and VOCs, the EPA believes that it is most appropriate to rescind the CTGs that were largely based on that rule.

[35] 81 Fed. Reg. 74798 (October 27, 2016).
[36] 77 Fed. Reg. 49490 (August 16, 2012); 78 Fed. Reg. 58416 (September 23, 2013), 79 Fed. Reg. 79018 (December 31, 2014); and 80 Fed. Reg. 48262 (August 12, 2015).
[37] 81 Fed. Reg. 35824 (June 3, 2016).

- ***Refineries Residual Risk and Technology Review (RTR) Reconsideration* (RIN 2060-AT18)**

CAA §112(d) requires the EPA to promulgate regulations establishing national emission standards (NESHAPs) for each category or subcategory of major sources of hazardous air pollutants (HAPs) listed pursuant to §112(c). "Major" sources are those source that emit or have the potential to emit in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The standards must require the maximum degree of emission reduction that the EPA determines to be achievable by each particular source category; i.e., maximum achievable control technology (MACT). The "MACT floor" – the minimum level of HAP emission control requirement – for new sources is equivalent to the level of HAP emission control achieved by the best-controlled similar source, and the MACT floor for existing sources is the average level of HAP emission control achieved by the best performing 12% of that industry group's currently operating sources.

CAA §112(f) requires the EPA to assess the risk to public health remaining after the implementation of NESHAP for each source category after 8 years. If the "residual risk" for a source category does not protect public health with "an ample margin of safety," the EPA must promulgate health-based standards for that source category to further reduce HAP emissions. The EPA is required to set more stringent standards if necessary to prevent adverse environmental effects (considering energy, costs, and other relevant factors). CAA §112(d)(6) requires the EPA to review and revise the MACT standards every 8 years, as necessary, taking into account developments in practices, processes, and control technologies. The EPA typically undertakes a combined residual risk and technology review rulemaking to reassess each source category NESHAP if both reviews are required.

In 2015, the EPA promulgated the "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards,"[38] which included the RTR for two petroleum refinery NESHAPS, Refinery MACT 1[39] and Refinery MACT 2[40], as well as technical corrections to Petroleum Refinery NSPS[41].

On January 19, 2016, the American Petroleum Institute (API) and the American Fuels and Petrochemical Manufacturers (AFPM) requested administrative reconsideration of certain provisions. On July 13, 2016, the EPA promulgated a final rule responding to that initial request for reconsideration.[42]

[38] 80 Fed. Reg. 7178 (December 1, 2015).
[39] 40 CFR part 63, subpart CC.
[40] 40 CFR part 63, subpart UUU.
[41] 40 CFR part 60, subpart J.
[42] 81 Fed. Reg. 45232 (July 13, 2016).

On February 1, 2016, Earthjustice petitioned the Agency for reconsideration of aspects of the final rule, and on that same day, API and AFPM submitted a supplemental petition for reconsideration. On June 16, 2016, the EPA granted reconsideration of five aspects of the final rule for which the EPA did not provide adequate opportunity for notice and comment: (1) work practice standards for pressure relief devices; (2) work practice standards for emergency flaring; (3) assessment of risk from the refinery source categories after implementation of the pressure relief device and emergency flaring work practice standards; (4) alternative work practice standards for delayed coking units employing the water overflow design; and, (5) reduced frequency of fenceline monitoring. The EPA proposed a response to the reconsideration issues on October 18, 2016.[43] At that time, the EPA also proposed a technical correction related to regulatory overlap of equipment leak regulations that was raised in one of the petitions and proposed to correct a referencing error related to that provision.

The Office of Air and Radiation leads the workgroup developing the final rule with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

The EPA expects to issue a final rulemaking by the end of 2017 in response to the issues for which the EPA granted reconsideration, as well as action on the technical correction and referencing error.

- ***"Effluent Limitations Guidelines and Pretreatment Standards for the Oil and Gas Extraction Point Source Category" Review***

The Clean Water Act (CWA) prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized, such as under the CWA §402 National Pollutant Discharge Elimination System (NPDES) permit program. Direct dischargers (those discharging directly to waters of the U.S.) must comply with effluent limitations in NPDES permits, generally based on technology controls or performance standards.

CWA §307(b) provides general and specific prohibitions on the discharge to publicly owned treatment works (POTW) in order to prevent "pass through" of pollutants from industrial sources that would cause or contribute to a violation of the POTW's NPDES permit or "interfere" with the POTW's operation or prevent biosolids use consistent with the POTW's chosen method of disposal. Pretreatment programs are designed to prevent industrial facilities from passing through such untreated pollutants to their POTW. The CWA also authorizes the EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge pollutants indirectly, by sending wastewater to POTWs. Specifically, CWA §§307(b) and (c) authorize the EPA to establish pretreatment standards for those pollutants in wastewater from indirect dischargers that the EPA determines are not susceptible to treatment by a POTW or would interfere with POTW operations.

[43] 81 Fed. Reg. 71661 (October 18, 2016).

On June 28, 2016, the EPA promulgated an Effluent Limitations Guidelines and Pretreatment Standards for the Oil and Gas Extraction Point Source Category (ELG for Oil & Gas) that established pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas extraction facilities to POTWs.[44] The EPA's rule record indicated that all unconventional oil and gas facilities were already meeting the zero discharge requirement – through underground injection, recycling, reuse, and transfer to centralized waste treatment facilities. After promulgation, the EPA received information from a coalition of Pennsylvania oil and gas operators indicating that some of the operators were discharging unconventional oil and gas wastewater to POTWs at the time of the final rule. These operators extract from formations that are considered "conventional" under Pennsylvania law but would be considered "unconventional" under the EPA's rule, which would subject them to the prohibition on discharge into POTWs. These operators did not comment on the proposed rule. Based on this new information, the EPA issued a rule extending the compliance deadline for three years until August 29, 2019, for facilities sending wastewater to POTWs at the time of the final rule.[45]

On November 18, 2016, the Pennsylvania Grade Crude Oil Coalition (the same coalition of Pennsylvania oil and gas operators) filed a petition for review in the Third Circuit. On June 15, 2017, the Pennsylvania Grade Crude Oil Coalition filed suit in the Third Circuit regarding the rule's definition of an "unconventional" operation.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, industry associations asked that the Agency undertake a review of fracking waste water management technologies and to consider revisions to the ELG based on the review.

The EPA intends to review the 2016 ELG for Oil & Gas to determine if it has appropriately defined "unconventional" oil and gas extraction facilities and whether fracking waste water management technologies should be included in a technology evaluation. [Note: as of 7/14/2017, no action has been tiered or entered into the tracking system for a review of this ELG.]

Actions Related to Electricity Generation and Coal

- ***Steam Electric ELG – "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category."***[46]

The CWA has, as a national goal, the elimination of the discharge of all pollutants into the nation's waters.[47] The CWA establishes a comprehensive program for protecting our nation's waters. Among

[44] 81 Fed. Reg. 41845 (June 28, 2016).
[45] 81 Fed. Reg. 88126 (December 7, 2016).
[46] 80 Fed. Reg. 67838 (November 3, 2015).
[47] 33 U.S.C. 1251(a)(1).

its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the CWA. Under CWA §402, discharges may be authorized by an NPDES permit. The CWA establishes a dual approach for these permits, technology-based controls that establish a floor of performance for all dischargers, and water quality-based effluent limitations, where the technology-based effluent limitations are insufficient to meet applicable WQS. To serve as the basis for the technology-based controls, the CWA authorizes the EPA to establish national technology-based effluent limitations guidelines (ELG) and new source performance standards for discharges from categories of point sources (such as industrial, commercial, and public sources) that flow directly into waters of the U.S.

On November 3, 2015, under the authority of the CWA, the EPA issued a final rule amending the ELG and standards for the steam electric power generating point source category (i.e., 2015 Steam Electric ELG). The amendments addressed and contained limitations and standards on various wastestreams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate. This update to ELG primarily affects coal-fired electric generating units.

EPA received seven petitions for review of the 2015 Steam Electric ELG rule. The United States Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit.[48]

In a letter dated March 24, 2017, the Utility Water Act Group (UWAG) submitted a petition for reconsideration of the 2015 Steam Electric ELG and requested that the EPA suspend the 2015 Steam Electric ELG's approaching compliance deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. In a letter dated April 5, 2017, the Small Business Administration (SBA) Office of Advocacy sent the EPA a second petition for reconsideration of the 2015 Steam Electric ELG, which expressly supports the UWAG's petition and raises issues that SBA considers are pertinent to small businesses. The petitions raise wide-ranging and sweeping objections to the 2015 Steam Electric ELG and point to new data.

Considering the litigation and in response to the petitions for reconsideration, the EPA has taken the following actions:

- On April 11, 2017, the Administrator sent a letter to each state governor notifying them of the Agency's intent to consider postponing compliance dates as well as petitions for reconsideration of the final rule.
- On April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule and, using authority under the Administrative Procedures Act §705, to postpone compliance dates that have not yet passed pending judicial review.[49]
- On June 6, 2017, the Administrator, in response to administrative petitions for reconsideration, proposed to postpone certain compliance dates until the EPA completes

[48] *Southwestern Electric Power Co., et al. v. EPA*, No. 15–60821.
[49] 82 Fed. Reg. 19005 (April 25, 2017).

reconsideration of the 2015 Steam Electric ELG.[50]

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Water will lead the workgroup with Betsy Southerland, Director, Office of Science and Technology, as the primary contact. [Timeframe for completion]

- ***Greenhouse Gas Reporting Program (GHGRP) Modifications***

The GHGRP requires reporting of GHG data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO_2 injection sites in the United States.[51] A total of 41 categories of reporters are covered by the GHGRP. Facilities determine whether they are required to report based on the types of industrial operations located at the facility, their emission levels, or other factors. Facilities are generally required to submit annual reports if: (1) GHG emissions from covered sources exceed 25,000 metric tons CO_2e per year; (2) supply of certain products would result in over 25,000 metric tons CO_2e of GHG emissions if those products were released, combusted, or oxidized; or, (3) the facility receives 25,000 metric tons or more of CO_2 for underground injection.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, several commenters provided suggestions for modifications to the GHGRP to reduce reporting burden. Specifically, commenters noted streamlining opportunities related to reporting by electric utilities and petroleum and natural gas sources.

Subpart D sets the GHGRP reporting requirements for the electricity generation source category. Commenters noted that the GHGRP requires duplicative reporting of CO_2 emissions from sources already subject to the reporting requirements of 40 CFR Part 75 related to continuous emissions monitoring (including the Acid Rain Program). To avoid the need for duplicative reporting, commenters suggested that the EPA transfer reported CO_2 emissions under 40 CFR Part 75 to the GHGRP data systems.

Subpart W sets the GHGRP reporting requirements for the petroleum and natural gas systems source category. Commenters suggested that the EPA allow oil and gas facilities to report estimates of the GHG emissions from compressors by use of emissions factors in lieu of measuring and reporting direct emissions from these compressors.

EPA is evaluating these and other opportunities to revise and streamline the GHG reporting requirements.

[50] 82 Fed. Reg. 26017 (June 6, 2017).
[51] 40 CFR Part 98.

- ***Mercury and Air Toxics Standards (MATS) E-Reporting Requirements Revision* (RIN 2060-AT42)**

The EPA issued the MATS rule in 2012 establishing NESHAPs for coal- and oil-fired electric steam generation units.[52] The MATS rule included reporting requirements as well.

The final MATS rule required affected sources to submit certain MATS emissions and compliance information electronically, using either the Compliance and Emissions Data Reporting Interface (CEDRI) or the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool. The EPA developed these two systems prior to the MATS rule for the electronic submittal of emissions data from many source categories. Currently, owners or operators of sources regulated under the NSPS and NESHAP programs use CEDRI to submit performance test reports and other air emissions reports. ECMPS is used to report emissions data under the Acid Rain Program and other programs that are required to continuously monitor and report emissions. These two systems have enhanced the way source owners and operators report emissions data to the EPA by providing a streamlined and standardized electronic approach. Subsequent to publication of the MATS rule, stakeholders commented that the EPA could improve the reporting efficiency of the MATS rule by requiring all data to be reported to one system instead of two. Stakeholders also commented that one system could benefit the EPA and the public in the review of data submitted by setting one consistent format for all data reported through MATS. Further, because the vast majority of sources covered under the MATS rule have been using the ECMPS Client Tool since 2009, the stakeholders have encouraged the EPA to consider consolidating the electronic reporting under ECMPS.

The EPA is implementing this change in two phases. In a March 25, 2015 rule the EPA removed the requirement to submit MATS compliance reports to the CEDRI and, instead, required that source owners or operators to use the ECMPS Client Tool to submit PDF version of the reports.[53] In the second phase, the EPA will issue another rulemaking that requires affected source owners or operators to submit the data elements required in MATS in a structured XML format using the ECMPS Client Tool.

The workgroup for the second phase is working to complete a final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. The EPA expects to issue the final phase two rule by Fall 2017.

- ***CCR***

[52] 77 Fed. Reg. 9304 (February 16, 2012).
[53] 80 Fed. Reg. 15510 (March 24, 2015).

On April 17, 2015, the EPA promulgated a final rule that establishes minimum national criteria under subtitle D of the Resource Conservation and Recovery Act (RCRA) for Coal Combustion Residuals (CCR) landfills and surface impoundments at active coal fired power plants.[54] The rule regulates surface impoundments and landfills that are actively accruing CCR, inactive surface impoundments still containing CCRs, and water both at operating power plants actively burning coal and those that burned coal in the past but have transitioned to use of an alternate fuel source. Under subtitle D of RCRA, the EPA does not have the authority to enforce these criteria nor are we authorized to approve state permit programs, as is the case for municipal solid waste landfills. Instead, the requirements of the CCR rule are directly applicable to owner/operators of facilities where disposal units are located and can be enforced via citizen suit or under the "imminent and substantial danger" authority of RCRA §7002. Owner/operators are required under the rule to place notifications in their operating record, on their website, and in some instances provide notice to the directors of appropriate state agencies documenting the measures taken to comply with the rule.

The requirements of the rule include: location restrictions (floodplains, wetlands, unstable areas, etc.); design criteria (liners, structural integrity criteria); operating criteria (e.g., run-on and runoff controls, inspections, fugitive dust controls); groundwater monitoring and corrective action; closure and post closure care (e.g., final cover systems, 30 years of groundwater monitoring); and recordkeeping. All new landfills and surface impoundments must be constructed with a composite liner or equivalent. Existing unlined leaking surface impoundments exceeding a groundwater protection standard (as determined via groundwater monitoring) are required to retrofit with a composite liner or close the impoundment. All other leaking units (landfills, surface impoundments with any type of liner) exceeding a groundwater protection standard must take corrective action, but do not face a retrofit or close decision. Inactive surface impoundments that can be dewatered within three years of the effective date are not subject to the other rule provisions. The rule includes timing flexibilities applicable to closure deadlines for CCR units in instances where no alternative disposal capacity is available, circumstances beyond the owner operator's control prevent closure (obtaining state permits for closure), or when the boiler the unit serves is to permanently retire within 8.5 or 13.5 years of rule publication for smaller and larger units respectively.

This rule does not make a final Bevill regulatory determination as to whether CCRs warrant regulation as a hazardous waste under Subtitle C of RCRA, but instead defers a final regulatory determination until the EPA has more information on specific matters influencing the risks posed by CCRs, including: potential future changes in the toxicity characteristics of CCRs due to new air pollution control measures at EGUs; uncertainty surrounding the IRIS cancer slope factor for arsenic, which is currently under re-evaluation; and a better understanding of the adequacy of state programs to regulate CCRs.

[54] 80 Fed. Reg. 21302 (April 17, 2015).

Subsequent to the promulgation of the 2015 CCR rule, various environmental and industry groups submitted to the D.C. Circuit seven separate petitions for review, which have been consolidated into a single action. On June 16, 2016, the D.C. Circuit remanded with vacatur to the EPA specific provisions of the rule for further consideration.

In December 2016, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act,[55] which included language giving state agencies the authority to implement and enforce coal ash under the 2015 CCR Final rule through EPA-approved state permit programs. The WIIN Act also gives the EPA the authority to regulate coal ash in states that choose not to implement state permitting programs and in states whose permitting programs are determined to be inadequate by the EPA.

Subsequent to the passage of the WIIN Act, the EPA has taken the following actions:

- On April 28, 2017, Administrator Scott Pruitt sent letters informing states that the EPA is working on guidance for implementing state permitting programs under WIIN that allow flexibility in individual permits to manage the safe disposal of CCR. The EPA expects that its new guidance will allow for the safe disposal and continued beneficial use of coal ash while enabling states to decide what works best for their environment.
- On May 12, 2017, the Utility Solid Waste Activities Group, which represents the electric power sector on waste management issues, filed a petition with the EPA urging the Agency to reconsider numerous provisions of the 2015 CCR rule.
- On May 25, 2017, the EPA transmitted draft guidance to OMB for interagency review under EO 12866. The EPA withdrew that initial submission on June 14, 2017, and submitted a revised version the same day for EO 12866 review.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, several commenters requested that the EPA extend the CCR compliance dates to allow for implementation through state or Federal permitting programs as per the WIIN Act. Many compliance deadlines in the final CCR rule have already passed, but some remain outstanding. Groundwater monitoring must begin by October 2017, and where groundwater monitoring identifies exceedances, corrective action must be taken, and default cleanup targets have been described as very stringent. Commenters have requested that the EPA consider extending compliance deadlines for any corrective action that might be required until state permit programs are able to issue permits under provisions of the WIIN Act as state programs may define cleanup targets that are different than what otherwise would be required.

The EPA has initiated a workgroup to consider the provisions remanded by the D.C. Circuit, as well as the issues raised in the 2017 petition and other implementation issues raised by stakeholders. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Land and Emergency Management will lead the workgroup with Barnes Johnson,

[55] P.L. 114-322.

Director, Office of Resource Conservation and Recovery, as the primary contact. [Timeframe for completion]

- **Actions that are Generally Applicable to Energy Sector**

- ***WOTUS – "Clean Water Rule: Definition of 'Waters of the United States'."***[56]

The CWA seeks "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Among other provisions, the CWA regulates the discharge of pollutants into "navigable waters," defined in the CWA as "the waters of the United States." The question of what is a "water of the United States" is one that has generated substantial interest and uncertainty, especially among states, small businesses, the agricultural communities, and environmental organizations, because it relates to the extent of jurisdiction for federal and relevant state regulations.

The EPA and the Department of the Army (Corp of Engineers) have promulgated a series of regulations defining "waters of the United States." The scope of "waters of the United States" as defined by prior regulations has been subject to litigation in several U.S. Supreme Court cases, most recently in its 2006 *Rapanos* decision.[57] As a result of that decision, the EPA and the Corp of Engineers issued guidance regarding CWA jurisdiction in 2007 and revised it in 2008.

In response to that guidance, members of Congress, developers, farmers, state and local governments, environmental organizations, energy companies, and others asked the EPA and Corp of Engineers to replace the guidance with a regulation. At the conclusion of that rulemaking process, the EPA and the Corp of Engineers issued the "Clean Water Rule: Definition of 'Waters of the United States.'" (2015 WOTUS rule).

Due to concerns about the potential for continued regulatory uncertainty, as well as the scope and legal authority of the 2015 WOTUS rule, 31 states and a number of other parties sought judicial review in multiple actions. Seven states, plus the District of Columbia, and additional parties then intervened in those cases. On October 9, 2015, the Sixth Circuit stayed the 2015 WOTUS rule nationwide pending further action of the court.[58]

On February 28, 2017, President Trump signed Executive Order 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" rule, which directed the EPA and the U.S. Army Corp of Engineers to review the 2015 WOTUS rule.[59]

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[56] 80 Fed. Reg. 37054 (June 29, 2015).
[57] *Rapanos v. United States*, 547 U.S. 715 (2006).
[58] *Ohio v. U.S. Army Corps of Eng'rs.*, 6th Cir., No. 15-3799 (October 9, 2015).
[59] 82 Fed. Reg. 12497 (March 3, 2017).

Provisions of the rule may have burdensome impacts on domestic energy production, including coal, oil, and natural gas.

In response to EO 13778, the EPA and the Army Corp of Engineers have taken the following actions:

- On February 28, 2017, the day the EO 13778 was signed, Administrator Pruitt signed a notice to review the final rule.[60]
- On June 27, 2017, Administrator Pruitt signed a proposed rulemaking to repeal the 2015 WOTUS rule and reinstate the regulations in place prior to its issuance. As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 WOTUS rule. Currently, Step 1 is being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The recodification of the regulation previously in place and the issuance of a new definition will have wide-ranging effects on domestic energy production and use, including the permitting of oil, gas, coal, and renewable development sites, and the transmission and distribution of electricity.

WOTUS is a definitional rule that affects the scope of the "waters of the United States;" it does not establish any regulatory requirements or directly mandate actions on its own. However, by changing the definition of the "waters of the United States," the rule changes the waters where other regulatory requirements that affect regulated entities come into play (e.g., the locations where regulated entities would be required to obtain certain types of permits).

The EPA and the Corp of Engineers prepared an illustrative economic analysis of the proposed repeal of the 2015 rule and the recodification of pre-existing rules to provide the public with information on the potential changes to the costs and benefits of various CWA programs that could result if there was a change in the number of positive jurisdictional determinations. The 2015 rule is used as a baseline in the analysis in order to estimate the differential effects of restoring the pre-2015 status qua relative to the 2015 rule. (However, as noted previously, the 2015 rule has already been stayed by the Sixth Circuit, and the proposed rule would merely codify the legal status quo, not change current practice.) The illustrative economic analysis indicates that annual avoided costs range from $162 million to $476 million (2016$).

[60] 82 Fed. Reg. 12532 (March 6, 2017).

The EPA has initiated workgroups to recodify the regulation that was in place prior to the 2015 WOTUS rule and consider a new definition that would replace the approach in the 2015 Clean Water rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion. Each workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Water will lead the workgroup with John Goodin, Acting Director, Office of Wetlands, Oceans, and Watersheds, as the primary contact. [Timeframe for completion?]

- ***New Source Review and Title V Permitting Programs Reform***

The CAA establishes a number of permitting programs designed to carry out the goals of the Act. The EPA directly implements some of these programs through its Regional Offices, but most are carried out by states, local agencies, and approved tribes. In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777 as well as the Department of Commerce's request for information on Federal permitting requirements and other previous public comment forums, numerous commenters have identified streamlining, burden reduction, and other reform opportunities, and provided specific recommendations for the EPA's primary permitting programs.

New Source Review (NSR) is a preconstruction permitting program that ensures that the addition of new and modified sources does not significantly degrade air quality. NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source may be operated. There are three types of NSR permits: (1) Prevention of Significant Deterioration (PSD) (CAA Part C) permits, which are required for new major sources or a major source making a major modification in an attainment area; (2) Nonattainment NSR (NNSR) (CAA Part D) permits, which are required for new major sources or major sources making a major modification in a nonattainment area; and (3) Minor source permits (CAA § 110(a)(2)(C)).

CAA Title V requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit. Sources with these "Title V permits" are required by the CAA to certify compliance with the applicable requirements of their permits at least annually. Regulations governing the Title V program are found at 40 CFR Part 70 – State Operating Permit Programs.

The EPA is committed to producing an action plan by early Fall 2017 for NSR, Title V, and other permitting programs reform. Areas of emphasis will include: (1) the timely issuance of permits. The EPA will issue guidance on best practices and approaches to ensure timely issuance of permits based on a review of state, local, and tribal air agencies that are identified as among the best in issuing preconstruction permits in a timely manner. (2) Facilitate flexibility in permitting in a nationally consistent manner. Promote and facilitate the use of flexible permitting mechanisms associated with PSD and Title V, including but not limited to plant-wide applicability limits (PALs)

and alternative operating scenarios. (3) Simplify the CAA permitting requirements by evaluating and pursuing appropriate actions related to actual-to-projected-actual applicability test, project netting rulemaking, debottlenecking, and routine maintenance, repair, and replacement.

The EPA will complete the following actions: GHG Significant Emission Rate rulemaking,[61] which will provide a significance threshold for GHG emissions to determine when a best available control technology (BACT) analysis is required; improve the technical tools used to streamline air quality modeling by issuing final $PM_{2.5}$ and Ozone Significant Impact Levels (SILs) Guidance,[62] and final Modeled Emissions Rates for Precursors (MERPs) Guidance;[63] and Title V Permitting Program Petition Provisions Modification.[64]

- ***"Once In, Always In" Policy Replacement***

On March 16, 1994, the EPA promulgated Part 63 General Provisions for NESHAPs and other regulatory requirements that are established under CAA §112. In May 1995, John Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum to EPA Regional Air Division Directors interpreting certain requirements of the NESHAP General Provisions entitled "Potential to Emit for MACT Standards—Guidance on Timing Issues" – i.e., the "once in, always in" policy.

As per CAA §112, a "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources" and subject to less stringent regulation than a major source.

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable CAA §112 Maximum Achievable Control Technology (MACT) standard. However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT even if it subsequently reduces HAP emissions below major source levels at a later date. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, as well as other earlier public comment forums, states and many industry stakeholders have long expressed concern that the 1995 "once in, always in" policy inhibits innovation and penalizes good actions to reduce air pollution from industrial facilities.

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[61] 81 Fed. Reg. 67945 (October 3, 2016) (NPRM).
[62] https://www.epa.gov/sites/production/files/2016-08/documents/pm2_5_sils_and_ozone_draft_guidance.pdf (posted August 1, 2016).
[63] https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf (posted December 2, 2016).
[64] 81 Fed. Reg. 57822 (August 24, 2016) (NPRM).

In 2003 and 2007, the EPA proposed amendments to the Part 63 General Provisions to change parts of the "once in, always in" policy but was blocked by Congress from taking final action on the 2007 proposal.[65] Neither action was ever finalized.

EPA intends to revise its interpretation of CAA §112 through rulemaking to clarify the means by which a facility currently classified as a major source of HAPs can become an area source – i.e., by obtaining federally enforceable limits on its potential to emit.

The new regulation will strive to provide incentives to sources to minimize emissions and limit the number of sources (and reduce associated costs) required to comply with the MACT program.

- ***Ozone NAAQS Implementation Revisions***

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary Ozone NAAQS.[66] The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard. (The previous ozone NAAQS were set in 2008 and remain effective.)

The Administrator has recently taken administrative actions related to the implementation of the 2015 ozone standards. Using his CAA authority, the Administrator has announced a 1-year extension on the deadline for designating areas as attaining or not attaining the 2015 Ozone NAAQS.[67] This additional time will allow the EPA to further review the rule establishing the 2015 ozone standards, and to evaluate a number of complex issues that may affect states' efforts to comply with ozone standards (e.g., the role of background ozone and properly accounting for international transport).

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, as well as other earlier public comment forums, commenters have recommended that the EPA further revise the exceptional event rule and associated guidance to allow for greater state flexibility in flagging and excluding exceptional events in the data set used to determine compliance with the NAAQS. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, state, or local air agencies may implement in order to attain and maintain the NAAQS. Exceptional events include wildfires, stratospheric ozone intrusions, and volcanic and seismic activities. In September 2016, the EPA finalized revisions to the Exceptional Events rule to establish criteria and procedures for use in determining exceptional events influenced air quality monitoring data.[68]

[65] See 68 Fed. Reg. 26249 (May 15, 2003) and 72 Fed. Reg. 69 (January 3, 2007).
[66] 80 FR 65292 (October 26, 2015)
[67] 82 Fed. Reg. 29246 (June 28, 2017).
[68] 81 Fed. Reg. 68216 (October 3, 2016).

In addition, the EPA intends to use the additional time afforded by the designations extension to finalize necessary guidance (e.g., updated exceptional events guidance and guidance on Significant Impact Levels (SILs)[69] and Model Emission Rates for Precursors (MERPs)[70]), as well as to finalize its 2015 Ozone NAAQS Implementation rule[71].

The Administrator has also formed the Ozone Cooperative Compliance RRTF to examine possible additional flexibilities for states to comply with ozone standards.

- ***Texas Federal Implementation Plan (FIP) Requirements for Interstate Transport Related to 1997 PM2.5 National Ambient Air Quality Standards (NAAQS) Repeal***

CAA §110 requires that states submit a State Implementation Plan (SIP) for each primary and secondary NAAQS. CAA Part D requires SIP elements particular to nonattainment areas. As a first step in building a SIP, CAA §110(a)(1) & (2) requires that states include in their SIPs specific "infrastructure" elements that demonstrate how, through rules and procedures, the state will implement, maintain, and enforce a new or revised NAAQS – i.e., an Infrastructure SIP. The elements include emission inventories, monitoring network design, an air quality analysis, modeling results, enforcement mechanisms, and laws and regulations. Included within the infrastructure elements are the interstate transport requirements, including two sub-elements (or prongs) that must be addressed as per §110(a)(2)(D)(i)(I): the SIP must prohibit any source within the state from contributing significantly to (prong 1) or interfering with the maintenance of (prong 2) the NAAQS in other states. (Prongs 1 and 2 are frequently called the "Good Neighbor" provisions.)

If the EPA disapproves a SIP provision, or the state has not submitted a required revision, the EPA may promulgate control measures in an action known as a Federal Implementation Plan (FIP). FIPs may cover comprehensive program or be limited to very specific provisions. If the state subsequently adopts the necessary provisions, and the EPA approves them, the provisions are incorporated into the SIP, and the FIP or specific FIP provisions can be withdrawn.

In 2011, the EPA initially promulgated the Cross-State Air Pollution rule (CSPAR) to address the obligations of the states and the EPA under the Good Neighbor provisions of the CAA. To reduce transported $PM_{2.5}$ pollution, CSAPR sets limits on annual emissions of NO_X and SO_2 as precursors to $PM_{2.5}$. To reduce transported ozone pollution, CSAPR sets limits on ozone-season emissions of NO_X as a precursor to ozone. CSAPR's emissions limitations are defined in terms of emissions ''budgets'' for the collective emissions from affected EGUs in each covered state. The emissions limitations are phased in, with the Phase 1 and Phase 2 budgets. Affected EGUs are subject to FIP

[69] https://www.epa.gov/sites/production/files/2016-12/documents/draft-ozone-pm25-sils-guidance.pdf
[70] https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf
[71] 81 Fed. Reg. 81276 (November 17, 2016).

provisions requiring them to participate in one or more of several CSAPR federal allowance trading programs established as flexible mechanisms to achieve compliance with the emissions budgets.

Following it 2011 promulgation, CSAPR was litigated in the D.C. Circuit and the Supreme Court. In 2014, the Supreme Court largely affirmed the rule but remanded specific issues back to the D.C. Circuit. In 2015, the D.C. Circuit remanded to the EPA the Phase 2 budgets for SO_2 and ozone season NO_x for Texas and several other states, finding that Phase 2 requirements may be more stringent than necessary to address Texas' $PM_{2.5}$ Good Neighbor transport obligations.

In November 2016, the EPA issued a proposal that would withdraw the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO_2.[72] The EPA also proposed to determine that, following withdrawal of the FIP requirements, sources in Texas will not contribute significantly to nonattainment in, or interfere with maintenance by any other state with regard to the 1997 $PM_{2.5}$ NAAQS, and that the EPA, therefore, will have no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under the CAA Good Neighbor provisions.

The EPA will finalize this action no later than September 9, 2017, as per a consent decree deadline.[73]

- ***Title V Permitting Program Petition Provisions Modification***

Title V of the CAA establishes an operating permit program. CAA §505 requires state, local, and tribal permitting authorities to submit a proposed Title V permit to the EPA Administrator for review for a 45-day review period before issuing the permit as final. The CAA provides that the Administrator shall object to the issuance of a permit within that 45-day review period if the Administrator determines that the permit contains provisions that are not in compliance with the applicable requirements under the CAA. If the Administrator does not object to the permit during the 45-day EPA review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to take such action. The Title V petition provisions of the current implementing regulations found at 40 CFR part 70 largely mirror the CAA and have not been revised since original promulgation in 1992.

In August 2016, with 20 years of experience with Title V petitions as well as feedback from various stakeholders, the EPA proposed changes to 40 CFR part 70 intended to provide clarity and transparency to the petition process, and to improve the efficiency of that process.[74] Subsequently, in response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777 as well as the Department of Commerce's request for information on

[72] 81 Fed. Reg. 78954 (November 10, 2016).
[73] *National Parks Conservation Association v. EPA*, No. 1:11-cv-1548 (D.D.C.)
[74] 81 Fed. Reg. 57822 (August 24, 2016).

Federal permitting requirements, several commenters noted the need for a modification to the program to improve and streamline the process. The proposed changes are intended to benefit permitting authorities, permitted sources, and potential petitioners, as well as the EPA.

Permitting authorities and permitted sources are expected to benefit from early consultation with the appropriate EPA Regional Office when the permitting authority is preparing a permit to ensure it includes conditions that assure compliance with applicable requirements under the CAA and part 70. These early actions should minimize potential permit deficiencies and reduce the associated likelihood that a petition will be submitted on that Title V permit. Potential petitioners are expected to benefit by having better notification of permits and review deadlines (e.g., the EPA is proposing to post on EPA Regional Web sites when a proposed permit is received and the corresponding 60-day deadline for submitting a petition) and by better access to permitting decision information (e.g., the permitting authority's written response to comments). These updates will clarify the expected minimum content of petitions and provide a standardized format, simplifying the process and enhancing the likelihood that petitions will be clear and complete. In addition, potential petitioners may also derive a benefit from more efficient responses to petitions and a better understanding of the process.

The EPA is expected to benefit by improving the agency's ability to meet its statutory obligations to review proposed permits, respond to Title V petitions and provide more transparency in the Title V petition process. These were concerns expressed by a Clean Air Act Advisory Committee task force in recommendations provided to the agency in 2006.[75] The EPA believes that the proposed regulatory revisions and shared information are responsive to these concerns and could, if finalized, improve the efficiency of the agency's response.

The Office of Air and Radiation leads a workgroup developing a final rule in response to the August 24, 2016 proposal with Anna Marie Wood, Director, Air Quality Policy Division, as the primary contact.

- ***Risk Management Plan Rule Reconsideration***

CAA §112(r) requires the EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. The Risk Management Plan (RMP) rule contains these regulations and guidance. The information required from facilities under RMP helps local fire, police, and emergency response personnel prepare for and respond to chemical

[75] In 2004, the Clean Air Act Advisory Committee (CAAAC) established a Task Force to evaluate the Title V program. The 18-member panel, comprised of industry, state, and environmental group representatives, identified what Committee members believed was and was not working well. After hosting public meetings and receiving written feedback, and compiling the information with the personal experience of panel members, the Title V Task Force issued a final report that highlighted concerns and recommendations for improvement. See, Final Report to the Clean Air Act Advisory Committee on the Title V Implementation Experience: Title V Implementation Experience (April 2006). The Title V Task Force Final Report is available at: https://www.epa.gov/caaac/caaac- reports.

emergencies. Making RMPs available to the public also fosters communication and awareness to improve accident prevention and emergency response practices at the local level.

The EPA RMP rule applies to stationary sources that hold specific "regulated substances" in excess of threshold quantitates. RMP aims to prevent or minimize the consequences of accidental chemical releases through the implementation of management program elements that integrate technologies, procedures, and management practices. In addition to requiring management program elements, the RMP rule requires covered sources to submit (to the EPA) a document summarizing the source's risk management program, called a Risk Management Plan.

The RMP rule establishes three "program levels" for regulated processes: Program 1 applies to processes that would not affect the public in the case of a worst-case release and that have had no accidents with specific offsite consequences within the past five years. Program 1 imposes limited hazard assessment requirements, requires coordination with local response agencies, and requires submission of an RMP. Program 2 applies to processes not eligible for Program 1 or subject to Program 3, and imposes streamlined prevention program requirements, including safety information, hazard review, operating procedures, training, maintenance, compliance audits, and incident investigation elements. Program 2 also imposes additional hazard assessment, management, and emergency response requirements. Program 3 applies to processes not eligible for Program 1 and either subject to OSHA's Process Safety Management standard under Federal or state OSHA programs or classified in one of ten specified industry sectors selected because they had a higher frequency of the most serious accidents as compared to other industry sectors.

On January 13, 2017, the EPA promulgated amendments to the RMP rule.[76] The major provisions of the amendments included several changes to the accident prevention program requirements, the emergency response requirements, and the public availability of chemical hazard information. The accident prevention program provisions require all facilities with Program 2 or 3 processes to conduct a root cause analysis as part of an incident investigation of a catastrophic release or incident that could have reasonably resulted in a catastrophic release; to contract with an independent third-party, or assemble an audit team led by an independent third-party, to perform a compliance audit after the facility has an RMP reportable accident; and requires that Program 3 in certain NAICS codes conduct a safer technology and alternatives analysis as part of their every-five-years process hazard analysis. The emergency response provisions require that Program 2 or 3 processes coordinate with the local emergency response agencies at least once a year and conduct notification exercises annually, and that certain facilities conduct field exercises and tabletop exercise at least once every ten years. The provisions pertaining to public availability of information provisions require that all facilities provide certain basic information to the public upon request and that facilities hold a public meeting for the local community within 90 days of the RMP reportable accident.

[76] 82 Fed. Reg. 4594 (January 13, 2017).

Subsequent to the issuance of the amendments on January 13, 2017, the following actions have taken place related to RMP:

- On February 28, 2017, RMP Coalition, representing several trade associations submitted a petition requesting a reconsideration and a stay for the RMP rule amendments.
- On March 13, 2017, Administrator Pruitt convened a proceeding for reconsideration of the RMP rule amendments.
- On March 16, 2017, the EPA published a final rule that provides a three-month (90-day) administrative stay of the effective date of the RMP rule amendments, delaying the effective date of the final rule to June 19, 2017.
- On March 13, 2017, the Chemical Safety Advocacy Group (CSAG), a coalition of companies in the refining, oil and gas, chemicals and general manufacturing sector, submitted a petition for reconsideration. CSAG also submitted a supplement to their petition on March 14, 2017.
- On March 14, 2017, the state of Louisiana, joined by ten other states (Arizona, Arkansas, Florida, Kansas, Kentucky, Oklahoma, South Carolina, Texas, Wisconsin and West Virginia) submitted a petition for reconsideration.
- On June 14, 2017, the EPA published a final rule to further delay the effective date of the RMP rule amendments for 20 months until February 19, 2019. This action allowed the EPA to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action.

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The Office of Land and Emergency Management will lead the workgroup with Reggie Cheatham, Director, Office of Emergency Management, as the primary contact. [Timeframe for completion – by Feb 2019?]

- ***Startup, Shutdown, and Malfunction Policy***

On June 12, 2015, the EPA promulgated a final rule that issued a SIP Call to 37 states (or air quality jurisdictions within those states), finding that their SIPs were substantially inadequate with due to the inclusion of provisions for (1) an affirmative defense for excess emissions during startup, shutdown, or malfunction (SSM) events, or (2) a state director's discretion to unilaterally grant exemptions or variances from otherwise applicable emissions limitations, or (3) an automatic exemption for excess emissions during malfunctions, or (4) an enforcement discretion provision that purports to restrict citizen suits or federal enforcement.[77] (A state may exercise discretion in its enforcement program, provided that such discretion cannot apply to anyone other than state personnel; i.e., the EPA or other parties pursuant to the citizen suit provision can still pursue monetary penalties as well as injunctive relief.)

[77] 80 Fed. Reg. 33840 (June 12, 2015).

[Discuss litigation]

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, industry associations noted objections to the EPA's current SSM policy. Most stated that the EPA should consider withdrawing the SSM SIP Call and not act on any of the recent SIP submissions until it revises its interpretation of excess emission during SSM events. Commenters states that the current SSM Policy and the SSM SIP Call were not consistent with the system of cooperative federalism and unnecessarily interferes with States' authority to implement their programs. The EPA should establish work practices applicable to SSM events or amend emissions standards that can be achieved during SSM events. The SSM SIP Call was not based on any finding of air quality impacts or a finding that removing the provisions is necessary to meet other CAA goals.

The EPA will work with stakeholders to further understand their concerns and identify viable SSM events policies that adhere to the principals of cooperative federalism. [Note – there is an ongoing effort being led by Mandy and Justin on this, but there isn't yet a formal rulemaking process underway]

IV. Conclusion

The EPA plays a critical role in shaping policies that may affect domestic energy resources. The EPA believes EO 13783 offers an important and unique opportunity to revisit its regulations and identify and remedy those that impose unnecessary burdens on domestic energy production and use. The EPA is taking regulatory reform very seriously, and has been proactive in soliciting input in a variety of venues that will inform the Agency's regulatory efforts related to EO 13783, EO 13777, and other Administration initiatives to identify and remedy regulations that are outdated, impose unnecessary burdens, inhibit job growth, and impose costs that exceed benefits.

There is much opportunity to reduce burden while maintaining a healthy environment based on the preliminary input the Agency has already received. Regulatory reform should be a natural way of doing business for the EPA, continually looking for ways to improve regulations and remove unneeded and counterproductive obstacles to fulfilling the Agency's critical mission.

Environmental Protection Agency
Draft Final Report on the Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783

I. Introduction

a. Overview of Executive Order 13783

On March 28, 2017, President Trump signed Executive Order 13783, Promoting Energy Independence and Economic Growth.[1] The Executive Order established a national policy to promote the clean and safe development of domestic energy resources while reducing unnecessary regulatory burdens, and directs federal agencies to undertake several actions to further this goal. Specifically, the Executive Order directs federal agencies to "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources[.]" Accompanying the call for a general review of regulations, EO 13783 specifically directed the EPA to review the Clean Power Plan suite of rules and the Oil and Gas New Source Performance Standards rule.[2, 3] The Executive Order further directs agencies to develop a plan to carry out this review.

Agencies are to "appropriately suspend, revise, or rescind those [existing regulations] that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." This draft report details the specific actions the EPA has taken and will take in response to EO 13783 and other Administration initiatives to address regulatory burdens on domestic energy resources.

b. Background on Other Key Administration Initiatives

The Trump Administration is undertaking other regulatory review and management initiatives in addition to EO 13783. The EPA has utilized the information gathered from these activities to identify and prioritize additional energy-related actions that may be appropriate for repeal, replacement, or modification to make them less burdensome. These key initiatives include:

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[1] 82 Fed. Reg. 16093 (March 31, 2017).

[2] The Clean Power Plan suite of rules includes the following final or proposed rules: (i) The final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," (80 Fed. Reg. 64661; October 23, 2015) (Clean Power Plan); (ii) The final rule entitled "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," (80 Fed. Reg. 64509; October 23, 2015); and (iii) The proposed rule entitled "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule," (80 Fed. Reg. 64966; October 23, 2015).

[3] "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," (81 Fed. Reg. 5824; June 3, 2016), and any rules and guidance issued pursuant to it.

Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017. As directed by the Presidential Memorandum, the Department of Commerce issued a formal request for information (RFI) seeking information on the impact of Federal permitting requirements on the construction and expansion of domestic manufacturing facilities and on regulations that adversely impact domestic manufacturers. The EPA is analyzing the 170 entries in the public docket received by Commerce for those that are relevant to the EPA's permitting and/or regulatory requirements. Public comments identified as relevant to the EPA and related to domestic energy production and use will inform the review of Agency actions under EO 13783.

EO 13777 - Enforcing the Regulatory Reform Agenda, issued February 24, 2017.[4] As directed by EO 13777, Administrator Pruitt designated Samantha Dravis, Senior Counsel and Associate Administrator for Policy to serve as the EPA's Regulatory Reform Office (RRO) and a member of the Task Force. Ryan Jackson, Chief of Staff, will serve as the chairman of the Task Force. Other members of the Task Force include Byron Brown and Brittany Bolen, Deputy Chief of Staff for Policy and Office of Policy Deputy Associate Administrator, respectively.

Under EO 13777, the Task Force is charged with evaluating existing regulations and making recommendations to the Administrator regarding those that can be repealed, replaced, or modified to make them less burdensome. Specifically, the Task Force should identify regulations that: eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; are inconsistent with the requirements of the Information Quality Act or guidance issued pursuant to that law; or derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Because the Task Force is already charged with identifying and reviewing regulations across the EPA for burden reduction, it is well positioned to identify the regulations that are specifically burdensome for the energy sector. Accordingly, in an April 19, 2017, Agency-wide memorandum, the Administrator directed the Task Force to lead the Agency's EO 13783 review as well.

EO 13777 also requires that the Task Force seek input from entities significantly affected by the Agency's regulations, including state, local and tribal governments, small businesses, consumers, non-governmental organizations and trade associations. In response, the EPA issued a request for comment on April 11, 2017, soliciting public input to inform the EPA's Task Force.[5] Additionally, key program offices conducted more than a dozen public outreach meetings to solicit comments on the EPA regulations and opportunities for reform. EPA received over 460,000 comments as a result of this outreach.

[4] 82 Fed. Reg. 12285 (March 31, 2017).
[5] 83 Fed. Reg. 17793 (April 13, 2017).

c. EPA's Review Process for the Identification of Actions Unnecessarily Burdening Domestic Energy Use and Production

The Task Force, working with EPA program offices, has begun to identify major and recurrent themes they have heard in the public meetings regarding the EPA's energy-related regulations. Internal analysis as well as public input have honed in on specific rulemakings and/or specific provisions of rulemakings that unduly burden domestic energy production and use. The Task Force has used this public input to select an initial set of regulations, in addition those identified in EO 13783 related to the Clean Power Plan and the Oil and Gas NSPS, which should be suspended, revised, or rescinded.

The Task Force, working with the EPA program offices, will prioritize the identified regulations based on strategic factors such as the following:

- The timing and urgency of the needed regulatory relief. Considering the compliance deadlines of actions, whether delay of such deadlines could significant reduce burdens while the action is under review.
- The associated costs and employment impacts. Actions likely to be determined to be economically significant (i.e., estimated impact of $100 million or more per year) should be prioritized for review.
- Associated with a Presidential directive or initiative. As indicated above, there are several executive orders and memoranda that are part of the President's regulatory reform agenda. Actions associated with the President's agenda should be prioritized (e.g., actions that may streamline permitting processes, or that could reduce burdens on domestic manufacturers).
- Review would be swift and simple. Actions that could be repealed, replaced, or modified in a swift and simple fashion should be considered. These actions may include those that are non-controversial (e.g., viable for a direct final rule) or non-regulatory (e.g., a non-significant guidance document or an information collection request).

II. Status of Actions Identified in §4 and §7 of EO 13783

The EPA has made progress towards fulfilling the policies outlined in Executive Order 13783. Below is a summary of actions already taken regarding specific the EPA regulations which have significant impacts on domestic energy production and use.

<u>Clean Power Plan and Related Rules</u>

EO 13783 §4 addresses the Clean Power Plan (CPP) and related rules that affect the electric utility sector, particularly utilities' fossil fuel-fired power plants - i.e., primarily coal and natural gas. the EPA has initiated a review of two of the identified final rules and withdrew a proposed rule:

- ***Clean Power Plan* - "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units."** [6]

The CPP was promulgated under Clean Air Act (CAA) §111 which authorizes the EPA to issue nationally applicable New Source Performance Standards (NSPS) limiting air pollution from "new sources" in source categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under this authority, the EPA had long regulated new fossil fuel-fired power plants to limit air pollution other than carbon dioxide (CO_2), including particulate matter (PM), nitrogen oxides (NO_x), and sulfur dioxide (SO_2). In 2015, the EPA issued a rule that for the first time set CO_2 emission limits for new fossil fuel-fired power plants. Under certain circumstances, when the EPA issues standards for new sources under §111(b), the EPA has the authority under §111(d) to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category. The EPA relied on that authority to issue the CPP, which, for the first time, required states to submit plans specifically designed to limit CO_2 emissions from existing fossil fuel-fired power plants. As part of the promulgation of the CPP, the EPA prepared a legal memorandum that supplemented the legal analysis provided by the Agency in the preamble to the final CPP.

Due to concerns about the EPA's legal authority and record, 27 States and a number of other parties sought judicial review of the CPP in the D.C. Circuit.[7] On February 9, 2016, the Supreme Court stayed implementation of the CPP pending judicial review.[8] Following full merits briefing, oral argument was held before the D.C. Circuit, sitting en banc, on September 27, 2016. That case is currently pending in the D.C. Circuit.

On March 28, 2017, pursuant to EO 13783, the EPA initiated its review of the CPP, including the accompanying legal memorandum. If the EPA's review concludes that suspension, revision or rescission of the CPP may be appropriate, the EPA's review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.

As part of the review, the EPA will consider returning to an interpretation of the EPA's statutory authority consistent to how it has been historically applied. CAA §111(d) authorizes the Agency to promulgate emission guidelines for existing sources that reflect the "best system of emission reduction" (BSER). Other than the CPP, all of the EPA's other CAA §111(d) regulations are based on a BSER consisting of technological or operational measures that can be applied to, or at, a single source. The EPA will consider a return to a reading of the statute such that this phrase must be based on measures that can be applied to the source, rather than "beyond-the-fenceline" measures.

As part of the review of the CPP, the EPA will be reviewing the compliance dates that were set in the CPP. Under the Supreme Court's stay of the CPP, states and other interested parties have

[6] 80 Fed. Reg. 64661 (October 23, 2015).
[7] *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.).
[8] *West Virginia v. EPA*, U.S., No. 15A773 (February 9, 2016).

not been required nor expected to work towards meeting the compliance dates set in the CPP. Indeed, some compliance dates have passed or will likely pass while the CPP continues to be stayed. For these reasons, the compliance dates in the CPP will need to be re-evaluated. Once the EPA completes its review and decides what further action to take on the CPP, the EPA will ensure that any and all remaining compliance dates will be reasonable and appropriate in light of the Supreme Court stay of the CPP and other factors.

In conducting this review, the EPA will follow each of the principles and policies set forth in EO 13783, as consistent with EPA's statutory authority. The Agency will reevaluate whether the CPP and alternative approaches are appropriately grounded in the EPA's statutory authority and consistent with the rule of law. The EPA will assess whether the CPP or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the states. The EPA will also examine whether the CPP and alternative approaches affect the Administration's dual goals of protecting public health and welfare while also supporting economic growth and job creation, whether the CPP or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security, and the EPA will assess the CPP and alternative approaches to determine whether they will provide benefits that substantially exceed their costs.

The following action have taken place as part of the EPA's review of the CPP:

- On March 28, 2017, the day EO 13783 was issued, Administrator Pruitt signed a notice to review this final rule.[9]
- On March 28, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the Clean Power Plan. On April 28, 2017, the D.C. Circuit ordered the litigation regarding the Clean Power Plan be held in abeyance for 60 days.[10]
- On March 30, 2017, Administrator Pruitt sent a letter to governors of the 47 states subject to the CPP, advising them that, as per the U.S. Supreme Court's stay of the rule, states and other interested parties have neither been required nor expected to work towards meeting the compliance dates set in the CPP rule and that it is the policy of the EPA that the states have no obligation to spend resources to comply with a rule that has been stayed by the U.S. Supreme Court.

The EPA received several comments identifying the CPP as burdensome and a candidate for review in response to the EPA's request for comments as part of EO 13777.

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final CPP Rule (Review of the Clean Power Plan; RIN 2060-AT55). The proposed rule was accepted by OMB for interagency review under EO 12866 on June 6, 2017. The workgroup intends to issue a notice of

[9] 82 Fed. Reg. 16329 (April 4, 2017).
[10] *West Virginia v. EPA*, D.C. Cir. en banc, No. 15-1363.

proposed rulemaking and a final rule. The workgroup will be led by the Office of Air and Radiation with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Timeframe for completion]

The Regulatory Impact Analysis of the 2015 CPP indicated annualized cost of about $8 billion (2011$) through 2030. A revised analysis of the cost savings is likely to be significantly higher. [Note – the RIA currently at OMB shows annualized savings of $27 billion. – Under review at OMB as of 6/27/2017. But until it clears OMB review we likely can't include this information]

- ***NSPS for GHGs at Electric Generating Units - "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units."*** [11]

The NSPS for GHGs at Electric Generating Units Rule was promulgated under the authority of CAA §111 which authorizes the EPA to issue nationally applicable performance standards limiting air pollution from "new sources" in source categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under this authority, the EPA had long regulated new fossil fuel-fired power plants to limit air pollution other than CO_2, including PM, NO_x, and SO_2. In the NSPS for GHGs at Electric Generating Units Rule, EPA for the first time used CAA §111(b) to limit CO_2 emissions from new power plants.

Due to concerns about EPA's legal authority and record, 24 States and a number of other parties sought judicial review of the NSPS for GHGs at Electric Generating Units Rule in the D.C. Circuit.[12] The case has been fully briefed and is currently pending before the D.C. Circuit.

As noted above, on March 28, 2017, pursuant to EO 13783, the EPA initiated its review of the CPP, including the NSPS for GHGs at Electric Generating Units Rule. In conducting this review, the EPA will follow each of the principles and policies set forth in EO 13783, as consistent with EPA's statutory authority. The Agency will reevaluate whether the NSPS for GHGs at Electric Generating Units Rule and alternative approaches are appropriately grounded in the EPA's statutory authority and consistent with the rule of law. The EPA will assess whether the NSPS for GHGs at Electric Generating Units Rule or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the states. The EPA will also examine whether the NSPS for GHGs at Electric Generating Units and alternative approaches effect the Administration's dual goals of protecting public health and welfare while also supporting economic growth and job creation, whether the NSPS for GHGs at Electric Generating Units or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security, and the EPA will assess the NSPS for GHGs at Electric Generating Units and alternative approaches to determine whether they will provide benefits that substantially exceed their costs.

[11] 80 Fed. Reg. 64509 (October 23, 2015).

[12] *State of North Dakota v. EPA*, No. 15-1381 (and consolidated cases) (D.C. Cir.).

The following actions have taken place as part of the EPA's review of the NSPS for GHGs at Electric Generating Units:

- On March 28, 2017, the day the EO 13783 was signed, Administrator Pruitt signed a notice to review the final rule. [13]
- On March 28, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the NSPS for GHGs at Electric Generating Units Rule, including the scheduled April 17, 2017 oral arguments. The court granted the request to hold the litigation in abeyance on March 30, 2017. [14]

This NSPS was also identified by several commenters as potentially burdensome and a candidate for review in response to the EPA's request for comments as part of EO 13777.

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule (Review of NSPS for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: EGUs; RIN 2060-AT56). The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Air and Radiation with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Timeframe for completion]

The Regulatory Impact Analysis of the 2015 NSPS for GHGs at Electric Generating Units Rule stated there would not be any notable compliance costs. [We need to verify that someone is or is not working on a cost savings estimate? Will it remain as no cost savings as per the original rule, or revised analysis showing something different?]

- ***Federal Plan/Model Trading/Framework Rule -- "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule.*** [15]

On October 23, 2015, in connection with the CPP, EPA published a proposed rule for a Federal plan to implement the CPP emission guidelines, for model trading rules to aid implementation of the guidelines, and for amendments to the existing framework regulations implementing CAA §111(d).

The CPP was promulgated under CAA §111 which authorizes the EPA to issue nationally applicable NSPS limiting air pollution from "new sources" in source categories that cause or

[13] 82 Fed. Reg. 16330 (April 4, 2017).
[14] *North Dakota v. EPA*, D.C. Cir., No. 15-1381.
[15] 80 Fed. Reg. 64966 (October 23, 2015)

contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under this authority, the EPA had long regulated new fossil fuel-fired power plants to limit air pollution other than CO_2, including PM, NO_x, and SO_2. In 2015, the EPA issued a rule that for the first time set CO_2 emissions limits for new fossil fuel-fired power plants.

Under certain circumstances, when the EPA issues standards for new sources under CAA §111(b), the EPA has the authority under CAA §111(d), to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category. Should a state fail to submit a plan within two years, CAA §111(d) requires that the EPA issue a Federal plan applicable to those states that have not adopted an approved plan. The October 23, 2015, notice proposed two approaches to a Federal plan for states and other jurisdictions that do not submit an approvable plan to the EPA: a rate-based emission trading program, and a mass-based emission trading program.

The October 23, 2015, notice also proposed model trading rules that States could adopt or tailor for implementation of the final CPP emission guidelines as well as amendments to the CAA §111(d) framework regulations related to the process and timing for State plan submissions and EPA actions.

Due to concerns about EPA's legal authority and record, 27 States and a number of other parties sought judicial review of the CPP in the D.C. Circuit.[16] On February 9, 2016, the Supreme Court stayed implementation of the CPP pending judicial review.[17]

The various provisions in the October 23, 2015, proposal were issued at EPA's discretion to implement the CPP; there is not a time-sensitive need for them given the Supreme Court's stay of the CPP and this Administration's decision to review the CPP and NSPS for GHGs at Electric Generating Units. Because the CPP-related proposed rules are designed to provide implementation details related to the specific requirements of the CPP, any changes to the CPP or new emission guidelines would most likely require changes to these CPP-related proposals. Thus, this preliminary action to withdraw these CPP-related proposals will allow EPA to review them in light of its review of the CPP and, if they are still needed, to determine the appropriate next steps for these proposals, which may be to develop new proposals with revisions to ensure they are consistent with and appropriately implement revised emission guidelines, if any.

The following action has taken place as part of the EPA's review of the Federal Plan/Model Trading/Framework Rule:

- On March 28, 2017, the day the EO 13783 was issued, Administrator Pruitt signed a notice withdrawing this proposed rule.[18] (The notice also included the withdrawal of the proposed design details of the Clean Energy Incentive Program (CEIP), an optional

[16] *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.).
[17] *West Virginia v. EPA*, U.S., No. 15A773 (February 9, 2016).
[18] 82 Fed. Reg. 16141 (April 3, 2017).

program that States could use to incentivize early emission reduction projects under the CPP which had been proposed separately.)[19]

Actions Related to Oil and Gas Production

EO 13783 §7 addresses rules related to oil and gas development. The EPA has initiated a review of the one identified final rule which affects oil and gas production:

- ***Methane Oil & Gas Rule – "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources."*** [20]

As a discretionary rulemaking, on September 18, 2015, the EPA issued a notice of proposed rulemaking to set NSPS for certain pollutants emitted from new and modified sources from oil and natural gas facilities.[21] The final 2016 Methane Rule included minor amendments to the existing standards for the oil and natural gas source category (subpart OOOO), and set first-time standards for both GHGs (specifically methane) and volatile organic compounds (VOC) (subpart OOOOa). The OOOOa regulations added sources not covered by the OOOO regulations including hydraulically fractured oil well completions, pneumatic pumps, and fugitive emissions from well sites and compressor stations. It also required methane controls at certain sources already covered by OOOO including hydraulically fractured gas well completions and equipment leaks at natural gas processing plants.

On August 2, 2016, the EPA received petitions for administrative reconsideration that raised numerous objections to the 2016 Methane Rule. Petitions were received from the American Petroleum Institute, GPA Midstream Association, Spilman Thomas & Battle representing numerous national and state level trade associations, the Texas Oil & Gas Association, and other organizations. The EPA recently granted reconsideration of several issues identified in the petitions (see bulleted timeline, below). The reconsideration covers several issues: (1) fugitive emissions monitoring and control requirements, including the inclusion of low-production wells and provisions relating to approvals for alternative means of emission limitation (AMEL); (2) the requirement that the design and capacity assessment of a closed vent system used to demonstrate compliance with a number of emission standards at affected facilities (i.e., centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels) be performed by a professional engineer; and (3) the requirement that the determination be made and certified by a professional engineer that it is technically infeasible to route a pneumatic pump to a control device or process.

Several administrative reconsideration petitions raised issues and questions regarding the AMEL provisions relative to the fugitive emissions requirements (e.g., who can apply for and who can use

[19] 81 Fed. Reg. 42940 (June 30, 2016).
[20] 81 Fed. Reg. 35824 (June 3, 2016).
[21] 80 Fed. Reg. 56593 (September 18, 2015).

an approved AMEL), particularly as it relates to low production well sites. These inquiries and concerns suggest that the AMEL provisions included in the 2016 Methane Rule, may not be sufficiently clear to facilitate effective application and approval of AMEL and may make it difficult for states to develop their own control programs that achieve equivalent, or greater, emission reduction from their affected sources than the required reduction under the 2016 Methane Rule.

The 2016 Methane Rule requires certification by a professional engineer that a closed vent system design and capacity assessment was conducted under his or her direction or supervision and that the assessment and resulting report were conducted pursuant to the requirements of the 2016 Methane Rule. This certification requirement must be met in order comply with the emissions standards for centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels; as such, this requirement impacts a wide range of sources with respect to their ability to show compliance. In addition to the closed vent system certification requirement, there are other issues that the EPA is reconsidering that may further complicate a source's ability to comply with the well site pneumatic pump standards. Specifically, the 2016 Methane Rule requires certification by a professional engineer of technical infeasibility in order for a well site pneumatic pump to qualify for an exemption from controlling emissions using an existing control or process.

Based on the great interest expressed by stakeholders (including states, industry, and manufacturers of emerging monitoring technology), in particular on the AMEL, the EPA anticipates receiving a large amount of information during the reconsideration proceeding. During the reconsideration proceeding the EPA intends to request comment on the cost and other compliance burden, among other relevant information, associated with the requirement for certification by a professional engineer. The EPA believes that it is in the public interest that it addresses these other related issues at the same time it reconsiders the fugitive emissions requirements, well site pneumatic pumps standards, and the certification by professional engineer requirements, thereby avoiding addressing these requirements in a piecemeal fashion, providing clarity and certainty for the public and regulated community with regard to these requirements.

Subsequent to the issuance of the final rule and receipt of the petitions for reconsideration, the following activity has taken place:

- On March 28, 2017, the day EO 13783 was signed, Administrator Pruitt signed a notice to review this final rule.[22]
- On April 7, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the oil and gas methane rule, including the scheduled oral arguments.
- On April 18, 2017, Administrator Pruitt signed a letter, based on the criteria in CAA §307(d)(7)(B), that convened a proceeding for reconsideration of the following objections relative to the fugitive emissions requirements: (1) the applicability of the fugitive emissions requirements to low production well sites, and (2) the process and criteria for

[22] 82 Fed. Reg. 16331 (April 4, 2017).

requesting and receiving approval for the use of an alternative means of emission limitations (AMEL) for purposes of compliance with the fugitive emissions requirements in the 2016 Rule.

- On May 26, 2017, Administrator Pruitt signed a notice of reconsideration and partial stay. It noted that since issuing the April 18, 2017, letter, the EPA has identified objections to two other aspects of the 2016 Rule that meet the criteria for reconsideration under CAA §307(d)(7)(B). These objections relate to (1) the requirements for certification of closed vent system by professional engineer, and (2) the well site pneumatic pump standards. In addition, the EPA stayed for three months the rule requirements pending reconsideration.[23]
- On June 12, 2017, Administrator Pruitt signed a notice proposing a second three-month stay and a separate notice proposing a two-year stay. The second three-month stay would extend beyond the initial three-month stay and serve as a stop-gap for the separately proposed two-year stay. Since the rulemaking for the two-year stay would likely be determined to be a major rule under the Congressional Review Act, it will not take effect until sixty days after publication of the final rule or after Congress receives the rule report, whichever is later. That extra time will extend beyond the initial three-month stay.[24]

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Air and Radiation with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Timeframe for completion]

Based on analysis accompanying the proposed stay, administratively staying the provisions for which reconsideration has been granted will reduce cost in 2018 by $146 million (2016$); $21 million in reduced capital costs plus $153 million in reduced operating costs are offset by $28 million in lost product recovery revenue.

In addition to the petitions for reconsideration, the EPA has received several comments regarding the 2016 Rule in response to the EPA's request for comments as part of EO 13777.

III. Status of Other Energy-Related Actions

As noted previously, the Trump Administration has several regulatory reform initiatives underway, allowing the EPA to leverage the ideas and information gleaned from those efforts to support and focus its activities to alleviate unneeded burdens on the domestic energy sector. Public input has been received in response to both the Department of Commerce's request for information regarding streamlining permitting and reducing regulatory burden on domestic manufacturing, and the EPA's

[23] 82 Fed. Reg. 25734 (June 5, 2017). Note that the D.C. Circuit vacated the 90 day stay on July 3, 2017. A July 13, 2017, order delayed the vacature for a period of 14 days.
[24] 82 Fed. Reg. 27641 and 82 Fed. Reg. 27645 (June 16, 2017).

request for comment regarding a general call to identify regulations that can be repealed, replaced, or modified. The EPA has screened each docket for comments with substantive, specific suggestions to remove regulatory burdens on the development or use of domestic energy.

Working with EPA's program office, the Task Force has identified the following additional priority energy-related regulations for review:

Actions Related to Oil and Gas Production

- ***Oil & Gas ICR* – EPA ICR No. 2548.01; released November 10, 2016.**

In November 2016, the EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. This information collection conducted pursuant to CAA §114 was to assist the Agency in developing emissions standards for existing oil and gas facilities pursuant to CAA §111(d).

On June 3, 2016, EPA promulgated a final NSPS for the oil and natural gas source category which included minor amendments to the previous standards (subpart OOOO), and set first-time standards for both GHGs (specifically methane) and volatile organic compounds (VOC) (subpart OOOOa) (i.e., the 2016 Methane Rule).[25] Under certain circumstances, when the EPA issues standards for new sources under CAA §111(b), the EPA has the authority under §111(d) to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category.

The November 2016 information collection request encompassed two parts. Part 1, referred to as the operator survey, was specifically designed to obtain comprehensive information from onshore petroleum and natural gas production facilities to better determine the number and types of equipment at production facilities. Part 1 sought to collect information regarding production operators (e.g., facility name, address and contact information) as well as information on the location and types of equipment (e.g., number of wells, tanks, dehydrators and compressors) present at well surface sites and centralized production surface sites. Part 1 was sent to all known operators of oil and gas production wells. The operators were to complete the Part 1 survey and provide equipment counts for all production facilities that they operate except for facilities selected to complete Part 2.

Part 2, referred to as the detailed facility survey, was sent to selected oil and gas facilities (production, gathering and boosting, processing, compression/transmission, pipeline, natural gas storage, and LNG storage and import/export facilities) based on statistical sampling method. Part 2 was to collect detailed, unit-specific information on emission sources at the facility and any emission control devices or management practices used to reduce emissions.

[25] 81 Fed. Reg. 35824 (June 3, 2016).

- On March 1, 2017, EPA received letters from nine state Attorneys General and the Governors of Mississippi and Kentucky, expressing concern with the burdens on businesses imposed by the pending requests. EPA takes these concerns seriously and is committed to strengthening its partnership with the states. In response, the EPA withdrew its information collection request on March 2, 2017.[26]

The withdrawal will allow EPA to assess the need for the information that the Agency was collecting through these requests, and reduce burdens on businesses while the Agency assesses such need. The EPA estimated the burden of the information collection to be 284,751 hours, costing $42,453,050. (However, because some facilities submitted responses to the collection request prior to the withdrawal, the EPA now estimates that the withdrawal would avoid approximately $37 million in reporting burden.)

- ***Light-duty Vehicle Mid-Term Evaluation - "Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation,"* cover letter announcing the determination signed by Administrator McCarthy, January 12, 2017.**

The Mid-Term Evaluation was established to review standards set in a 2012 joint rulemaking by the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA), which set federal GHG emissions and Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2017 and beyond for light-duty vehicles.[27] These standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles (i.e., sport utility vehicles, cross-over utility vehicles, and light trucks), collectively referred to as light-duty vehicles.

The EPA and NHTSA finalized separate sets of standards under their respective statutory authorities. EPA set GHG emission standards (including standards for emissions of CO_2, NO_x, methane and air conditioning refrigerants) for MY 2017–2025 passenger cars and light-trucks under CAA §202(a). NHTSA sets national CAFE standards under the Energy Policy and Conservation Act (EPCA) for MY 2017–2021 light-duty vehicles and issued augural standards for MY 2022–2025.

The 2012 joint rulemaking establishing these standards included a regulatory requirement for the EPA to conduct a Mid-Term Evaluation of the GHG standards established for MY 2022–2025. In July 2016, the EPA, NHTSA, and the California Air Resources Board (CARB) released for public comment a jointly prepared Draft Technical Assessment Report, which examined a range of issues relevant to GHG emissions and CAFE standards for MY 2022–2025.[28] In November, 2016, EPA

[26] 82 Fed. Reg. 12817 (March 7, 2017).
[27] 77 Fed. Reg. 62624 (October 15, 2012).
[28] 81 Fed. Reg. 49217 (July 27, 2016).

issued a proposed determination for the Mid-Term Evaluation.[29]

On January 12, 2017, the EPA Administrator Gina McCarthy signed the Final Determination of the Mid-Term Evaluation of light-duty vehicle GHG emissions standards for MY 2022–2025.

Under the 2012 joint rulemaking regulations, no later than April 1, 2018, the EPA Administrator must determine whether the GHG standards established under 2012 joint rule for MY 2022–2025 are appropriate under CAA §202(a) in light of the record then before the Administrator. Given that CO_2 makes up the vast majority of the GHGs that EPA regulates under §202(a), and given that the technologies available for regulating CO_2 emissions do so by improving fuel economy (which NHTSA regulates under EPCA/EISA), NHTSA's views with regard to what CAFE standards would be maximum feasible for those model years is an appropriate consideration in EPA's determining what GHG standards would be appropriate under the CAA.[30] However, NHTSA has not yet considered what CAFE standards would be the maximum feasible standards for MY 2022–2025. Accordingly, EPA has concluded that it is appropriate to reconsider its Final Determination in order to allow additional consultation and coordination with NHTSA in support of a national harmonized program.

For its part, NHTSA will continue to engage with stakeholders as it works to develop a notice of proposed rulemaking to set CAFE standards for MY 2022–2025. As explained in the 2012 final joint rule, this proposal will be part of "a de novo rulemaking conducted . . . with fresh inputs and a fresh consideration and balancing of all relevant factors, based on the best and most current information before the agency at that time."[31] A final rule for MY 2022 is statutorily required to be issued by NHTSA by April 1, 2020.

In accord with the schedule set forth in EPA's regulations, the EPA intends to make a new Final Determination regarding the appropriateness of the MY 2022–2025 GHG standards no later than April 1, 2018. As a part of this process, EPA is examining a wide range of factors, such as developments in powertrain technology, vehicle electrification, light-weighting and vehicle safety impacts, the penetration of fuel efficient technologies in the marketplace, consumer acceptance of fuel efficient technologies, trends in fuel prices and the vehicle fleet, employment impacts, and many others.

- On March 15, 2017, Administrator Pruitt and Department of Transportation Secretary Elaine Chao announced that the EPA intends to reconsider the final determination, issued on January 12, 2017, that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025.[32]

[29] 81 Fed. Reg. 87927 (December 6, 2016).
[30] See 40 CFR 86.1818–12(h)(1)(vii) (listing as one of the factors EPA should consider in the Mid-Term Evaluation "[t]he impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program").
[31] 77 FR 62624, at 62652 (October 15, 2012).
[32] 82 Fed. Reg. 14671 (March 22, 2017).

This joint EPA/DOT determination will have an effect on energy resources used to fuel and/or power automobiles.

The January 12, 2017, unilateral EPA determination projected lifetime cost of between $26 billion to $36 billion (or $875 average per vehicle) to meet the MY 2022-2025 GHG standards (net present value in 2015$).

The EPA has initiated a workgroup to reconsider the full suite of issues and information regarding the determination on the appropriateness of the MY 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Air and Radiation with Christopher Grundler, Director, Office of Transportation and Air Quality, as the primary contact. [Note - ADP has not been initiated as of 6/27/2017.] [Timeframe for completion - 4/1/2018?]

- ***Landfill Methane Rules – "Standards of Performance for Municipal Solid Waste Landfills," and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills."*** [33]

On August 29, 2016, the EPA promulgated a final rule establishing an NSPS intended to reduce emissions of landfill gas from new, modified, and reconstructed municipal solid waste (MSW) landfills, thereby updating standards that were issued in 1996. In a separate action, the EPA also promulgated a final rule revising guidelines for reducing emissions from existing MSW landfills, thereby updating the previous emissions guidelines, which also were issued in 1996.

On October 27, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of both rules pursuant to CAA §307(d)(7)(B). In response, the EPA took the following actions:

- On May 5, 2017, the EPA sent a letter announcing it was convening a proceeding for reconsideration of the final rules and its intention to issue a 90-day stay of the effectiveness of both final rules.
- On May 31, 2017, the EPA issued a 90-day stay for the regulatory provisions added or revised by the two rules.[34] [Longer stay to be announced shortly, but currently pending completion of OMB review.]

Both rules were included as initiatives in two reports identified for rescission in §3(b) of EO 13783 -- The President's Climate Action Plan (June 2013) and the Climate Action Plan Strategy to Reduce Methane Emissions (March 2014).

[33] 81 Fed. Reg. 59332 and 81 Fed. Reg. 59276 (August 29, 2016).
[34] 82 Fed. Reg. 24878 (May 31, 2017).

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Air and Radiation with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. [Note - no reconsideration action has been tiered] [Timeframe for completion]

- ***Oil and Gas Control Technique Guidelines (CTG) Rescission*** [35]

CAA §183 (Federal Ozone Measures) provides the EPA authority to issue, review and update as necessary Control Technique Guidelines (CTG) for VOC sources, including stationary sources as well as consumer and commercial products. A CTG is a document that provides recommendations to state and local air agencies on establishing reasonably available control technology (RACT) for reducing emissions from covered stationary source equipment and processes.

CAA §182 requires that moderate or higher ozone nonattainment areas or areas within an ozone transport region must revise their state implementation plans (SIPs) to include RACT for each category of VOC sources covered by a CTG. The measures identified in the CTG are recommendation only and are not legally binding, states may use the recommendations in the CTG to inform their determinations as to what constitutes RACT for VOC, and are free to implement other technically-sound approaches that are consistent with the CAA and EPA's regulations. CAA §182(b)(2) requires that CTG include a date by which states must submit SIP revision in response to the CTG.

The EPA issued Oil and Gas Control Technique Guidelines on October 27, 2016. In general, the RACT recommendations are based on the control options contained in the 2012 Oil & Gas NSPS (including its subsequent amendments) (subpart OOOO)[36] and the 2016 Oil & Gas NSPS (subpart OOOOa).[37] (Some control requirements in the 2016 rule applied only to methane emissions and were not included in the 2016 CTG which, as per the CAA, only includes VOC controls.)

Because the EPA is reconsidering various provisions of the 2016 Oil & Gas NSPS that relate to the control of both methane and VOCs, the EPA believes that it is most appropriate to rescind the CTGs that were largely based on that rule.

[35] 81 Fed. Reg. 74798 (October 27, 2016).
[36] 77 Fed. Reg. 49490 (August 16, 2012); 78 Fed. Reg. 58416 (September 23, 2013), 79 Fed. Reg. 79018 (December 31, 2014); and 80 Fed. Reg. 48262 (August 12, 2015).
[37] 81 Fed. Reg. 35824 (June 3, 2016).

- ***Refineries Residual Risk and Technology Review (RTR) Reconsideration* (RIN 2060-AT18)**

CAA §112(d) requires EPA to promulgate regulations establishing national emission standards (NESHAPs) for each category or subcategory of major sources of hazardous air pollutants (HAPs) listed pursuant to §112(c). "Major" sources are those source that emit or have the potential to emit in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The standards must require the maximum degree of emission reduction that the EPA determines to be achievable by each particular source category; i.e., maximum achievable control technology (MACT). The "MACT floor" -- the minimum level of HAP emission control requirement -- for new sources is equivalent to the level of HAP emission control achieved by the best-controlled similar source, and the MACT floor for existing sources is the average level of HAP emission control achieved by the best performing 12% of that industry group's currently operating sources.

CAA §112(f) requires EPA to assess the risk to public health remaining after the implementation of NESHAP for each source category after 8 years. If the "residual risk" for a source category does not protect public health with "an ample margin of safety," the EPA must promulgate health-based standards for that source category to further reduce HAP emissions. The EPA is required to set more stringent standards if necessary to prevent adverse environmental effects (considering energy, costs and other relevant factors). CAA §112(d)(6) requires EPA to review and revise the MACT standards every 8 years, as necessary, taking into account developments in practices, processes and control technologies. EPA typically undertakes a combined residual risk and technology review rulemaking to reassess each source category NESHAP if both reviews are required.

In 2015, the EPA promulgated the "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards,"[38] which included the RTR for two petroleum refinery NESHAPS, Refinery MACT 1[39] and Refinery MACT 2[40], as well as technical corrections to Petroleum Refinery NSPS[41].

On January 19, 2016, the American Petroleum Institute (API) and the American Fuels and Petrochemical Manufacturers (AFPM) requested administrative reconsideration of certain provisions. On July 13, 2016, the EPA promulgated a final rule responding to that initial request for reconsideration.[42]

On February 1, 2016, Earthjustice petitioned the Agency for reconsideration of aspects of the final rule, and on that same day API, and AFPM submitted a supplemental petition for reconsideration.

[38] 80 Fed. Reg. 7178 (December 1, 2015).
[39] 40 CFR part 63, subpart CC.
[40] 40 CFR part 63, subpart UUU.
[41] 40 CFR part 60, subpart J.
[42] 81 Fed. Reg. 45232 (July 13, 2016).

On June 16, 2016, the EPA granted reconsideration of five aspects of the final rule for which the EPA did not provide adequate opportunity for notice and comment: (1) work practice standards for pressure relief devices; (2) work practice standards for emergency flaring; (3) assessment of risk from the refinery source categories after implementation of the pressure relief device and emergency flaring work practice standards; (4) alternative work practice standards for delayed coking units employing the water overflow design; and, (5) reduced frequency of fenceline monitoring. EPA proposed a response to the reconsideration issues on October 18, 2016.[43] At that time, EPA also proposed a technical correction related to regulatory overlap of equipment leak regulations that was raised in one of the petitions and proposed to correct a referencing error related to that provision.

The workgroup developing the final rule is led by the Office of Air and Radiation with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

The EPA expects to issue a final rulemaking by the end of 2017 in response to the issues for which the EPA granted reconsideration, as well as action on the technical correction and referencing error.

- ***"Effluent Limitations Guidelines and Pretreatment Standards for the Oil and Gas Extraction Point Source Category" Review***

The Clean Water Act (CWA) prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized, such as under the CWA §402 National Pollutant Discharge Elimination system (NPDES) permit program. Direct dischargers (those discharging directly to waters of the U.S.) must comply with effluent limitations in NPDES permits, generally based on technology controls or performance standards.

CWA §307(b) provides general and specific prohibitions on the discharge to publicly owned treatment works (POTW) in order to prevent "pass through" of pollutants from industrial sources that would cause or contribute to a violation of the POTW's NPDES permit or "interfere" with the POTW's operation or prevent biosolids use consistent with the POTW's chosen method of disposal. Pretreatment programs are designed to prevent industrial facilities from passing through such untreated pollutants to their POTW. The CWA also authorizes the EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge pollutants indirectly, by sending wastewater to POTWs. Specifically, CWA §§307(b) and (c) authorize the EPA to establish pretreatment standards for those pollutants in wastewater from indirect dischargers that the EPA determines are not susceptible to treatment by a POTW or which would interfere with POTW operations.

On June 28, 2016, the EPA promulgated an Effluent Limitations Guidelines and Pretreatment Standards for the Oil and Gas Extraction Point Source Category (ELG for Oil & Gas) that

[43] 81 Fed. Reg. 71661 (October 18, 2016).

established pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas extraction facilities to POTWs.[44] The EPA's rule record indicated that all unconventional oil and gas facilities were already meeting the zero discharge requirement—through underground injection, recycling, reuse and transfer to centralized waste treatment facilities. After promulgation, the EPA received information from a coalition of Pennsylvania oil and gas operators indicating that some of the operators were discharging unconventional oil and gas wastewater to POTWs at the time of the final rule. These operators extract from formations that are considered "conventional" under Pennsylvania law, but would be considered "unconventional" under EPA's rule, which would subject them to the prohibition on discharge into POTWs. These operators did not comment on the proposed rule. Based on this new information, the EPA issued a rule extending the compliance deadline for three years until August 29, 2019, for facilities sending wastewater to POTWs at the time of the final rule.[45]

On November 18, 2016, the Pennsylvania Grade Crude Oil Coalition (the same coalition of Pennsylvania oil and gas operators) filed a petition for review in the Third Circuit. On June 15, 2017, the Pennsylvania Grade Crude Oil Coalition filed suit in the Third Circuit regarding the rule's definition of an "unconventional" operation.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, industry associations asked that the Agency undertake a review of fracking waste water management technologies and to consider revisions to the ELG based on the review.

The EPA intends to review the 2016 ELG for Oil & Gas to determine if it has appropriately defined "unconventional" oil and gas extraction facilities, and whether fracking waste water management technologies should be included in a technology evaluation. [Note: as of 7/14/2017, no action has been tiered or entered into the tracking system for a review of this ELG.]

Actions Related to Electricity Generation and Coal

- ***Steam Electric ELG – "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category."*** [46]

The CWA has, as a national goal, the elimination of the discharge of all pollutants into the nation's waters.[47] The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the CWA. Under CWA §402, discharges may be authorized through a

[44] 81 Fed. Reg. 41845 (June 28, 2016).
[45] 81 Fed. Reg. 88126 (December 7, 2016).
[46] 80 Fed. Reg. 67838 (November 3, 2015).
[47] 33 U.S.C. 1251(a)(1).

NPDES permit. The CWA establishes a dual approach for these permits, technology-based controls that establish a floor of performance for all dischargers, and water quality-based effluent limitations, where the technology-based effluent limitations are insufficient to meet applicable WQS. To serve as the basis for the technology-based controls, the CWA authorizes the EPA to establish national technology-based effluent limitations guidelines (ELG) and new source performance standards for discharges from categories of point sources (such as industrial, commercial, and public sources) that occur directly into waters of the U.S.

On November 3, 2015, under the authority of the CWA the EPA issued a final rule amending the ELG and standards for the steam electric power generating point source category (i.e., 2015 Steam Electric ELG). The amendments addressed and contained limitations and standards on various wastestreams at steam electric power plants: Fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate. This update to ELG primarily affects coal-fired electric generating units.

EPA received seven petitions for review of the 2015 Steam Electric ELG Rule. The United States Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit.[48]

In a letter dated March 24, 2017, the Utility Water Act Group (UWAG) submitted a petition for reconsideration of the 2015 Steam Electric ELG and requested that the EPA suspend the 2015 Steam Electric ELG's approaching compliance deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. In a letter dated April 5, 2017, the Small Business Administration (SBA) Office of Advocacy sent EPA a second petition for reconsideration of the 2015 Steam Electric ELG, which expressly supports the UWAG's petition and raises issues that SBA considers are pertinent to small businesses. The petitions raise wide-ranging and sweeping objections to the 2015 Steam Electric ELG and point to new data.

Considering the litigation and in response to the petitions for reconsideration, the EPA has taken the following actions:

- On April 11, 2017, the Administrator sent a letter to each state governor notifying them of the Agency's intent to consider postponing compliance dates as well as petitions for reconsideration of the final rule.
- On April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule and, using authority under the Administrative Procedures Act §705, to postpone compliance dates that have not yet passed pending judicial review.[49]
- On June 6, 2017, the Administrator, in response to administrative petitions for reconsideration, proposed to postpone certain compliance dates until EPA completes reconsideration of the 2015 Steam Electric ELG.[50]

[48] *Southwestern Electric Power Co., et al. v. EPA*, No. 15–60821.
[49] 82 Fed. Reg. 19005 (April 25, 2017).
[50] 82 Fed. Reg. 26017 (June 6, 2017).

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Water with Betsy Southerland, Director, Office of Science and Technology, as the primary contact. [Timeframe for completion]

- ***Greenhouse Gas Reporting Program (GHGRP) Modifications***

The GHGRP requires reporting of GHG data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO_2 injection sites in the United States.[51] A total of 41 categories of reporters are covered by the GHGRP. Facilities determine whether they are required to report based on the types of industrial operations located at the facility, their emission levels, or other factors. Facilities are generally required to submit annual reports if: (1) GHG emissions from covered sources exceed 25,000 metric tons CO_2e per year; (2) supply of certain products would result in over 25,000 metric tons CO_2e of GHG emissions if those products were released, combusted, or oxidized; or, (3) the facility receives 25,000 metric tons or more of CO_2 for underground injection.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, several commenters provided suggestions for modifications to the GHGRP to reduce reporting burden. Specifically, commenters noted streamlining opportunities related to reporting by electric utilities and petroleum and natural gas sources.

Subpart D sets the GHGRP reporting requirements for the electricity generation source category. Commenters noted that the GHGRP requires duplicative reporting of CO_2 emissions for sources already subject to the reporting requirements of 40 CFR Part 75 related to continuous emissions monitoring (including the Acid Rain Program). To avoid the need for duplicative reporting, commenters suggested that the EPA transfer reported CO_2 emissions under 40 CFR Part 75 to the GHGRP data systems.

Subpart W sets the GHGRP reporting requirements for the petroleum and natural gas systems source category. Commenters suggested that the EPA allow oil and gas facilities to report estimates of the GHG emissions from compressors by use of emissions factors in lieu of measuring and reporting direct emissions from these compressors.

EPA is evaluating these and other opportunities to revise and streamline the GHG reporting requirements.

[51] 40 CFR Part 98.

- ***Mercury and Air Toxics Standards (MATS) E-Reporting Requirements Revision* (RIN 2060-AT42)**

The EPA issued the MATS rule in 2012 establishing NESHAPs for coal- and oil-fired electric steam generation units.[52] The MATS rule included reporting requirements as well.

The final MATS rule required affected sources to submit certain MATS emissions and compliance information electronically, using either the Compliance and Emissions Data Reporting Interface (CEDRI) or the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool. The EPA developed these two systems prior to the MATS rule for the electronic submittal of emissions data from many source categories. CEDRI is currently used by owners or operators of sources regulated under the NSPS and NESHAP programs to submit performance test reports and other air emissions reports. ECMPS is used to report emissions data under the Acid Rain Program and other programs that are required to continuously monitor and report emissions. These two systems have enhanced the way source owners and operators report emissions data to the EPA by providing a streamlined and standardized electronic approach. Subsequent to publication of the MATS rule, stakeholders commented that the EPA could improve the reporting efficiency of the MATS rule by requiring all data to be reported to one system instead of two. Stakeholders also commented that one system could benefit the EPA and the public in the review of data submitted by setting one consistent format for all data reported through MATS. Further, because the vast majority of sources covered under the MATS rule have been using the ECMPS Client Tool since 2009, the stakeholders have encouraged the EPA to consider consolidating the electronic reporting under ECMPS.

The EPA is implementing this change in two phases. In a March 25, 2015, rule the EPA removed the requirement to submit MATS compliance reports to the CEDRI and, instead, required that source owners or operators to use the ECMPS Client Tool to submit PDF version of the reports.[53] In the second phase, the EPA will issue another rulemaking that requires affected source owners or operators to submit the data elements required in MATS in a structured XML format using the ECMPS Client Tool.

The workgroup for the second phase is working to complete a final rule. The workgroup will be led by the Office of Air and Radiation with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. EPA expects to issue the final phase two rule by the fall of 2017.

- ***CCR***

On April 17, 2015, the EPA promulgated a final rule that establishes minimum national criteria under subtitle D of the Resource Conservation and Recovery Act (RCRA) for Coal Combustion

[52] 77 Fed. Reg. 9304 (February 16, 2012).
[53] 80 Fed. Reg. 15510 (March 24, 2015).

Residuals (CCR) landfills and surface impoundments at active coal fired power plants.[54] The rule regulates surface impoundments and landfills that are actively accruing CCR, inactive surface impoundments still containing CCRs, and water both at operating power plants currently actively burning coal and those that burned coal in the past but have transitioned to use of an alternate fuel source. Under subtitle D of RCRA, EPA does not have authority to enforce these criteria nor are we authorized to approve state permit programs, as is the case for municipal solid waste landfills. Instead, the requirements of the CCR rule are directly applicable to owner/operators of facilities where disposal units are located and can be enforced via citizen suit or under the "imminent and substantial danger" authority of RCRA §7002. Owner/operators are required under the rule to place notifications in their operating record, on their website, and in some instances provide notice to the directors of appropriate state agencies documenting the measures taken to comply with the rule.

The requirements of the rule include: location restrictions (floodplains, wetlands, unstable areas, etc.); design criteria (liners, structural integrity criteria); operating criteria (e.g., run-on and runoff controls, inspections, fugitive dust controls); groundwater monitoring and corrective action; closure and post closure care (e.g., final cover systems, 30 years of groundwater monitoring); and recordkeeping. All new landfills and surface impoundments must be constructed with a composite liner or equivalent. Existing unlined leaking surface impoundments exceeding a groundwater protection standard (as determined via groundwater monitoring) are required to retrofit with a composite liner or close the impoundment. All other leaking units (landfills, surface impoundments with any type of liner) exceeding a groundwater protection standard must take corrective action, but do not face a retrofit or close decision. Inactive surface impoundments that can be dewatered within three years of the effective date are not subject to the other rule provisions. The rule includes timing flexibilities applicable to closure deadlines for CCR units in instances where no alternative disposal capacity is available, circumstances beyond the owner operator's control prevent closure (obtaining state permits for closure), or, when the boiler the unit serves is to permanently retire within 8.5 or 13.5 years of rule publication for smaller and larger units respectively.

This rule does not make a final Bevill regulatory determination as to whether CCRs warrant regulation as a hazardous waste under Subtitle C of RCRA, but instead defers a final regulatory determination until the EPA has more information on specific matters influencing the risks posed by CCRs, including: potential future changes in the toxicity characteristics of CCRs due to new air pollution control measures at EGUs; uncertainty surrounding the IRIS cancer slope factor for arsenic, which is currently under re-evaluation; and, a better understanding of the adequacy of state programs to regulate CCRs.

Subsequent to the promulgation of the 2015 CCR Rule, seven separate petitions for review were submitted to the D.C. Circuit by various environmental and industry groups, which have been consolidated into a single action. On June 16, 2016, the D.C. Circuit remanded with vacatur to the EPA specific provisions of the rule for further consideration.

[54] 80 Fed. Reg. 21302 (April 17, 2015).

In December of 2016, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act,[55] which included language giving state agencies the authority to implement and enforce coal ash under the 2015 CCR Final Rule through EPA-approved state permit programs. The WIIN Act also gives EPA the authority to regulate coal ash in states that choose not to implement state permitting programs and in states whose permitting programs are determined to be inadequate by EPA.

Subsequent to the passage of the WIIN Act, the EPA has taken the following actions:

- On April 28, 2017, Administrator Scott Pruitt sent letters informing states that the EPA is working on guidance for implementing state permitting programs under WIIN that allow flexibility in individual permits to manage the safe disposal of CCR. The EPA expects that its new guidance will allow for the safe disposal and continued beneficial use of coal ash, while enabling states to decide what works best for their environment.
- On May 12, 2017, the Utility Solid Waste Activities Group, which represents the electric power sector on waste management issues, filed a petition with the EPA urging the Agency to reconsider numerous provisions of the 2015 CCR Rule.
- On May 25, 2017, the EPA transmitted draft guidance to OMB for interagency review under EO 12866. The EPA withdrew that initial submission on June 14, 2017, and submitted a revised version the same day for EO 12866 review.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, several commenters requested that EPA extend the CCR compliance dates to allow for implementation through state or Federal permitting programs as per the WIIN Act. Many compliance deadlines in the final CCR rule have already passed, but some remain outstanding. Groundwater monitoring must begin by October 2017, and where groundwater monitoring identifies exceedances, corrective action must be taken, and default cleanup targets have been described as very stringent. Commenters have requested that the EPA should consider extending compliance deadlines for any corrective action that might be required, until state permit programs are able to issue permits under provisions of the WIIN Act as state programs may define cleanup targets that are different than what otherwise would be required.

The EPA has initiated a workgroup to consider the provisions remanded by the D.C. Circuit, as well as the issues raised in the 2017 petition and other implementation issues raised by stakeholders. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Land and Emergency Management with Barnes Johnson, Director, Office of Resource Conservation and Recovery, as the primary contact. [Timeframe for completion]

[55] P.L. 114-322.

- **Actions that are Generally Applicable to Energy Sector**

- ***WOTUS – "Clean Water Rule: Definition of 'Waters of the United States'."*** [56]

The CWA seeks "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Among other provisions, the CWA regulates the discharge of pollutants into "navigable waters," defined in the CWA as "the waters of the United States." The question of what is a "water of the United States" is one that has generated substantial interest and uncertainty, especially among states, small businesses, the agricultural communities, and environmental organizations, because it relates to the extent of jurisdiction for federal and relevant state regulations.

The EPA and the Department of the Army (Corp of Engineers) have promulgated a series of regulations defining "waters of the United States." The scope of "waters of the United States" as defined by prior regulations has been subject to litigation in several U.S. Supreme Court cases, most recently in its 2006 *Rapanos* decision.[57] As a result of that decision, the EPA and the Corp of Engineers issued guidance regarding CWA jurisdiction in 2007, and revised it in 2008.

In response to that guidance, Members of Congress, developers, farmers, state and local governments, environmental organizations, energy companies and others asked the EPA and Corp of Engineers to replace the guidance with a regulation. At the conclusion of that rulemaking process, the EPA and the Corp of Engineers issued the "Clean Water Rule: Definition of 'Waters of the United States.' " (2015 WOTUS Rule).

Due to concerns about the potential for continued regulatory uncertainty, as well as the scope and legal authority of the 2015 WOTUS Rule, 31 states and a number of other parties sought judicial review in multiple actions. Seven states, plus the District of Columbia, and additional parties then intervened in those cases. On October 9, 2015, the Sixth Circuit stayed the 2015 WOTUS Rule nationwide pending further action of the court.[58]

On February 28, 2017, President Trump signed Executive Order 13778 - Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule, which directed the EPA and the U.S. Army Corp of Engineers to review the 2015 WOTUS Rule.[59] Provisions of the rule may have burdensome impacts on domestic energy production, including coal, oil, and natural gas.

In response to EO 13778, the EPA and the Army Corp of Engineers have taken the following actions:

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[56] 80 Fed. Reg. 37054 (June 29, 2015).
[57] *Rapanos v. United States*, 547 U.S. 715 (2006).
[58] *Ohio v. U.S. Army Corps of Eng'rs.*, 6th Cir., No. 15-3799 (October 9, 2015).
[59] 82 Fed. Reg. 12497 (March 3, 2017).

- On February 28, 2017, the day the EO 13778 was signed, Administrator Pruitt signed a notice to review the final rule.[60]
- On June 27, 2017, Administrator Pruitt signed a proposed rulemaking to repeal the 2015 WOTUS Rule and reinstate the regulations in place prior to its issuance. As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 WOTUS Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion.

The recodification of the regulation previously in place and the issuance of a new definition will have wide-ranging effects on domestic energy production and use, including the permitting of oil, gas, coal, and renewable development sites, and the transmission and distribution of electricity.

WOTUS is a definitional rule that affects the scope of the "waters of the United States," it does not establish any regulatory requirements or directly mandate actions on its own. However, by changing the definition of the "waters of the United States," the rule changes the waters where other regulatory requirements that affect regulated entities come into play, for example, the locations where regulated entities would be required to obtain certain types of permits.

The EPA and the Corp or Engineers prepared an illustrative economic analysis of the proposed repeal of the 2015 rule and the recodification of pre-existing rules to provide the public with information on the potential changes to the costs and benefits of various CWA programs that could result if there were a change in the number of positive jurisdictional determinations. The 2015 rule is used as a baseline in the analysis in order to estimate the differential effects of restoring the pre-2015 status qua relative to the 2015 rule. (However, as noted previously, the 2015 rule has already been stayed by the Sixth Circuit, and the proposed rule would merely codify the legal status quo, not change current practice.) The illustrative economic analysis indicates that annual avoided costs range from a low of $162 million to a high of $476 million (2016$).

The EPA has initiated workgroups to recodify the regulation that was in place prior to the 2015 WOTUS Rule and consider a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion. Each workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Water with John Goodin, Acting Director, Office of Wetlands, Oceans, and Watersheds, as the primary contact. [Timeframe for completion?]

[60] 82 Fed. Reg. 12532 (March 6, 2017).

- ***New Source Review and Title V Permitting Programs Reform***

The CAA establishes a number of permitting programs designed to carry out the goals of the Act. Some of these programs are directly implemented by the EPA through its Regional Offices but most are carried out by states, local agencies and approved tribes. In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777 as well as the Department of Commerce's request for information on Federal permitting requirements and other previous public comment forums, numerous commenters have identified streamlining, burden reduction, and other reform opportunities, and provided specific recommendations for the EPA's primary permitting programs.

New Source Review (NSR) is a preconstruction permitting program that serves to ensure that air quality is not significantly degraded from the addition of new and modified sources. NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source may be operated. There are three types of NSR permits: (1) Prevention of Significant Deterioration (PSD) (CAA Part C) permits which are required for new major sources or a major source making a major modification in an attainment area; (2) Nonattainment NSR (NNSR) (CAA Part D) permits which are required for new major sources or major sources making a major modification in a nonattainment area; and (3) Minor source permits (CAA § 110(a)(2)(C)).

CAA title V requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit. Sources with these "title V permits" are required by the CAA to certify compliance with the applicable requirements of their permits at least annually. Regulations governing the title V program are found at 40 CFR Part 70 - State Operating Permit Programs.

The EPA is committed to producing an action plan by early fall 2017 for NSR, title V, and other permitting programs reform. Areas of emphasis will include: (1) The timely issuance of permits. EPA will issue guidance on best practices and approaches to ensure timely issuance of permits based on a review of state, local, and tribal air agencies that are identified as among the best in issuing preconstruction permits in a timely manner. (2) Facilitate flexibility in permitting in a nationally consistent manner. Promote and facilitate the use of flexible permitting mechanisms associated with PSD and title V, including but not limited to plant-wide applicability limits (PALs) and alternative operating scenarios. (3) Simplify the CAA permitting requirements by evaluating and pursuing appropriate actions related to actual-to-projected-actual applicability test, project netting rulemaking, debottlenecking, and routine maintenance, repair, and replacement.

[61] 81 Fed. Reg. 67945 (October 3, 2016) (NPRM).

The EPA will complete the following actions: GHG Significant Emission Rate rulemaking,[61] which will provide a significance threshold for GHG emissions to determine when a best available control technology (BACT) analysis is required; improve the technical tools used to streamline air quality modeling by issuing final $PM_{2.5}$ and Ozone Significant Impact Levels (SILs) Guidance,[62] and final Modeled Emissions Rates for Precursors (MERPs) Guidance;[63] and, Title V Permitting Program Petition Provisions Modification.[64]

- ***"Once In, Always In" Policy Replacement***

On March 16, 1994, the EPA promulgated Part 63 General Provisions for NESHAPs and other regulatory requirements that are established under CAA §112. In May 1995, John Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum to EPA Regional Air Division Directors interpreting certain requirements of the NESHAP General Provisions entitled "Potential to Emit for MACT Standards—Guidance on Timing Issues" – i.e., the "once in, always in" policy.

As per CAA §112, a "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources" and subject to less stringent regulation than a major source.

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable CAA §112 Maximum Achievable Control Technology (MACT) standard. However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT even if it subsequently reduces HAP emissions below major source levels at a later date. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, as well as other earlier public comment forums, states and many industry stakeholders have long expressed concern that the 1995 "once in, always in" policy inhibits innovation and penalizes good actions to reduce air pollution from industrial facilities.

In 2003 and 2007, the EPA proposed amendments to the Part 63 General Provisions to change parts of the "once in, always in" policy, but was blocked by Congress from taking final action on the 2007 proposal.[65] Neither action was ever finalized.

[61] 81 Fed. Reg. 67945 (October 3, 2016) (NPRM).
[62] https://www.epa.gov/sites/production/files/2016-08/documents/pm2_5_sils_and_ozone_draft_guidance.pdf (posted August 1, 2016).
[63] https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf (posted December 2, 2016).
[64] 81 Fed. Reg. 57822 (August 24, 2016) (NPRM).
[65] See 68 Fed. Reg. 26249 (May 15, 2003) and 72 Fed. Reg. 69 (January 3, 2007).

EPA intends revise its interpretation of CAA §112 through rulemaking to clarify the means by which a facility currently classified as a major source of HAPs can become an area source – i.e., by obtaining federally enforceable limits on its potential to emit.

The new regulation will strive to provide incentives to sources to minimize emissions and limit the number of sources (and reduce associated costs) required to comply with the MACT program.

- ***Ozone NAAQS Implementation Revisions***

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary Ozone NAAQS.[66] The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard. (The previous ozone NAAQS were set in 2008 and remain effective.)

The Administrator has recently taken administrative actions related to implementation of the 2015 ozone standards. Using his CAA authority, the Administrator has announced a 1-year extension on the deadline for designating areas as attaining or not attaining the 2015 Ozone NAAQS.[67] This additional time will allow the EPA to further review the rule establishing the 2015 ozone standards, and to evaluate a number of complex issues that may affect states' efforts to comply with ozone standards (e.g., the role of background ozone and properly accounting for international transport).

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, as well as other earlier public comment forums, commenters have recommended that the EPA should further revise the exceptional event rule and associated guidance to allow for greater state flexibility in flagging and excluding exceptional events in the data set used to determine compliance with the NAAQS. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, state or local air agencies may implement in order to attain and maintain the NAAQS. Exceptional events include wildfires, stratospheric ozone intrusions and volcanic and seismic activities. In September of 2016, the EPA finalized revisions to the Exceptional Events Rule to establish criteria and procedures for use in determining if air quality monitoring data has been influenced by exceptional events.[68]

In addition, the EPA intends to use the additional time afforded by the designations extension to finalize necessary guidance (e.g., updated exceptional events guidance and guidance on Significant Impact Levels (SILs)[69] and Model Emission Rates for Precursors (MERPs)

[66] 80 FR 65292 (October 26, 2015)
[67] 82 Fed. Reg. 29246 (June 28, 2017).
[68] 81 Fed. Reg. 68216 (October 3, 2016).
[69] https://www.epa.gov/sites/production/files/2016-12/documents/draft-ozone-pm25-sils-guidance.pdf

[70]), as well as to finalize its 2015 Ozone NAAQS Implementation rule[71].

The Administrator has also formed the Ozone Cooperative Compliance Task Force to examine possible additional flexibilities for States to comply with ozone standards.

- ***Texas Federal Implementation Plan (FIP) Requirements for Interstate Transport Related to 1997 PM2.5 National Ambient Air Quality Standards (NAAQS) Repeal***

CAA §110 requires that states submit a State Implementation Plan (SIP) for each primary and secondary NAAQS. CAA Part D requires SIP elements particular to nonattainment areas. As a first step in building a SIP, CAA §110(a)(1) & (2) requires that states include in their SIPs specific "infrastructure" elements that demonstrate how, through rules and procedures, the state will implement, maintain, and enforce a new or revised NAAQS -- i.e., an Infrastructure SIP. The elements include emission inventories, monitoring network design, an air quality analysis, modeling results, enforcement mechanisms, and laws and regulations. Included within the infrastructure elements are the interstate transport requirements, including two sub-elements (or prongs) that must be addressed as per §110(a)(2)(D)(i)(I) : The SIP must prohibit any source within the state from contributing significantly to (prong 1) or interfering with the maintenance of (prong 2) the NAAQS in other states. (Prongs 1 and 2 are frequently called the "Good Neighbor" provisions.)

If EPA disapproves a SIP provision, or the state has not submitted a required revision, EPA may promulgate control measures in an action known as a Federal Implementation Plan (FIP). FIPs may cover comprehensive program or be limited to very specific provisions. If the state subsequently adopts the necessary provisions, and EPA approves them, the provisions are incorporated into the SIP and the FIP or specific FIP provisions can be withdrawn.

In 2011, the EPA initially promulgated the Cross-State Air Pollution Rule (CSPAR) to address the obligations of the states and the EPA under the Good Neighbor provisions of the CAA. To reduce transported $PM_{2.5}$ pollution, CSAPR sets limits on annual emissions of NO_X and SO_2 as precursors to $PM_{2.5}$. To reduce transported ozone pollution, CSAPR sets limits on ozone-season emissions of NO_X as a precursor to ozone. CSAPR's emissions limitations are defined in terms of emissions ''budgets'' for the collective emissions from affected EGUs in each covered state. The emissions limitations are phased in, with the Phase 1 and Phase 2 budgets. Affected EGUs are subject to FIP provisions requiring them to participate in one or more of several CSAPR federal allowance trading programs established as flexible mechanisms to achieve compliance with the emissions budgets.

Following it 2011 promulgation, CSAPR was litigated in the D.C. Circuit and the Supreme Court. In 2014, the Supreme Court largely affirmed the rule, but remanded specific issues back to the D.C.

[70] https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf
[71] 81 Fed. Reg. 81276 (November 17, 2016).

Circuit. In 2015, the D.C. Circuit remanded to the EPA the Phase 2 budgets for SO_2 and ozone season NO_x for Texas and several other states, finding that Phase 2 requirements may be more stringent than necessary to address Texas' $PM_{2.5}$ Good Neighbor transport obligations.

In November 2016, the EPA issued a proposal that would withdraw the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO_2.[72] The EPA also proposed to determine that, following withdrawal of the FIP requirements, sources in Texas will not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 $PM_{2.5}$ NAAQS, and that the EPA therefore will have no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under the CAA Good Neighbor provisions.

The EPA will finalize this action no later than September 9, 2017, as per a consent decree deadline.[73]

- ***Title V Permitting Program Petition Provisions Modification***

Title V of the CAA establishes an operating permit program. CAA §505 requires state, local, and tribal permitting authorities to submit a proposed title V permit to the EPA Administrator for review for a 45-day review period before issuing the permit as final. The CAA provides that the Administrator shall object to issuance of the permit within that 45-day review period if the Administrator determines that the permit contains provisions that are not in compliance with the applicable requirements under the CAA. If the Administrator does not object to the permit during the 45-day EPA review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to take such action. The title V petition provisions of the current implementing regulations found at 40 CFR part 70 largely mirror the CAA, and have not been revised since original promulgation in 1992.

In August 2016, with 20 years of experience with title V petitions as well as feedback from various stakeholders, the EPA proposed changes to 40 CFR part 70 intended to provide clarity and transparency to the petition process, and to improve the efficiency of that process.[74] Subsequently, in response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777 as well as the Department of Commerce's request for information on Federal permitting requirements, several commenters noted the need for a modification to the program to improve and streamline the process. The proposed changes are intended to benefit permitting authorities, permitted sources, and potential petitioners, as well as the EPA.

[72] 81 Fed. Reg. 78954 (November 10, 2016).
[73] *National Parks Conservation Association v. EPA*, No. 1:11-cv-1548 (D.D.C.)
[74] 81 Fed. Reg. 57822 (August 24, 2016).

Permitting authorities and permitted sources are expected to benefit by early consultation with the appropriate EPA Regional Office when the permitting authority is preparing a permit to ensure it includes conditions that assure compliance with applicable requirements under the CAA and part 70. These early actions should minimize potential permit deficiencies and reduce the associated likelihood that a petition will be submitted on that title V permit. Potential petitioners are expected to benefit by having better notification of permits and review deadlines (e.g., the EPA is proposing to post on EPA Regional Web sites when a proposed permit is received and the corresponding 60-day deadline for submitting a petition) and by better access to permitting decision information (e.g., the permitting authority's written response to comments). These updates will clarify the expected minimum content of petitions and provide a standardized format, simplifying the process and enhancing the likelihood that petitions will be clear and complete. In addition, potential petitioners may also derive a benefit from more efficient responses to petitions and a better understanding of the process.

The EPA is expected to benefit by improving the agency's ability to meet its statutory obligations to review proposed permits, respond to title V petitions and provide more transparency in the title V petition process. These were concerns expressed by a Clean Air Act Advisory Committee task force in recommendations provided to the agency in 2006.[75] The EPA believes that the proposed regulatory revisions and shared information are responsive to these concerns and could, if finalized, improve the efficiency of the agency's response.

The workgroup developing a final rule in response to the August 24, 2016 proposal is led by the Office of Air and Radiation with Anna Marie Wood, Director, Air Quality Policy Division, as the primary contact.

- ***Risk Management Plan Rule Reconsideration***

CAA §112(r) requires the EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. These regulations and guidance are contained in the Risk Management Plan (RMP) rule. The information required from facilities under RMP helps local fire, police, and emergency response personnel prepare for and respond to chemical emergencies. Making RMPs available to the public also fosters communication and awareness to improve accident prevention and emergency response practices at the local level.

[75] In 2004, the Clean Air Act Advisory Committee (CAAAC) established a Task Force to evaluate the title V program. The 18-member panel, comprised of industry, state, and environmental group representatives, identified what Committee members believed was and was not working well. After hosting public meetings and receiving written feedback, and compiling the information with the personal experience of panel members, the Title V Task Force issued a final report that highlighted concerns and recommendations for improvement. See, Final Report to the Clean Air Act Advisory Committee on the Title V Implementation Experience: Title V Implementation Experience (April 2006). The Title V Task Force Final Report is available at: https://www.epa.gov/caaac/caaac- reports.

The EPA RMP rule applies to stationary sources that hold specific "regulated substances" in excess of threshold quantitates. RMP aims to prevent or minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures, and management practices. In addition to requiring implementation of management program elements, the RMP rule requires covered sources to submit (to EPA) a document summarizing the source's risk management program—called a Risk Management Plan.

The RMP rule establishes three "program levels" for regulated processes: Program 1 applies to processes that would not affect the public in the case of a worst-case release and that have had no accidents with specific offsite consequences within the past five years. Program 1 imposes limited hazard assessment requirements, requires coordination with local response agencies, and requires submission of an RMP. Program 2 applies to processes not eligible for Program 1 or subject to Program 3, and imposes streamlined prevention program requirements, including safety information, hazard review, operating procedures, training, maintenance, compliance audits, and incident investigation elements. Program 2 also imposes additional hazard assessment, management, and emergency response requirements. Program 3 applies to processes not eligible for Program 1 and either subject to OSHA's Process Safety Management standard under Federal or state OSHA programs or classified in one of ten specified industry sectors selected because they had a higher frequency of the most serious accidents as compared to other industry sectors.

On January 13, 2017, the EPA promulgated amendments to the RMP rule.[76] The major provisions of the amendments included several changes to the accident prevention program requirements, as well as enhancements to the emergency response requirements, and improvements to the public availability of chemical hazard information. The accident prevention program provisions require all facilities with Program 2 or 3 processes to conduct a root cause analysis as part of an incident investigation of a catastrophic release or incident that could have reasonably resulted in a catastrophic release; to contract with an independent third-party, or assemble an audit team led by an independent third-party, to perform a compliance audit after the facility has an RMP reportable accident; and, requires that Program 3 in certain NAICS codes conduct a safer technology and alternatives analysis as part of their every-five-years process hazard analysis. The emergency response enhancements require that Program 2 or 3 processes coordinate with the local emergency response agencies at least once a year and conduct notification exercises annually, and that certain facilities conduct field exercises and tabletop exercise at least once every ten years. The improvement to public availability of information provisions require that all facilities provide certain basic information to the public upon request and that facilities hold a public meeting for the local community within 90 days of the RMP reportable accident.

Subsequent to the issuance of the amendments on January 13, 2017, the following actions have taken place related to RMP:

[76] 82 Fed. Reg. 4594 (January 13, 2017).

- On February 28, 2017, RMP Coalition, representing several trade associations submitted a petition requesting a reconsideration and a stay for the RMP rule amendments.
- On March 13, 2017, EPA's Administrator convened a proceeding for reconsideration of the RMP rule amendments.
- On March 16, 2017, EPA published a final rule that provides a three-month (90-day) administrative stay of the effective date of the RMP rule amendments, delaying the effective date of the final rule to June 19, 2017.
- On March 13, 2017, the Chemical Safety Advocacy Group (CSAG), a coalition of companies in the refining, oil and gas, chemicals and general manufacturing sector, submitted a petition for reconsideration. CSAG also submitted a supplement to their petition on March 14, 2017.
- On March 14, 2017, the State of Louisiana, joined by ten other states (Arizona, Arkansas, Florida, Kansas, Kentucky, Oklahoma, South Carolina, Texas, Wisconsin and West Virginia) submitted a petition for reconsideration.
- On June 14, 2017, EPA published a final rule to further delay the effective date of the RMP rule amendments for 20 months until February 19, 2019. This action allowed EPA to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action.

The EPA has initiated a workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The workgroup intends to issue a notice of proposed rulemaking and a final rule. The workgroup will be led by the Office of Land and Emergency Management with Reggie Cheatham, Director, Office of Emergency Management, as the primary contact. [Timeframe for completion – by Feb 2019?]

- ***Startup, Shutdown, and Malfunction Policy***

In a 1999 policy document, the EPA provided guidance to states with respect to SIP provisions addressed the issue of excess emissions from regulated sources that occur during startup, shutdown, and malfunction (SSM) events. EPA's policy has been that states may elect to have narrowly drawn affirmative defense provisions in SIPs, so long as they meet certain requirements (e.g., that they only apply to monetary penalties and not to injunctive relief).

The Sierra Club submitted a petition in 2011 requesting that the EPA address various types of alleged deficiencies with the Agency's SSM policy. The Sierra Club included three interrelated overarching requests concerning the treatment in SIPs of excess emissions from sources during SSM events: (1) The Petitioner argued that any SIP provision providing an affirmative defense for monetary penalties for excess emissions applicable in judicial proceedings is contrary to CAA §§113 and 304 in such a way that states could in effect alter the jurisdiction of the federal courts to impose monetary penalties for violations of the CAA requirements and, thus, EPA should rescind its interpretation of the CAA expressed in the SSM Policy that allows appropriately drawn

affirmative defense provisions in SIPs. (2) The Petitioner argued that many existing SIPs contain impermissible provisions. The Petitioner identified specific provisions in SIPs of 39 states that it considered inconsistent with the CAA, including automatic exemptions from applicable emission limitations during SSM events, director's discretion provisions that provide discretionary exemptions from applicable emission limitations during SSM events, enforcement discretion provisions that appear to bar enforcement by the EPA or citizens for such excess emissions, and inappropriate affirmative defense provisions that are not consistent with the CAA or the recommendations in the EPA's SSM Policy. And, (3) The Petitioner argued that the EPA should not rely on interpretive letters from states to resolve any ambiguity, or perceived ambiguity, in state regulatory provisions in SIP submissions. The Petitioner reasoned that all regulatory provisions should be clear and unambiguous on their face and that any reliance on interpretive letters to alleviate facial ambiguity in SIP provisions can lead to later problems with compliance and enforcement.

The Petitioner identified specific existing provisions in the SIPs of 14 states that were structured or characterized as affirmative defenses, regardless of whether the provisions in question were consistent with the EPA's SSM Policy as explained in the 1999 SSM Guidance. The Petitioner requested EPA to issue a SIP call pursuant to CAA §110(k)(5) to require each state to revise its SIP.

The EPA published a proposed response on February 22, 2013, which with respect to the Petitioner's overarching claim that the EPA's interpretation of the CAA in the SSM Policy permitting states to have affirmative defenses in SIP provisions is in error, the EPA proposed to deny in part and to grant in part.

Subsequent to EPA's issuance of the February 2013 proposal, the D.C. Circuit ruled that CAA §§113 and 304 preclude EPA authority to create affirmative defense provisions in the Agency's own regulations imposing emission limits on sources, because such provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. The EPA believes that the reasoning of the court in that decision indicates that the states, like the EPA, have no authority in SIP provisions to alter the jurisdiction of federal courts to assess penalties for violations of CAA requirements through affirmative defense provisions. If states lack authority under the CAA to alter the jurisdiction of the federal courts through affirmative defense provisions in SIPs, then the EPA lacks authority to approve any such provision in a SIP.

The EPA issued a Supplemental Proposal which revised the earlier response. The Final Rule promulgated on June 12, 2015, issued a SIP Call to 37 states (or air quality jurisdictions within those states), finding that their SIPs are substantially inadequate with due to the inclusion of provisions for (1) an affirmative defense for excess emissions during startup, shutdown, or malfunction (SSM) events, or (2) a state director's discretion to unilaterally grant exemptions or variances from otherwise applicable emissions limitations, or (3) an automatic exemption for

excess emissions during malfunctions, or (4) an enforcement discretion provision that purports to restrict citizen suits or federal enforcement.[77] (A state may exercise discretion in its enforcement program, provided that such discretion cannot apply to anyone other than state personnel; i.e., EPA or other parties pursuant to the citizen suit provision can still pursue monetary penalties as well as injunctive relief.)

The final rule clarified, restated, and revised EPA's interpretive guidance regarding CAA requirements for the treatment of excess emissions that occur during periods of SSM: The CAA prohibits exemptions for excess emissions during SSM events in SIPs; no automatic or discretionary exemptions or overly broad enforcement discretion provisions that would bar enforcement by the EPA or by other parties in federal court through a citizen suit are allowed. SIPs must contain emission limitations that "limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." However, SIP emissions limitations do not have to be numerical and do not have to apply the same limitation at all times; they may be composed of a combination of numerical limitations, specific technological control requirements, and/or work practice requirements, with each component of the limitation applicable during a defined mode of source operations. A state can develop special, alternative emission limitations that apply during startup or shutdown if the source cannot meet the otherwise applicable emission limitation in the SIP -- i.e., as part of a continuously applicable emission limitation when properly developed and otherwise consistent with CAA requirements. However, if a non-numerical requirement does not itself (or in combination with other components of the emission limitation) limit the quantity, rate or concentration of air pollutants on a continuous basis, then the non-numerical standard (or overarching requirement) does not meet the statutory definition of an emission limitation under §302(k).

[Discuss litigation]

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, industry associations noted objections to the EPA's current SSM policy. Most stated that the EPA should consider withdrawing the SSM SIP Call and not act on any of the recent SIP submissions until it revises its interpretation of excess emission during SSM events. Commenters states that the current SSM Policy and the SSM SIP Call were not consistent with the system of cooperative federalism and unnecessarily interferes with States' authority to implement their programs. The EPA should establish work practices applicable to SSM events or amend emissions standards that can be achieved during SSM events. The SSM SIP Call was not based on any finding of air quality impacts or a finding that removing the provisions is necessary to meet other CAA goals.

The EPA will work with stakeholders to further understand their concerns and identify viable SSM events policies that adhere to the principals of cooperative federalism. [Note – there is an ongoing

[77] 80 Fed. Reg. 33840 (June 12, 2015).

effort being led by Mandy and Justin on this, but there isn't yet a formal rulemaking process underway]

IV. Conclusion

The EPA plays a critical role in shaping policies that may affect domestic energy resources. The EPA believes EO 13783 offers an important and unique opportunity to revisit its regulations and identify and remedy those that impose unnecessary burdens on domestic energy production and use. The EPA is taking regulatory reform very seriously, and has been proactive in soliciting input in a variety of venues that will inform the Agency's regulatory efforts related to EO 13783, EO 13777 and other Administration initiatives to identify and remedy regulations that are outdated or impose unnecessary burdens, that inhibit job growth, and those that impose costs that exceed benefits.

There is much opportunity to reduce burden while maintaining a healthy environment based on the preliminary input the agency has already received. Regulatory reform should be a natural way of doing business for the EPA, continually looking for ways to improve regulations and remove unneeded and counterproductive obstacles to fulfilling the Agency's critical mission.

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EXAMPLES OF ENERGY-RELATED COMMENTS SUBMITTED BY INDUSTRY AND GOVERNMENT ASSOCIATIONS IN RESPONSE TO EPA'S APRIL 13, 2017 FEDERAL REGISTER NOTICE PUBLISHED IN ACCORDANCE WITH EO 13777

Note: The comments listed below do not reflect comments related to the Waters of the United States rule.

EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OW	2015 Water Quality Standard Rule	Withdraw rule because it impinges on states' authority to set water quality standards	Regulation	Electric Power
OW	316(b) – Cooling Water Intake Structure Rule (40 C.F.R. Parts 122 and 125)	Revise to relieve regulatory permitting uncertainty of provision §125.98 (which requires Fish and Wildlife Service (FWS) review of 316(b) reports after the studies and even draft permits are completed)	Regulation	Electric Power
OW	Clean Water Act (CWA) Section 401 certifications	Amend to address delays Withdraw proposal	Regulation	Natural Gas, Oil
OW	Compensatory Mitigation for Losses of Aquatic Resources	Revise rule to reduce inconsistent interpretations	Regulation	Coal
OW	CWA Section 404 Permitting Program	Supports EPA's formation of National Advisory Council for Environmental Policy and Technology (NACEPT) Subcommittee to recommend clarifications to regulations to foster meaningful state assumption of Section 404 permitting authority as allowed under the law Review and streamline program Increase funding to states to manage program	Regulation, Guidance, Policy	Coal
OW	CWA Section 404 and 402	Revise guidance documents to increase state role	Guidance	Coal
OW	CWA Section 404(c)	Clarify that presumptive and retroactive veto occurs before permitting not after Revise interpretation of authority to consider economics and sound science	Regulation, Guidance	Coal
OW	Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity	Revise draft methodology to relax numeric limits Withdraw due to concerns with overly conservative criteria	Regulation, Guidance	Coal, Electric Power
OW	Drinking Water Standards for Beryllium	Revise to reduce burden	Regulation	Coal

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OW	Guidance for Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater	Re-evaluate/revise criterion and implementation guidance to reduce burden	Regulation, Guidance	Oil, Coal
OW	Federal Human Health Criteria Applicable to Washington State	Approve reconsideration petition for Partial Disapproval of Washington's Human Health Water Quality Criteria and Implementation Tools	Regulation	Coal
OW	Federal Human Health Criteria for Washington State and Maine	Rescind and reinstate prior practice of giving states discretion in how they apply fish consumption and exposure criteria	Regulation	Electric power
OW	Hydrologic Alteration Report	Revise final report	Report	Coal
OW	National Pollutant Discharge Elimination System (NPDES) Program	Increase delegation to states Streamline process and allow all regions to use general permits to maximum extent	Policy	Coal
OW	Proposed NPDES Application and Program Updates Rule	Withdraw proposal which would make changes to the state-delegated NPDES program and establish federal veto authority Revise proposal	Regulation	Coal, Electric power
OW	Effluent Limitations Guidelines (ELG) and Pretreatment Standards for the Oil and Gas Extraction Point Source Category	Rescind to preserve disposal option which may one day prove indispensable Undertake thorough review of hydraulic fracturing-related waste water management technologies to determine if economically achievable pretreatment options are available, and consider revisions to ELG rulemaking as appropriate based on the review Replace with appropriate pretreatment standards	Regulation	Oil, Natural Gas
OW	Steam Electric ELG	Reconsider and reform rule to reduce burden	Regulation	Electric Power
OW	Refinery ELGs	Retain existing guidelines	Regulation	Oil
OW	Safe Drinking Water Act (SDWA) Aquifer Exemptions in the Underground Injection Control Program	Deny environmental petition to change aquifer exemption program	Regulation	Oil

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OW	Unconventional Oil and Gas Extraction Effluent Guidelines	☐ Reconsider for onshore unconventional oil and gas publicly owned treatment works (POTWs)	Regulation	Oil
OW	Spill Prevention, Control and Countermeasure Plans (SPCC)	☐ Establish an analytical method and detection limit so that if the concentration of oil is below, then an impoundment holding treated produced water would not be subject to SPCC requirements ☐ Do not expand requirements to chemicals beyond oil	Regulation	Oil, Natural Gas
OW	Water Quality Standards Generally	☐ Revise to increase role of states and reduce burden	Regulation, Guidance Policy	Coal

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EXAMPLES OF ENERGY-RELATED COMMENTS SUBMITTED BY INDUSTRY AND GOVERNMENT ASSOCIATIONS IN RESPONSE TO EPA'S APRIL 13, 2017 FEDERAL REGISTER NOTICE PUBLISHED IN ACCORDANCE WITH EO 13777

Note: The comments listed below do not reflect comments related to the Clean Power Plan, New Source Performance Standards for greenhouse gas emissions from power plants, or the Oil and Gas New Source Performance Standards.

EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OAR	New Source Review (NSR) Permitting Program	☐ Revise, streamline, and simplify NSR program and permitting process ☐ Revise rules to clarify what constitutes "routine maintenance, repair and replacement" ☐ Address difficulties with applicability determinations ☐ Remove program elements that impede efficiency improvements ☐ Grandfather reasonably complete NSR permit applications that are pending when a revised National Ambient Air Quality Standard (NAAQS) comes into effect ☐ Allow non-emitting construction activities to be undertaken before a final permit is issued ☐ Revise synthetic minor "relaxation" provision such that small changes to enforceable limitations at synthetic minor sources do not trigger NSR ☐ Assess the use of probabilistic models in lieu of overly conservative dispersion modeling ☐ Finalize aggregation, debottlenecking, and project-netting policies ☐ Modify Offset Policy ☐ Provide mechanisms to relieve smaller sources from burdensome modeling exercises ☐ Withdraw proposed Prevention of Significant Deterioration (PSD) significance threshold of 75,000 tons per year for greenhouse gases and propose a higher threshold ☐ Revise various other provisions of major and minor source NSR ☐ Revisit EPA's 2005 NSR reform proposal as a starting point for making changes to the program	Regulation, Guidance and Policy	Oil, Natural Gas, Coal, Electric power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
		☐ Fully delegate PSD permit review to states and modify requirements for environmentally beneficial projects		
OAR	Title V Permitting Program	☐ Consider prior comprehensive program review undertaken in 2005 by EPA's Title V Task Force, including the recommendations in their Final Report ☐ Create mechanisms to facilitate introduction of new and modified products and operations that improve efficiency ☐ Reduce the burdens of reapplying for existing permits by focusing on new requirements and changes since last permit issuance ☐ Encourage states to use general permits for smaller sources	Regulations, Guidance and Policy	Oil, Natural Gas, Coal, Electric power
OAR	NSR and Title V Permitting Programs	☐ Shorten and standardize permit approval processes ☐ Remove unnecessary reporting obligations ☐ Revise regulations and/or policies concerning "Common Control," "Contiguous or Adjacent," and "Reactivation"	Regulation	Oil, Natural Gas, Coal, Electric power
OAR	2015 Ozone NAAQS	☐ Delay 2015 ozone NAAQS implementation, such as until 2008 NAAQS is fully implemented ☐ Revoke 2008 standard once 2015 standard is effective ☐ Revise to consider, among other factors, natural sources and international transport ☐ Reconsider because of burden associated with Oil and Natural Gas Production Control Technique Guidelines (CTG) and NSR requirements	Regulation, Guidance, and Policy	Oil, Natural Gas, Coal, Electric power
OAR	Primary NO2 NAAQS	☐ Revise to lengthen averaging time	Regulation	Coal
OAR	NAAQS Standard Setting	☐ Expand membership of the Clean Air Scientific Advisory Committee (CASAC) ☐ Direct CASAC to provide assessment of adverse public health, welfare, social, economic, or energy effects of the various standards under review (section 109(d))	Policy	Oil, Natural Gas, Coal, Electric power
OAR	NAAQS Implementation	☐ Provide prompt and clear implementation guidance when new NAAQS are issued ☐ Support flexible implementation of non-attainment designation process	Regulation and Guidance	Oil, Natural Gas, Coal, Electric power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
		☐ Return to prior approach of relying on air quality monitoring to make initial nonattainment designations for sulfur dioxide ☐ Revise 40 CFR Part 50 to remove NAAQS that have been replaced and to consolidate the current NAAQS for each regulated pollutant into a single section of the Code of Federal Regulation (CFR) (i.e., scattered codification of NAAQS is "at best confusing and at worst misleading") ☐ Take additional steps to issue workable regulations or guidance for use of the rural ozone transport area designation ☐ Revise interpretation of Reasonable Further Progress in proposed ozone implementation rule ☐ Increase delegation to states		
OAR	Exceptional Events Rule ("Treatment of Data Influenced by Exceptional Events," 81 *Fed. Reg*. 68,216 (Oct. 3, 2016)	☐ Revise rule and associated guidance to allow for greater state flexibility in "flagging" and excluding exceptional event data, clarify that relief under the international transport provisions is available to non-border states, better address fire-related events, and provide objective, science-based criteria for approving a demonstration	Regulation and Guidance	Oil, Natural Gas, Electric Power
OAR	Tribal Federal Implementation Plan (40 CFR Part 49 Subpart C)	☐ Eliminate duplicative requirements regarding threatened or endangered species and historic properties, which are already addressed through APD review process ☐ Allow operators to satisfy section 49.160(c)(iv) registration requirements by providing actual emissions data (based on first 30 days of production), similar to Subpart OOOO rules for New Source Performance Standards (NSPS) ☐ Streamline permitting for synthetic minor sources	Regulation	Oil
OAR	Cross-State Air Pollution Rule (CSAPR) Update Rule	☐ Revise to reduce burden ☐ Reconsider to increase state emission budgets and identify additional states that can be removed from coverage under the program ☐ Address other issues raised in industry petitions ☐ Address deficiencies in modeling and international transport	Regulation	Coal, Electric power
OAR	Notice of Availability of the EPA's Preliminary	☐ Withdraw and correct flawed assumptions for EGU retirements, as well as assumptions regarding implementation of the 111(d) rule	Regulation	Electric Power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
	Interstate Ozone Transport Modeling Data for the 2015 Ozone NAAQS (82 Fed. Reg. 1733, January 6, 2017)			
OAR	Regional Haze Program	☐ Review Federal Implementation Plans to reduce burden ☐ Increase delegation to states and do not second guess state implementation plans ☐ Grant industry petitions for reconsideration on regional haze regulations	Regulation and Policy	Coal, Electric Power
OAR	"Once in, Always in" MACT Applicability Policy	☐ Revise to incentivize emission-reducing improvements ☐ Withdraw and replace with 2007 proposal that would allow a major source to become an area source where its HAP emissions have been reduced to minor source levels ☐ Provide an exception to the policy for sources that reduce emissions below major source thresholds through pollution prevention measures that are permanent and enforceable	Guidance	Oil, Natural Gas, Coal, Electric Power
OAR	Mercury and Air Toxics Rule (MATS)	☐ Revise to reduce burden and remove co-benefits from economic analysis ☐ Revise performance testing provisions ☐ Reevaluate and improve compliance testing waiver provisions for low-emitting sources ☐ Amend provisions pertaining to demonstration of low-emitting status to permit use of actual unit operating data rather than potential maximum operating data ☐ Clarify reference value to be used in system integrity checks ☐ Re-evaluate/revise to address other remaining ambiguous and inconsistent provisions	Regulation	Coal, Electric power
OAR	Proposed MATS Completion of Electronic Reporting Requirements	☐ Streamline electronic reporting requirements ☐ Allow use of Emissions Collection and Monitoring Plan System (ECMPS) software for electronic reporting under MATS, as proposed	Regulation	Electric Power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
	Rule (81 Fed. Reg. 67,062, Sept. 29, 2016)	☐ Reduce extent of new, detailed reporting called for in the proposal to ensure additional reporting burden will not be larger than cost savings ☐ Reduce amount of information EGUs would have to report both for performance stack tests and continuous emissions monitoring systems (e.g., with regard to relative accuracy test audits (RATA), relative response audits (RRA), and response correlation audits (RCA))		
OAR	MATS Residual Risk and Technology (RTR) Review	☐ Complete review for coal-fired power plants covered by MATS by the statutory deadline	Regulation	Electric Power
OAR	National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters ("Boiler MACT")	☐ Streamline redundant reporting requirements, including those that are duplicative with Title V requirements ☐ Amend frequency of required tune-ups to be based on calendar years instead of every 13 months, since compliance deadlines based on calendar years are more manageable ☐ Propose revisions to emission limits that are cost-effective	Regulation	Electric Power
OAR	Refinery Risk and Technology Review (RTR)	☐ Reject environmental group petitions, revise flare requirements, eliminate fenceline monitoring ☐ Review and revise without increasing stringency	Regulation	Oil
OAR	Natural Gas Transmission and Storage NESHAP	☐ Clarify compliance obligations	Regulation	Natural Gas
OAR	Site Remediation NESHAP	☐ Withdraw proposed rule	Regulation	Oil, Electric Power
OAR	Potentially Delist Natural Gas -Fired Stationary Combustion Turbines from	☐ Revisit delisting proposal from 2004 and assess whether these sources still meet the statutory criteria for delisting. If so, EPA should promptly delist. If not, EPA should provide a transition mechanism for gas-fired turbines constructed since 2003	Regulation	Electric power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
	Regulation Under Section 112			
OAR	Primary copper smelters NSPS/NESHAP	☐ Revise NSPS to exempt fugitive emissions ☐ Revise NESHAP requirements on control device and monitoring	Regulation	Coal
OAR	Proposed NSPS for Stationary Combustion Turbines (40 C.F.R. Part 60, Subpart KKKK)	☐ Issue supplemental proposal withdrawing the 2012 proposal's reconstruction analysis and addressing other issues ☐ Revise proposal to remove ambiguity around necessary maintenance activity ☐ Prevent retroactive applicability of the 2012 proposed limits	Regulation	Electric power, Natural Gas
OAR	Spark Ignition NSPS	☐ Revise notification and test requirements	Regulation	Natural Gas
OAR	Turbine NSPS	☐ Withdraw proposed rule	Regulation	Natural Gas
OAR	NSPS and NESHAP for Stationary Engines	☐ Revise to reduce burden, including for remote engines ☐ Resolve overlapping regulatory programs and subcategory ranges ☐ Revise unnecessary, duplicative or excessive testing, maintenance and record-keeping requirements ☐ Eliminate unnecessary restrictions on operation of emergency engines ☐ Exempt emergency engines under 500 HP ☐ Allow power plants the option to develop their own operation and maintenance plans ☐ Revise definition of "emergency situation" ☐ Modify to require performance testing for non-emergency engines based exclusively on hours of use (rather than every 8,760 hours of operation or three years, whichever comes first) ☐ Modify requirement for continuous monitoring of catalyst inlet temperature and pressure drop ☐ Revise construction commencement notification requirements	Regulation	Coal, Natural Gas, Electric power
OAR	Nonroad engine NSPS	☐ Revise to clarify exemption for nonroad engines temporarily replacing stationary engines	Regulation	Coal
OAR	Oil and Natural Gas CTG	☐ Withdraw rule ☐ Revise stringency and incorporate cost-effective VOC thresholds	Regulation	Oil

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
		☐ Provide flexibility for states to eliminate VOC controls in NOx-limited airsheds		
OAR	NSPS Electronic Reporting Requirements (codified in general provisions in Subpart A and in individual subparts)	☐ Withdraw signed (but unpublished) final rule and issue new proposal ☐ Replace existing requirements for reporting using the Electronic Reporting Tool (ERT) with a more workable electronic reporting system ☐ Reduce volume of information that must be reported.	Regulation	Electric power
OAR	Stack testing and reporting requirements (across multiple rules and programs, including CAA sections 110 and 112, as well as CAA title IV and title V	☐ Stream line duplicative or unnecessary stack requirements	Regulation	Electric power
OAR	Test Method for Determining Stack Test Gas Velocity Taking into Account Velocity Decay Near the Stack Walls	☐ Finalize revisions as proposed	Regulation	Electric power
OAR	Compliance Assurance Monitoring (CAM) Provisions	☐ Eliminate requirements that have become unnecessary and outdated in light of subsequent regulations	Regulation	Electric Power
OAR	Monitoring and Testing Requirements	☐ Eliminate monitoring certification and QA/QC redundancies between Part 60 and Part 75 ☐ Reduce MATS requirements for CEMS (Continuous Emissions Monitoring System) certification on bypass stacks in cases where they are rarely used ☐ Exempt from Part 60 opacity monitoring requirements units on which a PM CPMS (Continuous Parameter Monitoring System) or PM CEMS is installed ☐ Reduce RICE MACT monitoring and testing requirements for non-emergency engines that operate less than 50 hours per year	Regulation, Guidance	Electric Power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
		☐ Reduce number of RATA (relative accuracy test audit) runs required under Part 75 from 9 to 3 ☐ Update 40 CFR Part 70 Appendix D and Appendix E to approve the use of ultrasonic meters ☐ Revise or eliminate other requirements		
OAR	Quality Assurance Requirements for PM Continuous Monitoring (40 CFR Part 60 App. F, Procedure 2, Section 10.4)	☐ Due to comment on direct final rule, it had to be withdrawn. EPA should complete the rulemaking process and issue a final rule revising section 10.4	Regulation	Electric power
OAR	Startup, Shutdown and Malfunction (SSM) SIP Calls and Findings of Inadequacy	☐ Withdraw SSM SIP calls consistent with EPA's limited authority under the Clean Air Act ☐ Revise SSM policies, including allowing work practice standards ☐ Do not finalize rulemaking to remove affirmative defense provisions	Regulation	Natural Gas, Coal, Electric power
OAR	Guidelines on Air Quality Modeling ("Appendix W")	☐ Update AERMOD for permit modeling or allow alternatives to dispersion modeling ☐ Address issues raised in NAAQS Implementation Coalition petition for reconsideration	Regulation	Natural Gas, Electric power
OAR	AP-42 Emission Factors	☐ Make long-overdue revisions to the emission factors to improve accuracy and help streamline the permitting process	Guidance	Oil, Natural Gas, Coal, Electric Power
OAR	Rules governing compliance demonstrations under the Acid Rain Program and CSAPR (at 40 CFR Part 75)	☐ Update fuel sampling and analysis requirements to reflect current market and operating conditions, and incorporate relief already provided for individual sources by petition.	Regulation	Electric power
OAR	Fuel Regulations	☐ Revise requirements for reformulated gasoline ☐ Lower Reid vapor pressure (RVP) of the complex model valid range	Regulation	Oil

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
		☐ Remove obsolete regulatory text and reporting requirements for fuels in 40 CFR part 80 ☐ Revise gasoline loading racks regulations to allow temporary relaxation		
OAR	Evaporative Emissions Regulation	☐ Provide RVP relief to E15 and higher ethanol blends to allow more widespread use of ethanol and other lower cost fuels that improve air quality	Regulation	Biofuel
OAR	Lifecycle Analysis for Corn Ethanol	☐ Update analysis ☐ Modify outdated modeling assumptions related to corn planted in no-till and low-tillage systems ☐ Calculate impact that individual biofuel crops have on soil carbon stocks and consider establishing a credit for crops like corn that increase soil carbon ☐ Adopt more realistic assumptions for application of fertilizer and emissions of nitrous oxide (N2O) from corn production	Regulation	Biofuel
OAR	CAA Section 211(f)	☐ Modify EPA's mistaken "substantially similar" interpretation so as not to limit the concentration of ethanol in fuel	Regulation	Biofuel
OAR	Approval Process for New Fuels	☐ Streamline process and eliminate unreasonable criteria for approval in order to allow high-octane fuels (such as E25-40 blends) to compete in the marketplace	Regulation	Biofuel
OAR	CAFE Rules	☐ Update "R" factor for fuel economy compliance calculations to better represent modern engines and fuels ☐ Adjust fuel economy (CAFE) compliance to allow flex fuel vehicles (FFVs) to utilize the same incentives that are provided to other alternative fuel vehicles ☐ Correct bias against flex-fueled vehicles capable of operating on alternative fuels ranging from straight gasoline to 85% ethanol, during the review of the 2022-2025 model year CAFE-GHG standards. ☐ Discontinue use of the model (which erroneously estimates increased emissions from higher ethanol blends) until a new emissions study based on real-world test fuels and methods is conducted	Regulation	Biofuel

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OAR	Fuel Survey Programs (Such as E15 Survey (40 CFR 80.15021))	☐ Streamline and consider eliminating costly surveys that offer little or no regulatory benefit	Regulatory	Biofuel
OAR	Cellulosic Waiver Credit Program and Efficient Producer Pathways	☐ Eliminate unnecessary barriers to cellulosic ethanol production from corn kernel fiber	Regulatory	Biofuel
OAR	GHG Mandatory Reporting Rule	☐ Reevaluate/repeal rule to reduce burden ☐ Streamline amount of measurements and data elements required ☐ Tailor program based on comprehensive program review to see what is necessary and what is not ☐ Amend 40 CFR 98 Subpart W reporting requirements and update emission to reflect current practices ☐ Replace unnecessary leak surveys with emission factors based on data recently collected and analyzed from the surveys ☐ Redefine "stationary fuel combustion sources" to exclude certain miscellaneous sources that have negligible emissions but add significant burden ☐ Repeal recent Subpart W amendments, i.e., 81 FR 86490 (11/30/16) and 80 FR 64262 (10/22/15) ☐ Repeal duplicative 40 CFR 98 Subpart NN ☐ Exempt emissions data that EGUs already submit pursuant to other rules, such as the Acid Rain Program ☐ Incentivize deployment of carbon sequestration and storage by clarifying that carbon dioxide utilized for enhanced oil recovery should be reported under Subpart UU and not under Subpart RR	Regulation	Oil, Natural Gas, Coal, Electric Power, Biofuel
OAR	Proposed Health and Environmental Protection Standards for Uranium In-Situ Recovery (ISR) Facilities ("Part 192") Rule	☐ Withdraw proposed rule	Regulation	Nuclear, Coal

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OAR	National Emissions Standards for Radon Emissions from Operating Uranium Mill Tailings	☐ Revise rule to reduce burden	Regulation	Nuclear
OAR	Environmental Radiation Protection Standards for Nuclear Power Operations (2014 Advanced Notice of Proposed Rulemaking)	☐ Do not revise standards	Regulation	Nuclear

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Draft June 21, 2017

EXAMPLES OF ENERGY-RELATED COMMENTS SUBMITTED BY INDUSTRY AND GOVERNMENT ASSOCIATIONS IN RESPONSE TO EPA'S APRIL 13, 2017 FEDERAL REGISTER NOTICE PUBLISHED IN ACCORDANCE WITH EO 13777

EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OCSPP	Toxics Release Inventory (TRI) Reporting	☐ Revise to exempt mining releases ☐ Withdraw decision to add natural gas processing facilities to TRI reporting	Regulation	Coal, natural gas
OCSPP	Toxics Substances Control Act (TSCA)	☐ Revise interpretation of "conditions of use" ☐ Allow "robust summaries" in lieu of full reports ☐ Allow manufacturers to voluntarily submit risk evaluations ☐ Reduce unnecessary reporting for TSCA Inventory ☐ Reduce substantiation of confidential business information claims ☐ Reduce reporting requirements for Section 8 Preliminary Assessment Information Rule ☐ Revise reporting under Chemical Data Reporting rule, allow non-punitive correction to inventory ☐ Revise proposed rules to address comments from industry stakeholders	Regulation	Oil

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NRECA
America's Electric Cooperatives

May 15, 2017

Via Email

Samantha Dravis
Senior Counsel and Associate Administrator for Policy
Regulatory Reform Officer for Executive Order 13777
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Identification of Regulations for Repeal, Modification or Replacement Under Executive Order 13777 - Docket No. EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification under Executive Order 13777, "Enforcing the Regulatory Reform Agenda." EO 13777 furthers the policy goal of alleviating unnecessary regulatory burdens on the American people by directing the heads of federal agencies to establish Regulatory Reform Task Forces (RRTF) which, among other duties, is directed to seek input from entities significantly affected by Federal regulations including, among others, trade associations. NRECA appreciates the opportunity to recommend burden reduction candidates and incorporates by reference comments submitted by the Utility Air Regulatory Group (UARG), the Utility Solid Waste Activities Group (USWAG), and the Utility Water Act Group (UWAG).

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives chartered to provide affordable, reliable electricity to approximately 42 million people in 80 percent of U.S. counties. Rural electric cooperatives are small businesses, most of which serve member-owners, especially those in rural areas, facing significant economic challenges.

Electric cooperatives and our member-owners value, and deserve, a healthy environment and cooperatives are proud of their environmental compliance. Nonetheless, the economic challenges faced by so many cooperatives and their member-owners underscore the importance of ensuring that these regulations are cost-effective.

NRECA appreciates the efforts already announced to reconsider several regulations of utmost concern to our members, specifically:

- The Clean Power Plan (80 Fed. Reg. 64661, October 23, 2015) to be reviewed per Executive Order 13783 (82 Fed. Reg. 16093, March 31, 2017);
- The Clean Water Rule, also known as the "Waters of the US" rule (80 Fed. Reg. 37054, June 29, 2015) to be reviewed per Executive Order 13778 (82 Fed. Reg. 12497); and
- The Steam Electric Effluent Limitation Guidelines rule (80 Fed. Reg. 67838, November 3, 2015) per EPA's notification and postponement of compliance dates (82 Fed. Reg. 19005, April 25, 2017).

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Each of these rules has significant substantive and procedural deficiencies as discussed below and in the comments submitted by UARG regarding the Clean Power Plan and UWAG concerning the WOTUS and ELG rules. We look forward to working with EPA on these issues.

We also urge EPA to act quickly on USWAG's petition for reconsideration of the Coal Combustion Residuals (CCR) rule (80 Fed. Reg. 21302, April 17, 2015) submitted May 12, 2017. As discussed below and in the comments submitted by USWAG, the Water Infrastructure Improvement for America (WIIN) Act (P.L. 114-322, December 16, 2016), provides EPA with the authority, previously lacking, to implement and inforce the federal CCR criteria through state or federal permits and to incorporate risk-based approaches to achieving the protectiveness embodied in the CCR rule.

Air Issues:

1. EPA should remove New Source Review program elements that impede electric generating unit (EGU) efficiency improvements.

   EPA may propose that EGUs to make heat-rate improvements or efficiency-based modifications to existing EGUs under revisions to the Clean Power Plan regulations. NRECA has previously filed comments and made suggestions relating to an inadvertent triggering of NSR requirements when undertaking many efficiency improvements. There are numerous examples of EGUs identifying numerous projects that could improve unit efficiency by greater than 5%, yet these projects would almost certainly trigger NSR concerns as the program is currently implemented. This means that these projects likely won't be pursued.
   In 2005, EPA proposed to remedy some of the NSR program difficulties, but that effort was never finished and published as a final rule. EPA should revisit their 2005 NSR reform proposal as a starting point for making much needed changes to this program.

   EPA needs to change the NSR rule to provide substantial certainty that efficiency improvement projects don't trigger a NSR review or do not create a reasonable apprehension of NSR review.

2. EPA should re-evaluate their compliance testing requirements under the MATS program.

   MATS compliance testing is very expensive and in many circumstances testing results indicate that when HAP emissions exist, they are below the test method detection level. Compliance testing should not be punitive, nor should sources be discouraged from seeking testing waivers in situations where EPA has otherwise provided for them through guidance.

   A single battery of stack tests for MATS acid gas and particulate matter (PM) compliance can cost over $25,000 per calendar quarter, or $100,000 per year. "Low-emitter status" determination requires three years of quarterly stack testing, or a total of 36 individual data points at a cost of about $300,000. Once successfully completed, the low-emitter status still requires a stack test frequency every third year. The on-going testing and monitoring is excessive, burdensome and in some cases duplicative and provide little benefit. The following is suggested:
   - Some EGUs are inherently low-emitters given installed control technology and/or fuel choice.

- EGUs that use Powder River Basin (PRB) coal have relevant information that fuel chloride concentration is frequently below 10 ppm. Ash from PRB fuel is highly alkaline and adsorbs the chlorine gases that would otherwise be emitted. HCl concentration at the boiler outlet, before any pollution control technology, is already at or below test method detection levels.
- Pre-status determination of nine tests, including the initial performance test, can provide statistically relevant indications of performance levels at relatively high confidence intervals.

Once the low-emitter status is confirmed a stack test of once in 3 years, as currently provided in MATS, should continue to be adequate.

Current EPA Clean Air Act National Stack Testing Guidance provides for certain testing waivers, including a relaxation of testing frequency, when multiple units at the same location have similar design and when they have exhibited similar traits relating to verified emissions. It seems reasonable that such guidance can be extended to coal-based EGUs when the same principles are applied.

The source should provide sufficient emissions data that, though the margin of compliance is not substantial, allow for a determination that the variability of emissions is low enough for confidence that the unit is in compliance. The national guidance provides three relevant factors for evaluating whether a waiver of testing may be appropriate.

The guidance further identifies that if a facility does not have the ability to emit a pollutant in excess of the prescribed emissions limit that a waiver may be granted on a case-by-case basis.
Finally, EPA should provide that an EGU undergoing maintenance (not an NSR major modification), upon submitting a reasonable request for an extension of time to perform a required periodic compliance test, be granted an extension, not to exceed 720 hours, to conduct such testing if the scheduled restart of such EGU does not provide for a 720-hour shakedown period prior to the end of the calendar quarter. This experience does not arise from a force majeure; not unlike and initial startup compliance with the requirements may be a reflection following major maintenance on systems that will likely require several days of shakedown.

EPA can maintain the stringency of MATS while also significantly reducing the compliance burden of the rule, by making these recommended changes.

3. <u>EPA should revise their SIP-call to the states relating to the treatment of startup, shutdown, and malfunction (SSM) in utility operations</u>.

Coal-fired EGUs are very large facilities with many complex and interconnected systems and components that generate electricity while maintaining compliance with both their environmental and power system regulations. Generally, pollution control technology performance cannot be optimized with changing operating levels or at levels of operation significantly below that designed for maximum pollution control technology performance.

Many coal-fired EGUs now operate at lower loads and at varying loads to accommodate the growth of renewable energy sources. Sudden changes in operating levels that are forced upon a particular facility by electric grid operation can and do significantly affect pollution control performance. Challenges to emission control performance are sometimes unavoidable and are always highest

during periods classified as startup, shutdown, and malfunction.

A well-reasoned SSM program should consider whether an SSM event actually causes or contributes to any significant impacts on ambient air quality or ambient standards non-attainment. The growing nationwide attainment or maintenance of attainment with ever-tightening NAAQS suggests that existing SSM allowances in permits should be retained as they are not triggering adverse air quality issues. In fact any emission upsets have been calculated into 'normal' operation allowable emission rates in permits and AP-42 factors. With its current policy EPA has over-reached in the conclusions that some state programs are ineffectively managing their sources in situations involving SSM.

Accordingly EPA should withdraw its SSM SIP call and instead encourage state agencies to work with their sources to critically evaluate the implications of specific SSM events that can or may have previously occurred at a particular facility before establishing whether any new event of the same type is worthy of any action at all.

4. NAAQS attainment should be based on air quality monitoring and not modeling estimates.

EPA made a significant change when they decided to use computer modeling rather than actual air quality monitoring data to make 'non-attainment' determinations for the Sulfur Dioxide NAAQS. Any number of variables used in the model can have a significant impact on these determinations. This can then be compounded by EPA establishing non-attainment based on exaggerated modeled information and then applying "potential to emit" models to drive permitted emission limits well below what is needed to achieve attainment. This approach causes significant cost to economic development and can even prohibit business development in these areas. This can be easily remedied by EPA using actual monitored emissions data to establish nonattainment designations.

5. Return primacy for the Regional Haze program to the states.

Congress established Clean Air Act authority for EPA to set best available retrofit technology requirements with the goal of achieving natural visibility conditions in areas like National Parks and Wilderness areas by 2064. But Congress gave the *states* the primary role to determine where these determinations apply using a four part test as well as determining their 'glide-path'. Compliance with Phase I of this program will largely be achieved by 2018.

In recent years, EPA has become much more prescriptive in forcing states to implement the program exactly as EPA wishes, or else EPA rejects the state program and issues a Federal plan. For Phase II of the program, EPA appears to be doubling down on this approach with even greater prescriptiveness in their recent guidance and rulemaking. This will force states to impose high cost, low benefit pollution controls to drive a standard based on aesthetics rather than human health and the environment. EPA has largely demanded that states impose selective catalytic reduction technology on all utility units to control NOx emissions. This technology can cost hundreds of millions per unit for purported visibility improvements that are difficult to perceive. EPA also requires use of their outdated models which historically have over-estimated visibility impacts.

EPA should revise their recent guidance and rulemaking to put the decision making back in the hands of the states and to allow them the time and discretion to cost-effectively manage their

program towards a goal that is still 48 years away. A good first step would be to extend the 2018-2028 planning and compliance cycle by at least 3 years, to give states and the regulated community added time to meet the next round of limits.

Specific to the Federal Implementation Plan(FIP) for Arkansas, EPA, by a Federal Register notice dated April 25, 2017, 82 Fed Reg. 18994, announced a 90 day stay of the rule and the convention of a proceeding for reconsideration of certain requirements contained in the final FIP rule published in the Federal Register on September 27, 2016.

EPA should evaluate the Arkansas FIP requirements for coal-fired EGUs referenced in the federal register notice and amend the requirements to reflect timing of controls, costs of controls, and overall impact on visibility improvement.

In Utah, the Regional Haze litigation focuses on the agency again rejecting the state's plan and promulgating SCR technology to be implemented by 2021 even though analysis conclusively demonstrates that EPA's approach would achieve, at most, a 0.1 deciview improvement compared to the state's approach. Yet EPA's approach would increase costs by several hundred million dollars. If implemented, EPA's approach will have dire consequences for the local cooperative whose portion of capital cost ($45-50 million) would exceed their current financing capacity prior to 2025. Time is of the essence for EPA to reevaluate their approach and let the more cost-effective state SIP be adopted.

6. <u>EPA should finalize proposed revisions to 40 CFR Part 60 App. F Procedure 2, section 10.4</u>

   On November 21, 2016 EPA issued a direct final rule (81 Fed. Reg. 83160) and an alternative proposed rule (81 Fed Reg. 83189) addressing quality assurance requirements for particulate matter (PM) continuous monitoring to demonstrate Clean Air Act NSPS compliance. These actions were necessary to correctly account for the installation of additional PM control devices and their effect on compliance with annual quality assurance/quality control criteria.

   Due to comment on the direst final rule the rule had to be withdrawn as required by legal procedure. EPA should complete the rulemaking process on the proposed rule by addressing any concerns with it and an issue final rule revising section 10.4 referenced above for reasons heretofore stated.

Waste Issues:

1. <u>Revise the Coal Combustion Residuals, or "CCR," rule to reflect the permitting and risk-based opportunities provided by the Water Infrastructure Improvement for the Nation WIIN) Act – 40 CFR 257 & 261 (80 Fed. Reg. 21302, April 17, 2015)</u>.

   In the absence of clear RCRA authority, the CCR rule promulgated in 2015 established self-implementing one-size-fits-all federal standards for coal ash and air pollution control scrubber sludge; standards that can only be enforced through citizen suits.

The WIIN Act, signed into law last December, gives EPA new authority to implement the federal requirements through state permitting programs – the mechanism used to implement the current Municipal Solid Waste Landfill (MSWLF) requirements upon which the CCR criteria are based and even the federal *hazardous* waste rules. Most importantly, it allows those permits to reflect site-specific conditions and risks so long as the conditions in the permit are "as protective" as the federal criteria. The new law also allows EPA to establish a federal CCR permitting program for those states that do not adopt their own programs.

This new WIIN authority removes EPA's rationale for the current self-implementing approach as well as the Agency's justification for one-size-fits-all standards. EPA will be revisiting parts of the CCR rule under a settlement agreement which provides the perfect opportunity to reflect the new WIIN authority and incorporate site-specific, risk-based approaches into the federal standards.

Regulating CCR units under a state or federal permit that reflect site specific conditions and risks will significantly reduce the burden of complying with the CCR rule. In addition, implementing the requirement through permits will remove the burden of bringing, defending against, and adjudicating citizen suit – a burden reduction for everyone.

NRECA is a member of USWAG and wholeheartedly endorses the petition for reconsideration of the CCR rule submitted May 12, 2017, and to extend the upcoming CCR rule compliance deadlines. Owners and operators of CCR units are or will shortly be confronted with significant and irrevocable decisions or financial commitments to comply with the CCR rule – decisions or commitments that may be unneeded, inappropriate, or insufficient if the rule is modified. In addition, the CCR and ELG rules (see below) must work together and be implemented together. EPA has already stayed the ELG requirements while considering a petition submitted by UWAG. To make sure the two programs work together, compliance dates in the CCR rule should also be stayed.

2. Revise the PCB regulations to allow disposal of all wastes with PCB contamination of less-than 50 parts-per-million in modern, engineered landfills such as municipal solid waste landfills and other non-TSCA units.

EPA has determined that disposal of remediation wastes containing PCBs at less than 50 parts-per-million (<50 ppm) can be protectively managed in modern, engineered landfills such as municipal solid waste landfills (MSWLF) and other non-TSCA units. In fact, the PCB regulations already allow disposal of *most* < 50 ppm PCB-contaminated waste in non-TSCA facilities (*See* 68 Fed. Reg. 4934, January 31, 2003 acknowledging that < 50 ppm PCB remediation waste" has little inherent potential to pose an unreasonable risk to health or the environment."), but not all as-found remediation waste. EPA has issued approvals for NRECA and USWAG members to dispose of as-found < 50 ppm remediation wastes subject to conditions of the approval, including reporting to EPA, the state, and local authorities each time soil is disposed of under the approval. (Approval available online at https://www.epa.gov/pcbs/nationwide-risk-based-pcb-remediation-waste-disposal-approvals-under-title-40-code-federal#nreca, current as of May 15, 2017.)

While NRECA's members very much appreciate the approvals, we recommend that the PCB disposal regulations themselves be amended to reflect EPA's protectiveness determination and acknowledgement that PCB cleanup should be driven by the as-found concentration of PCBs (See 40

CFR 761.50(b)(3), "PCB remediation waste … is regulated for cleanup and disposal in accordance with 761.61" and 761.61 "Any person cleaning up and disposing of PCBs under this section shall do so based on the concentration at which PCBs are found."). EPA should allow *all* low-level (<50 ppm) PCB wastes to be managed in modern, engineered landfills such as MSWLF. We believe this change will encourage and significantly reduce the costs and regulatory burden of cleaning up low-level PCB contamination wherever it may be found.

3. Issue a Letter of Interpretation confirming that refined coal and boiler cleaning wastes do not trigger regulation of utility steam generation boilers as commercial and industrial solid waste incinerators (CISWI) – 40 CFR 60 and 241 (78 Fed. Reg. 9112, February 7, 2013).

   The commercial and industrial solid waste incineration (CISWI) rule established standards for units that "combust" solid waste. In comments on the proposed rule, the Utility Solid Waste Activities Group (USWAG) raised concern over potential application of the rule to boiler cleaning wastes and refined coal. The concerns were not resolved in the final rule or response to comments, and USWAG subsequently, on November 4, 2013, USWAG asked EPA to confirm that the introduction of refined coal and boiler cleaning waste into a utility boiler will *not* subject the unit to CISWI.

   In the course of operations, boiler cleaning wastes and refined coal may be introduced into a utility boiler as a practical way to manage materials without increasing emissions and even to reduce the emissions of certain contaminants. As explained in both the USWAG comments and the 2013 request, these materials are not combusted when introduced into utility boilers because these materials have no heating value are, therefore, not combusted. Consequently, they should not trigger the CISWI requirements.

   Since submitting the initial request for clarification, USWAG staff has provided additional justification for the request and has responded to additional questions from EPA's Office of Resource Conservation and Recovery (ORCR) staff, and have every reason to believe that the Agency is well underway toward issuing such a confirmation.

Water Issues:

1. Review and reconsider the Steam Electric Effluent Limitation Guidelines (ELG) rule with respect to the identification of best available treatment technology and the quality and public availability of information and data supporting the rule – 40 CFR 423 (80 Fed. Reg. 67838, November 3, 2015).

   The Steam Electric Effluent Limitation Guideline (ELG) rule prohibits discharge of waters used to transport coal ash and imposes unachievable standards for discharge of wastewaters from air pollution control systems (e.g. scrubbers). The rule is ripe for revision based on substantive and procedural deficiencies.
   - EPA significantly underestimated the costs of compliance and the actual availability of technologies undergirding the rule.
   - The rule will require many plants to redesign their ash and wastewater management systems at tremendous cost, yet with no assurance the technology EPA relied on will actually work.

- EPA grossly over-classified information, methods, and analyses as confidential business information (CBI) in violation of the Data Quality Act and its own guidelines on transparency and reproducibility.

Plants that can't retrofit their systems or can't meet the limits could be forced to close. NRECA urges EPA to revisit the best available technology (BAT) limits for flue gas desulfurization (FGD) wastewater and bottom ash transport water (BATW).

NRECA greatly appreciates that EPA has announced that it is considering petitions for reconsideration submitted by the Utility Water Act Group (UWAG) and the Small Business Administration Office of Advocacy. The recent administrative stay of the effective dates of the ELG rule is testament to the seriousness with which the Agency is considering the petitions. This stay is especially important for facilities that otherwise would have been forced to make imminent, significant, and irreversible capital investment within the next few months to meet the rule's aggressive implementation deadline.

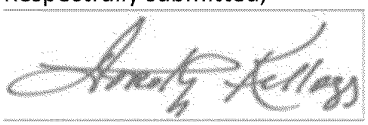
2. Withdraw and re-propose the Waters of the United States (WOTUS) rule – 33 CFR 328 (80 Fed. Reg. 37054, June 29, 2015).

The final WOTUS rule expanded Clean Water Act jurisdiction in a manner that affects electric cooperatives by delaying and increasing the costs for constructing new and maintaining existing power lines and by potentially increasing the costs to site, operate, and eventually decommission new and existing electrical generation facilities.

We appreciate and support Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" and look forward to working with EPA and the US Army Corps of Engineers in its implementation.

NRECA appreciates this opportunity to provide our initial recommendations for opportunities to reduce regulatory burden from certain regulations while protecting our environment. We particularly compliment EPA for the very public approach to soliciting burden reduction suggestions. We look forward to working with EPA and other stakeholders in implementing Executive Orders 13771 and 13777.

Respectfully submitted,



Dorothy Allen Kellogg
Sr. Principal – Environment Policy

CC: K. Bromberg, SBA Office of Advocacy

Edison Electric
INSTITUTE

Quinlan J. Shea, III
Vice President, Environment

May 15, 2017

Sarah Rees
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1200 Pennsylvania Avenue, N.W.
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[Submitted Electronically]

RE: Docket ID No. EPA-HQ-OA-2017-0190; Evaluation of Existing Regulations

Dear Ms. Rees:

The Edison Electric Institute (EEI) appreciates the opportunity to provide input on the Environmental Protection Agency's (EPA's or Agency's) notice—in accordance with Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda—seeking comments on regulations that may be appropriate for repeal, replacement or modification. The identification of these regulations is likewise consistent with the requirements of E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, which stipulates that two regulations be identified for elimination or revision for every new regulation proposed and that the costs of regulations be managed and controlled via a budgeting process.

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, our industry supports more than 7 million American jobs. Safe, reliable, affordable and clean energy powers the economy and enhances the lives of all Americans.

Driven by customer demands, technology developments, and federal and state regulatory obligations, the electric sector is undergoing a transition of its generating fleet that will continue over the next decade and beyond. Concurrent with this transition, EEI member companies are investing significant amounts of capital to make the energy grid smarter, more dynamic, more flexible, and more secure in order to integrate and deliver a balanced mix of resources from both central and distributed energy resources to customers.

The power sector has significantly decreased its emissions. At the end of 2016, the sector's emissions of sulfur dioxide (SO_2) were down 53 percent since 2014 and 91 percent from 1990 levels; emissions of nitrogen oxides (NOx) were down by 28 percent and 82 percent, respectively over the same periods. Additionally, carbon dioxide (CO_2) emissions were nearly 25 percent below 2005 levels. This has all occurred while electricity demand has increased 36 percent since 1990.

To support the ongoing fleet transformation and facilitate the continued operation of electric generating units (EGUs), EEI supports cost-effective public policies and a streamlined approach to regulation. In particular, EEI continues to support efforts—administratively and legislatively—to reform the permitting and siting process for critical energy infrastructure projects. An efficient and expeditious permitting process will enable electric companies to invest in energy infrastructure projects that will benefit customers, achieve greater environmental benefits, create jobs, and stimulate the economy.

EPA efforts to evaluate existing and forthcoming regulations and to look for areas of potential improvement are a key step toward establishing a regulatory structure that can appropriately support and inform the types of long-term investments EEI's members make in both existing and new generation capacity, as well as electric transmission lines and natural gas infrastructure. Consistent with EPA's request and E.O. 13777, these comments focus on examples of EPA regulations and significant guidance documents that potentially could be revised in order to reduce administrative burdens, simplify and streamline the overall process, and enhance the ability of EEI's members to permit, site and operate generation, transmission and other infrastructure assets while maintaining environmental integrity.

Importantly, these comments specifically do not address wider regulatory initiatives already identified by the Administration—including, but not limited to, the Administration's stated intent to revise the Waters of the United States (WOTUS) rule; E.O. 13783, Promoting Energy Independence and Economic Growth, which requires a review and possible revision, rescission or replacement of the Clean Power Plan; the reconsideration of the effluent limitations guidelines and standards for the steam electric point source category; and, any changes to regional haze requirements. EEI and its members intend to participate in these initiatives as they are developed.

The Clean Air Act (CAA)

Many of EEI members' generation and other assets are subject to numerous requirements under the CAA and, in particular, are subject to requirements for individual source permitting. Briefly and non-exhaustively, EGUs often must obtain individual source permits as part of the State Implementation Plan (SIP) process to help attain and maintain the National Ambient Air Quality Standards (NAAQS) under CAA section 110, which includes permitting under the Prevention of Significant Deterioration (PSD) program contained across CAA sections 160-169. Further, fossil fuel-based EGUs are subject to New Source Performance Standards (NSPS) under CAA section 111, and have fully implemented standards to reduce emissions of hazardous air pollutants (HAPs) under CAA section 112. Fossil fuel-based EGUs also comply with requirements under Title

IV's Acid Rain Program, obtain operating permits consistent with Title V of the CAA, and address visibility concerns under CAA section 169A.

EEI's members aim to comply with this array of requirements in a coordinated and cost-effective fashion so that they can continue to provide safe, reliable and affordable electricity to customers.

Certain elements of these regulatory programs could be streamlined, improved or modified in order to reduce the administrative burdens these programs can impose, thereby reducing costs to customers while maintaining or exceeding current levels of environmental protection. Such changes would enhance the ability of EEI's members to permit, site and operate fossil fuel-based generation, transmission, and other infrastructure assets while also protecting the environment. To that end, EPA should:

- Modify the Greenhouse Gas Reporting Rule to incentivize the deployment of carbon capture and storage (CCS) technology by clarifying that CO_2 utilized for enhanced oil recovery (EOR) should not report under Subpart RR, but instead under Subpart UU. Such a change would help to incentivize, and make more cost effective, the deployment of CCS technologies by allowing the captured CO_2 to be utilized more widely for EOR;

- Evaluate stack testing and reporting requirements—which exist across multiple rules and programs—to streamline compliance requirements. Numerous programs under CAA sections 112 and 110, as well as requirements for compliance with CAA title IV and title V, require duplicative stack testing and emissions reporting. In addition, EPA should evaluate whether the frequency of testing that is currently required is necessary given the widespread use of Continuous Emissions Monitoring Systems (CEMS) by EGUs, and should evaluate whether the emissions reports required under current programs are duplicative of the reports contained within a unit's title V operating permit;

- Withdraw the "once in, always in" guidance that interprets certain CAA section 112 applicability requirements so that a major source will always be treated as major, even if it becomes an area source under EPA's regulation. Reinterpreting this guidance could encourage fossil fuel-based EGUs to make improvements that would reduce emissions if they would allow reclassification as a minor source, with the attendant reductions in reporting obligations;

- Reevaluate the final rule establishing operational and emission controls for units identified as commercial and industrial solid waste incineration (CISWI) units, which establishes standards on units that "combust[s] any solid waste."

Historically, however, several types of materials have been introduced into utility boilers, including boiler cleaning waste and refined coal, as a practical way to manage material without increasing emissions and to reduce the emissions of certain contaminants. These beneficial practices should not trigger CISWI regulation, within the boundaries established by court precedent. The evaporation of boiler cleaning waste in utility boilers is a practical, cost-effective method for managing materials that are mostly or entirely water-based and does not increase emissions beyond regulatory thresholds. Accordingly, EPA should clarify the CISWI rule to explain that these activities do not necessarily trigger regulation, and allow fossil fuel-based EGU operators to manage waste materials and emissions in a cost-effective manner, subject to environmental considerations.

The Resource Conservation and Recovery Act (RCRA)

Many of EEI's members also are regulated under RCRA through the provisions of EPA's Coal Combustion Residuals (CCR) rule. While the CCR rule provides significant health protections and requirements for appropriately managing CCRs, the Water Infrastructure Improvement for the Nation (WIIN) Act provides a mechanism for implementation of the CCR rule through state or federal permit programs and therefore the rule should be revised to allow regulatory agencies to tailor the rule's groundwater monitoring and corrective action programs based on site-specific conditions while maintaining the rule's important environmental protections. This would reduce both administrative and substantive economic burdens on fossil fuel-based EGU operators. EPA should:

- Extend compliance dates established in the CCR rule to provide time for implementation of permit programs given the WIIN Act's establishment of procedures for states and EPA to implement the CCR rule through permit programs. This will avoid unnecessary capital expenditures for elements of the rule that may be implemented differently by a state permit program than as contemplated by EPA's final CCR rule;

- Revise the CCR rule to include site-specific flexibility regarding groundwater monitoring and corrective action similar to that provided in the municipal solid waste regulations and applied under state risk-based cleanup programs;

- Modify the CCR rule so that inactive surface impoundments (*i.e.*, impoundments that did not receive CCR after the rule's effective date) are not subject to regulation. EPA and the states can address any risks from these units in a more cost-effective manner under pre-existing imminent hazard provisions.

The Clean Water Act (CWA)

EEI's members are subject to numerous requirements under the CWA because some of the activities undertaken by electric utilities result in a discharge of pollutants to—or a modification of—a WOTUS, therefore requiring a permit under the CWA. Specifically,

EEI's members often must comply with the requirements of section 402, the National Pollutant Discharge Elimination System (NPDES), and section 404, Permits for Dredged or Fill Material that include the streamlined Nationwide Permits (NWP) program. EGUs also are governed by a variety of other substantive CWA provisions that address water quality criteria and standards, including cooling water intake structures through CWA section 316(b) and effluent guidelines.

EEI's members strive to comply with this array of requirements in a coordinated and cost-effective fashion. However, certain parts of EPA's regulatory programs under the CWA could be streamlined, improved or modified to help reduce the administrative burdens these programs can impose, thereby reducing costs to customers while protecting the environment. To that end, EPA should:

- Withdraw the 2015 Water Quality Standard rule, which impinges on states' authority to set water quality standards while considering each state's priorities and greatly reduces state flexibility to consider other factors when establishing standards. The rule unnecessarily complicates the process and could hamper the ability of fossil fuel-based EGUs to obtain and comply with NPDES permits;

- Rescind EPA's 2016 human health criteria for Washington state and Maine and reinstate the prior practice of giving states discretion as to how they apply fish consumption and exposure criteria by allowing them to propose more applicable criteria. Allowing the states to propose their own criteria potentially save significant project implementation costs;

- Withdraw the proposed 2016 NPDES Application and Program Updates rule, which would make changes to the state-delegated NPDES program and establish federal veto authority, among other concerning programmatic changes. The proposed rule has the potential to create additional permit backlogs, and EEI looks forward to engaging in a constructive dialogue with the Agency to explore opportunities for achieving additional efficiencies in the NPDES program;

- Withdraw the final 2016 EPA-USGS report, "Protecting Aquatic Life from Effects of Hydrologic Alteration." The report addresses protections for aquatic life from the effects of flow alteration—in particular, for changes in historic flow patterns that can result from climate change. However, the final report did not address all the technical and policy concerns raised by commenters;

- Withdraw the proposed "Draft Field-based Methods for Developing Aquatic Life Criteria for Specific Conductivity" given the document's technical and scientific deficiencies that would generate overly conservative criteria, leading to unnecessarily costly implementation of water quality criteria.

Again, EEI appreciates the opportunity to provide input on the EPA's notice requesting comment in accordance with E.O. 13771. If you have any questions concerning EEI's input, please contact me (qshea@eei.org or 202-508-5027) or another member of the EEI team.

Sincerely,

Quinlan J. Shea, III

cc: Ryan Jackson
Samantha Dravis
Brittany Bolen
Byron Brown
Mandy Gunasekara
Emily Fisher
Kathy Steckelberg
Chuck Barlow

DoD Comments
Evaluation of Existing Regulations Rule;
82 Federal Register 17793 (April 13, 2017)
Docket ID: EPA-HQ-OA-2017-0190

In accordance with Executive Order 13777, the Environmental Protection Agency (EPA) is requesting input on regulations that may be appropriate for repeal, replacement or modification to alleviate unnecessary regulatory burdens placed on the American people.

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EPA-Office of Air and Radiation

1. Electronic Record Keeping and Reporting

Regulation
EPA-HQ-OAR-2009-0174, RIN 2060-AP63, Electronic Reporting and Recordkeeping Requirements for New Source Performance Standards Final Rule; Amendments, (signed, but not published in the federal register, Prepublication Version)

Comment
The above mentioned regulation imposes unnecessary requirements on DoD installations that result in cost increase and additional administrative burden. The lack of flexibility associated with electronic recordkeeping in regulations may be too prescriptive.

Discussion
40 CFR 60 requires facilities subject to certain New Source Performance Standards (NSPSs) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) to submit reports to EPA via the Compliance and Emissions Data Reporting Interface (CEDRI) website. Although CEDRI is intended to facilitate reporting and demonstration of compliance, not all DoD computer systems are able to access and use the system due to security constraints. This causes additional burden and costs to facilities which could be eliminated if submitting the reports via hard copy in the mail or digital signatures were allowed.

Recommendation
Recommend EPA maintain the submittal of reports via the CEDRI website as a way to submit the regulatory reports, but allow facilities the option of submitting digitally signed and/or hard copy reports via the mail.

2. Modify the existing Reciprocating Internal Combustion Engines (RICE) National Emissions Standards for Hazardous Air Pollutants (NESHAP)

Regulations
40 CFR 63.6603
40 CFR 63.6640

Comment

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The RICE NESHAP requires facilities to change the engine oil and filter every 500 hours of operation or annually, whichever comes first except during periods of startup. This can generate unnecessary costs and waste.

Discussion
Maintenance personnel are required to check the oil and filter during the preventative maintenance inspections of the equipment and determine when the oil and filters need to be changed. Many times the oil does not need to be changed annually. The requirement in this regulation to replace the oil at least annually may force the replacement of good oil before it is necessary, resulting in excess spending and waste. Note: Equipment on an oil analysis program often indicates that the oil is still good past one year.

Recommendation
Modify existing regulations to remove requirement for oil to be changed annually and allow maintenance personnel to use their experience and training to maintain/manage equipment properly to keep the air emissions at acceptable levels.

3. Modify Existing Definition of Emergency Stationary RICE and ICE

Regulations
40 CFR 63.6675 - Stationary RICE
40 CFR 60.4219 - Compression ICE
40 CFR 60.4248 - Spark ICE

Comment
Request that the definition of an emergency situation for stationary RICE/ICE operation be expanded to include use of the engine in advance of severe storm activity or other phenomena that may cause a power outage.

Emergency stationary RICE means any stationary reciprocating internal combustion engine that meets all of the criteria in paragraphs (1) through (3) of this definition. All emergency stationary RICE must comply with the requirements specified in §63.6640(f) in order to be considered emergency stationary RICE. If the engine does not comply with the requirements specified in §63.6640(f), then it is not considered to be an emergency stationary RICE under this subpart. (1) The stationary RICE is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc.

Discussion
Emergency engines under the rule are limited to not more than 100 non-emergency hours of operation (unlimited emergency hours). For many engines, it is hard to stay under this threshold, even when only performing testing and maintenance. Facilities may have operations, such as hospitals, which require the use of emergency engines to prepare for

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and/or prevent loss of critical power. Expanding the language under the definition to explicitly include use of engines in advance of a severe storm, etc. would allow of maintenance of critical power and facilitate compliance with the 100 hour limit for non-emergency operation.

Recommendation
Recommend EPA change the definitions of Emergency stationary RICE/ICE at 40 CFR 63.6675, 40 CFR 60.4219, 40 CFR 4248, etal to include operation of the engines in advance of a potential outage. This could be done by adding a sentence to the definitions such as "This includes operation of stationary RICE in advance of a severe storm, etc. to transfer power in anticipation of an outage."

4. Modify and Standardize Existing Compliance Records of Shipbuilding and Ship Repair NESHAP with Other Coatings NESHAPs by Requiring Coating-level Vice Batch-level Compliance

Regulation
40 CFR 63.745
40 CFR 63.780

Comment
Among the several National Emission Standards for Hazardous Air Pollutants (NESHAPs) that address volatile organic Hazardous Air Pollutant (HAP) content of paints and coatings, the NESHAP for Shipbuilding and Ship Repair (40 CFR 63.780 et seq.) is alone in requiring certification of compliance for each batch of coating, rather than requiring documentation that compliant product formulations are used. Harmonizing this aspect of the Shipbuilding and Ship Repair NESHAP to be consistent with the other surface coating NESHAPs would simplify associated compliance documentation efforts without lessening environmental protections.

Discussion
For cost, performance, and quality control reasons, manufacturers carefully control the formulations of paint and coating products. While a batch may vary in composition from other batches of the same product, the amount of variation is expected to be minimal. Requiring a demonstration of compliance for each product batch is unique to the Shipbuilding and Ship Repair NESHAP and has created additional record-keeping burdens for Navy ship repair facilities. This burden is amplified because a coating received at one location may be used at another if transported on the vessel. Because an EPA or authorized state inspector may request to see the certification documentation associated with a randomly chosen paint container, it has been necessary to develop and maintain a database of batch certifications for marine coatings purchased throughout the Navy. Compliance would be simplified, with no loss of environmental protection, if the requirement for documentation at the batch level were changed to product formulation-level documentation, as is the case for (all) other surface coating NESHAPs including the Aerospace, Wood Furniture Manufacturing, Auto and Light Duty Truck, Fabric and Other Textiles, Wood Building

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Products, Large Appliance, Metal Furniture, Miscellaneous Metal Parts and Products, and Plastic Parts and Products NESHAPs.

Formulation-level compliance documentation such as found on Safety Data Sheets or other manufacturer's data sheets is typically easier to obtain from the manufacturer than coating batch documentation. The individual batch certification, found only in this NESHAP, should be eliminated in favor of other methods of demonstrating compliance.

Recommendation
Remove references to "batch" and to "certifying" each batch, and replace "batch" with "product formulation" or simply "coating" throughout the National Emission Standards for Shipbuilding and Ship Repair (Surface Coating), 40 CFR 63.780 through 40 CFR 63.789.

1. Change the language focused on certifying batches of coating to mirror the types of language found in other NESHAP such as the Aerospace NESHAP, which in the parallel sub-section (§63.745(c) Uncontrolled coatings) simply says:

"Each owner or operator shall comply with the organic HAP and VOC content limits specified …"

Batch appears in several locations in the Shipbuilding and Ship Repair NESHAP, but in particular,

- "Batch" should be deleted from the definitions, Section 63.782.
- The flowchart, Figure 1 to Section 63.785, should be revised to remove the word batch and substitute "coating."
- Equation 3 should be simplified to eliminate summing from i=1 to "n" number of batches,
- Delete the batch certification form "Appendix A to Subpart II of Part 63- VOC Data Sheet."

2. List the types of manufacturer-provided or other information (other than a batch certifica tion) that are acceptable to demonstrate compliance.

5. Modify and Broaden Existing Acceptable Information Types that May Demonstrate Compliance with Coating HAP Limits

Regulation
40 CFR 63.745
40 CFR 63.780

Comment
DoD procurement of coatings often requires manufacturers to demonstrate that the product meets the specified performance and composition criteria, such as HAP limits. Accepting documented compliance with such specifications as proof of NESHAP compliance would simplify compliance recordkeeping.

Discussion

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Potentially all of the surface coating NESHAPs could be revised to allow a specification that limits the formulation of a coating to a compliant level to be used to document compliance of all coatings qualified under that standard. For example, many military specifications (MILSPECs) contain volatile organic compound or HAP content criteria. In order for a manufacturer to place a material on the qualified product list for a MILSPEC, they must show that the product meets the specified performance and composition criteria.

Recommendation
Allow reference to specifications and manufacturer documented compliance with specifications as a means of establishing that individual coatings are compliant.

Language such as the following may be used:

"You may demonstrate the mass of organic HAP per unit volume of coating g/liter (lb./gallon), as supplied, does not exceed the applicable limit using either
(1) A value obtained from a specification or standard as defined * for coatings qualified to conform to the specification or standard, or
(2) Information provided by materials suppliers or manufacturers, such as safety data sheets, product data sheets, manufacturer's formulation data, or manufacturer's test data, when the mass of organic HAP per unit volume of coating is represented in such documents.

*Suggested definitions for specifications and standards:
"Specification" means a document that describes the essential technical requirements for purchased material that meets or exceeds military, NASA, or other purchaser's performance requirements. A military specification, or MILSPEC, is an example of a specification.

"Standard" means a document that establishes uniform engineering and technical requirements for processes, procedures, practices or methods that meet or exceed military, NASA, or other user's performance requirements."

6. Repeal Existing Title V Emergency Affirmative Defense Provision

Regulation
EPA–HQ–OAR–2016–0186; FRL–9947–56–OAR, RIN 2060–AS96, 81 FR 38645, "Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Program and Federal Operating Permit Program" proposed rule of June 14, 2016

Comment
EPA is proposing to remove the affirmative defense provision for emergencies found in the regulations for State and Federal operating permit programs which would remove emergency provisions conditions from DoD's air permits.

Discussion
The CAA has several provisions authorizing the President to waive applicable requirements of the Act to meet national emergencies or address the national security interest [Sections 110(f) and 112(i)(4)]. The DoD and other National Emergency and Security Agencies

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should be able to use these Presidential provisions to waive applicable requirements to the Act.

As a result, EPA included emergency affirmative defense provisions from Federal and State operating permit programs in 40 CFR 70, Section 70.6(g) and 40 CFR 71, Section 71.6(g). Currently, these regulations provide DoD the capability to act quickly to national emergencies and address national security, which includes operations of DoD forces introduced into hostilities, peacekeeping operations, rendering emergency humanitarian relief, actions to extinguish wildfires, responses to oil or hazardous spills, responses to natural disasters, etc. By removing the Title V Emergency Affirmative Defense Provisions from Federal and State Operating Permit Programs as proposed in this rule, the Emergency Provisions condition in DoD's air permits would be removed and DoD may not be able to act quickly to national emergencies or address national security or be at risk of violating their air permit conditions.

DoD does not believe that the recent court decisions from the US. Court of Appeals for the D.C. Circuit (in the 2014 NRDC v. EPA case) intended to restrict DoD from acting during national emergencies and addressing national security when the court held that this affirmative defense provision exceeded the EPA's statutory authority and that only the courts have the authority to decide whether to assess penalties for violations in civil suits. It is unreasonable for the courts to cause the EPA to revise the regulation without providing a legal mechanism to allow DoD to act quickly during national emergencies and addressing national security. In these situations, DoD should not have to wait and go to court to obtain approval to act or be put at risk for violating their air permit conditions and possibly having to go to court and be assessed penalties.

Recommendation
Withdraw this proposed rule. Before EPA removes the emergency affirmative defense provisions from Federal and State operating permit programs from the regulations, 40 CFR 70, Section 70.6(g) and 40 CFR 71, Section 71.6(g), the courts and EPA should provide a legal mechanism to allow DoD and other National Emergency and Security Agencies to act quickly during national emergencies and addressing national security, as intended by the Presidential waivers in the CAA.

7. Modify Proposed Rule: Publicly Owned Treatment Works (POTW) NESHAP

Regulations
EPA–HQ–OAR–2016–0490; FRL–9956–87–OAR, RIN 2060–AS85, 81 FR 95352, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works proposed rule of 27 December 2016
EPA–HQ–OAR–2016–0490; FRL–9959–53–OAR, RIN 2060–AS85, 82 FR 11334, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works proposed rule, extension of comment period of February 22, 2017

Comment

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The applicability of the POTW rule includes small POTW which may be collocated at a facility which is a major HAP source. However, the intent of the amendments is not to include small POTW.

Discussion
In the proposed amendments to the rule, EPA states "We do not intend to include small POTW that are not a major source of HAP emissions." 81 FR 95387. However, the applicability, as written, includes small POTW which may be collocated at a facility which is a major HAP source. Small POTW should be exempted from the rule.

Recommendation
Modify the applicability of this rule to only apply to POTW which are major HAP sources in and of itself and exempt small POTW.

8. Repeal Existing 2016 Amendments to National Consistency Regulations

Regulations
Amendments to Regional Consistency Regulations Final Rule, 3 August 2016 (81 FR 51102)
40 CFR Part 56 Regional Consistency
Clean Air Act Title III § 301 (a)(2) [42 USC §7601(a)(2)]

Comment
For 35 years, CAA Title III § 301(a)(2) has required EPA to establish a regulatory process structure (e.g. 40 CFR Part 56) to ensure EPA regions operated in such a way to "assure fairness and uniformity in criteria, procedures and policies of the various regions in implementing and enforcing" Title III on a national basis. This fairness and uniformity should be maintained.

Discussion
On August 3, 2016, EPA promulgated amendments that revised the National Consistency Regulations to allow (at EPA discretion) the application of regulatory interpretations and Federal Judicial decisions to be implemented on an individual Circuit basis instead of having to ensure applicability across the nation.

The finalization of these amendments may greatly increase environmental compliance risk and cost variability at DoD installations due to potential variation in regulatory requirements across the country created as regulatory issues are reviewed and/or litigated. There is also a risk of unbalanced and uneven interpretation and enforcement of regulations as facilities located in disparate geographical regions will be subject to different rules.

Recommendation
DoD supports the remand/vacatur of the amendments revising the National Consistency Regulation that has worked without change since its inception.

9. Modify Existing Once In – Always In Policy (OIAI)

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Regulations
40 CFR Part 63
NESHAP: General Provisions Proposed Rule of 3 January 2007 (EPA-HQ-OAR-2004-0094, RIN 2060-AM75, FRL-8263-3, 72 FR 69)
"Potential to Emit for MACT Standards--Guidance on Timing Issues" Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS) to EPA Regional Air Division Directors, May 1995 (Seitz- May 1995)

Comment
Policy established by the Sietz – May 1995 memorandum states that once a source is determined to be a major HAP source subject to a 40 CFR Part 63 NESHAP standard, the source remains a "major" source even if the facility undertakes pollution prevention process improvements or installs control devices to reduce emissions below the major source applicability thresholds.

This policy is not mandated by the statute and creates a significant disincentive for companies to reduce emissions via emissions controls or pollution reduction process improvements. Such sources have additional requirements as a "major source," including the requirement to obtain a Title V operating permit.

Discussion
DoD has installations that are Title V sources only because they are considered a major source of air toxics and would remain that way even if their mission was to change such that the HAP emissions were substantially reduced below major source applicability thresholds.

On January 3, 2007, EPA proposed a rule "NESHAP: General Provisions" (72 FR 69), to allow a major source to become an area source but it never completed rulemaking before it was withdrawn.

Recommendation
Revise the OIAI policy such that a facility that is originally subject to a major source NESHAP ("NESHAP X"), but which subsequently reduces its facility-wide potential emissions below the major HAP source thresholds is no longer be subject to "NESHAP X" when the actual emissions from the regulated units do not exceed 25% of either of the major HAP source thresholds, and any one of the following conditions apply:

- The emission reductions were achieved from the source categories regulated by "NESHAP X" using only pollution prevention methods (e.g., compliant coatings, approved solvents, etc.).
- The emission reductions were achieved from the source categories regulated by "NESHAP X" using control technology (in whole or in part) and the facility obtains a Federally enforceable permit condition that requires the continued use of the control technology.
- The emission reductions or enforceable permit limitations were achieved from other source categories, and the reductions in potential emissions attributed to compliance with the control technology and pollution prevention requirements of "NESHAP X" are not needed for the facility to qualify as an area or synthetic minor HAP source.
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10. Modify Existing Regulation to Allow At-Risk Construction to Avoid Project Delays

Regulation
40 C.F.R. §51.165(a)(1)(xv)

Comment
Federal permit writers, and most states, interpret the term "begin actual construction," defined in 40 CFR 51.165(a)(1)(xv), in such a manner that does not allow significant construction of a project to begin until the permit is approved. However, some states allow construction of a project to begin prior to approval of the New Source Review (NSR) construction permit -typically for minor NSR permit actions. This mechanism is employed in a handful of states and allows project construction to begin with the understanding by the applicant that changes to the project (due to the permit application review) or complete denial of the permit is possible. Construction is "at-risk" to the applicant. Allowing at-risk construction for all federal and state permitting would significantly reduce the delays in projects.

Discussion
In practice, "begin actual construction" has by policy been extended to prohibit construction on "any installation necessary to accommodate the emissions unit." We believe sources should be able to conduct early work up until the piece of equipment is actually emitting, with the understanding that any risk that the permit could be changed or denied entirely will be borne by the permittee. This includes laying underground piping, excavating, bringing in fill to prepare the area where the emission unit(s) will sit, and other efforts until the point prior to installing the emissions unit. The nature of the DoD budgeting process makes it very difficult to plan and budget for construction under the current circumstances. We propose to change the definition of "begin actual construction" to allow construction activities to begin with the permittee bearing risks of changes to or denial of the final permit, or create a waiver process similar to one used by state of Missouri below.

Pre-Construction Prohibition Waiver Air Pollution Control Program Fact Sheet
(02/2014)
Division of Environmental Quality Acting Director: Steve Feeler
PUB02014

Construction permits are required for the construction of new air pollution sources, or the modification of existing air emission sources, prior to commencement of construction. Under certain conditions a facility may request a waiver, or variance, from this requirement prior to beginning construction in accordance with 10 CSR 10-6.060(1)(C). In order to qualify for a pre-construction prohibition waiver, a facility must meet all of the requirements on the following checklist. In particular, projects subject to section (7) or (8) or (9) reviews, without permit conditions, are not eligible for a waiver. If a pre-construction prohibition waiver is granted, construction on the facility may begin prior to the granting of the permit. Every effort is made to process these waivers in a timely manner.

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The company receiving the waiver cannot operate the constructed unit until, or unless, a valid permit is issued. In addition, the company receiving a waiver risks the expense and inconvenience of not being able to operate should the department decide to deny the permit.

To process an applicant's request for a pre-construction waiver the applicant should write a letter or include in their application the following information or statements:

- *The applicant acknowledges that the project requested is not or will not be "major" (will not be subject to section (7) or (8) of 10 CSR 10-6.060, or Part C or D of the Act).*
- *The applicant states that construction at the site has not begun.*
- *The applicant accepts all liability associated with the possible denial of the permit application.*
- *The proposed schedule of construction activities has been provided.*
- *The permit application has been submitted.*

Recommendation
Change definition of "begin actual construction" in 40 CFR 51.165(a) (1) (xv) to allow commencement of construction activities or create a waiver process similar to one used by the State of Missouri (described above).

11. Repeal Existing Regulation on Clean Air Act Vehicle Inspection and Maintenance Employee Program Tracking

Regulation
40 CFR § 51.356(a)(4)

Comment
By letter dated July 29, 1998 the U.S. Department of Justice, Environmental and Natural Resources Division notified EPA that the provisions of 40 C.F.R. § 51.356 which required states to implement 42 U.S.C. § 7418(d) was inconsistent with the waiver of sovereign immunity located in 42 U.S.C. § 7418(a).

Discussion
Clean Air Act (CAA) Section 118(d) requires that Privately Owned Vehicles (POVs) operated by federal employees on federal facilities be in compliance with the emissions standards applicable to the vehicle inspection and maintenance (I/M) program area wherein the facility is located. For each DoD facility located within an area where a Vehicle I/M program is required by a State Implementation Plan pursuant to the CAA, the commander is required to ensure that employees provide proof of compliance with CAA Section 118(d). One example of a state regulation that should be disapproved and is in the current SIP is that of North Carolina's regulation 15A NCAC 02D.1002(a)(3) which is implemented pursuant to 40 CF.R § 51.356(a)(4). EPA approved this rule into the SIP on February 5, 2015 at 80 Fed. Reg. 6457, notwithstanding the fact that 40 C.F.R § 51.356(a)(4) is invalid.

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Recommendation
40 C.F.R. § 51.356(a)(4) should be revoked. Additionally, state and local regulation provisions which implement the requirements established by 40 C.F.R. § 51.356(a)(4) should be disapproved by EPA in accordance with 42 U.S.C. § 7410(k)(3), unless the provisions of the state regulations are consistent with the waiver of sovereign immunity set forth in 42 U.S.C. § 7418(a) and apply the same vehicle emissions and inspection requirements to all entities that allow operation of vehicles on their premises (e.g.-universities).

12. Repeal Proposed CAA Site Remediation Maximum Achievable Control Technology (MACT) rule.

Regulation
40 CFR 63

Comment
Remedial systems are typically small sources for air emissions from SVE or Air stripping operations. This requires additional evaluations, permitting, and oversight of inconsequential emissions. EPA is proposing to amend the rule by removing exemptions for site remediation activities performed under authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) 40 CFR 307 and Resource Conservation Recovery Act (RCRA) 40 CFR 63 and 40 CFR Parts 264 and 265. However, the need to amend the rule to remove the CERCLA/RCRA exemptions is not justified/warranted.

Discussion
The proposed rule also extended compliance requirements to spill sites that are determined to be a major stand-alone source of HAP's. This includes eliminating requirement for standalone site remediation, with the potential to emit 10 tons per year of a single HAP or 25 tons per year for a combination of HAPs, to comply with NESHAPs. At 81 FR 29824 (Part IV.B.), EPA states "We do not anticipate any HAP emission reductions from the proposed removal of the RCRA/CERCLA exemption." Also, site remediation under the CERCLA/RCRA programs serve as the function equivalents of the establishment of NESHAP under CAA section 112 and include air emission controls to provide protection of public health and the environment from air pollutants emitted during site remediation activities. Therefore, removal of the exemption is not justified.

Recommendation
Suspend/revoke the proposed rule submitted on May 13, 2016, in response to a petition for reconsideration of the EPA proposed rule changes to the 2006 final MACT rule to remove the exemptions for site remediation activities conducted under the authority of CERCLA or RCRA corrective action. Retain the exemptions at 40 CFR 63.7881(B)(2) and (3), and delete the proposed 40 CFR § 63.7882 (b)(5)(i) and 40 CFR §63.7882 (b)(5)(ii)

EPA-Office of Land and Emergency Management

13. Modify Existing Regulation Requiring a Home Phone Number

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Regulation
40 CFR 265.52 (d)
(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

Comment – Requiring a home phone number is an out of date practice and causes unnecessary release of personal information.

Discussion – Emergency response personnel generally have dedicated cell phones or office phones that they use for their spill response duties. Also, release of personal home phone numbers can pose a risk to employees.

Recommendation – Recommend deleting "(office and home)" language in 40 CFR 265.52(d).

14. Repeal the proposed Vapor Intrusion (VI) revisions to the Hazard Ranking System under CERCLA

Regulation
40 CFR Part 300, 82 FR 2760 and 82 FR 14324

Comment
It is unclear how EPA intends to fill the gaps with the technical issues and address the ambiguities and inconsistencies in between the 2015 Vapor Intrusion Guide and the final rule. This rule may not be necessary because DoD, other federal agencies, and private entities are currently adequately addressing VI sites, regardless if the site is listed on the National Priorities List (NPL).

Discussion
EPA issued a final rule adding a "subsurface intrusion" (SsI) component to the HRS. SsI can include either groundwater or vapor intrusion. Although the proposed rule claims it will "have minimal impacts on federal facility cleanup programs," it is unclear whether this is true based on the review conducted by DoD. The proposed rule is lengthy, highly complex, lacks transparency in some places, and the methods for prioritizing VI potential are inconsistent with the June 2015, EPA chlorinated VI and petroleum hydrocarbon (PVI) guidance documents. DoD's review identified numerous technical issues with the proposed rule which affect its usability/defensibility for scoring sites for inclusion on the NPL. These technical gaps need to be addressed before DoD can appropriately evaluate the proposed rule's full impact. The EPA continues to assert that they do not expect an increase in the number of site assessments per year, contrary to the expectation that the proposed rule would likely have an impact on Federal Facilities.

Recommendation

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EPA should repeal the final rule with a delayed effective date until guidance for the full implementation of the rule is available. Additional analyses are needed to support EPA's claim, given the potentially flawed scoring process. The EPA should repeal the addition of the subsurface pathway to the Hazard Ranking System (HRS).

15. Modify existing regulation to allow similarly credentialed environmental professional certifications to certify EPA SPCC Plans

Regulation
40 CFR 112

Comment
The requirement that only a licensed Professional Engineer can certify a SPCC plan has been in the SPCC regulation for over 20 years. While EPA does allow "qualified facilities" designated as Tier I and II certified facilities (no container > 5,000 gal or cumulative site above ground bulk container storage capacity <10,000 gallons) to self-certify their SPCC plans as codifed at 40 CFR 112.3(g), the fact remains that licensed Professional Engineers hold a monopoly over this segment of the environmental compliance sector. "Environmental equivalence" is allowed in the SPCC rule for purposes of secondary containment for bulk containers (i.e., allowing an alternate method of spill prevention, control, or countermeasure other than what is specified in 40 CFR 112), so why cannot "Environmental equivalence" in terms of who can review and certify a non-Tier I or Tier II SPCC plan be allowed?

Discussion
Environmentally equivalent professional certifications bring ample professional expertise to the field of oil spill prevention, control, and countermeasure and in reviewing and implementing SPCC plans. If it can be allowed for a facility to self-certify their plan for aboveground bulk storage of <10K gallons, why cannot an experienced environmental compliance professional certify the SPCC plan for a regulated facility? Realistically, there is no difference in spill control and plan content for a site with an aboveground bulk storage capacity of 9,999 gallons (qualified facility) versus a site with an aboveground bulk storage capacity of 10,001 gallons (non-qualified facility), with the exception that the latter requires a P.E. to prepare and certify the plan. In addition, the EPA's current requirement for a P.E. to review and certify a plan does not specify that the P.E. must have an environmental background. So in essence, a licensed P.E. in Electrical Engineering could theoretically certify an SPCC plan, even though that individual may have zero experience in environmental engineering or compliance.

According to the Institute of Hazardous Materials Management, the credentialing authority for the CHMM certification, in order for a Certified Hazardous Materials Manager (CHMM) to obtain this credential, an applicant must meet two prerequisites to sit for the CHMM examination:

1. Have at least a Baccalaureate degree (or higher) from an accredited college or university.
2. Have at least a minimum of four years of relevant experience in the field of hazardous materials management or a related field. The relevant experience includes, but is not lim ited to, the following examples:
    a. Hazardous materials identification and handling in compliance with applicable

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laws and regulations.
b. Planning and preparing for and responding to hazmat emergencies and incidents.
c. Sampling and analysis (of air, water, soil, waste) for potential contaminants.
d. Site investigation and remediation.
e. Hazmat program or project management. See: http://www.ihmm.org/applicants/eligibility-requirements-chmm. In addition, there are continuing education requirements of at least 20 Certification Management Points (CMPs) per year to maintain one's CHMM credential.

Similarly, for example, for a licensed Professional Geologist (P.G.) certification, an applicant must pass a state board licensing exam which typically entails passing the Fundamentals of Geology examination, which includes:

A. General Geology: Field Geology, Geophysics, Imagery, Modeling, & Graphical Methods
B. Mineralogy, Petrology, & Petrography
C. Sedimentology, Stratigraphy, & Paleontology
D. Quaternary Geology, Geomorphology, & Surficial Processes
E. Structure, Tectonics, & Seismology
F. Hydrogeology & Environmental Geochemistry
G. Engineering Geology
H. Economic Geology & Energy Resources

Recommendation
Modify the current SPCC plan requirement at 40 CFR 112.3(d) that a non-Qualified Plan or a Technical Amendment must be reviewed and certified by a state-licensed Professional Engineer. Expand the non-Qualfied facility review and SPCC plan certification requirement to allow an equivalent environmental professional, such as a CHMM (Certified Hazardous Materials Manager), PG (Professional Geologist), LSP (Licensed Site Professional), or any other national, United States-based professional certification having an Environmental focus or hazardous materials compliance focus. Facilities can still retain a Professional Engineer to certify and stamp their plans if desired.

16. Modify existing RCRA Underground Storage Tank Rule

Regulation
40 CFR 280.31(c)

Comment
Not allowing testing/inspection of impressed current system at same frequency as inspection of remote tanks creates different regulatory burden for different protective measures. This creates additional time and resource burdens unnecessarily. Modifying this Rule would

Discussion
There is an exception for inspection frequency greater than once every 30 days if the UST fuel delivery frequency is greater than every 30 days (40 CFR 280.36(a)(1)(i). In these cases, inspection can be conducted prior to each fill event. However, the regulations for frequency of inspection of impressed current corrosion control systems is fixed at 60 days. Not

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allowing testing/inspection of impressed current system at same frequency as inspection of remote tanks creates different regulatory burden for different protective measures. Remote emergency generator tanks may require filling at a frequency of greater than every 60 days.

Recommendation
Recommend modification to 40 CFR 280.31(c) to allow inspection of impressed current systems at remote UST systems before delivery if UST is filled at intervals of greater than every 60 days.

EPA-Office of Chemical Safety and Pollution Prevention

18. Clarify the role of EPA in regulation workplace environments and worker health

Regulation
TSCA

Comment
The Frank R. Lautenberg Chemical Safety for the 21st Century Act assigns responsibility to the Environmental Protection Agency to regulate chemical substances and mixtures that present an unreasonable risk of injury to health or the environment through risk-based safety standards for existing chemicals. The Act specifically identifies risks to workers and EPA's responsibility to assess risks to this potentially exposed or susceptible subpopulation. Currently, the Occupational Safety and Health Act assigns similar responsibility to the Occupational Safety and Health Administration in the Department of Labor.

Discussion
To optimize protection of public health and minimize duplication of health protective efforts requires a clear, written explanation of roles, implementation strategies, and enforcement responsibilities. Absent such clarifications, worker health protections may suffer as workplaces struggle to identify the best protective standard to use and, in turn, budgeting for compliance will be impossible. Worst case, worker health protections fall victim to the "Tragedy of the Commons" problem where independent actions by separate groups to address risks to workers spoils the overall "common good" of all workers.

Recommendation
We suggest that the Task Force evaluate this existing regulation to consider how to clarify language that ensures protection of worker health that is cost effective.

19. Clarify the new substances rules under the amended Toxic Substances Control Act

Regulation
TSCA

Comment
EPA should ensure that safer chemistries (i.e., green alternatives) for recognized hazardous or toxic chemicals are not delayed by TSCA.

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Discussion
As investments are made by the DoD and others to research, develop, test, evaluate, demonstrate, validate, and scale-up production of safer chemistries, it is unclear whether these new substances will fall under the new substances review rules and whether that will adversely impact adoption of these alternatives.

Recommendation
EPA should ensure that safer chemistries (i.e., green alternatives) for recognized hazardous or toxic chemicals are not delayed by TSCA.

20. Make Consistent the EPA's Toxicity Benchmarks

Regulation
Policy change

Comment
The EPA Office of Chemical Safety and Pollution Prevention, the EPA Office of Water, and the EPA Office of Research and Development (specifically the Integrated Risk Information System) are making determinations independent of each other regarding a chemical's toxicity and use varying methodologies.

Discussion
The OW process for developing and coordinating toxicity values among the federal agencies (e.g., PFOS and PFOA) are not well documented. The ORD/IRIS Program has a well-documented and step-wise process for engaging the federal agencies (and the public) in scientific debate on matter of toxicity. The Coordination Principals developed between the DoD and the OCSPP will facilitate examination of exposure and toxicity of chemicals under the TSCA.

Recommendation
We suggest that EPA take the lead within their own agency to clarify how toxicity benchmark values are developed and how best to maximize their resources to make the effort consistent, based on the best available science, and defensible.

21. Make Consistent the EPA's Risk Assessment Guidelines

Regulation
Risk assessments under TSCA and Superfund Part A

Comment
Risk Assessment Guidance for Superfund Part A was published in 1989 and Parts B through F published at various times through 2009. The fundamental guidance in Part A has not received a comprehensive update since it was published over 27 years ago. It is outdated and no longer consistent with overarching EPA Guidelines, National Research Council recommendations for risk assessment and practices elsewhere in the Agency.

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Discussion
Human health risk assessments performed using EPA Superfund guidance and those performed by OCSPP /TSCA use varying methods. Risk assessments for TSCA work plan chemicals used different procedures for assessing risk, as well as different sources for exposure and toxicity information than did Superfund. A risk evaluation procedural rule for TSCA is required by the Lautenberg Act and the proposed rule was published by EPA January 2017. This guidance meets the "significant guidance" definition of EO 12866 (national economy impacts over $100 million annually) and therefore is eligible as "regulatory actions" for regulatory reform per OMB April 2017 guidance.

Recommendation
Update Risk Assessment Guidelines and make consistent.

EPA- Office of Water

22. Modify existing Unregulated Contaminant Monitoring Rule (UCMR) effort

Regulation
SDWA section 1445(a)(2)

Comment
As stated by Roberson & Eaton (2014), although the UCMR program has been successful from the perspective of collecting national occurrence data, the preponderance of non-detects or minimal detections shows that more work is needed to optimize the UCMR program.

Discussion
As part of its responsibilities under the Safe Drinking Water Act, EPA implements section 1445(a)(2), ''Monitoring Program for Unregulated Contaminants.'' This section, as amended in 1996, requires that once every five years, beginning in August 1999, EPA issue a list of no more than 30 unregulated contaminants to be monitored by PWSs. There have been three rounds of UCMR and a fourth round is being planned; millions of dollars have been spent to date with little or no documented benefits to health. To our knowledge, EPA has not incorporated any lessons learned from the first three rounds of UCMR data monitoring.

Recommendation
Review and revise the UCMR process to improve efficiency by incorporating more public water system site specific data to determine contaminants, involve more stakeholder outreach, and invest in more analytic-method research for methods on potential contaminants.

EPA-Wide

18. Elimination of EPA Memorandum That Did Not Go Through the Rulemaking Process But EPA Treats and Enforces Like a Rule

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Regulation
General policy change

Comment
DoD requests the elimination of EPA Memoranda that did not go through the proper rulemaking processes and yet it treated and enforced as such. DoD also believes that reinstituting the interagency review process would prevent unknown or unintentional impacts to other federal agencies.

Discussion
EPA has a longstanding practice of developing and adopting detailed "guidance" outside the public rulemaking process, and then enforcing the guidance's requirements against Federal agencies that lack recourse to judicial relief. EPA's practice is inconsistent with sound governmental principles, arguably violates the APA and related case-law, and places DoD and other EPA-regulated Federal agencies at a significant disadvantage via their private-sector counterparts. This practice of "regulation by guidance" disproportionately and negatively impacts DoD and should be curtailed. EPA cannot rely on policy and guidance as if it carries the weight of law, unless the policy/guidance has properly undergone an Administrative Procedures Act-approved rulemaking process.

Recommendation
Reinstitute OMB interagency review of significant agency guidance and amend/rescind EPA policy and guidance that conflicts with law/regulation.

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The Honorable Mick Mulvaney
Director
The Office of Management and Budget
725 175 H Street, NW
Washington, D.C. 20503

Dear Mr. Mulvaney:

I am transmitting the U.S. Environmental Protection Agency's draft final report as required under Section 2(d) of Executive Order 13783: Promoting Energy Independence and Economic Growth.

This report provides detailed information on recommendations for Agency actions that could alleviate or eliminate aspects of current regulations, guidance, policies, or other programmatic activities that unnecessarily burden domestic energy production. Our review of energy-related actions has been tightly coordinated with our review of regulations under Executive Order 13777: Enforcing the Regulatory Reform Agenda, the Department of Commerce's request for information responsive to the January 24, 2017, Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, as well as other Administration initiatives focused on reducing regulatory burdens.

If you would like to discuss this report, please contact me or have your staff contact Samantha Dravis, Senior Counsel and Associate Administrator for Policy, at (202) 564-4332.

Respectfully submitted,

E. Scott Pruitt

Enclosure

Cc: The Vice President of the United States
Gary D. Cohn, Assistant to the President for Economic Policy
Andrew Bremberg, Assistant to the President for Domestic Policy
Mary Neumayer, Chief of Staff for the Council on Environmental Quality

MEMORANDUM

SUBJECT: Executive Order 13777 – Enforcing the Regulatory Reform Agenda Task Force 90-Day Status Report

FROM: Samantha K. Dravis, Senior Counsel and Associate Administrator for Policy

TO: E. Scott Pruitt, Administrator

I am transmitting to you a 90-Day Status Report on our progress in implementing Executive Order 13777 – Enforcing the Regulatory Reform Agenda as required under Section 3(g).

The report provides an overview of Executive Order 13777, outlines regulatory reform actions that have taken place to date, discusses what has been learned from public comments in response to the Department of Commerce's request for information regarding streamlining permitting and EPA's request for comment and public outreach meetings in regards to EO 13777. Based on what we have learned, the report provides preliminary recommendations for regulatory actions to consider changing or repealing and closes with our recommendations for next steps.

The Task Force believes this and related Executive Order and Presidential directives offers an important and unique opportunity for the Agency to revisit its regulations and remedy those that are outdated or impose unnecessary burdens, inhibit job growth, and those that impose costs that exceed benefits.

The Task Force looks forward to discussing our work with you.

Environmental Protection Agency Regulatory Reform Task Force 90-Day Progress Report Under Executive Order 13777 – Enforcing the Regulatory Reform Agenda

On February 24, 2017, President Trump signed Executive Order 13777 on "Enforcing the Regulatory Reform Agenda," which established a national policy to alleviate unnecessary regulatory burdens on the American people. In order to identify such burdens, the EO directs federal agencies to create a Regulatory Reform Task Force to "evaluate existing regulations…and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."[1] Among other requirements, the EO calls for the Task Force to provide a 90-day progress report on steps taken to 1) implement the regulatory reform initiatives and priorities identified in the EO, and 2) identify regulations that are candidates for repeal, replacement, or modification. This report provides the required 90-day status update regarding progress toward those two goals.

While 90 days is a relatively short period of time, the U.S. Environmental Protection Agency has made substantial progress in implementing the EO, including: (1) designating a Regulatory Reform Officer; (2) establishing a Regulatory Reform Task Force; (3) initiating review and/or reconsideration of more than a dozen actions; (4) reviewing information pertinent to EPA's regulatory actions from comments received by the Department of Commerce on permit streamlining; and, (5) running an open and transparent public outreach process, including public meetings and establishing a public comment period, to solicit input on regulatory actions to reconsider.

This report provides an overview of the directives and deliverables required by the order, the progress the EPA has made to date in implementing the order, preliminary recommended actions for consideration, and suggested next steps.

I. Overview of EO 13777 Directives and Deliverables

The overall policy goal of EO 13777 is to lessen or alleviate unnecessary regulatory burdens placed on the American people by implementing and enforcing the regulatory reform agenda. Section 2 of the EO provides certain initiatives and policies as part of the President's regulatory reform agenda. These initiatives and policies include:

- Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs, regarding offsetting the number and cost of new regulations, which is otherwise known as the "2 for 1" EO, issued January 30, 2017;
- Executive Order 12866 – Regulatory Planning and Review, regarding Administration-wide regulatory planning and review, which provides the framework for cost-benefit analysis underpinning regulatory actions, issued September 30, 1993 and subsequently amended;

[1] EO 13777, Section 3(d).

- Executive Order 13563 – Improving Regulation and Regulatory Review, regarding (as per Section 6) retrospective review of existing regulations, issued January 18, 2011; and
- The termination of programs and activities that derive from or implement directives that have been rescinded, such as Executive Orders, guidance documents, policy memoranda, rule interpretations and similar documents.

To oversee the implementation of EO 13777, each agency was asked to name a Regulatory Reform Officer who is tasked with periodically reporting to the agency head and regularly consulting with agency leadership. Additionally, each agency was to establish a Regulatory Reform Task Force to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.

Section 3(d) of the EO provides the Task Force with a targeted set of criteria on which to focus their evaluation and recommendations, including regulations that: "(i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with [the Information Quality Guidelines]; or, derive from Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified." In order to help identify such regulations, Section 3(e) of the EO directs the Task Force to seek input from "entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations."

Section 3(f) of the EO also directs each agency to prioritize regulations that the Task Force has identified as outdated, unnecessary, or ineffective, as part of its implementation of the regulatory offsets required under EO 13771.

Last, Section 3(g) of the EO provides that within 90 days of its issuance, the Task Force is required to report to the agency head detailing the agency's progress toward implementing the regulatory reform initiatives and policies identified above and identifying regulations for repeal, replacement, or modification. The EO also provides that future status updates be provided on a schedule to be determined by the agency head.

II. Progress to Date

Pursuant to EO 13777, the EPA Administrator designated a RRO and established a Regulatory Reform Task Force, which was memorialized in a March 27, 2017, agency-wide memorandum. Samantha Dravis, Senior Counsel and Associate Administrator for Policy, was designated to serve as EPA's RRO. Ryan Jackson, Chief of Staff, was designated to serve as the Chair of the Task Force. Additional members of the Task Force include Byron Brown and Brittany Bolen, Deputy Chief of Staff for Policy and Deputy Associate Administrator for Policy, respectively.
In order to fulfill the EO's requirement for stakeholder input, the March 27, 2017, agency-wide

memorandum included a request for program and regional offices to conduct public meetings or teleconferences on opportunities for regulatory reform. Program and regional offices were asked to provide the Task Force feedback from this outreach by May 15, 2017. In April and May, these offices conducted 11 public outreach meetings and provided feedback to the Task Force, as requested. Information on these meetings and program office feedback is detailed below.

The Agency also initiated an open and transparent process to seek public input on EPA's regulations. On April 11, 2017, EPA issued a request for public comment to an online docket, which was published in the Federal Register (83 Fed. Reg. 17793, April 13, 2017). The public comment period closed May 15, 2017, with over 190,000 comments filed.

Notably, the Task Force has been committed to increase transparency and public engagement throughout this effort. On April 11, 2017, the Agency launched a new website dedicated to providing the public information regarding its regulatory reform efforts, located at https://www.epa.gov/laws-regulations/regulatory-reform. Access to public comments and program office feedback to the Task Force is also available through the online docket at https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190.

The Task Force has made further progress by coordinating its efforts with the EPA's Office of Policy and key program and regional offices to identify regulations captured by previous reviews and other current Trump Administration EOs and directives. Key Trump Administration initiatives that complement the Task Force's work under EO 13777 review include:

- Presidential Memorandum regarding Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017;
- EO 13771 – Reducing Regulation and Controlling Regulatory Costs, issued January 30, 2017;
- EO 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule, issued on February 28, 2017;
- EO 13783 – Promoting Energy Independence and Economic Growth, issued March 28, 2017; and
- EO 13790 – Promoting Agriculture and Rural Prosperity in America, issued April 25, 2017.

The following sections describe these steps in further detail and identify specific actions the Agency has already taken to review or reconsider regulations, key actions pursuant to the Trump Administration directives listed above, and input received at public meetings on regulatory reform held by EPA program offices.

A. Agency Actions Under Review or Reconsideration

As outlined below, the Agency has already taken action to initiate the review or reconsideration of specific regulations and the withdrawal of proposed actions.

Review of the Waters of the United States Rule – EO 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule, issued February 28, 2017, directed the EPA and the U.S. Army Corp of Engineers to review the WOTUS rule. EPA has initiated its review of the rule.

- *WOTUS* - ''Clean Water Rule: Definition of 'Waters of the United States,''' (80 Fed. Reg. 37054; June 29, 2015). On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on March 6, 2017. (82 Fed. Reg. 12532.) On May 2, 2017, EPA submitted a proposed withdrawal of the final rule to the Office of Management and Budget for EO 12866 interagency review.

Withdrawal of Methane ICR – In 2016, EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. On March 2, 2017, EPA withdrew this information collection request (82 Fed. Reg. 12817; March 7, 2017). The agency expects this will lead to cost savings of approximately $37,000,000.

Risk Management Plans – Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, published on January 13, 2017 (82 Fed. Reg. 4594), is under review. On April 3, 2017, EPA published a proposed rule to delay the effective date of the RMP rule amendments until February 19, 2019 (82 Fed. Reg. 16146). This action will allow EPA to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action on the RMP rule.

Light-duty Mid-Term Evaluation – "Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation," signed January 12, 2017, is under review. On March 15, 2017, EPA and DOT announced that EPA intends to reconsider the final determination that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025 (82 Fed. Reg. 14671; March 22, 2017).

Review of Clean Power Plan and Related Actions – EO 13783, "Promoting Energy Independence and Economic Growth," signed March 28, 2017, directed the EPA to review the Clean Power Plan and related rules. EPA initiated a review of two of the identified final rules and withdrew one proposed rule:

- *Clean Power Plan* – "Carbon Pollution Emission Guidelines for Existing Stationary

Sources: Electric Utility Generating Units" (80 Fed. Reg. 64661; October 23, 2015) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16329).

- *NSPS for GHGs at Electric Generating Units* – "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units" (80 Fed. Reg. 64509; October 23, 2015) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16330).

- *Federal Plan/Trading Rule/Framework Amendments* – "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule" (80 Fed. Reg. 64966; October 23, 2015) were withdrawn. On the day the EO was signed, Administrator Pruitt signed a notice withdrawing this proposed rule. The notice was published in the Federal Register on April 3, 2017 (82 Fed. Reg. 16141).

Review of Methane Oil and Gas Rule – EO 13783, "Promoting Energy Independence and Economic Growth," signed March 28, 2017, directed the EPA to review the methane NSPS for the oil and gas sector. EPA initiated a review of the rule and has submitted a proposed extension of compliance deadlines to the Office of Management and Budget for review.

- *Methane Oil & Gas Rule* – "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources" (81 Fed. Reg. 35824; June 3, 2016) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16331). On May 24, 2017, EPA submitted a proposed 2-year extension of the compliance deadlines for the rule to OMB for interagency review.

Review of Steam Electric ELG – "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category," (80 Fed. Reg. 67838; November 3, 2015). On April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule and to postpone compliance dates that have not yet passed (82 Fed. Reg. 19005; April 25, 2017). On May 25, 2017, EPA issued a proposed postponement of the rule's compliance deadlines for publication in the Federal Register.

Review of Landfill Methane Rules – "Standards of Performance for Municipal Solid Waste Landfills," (81 Fed. Reg. 59332) and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills," (81 Fed. Reg. 59276), both published August 29, 2016. On May 5, 2017, EPA convened a proceeding for reconsideration of the final rules and issued a 90-

day stay of the effectiveness of these final rules limiting methane emissions from municipal solid waste landfills. On May 23, 2017, EPA announced a 90-day administrative stay for the final rules and a proposal to stay both rules until March 13, 2020.

Certified Pesticide Applicators Rule – On May 15, 2017, EPA solicited public comments on extending the effective date of this rule 12 months to May 22, 2018 (82 Fed. Reg. 22294). Comments were due by May 19, 2017. To provide time to consider those public comments, EPA provided a third interim extension of the effective date from May 22, 2017 until June 5, 2017 (82 Fed. Reg. 23148) EPA has initiated a review of the rule.

Formaldehyde Emission Standards for Composite Wood Products -- On May 24, 2017, EPA issued a direct final rule and parallel proposed rule to extend compliance dates in the final rule (82 Fed. Reg. 23735 and 82 Fed. Reg. 23769, respectively).

B. Department of Commerce Request for Information as per Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017

As directed by the President's January 24, 2017, Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, the Department of Commerce issued a formal request for information on the impact of Federal permitting requirements and on regulations that adversely impact domestic manufacturers. DOC received 170 public comments in response to the RFI. Based on the comments, DOC identified key areas for EPA to review, mostly focused on air permitting programs, including:

- New Source Review (NNSR and PSD) permits;
- Title V Operating Permits;
- National Emissions Standards for Hazardous Air Pollutants;
- Start-up, Shutdown and Malfunctions;
- National Ambient Air Quality Standards;
- Waters of the United States Rule; and
- Section 404 and NPDES permits.

EPA has further screened the 170 comments for those relevant to the Agency. Commenters included many actions already subject to EPA review, reconsideration, or extensions including the Clean Power Plan and related rules, WOTUS, Risk Management Plans, and the Certified Pesticides Applicators rule. Beyond those rules, commenters identified specific concerns with existing regulations in nearly every major EPA program, including most prominently:

Office of Air and Radiation:

- Ozone NAAQS Implementation
- Leak Detection and Repair Rules
- Once-in-Always-in Policy for major sources in the hazardous air program
- Renewable Fuels Standard Program

Office of Chemical Safety and Pollution Prevention:

- Worker Protection Standards
- Formaldehyde Emission Standards for Composite Wood Products
- Lead Renovation, Repair, and Painting Rule
- Nanoscale Reporting Rule

Office of Land and Emergency Management:

- Hazardous Waste Generator Requirements
- Spill Prevention, Control, and Countermeasure program
- CERCLA §108(b) Financial Responsibility

Office of Water:

- Water Quality Criteria
- Storm Water Management program requirements
- Wastewater Treatment – pretreatment program and Effluent Limitation Guidelines

C. EPA's Outreach and Public Meetings as per EO 13777

As indicated above, EPA opened a 30-day public comment period and key program offices held 11 public meetings to receive input that could inform the Task Force's regulatory review. More than 200,000 stakeholders were independently invited by the program offices to participate in teleconferences and public meetings, and over 190,000 comments have been received in the public comment docket.

Specifically, the following program office meetings were held:

- The Office of Air and Radiation held a public meeting via teleconference on April 24, 2017.
- The Office of International and Tribal Affairs hosted an outreach call with tribal representatives on April 24, 2017.
- The Office of Small and Disadvantaged Business Utilization held a meeting on April 25, 2017.
- The Office of Congressional and Intergovernmental Relations hosted a meeting with intergovernmental representatives on April 26, 2017.
- The Office of Chemical Safety and Pollution Prevention hosted a public meeting on May

1, 2017 on opportunities for regulatory reform as it relates to the Toxic Substance Control Act (TSCA) Subchapters I (Control of Toxic Substances), II (Asbestos Hazard Emergency Response) and VI (Formaldehyde Standards for Composite Wood Products) rules as well as EPCRA Subchapter II §11023 (Toxic Release Inventory program) rules.

- OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to TSCA Subchapter IV (Lead Exposure Reduction) rules.
- The Office of Water hosted a virtual listening session for the public on May 2, 2017.
- OCSPP held a public meeting with the Pesticide Program Dialogue Committee on May 4, 2017.
- The Office of Land and Emergency Management hosted a public meeting on May 9, 2017.

Program offices were asked to provide the Task Force with initial high-level summaries of the input they received from these meetings, as well as preliminary recommendations regarding specific rules that should be considered for repeal, replacement, or modification by May 15, 2017. Information on these summaries and recommendations are provided in the following section.

III. Preliminary Recommendations for Consideration

Based on an initial review of issues raised in public outreach meetings, the Department of Commerce's permit streamlining initiative, and EPA program offices' submissions to the Task Force, the Task Force offers preliminary recommendations for actions to consider reviewing as listed by program office, below.

It is important to note that these preliminary ideas are not yet informed by the extensive written comments received in the agency-wide public docket that closed May 15, 2017. Those comments are still being compiled and summarized. As discussed in the next section, the Task Force, the Office of Policy, and the program offices will continue to evaluate all public input and conduct additional internal analysis to better refine the list of regulations for consideration, and ensure proper coordination with all regulatory reform initiatives.

OAR:

- **"Once In, Always In" Policy:** EPA's long-standing policy (originating in a 1995 guidance memo) states that once a source becomes subject to a hazardous air pollutant standard it must always remain subject to that standard, notwithstanding the subsequent reduction in emissions below major source thresholds. States and many industry stakeholders have long expressed concerns about this 1995 policy.
- **Mobile Source Fuels Regulations:** Substantial opportunities exist to streamline EPA's existing regulations regarding gasoline, diesel, and other fuels. Doing so would reduce burden and compliance costs for industry, and improve compliance assurance while

maintaining environmental performance.

- **Exceptional Events Guidance:** Exceptional events are unusual or naturally occurring events that can affect air quality episodes that are beyond the control of state, tribal or local air agencies. Exceptional events include wildfires, stratospheric ozone intrusions and volcanic and seismic activities. The tightened ozone and PM2.5 standards increased the impact of exceptional events on attainment status and design value, as a result the Exceptional Events Guidance has become more important to states struggling to meet the standard. States and industry have many outstanding concerns about the process for excluding air quality data from consideration in regulatory decisions.
- **NAAQS Implementation:** Each new or revised NAAQS requires a host of supporting rules, guidance, and technical support documents to be used by Federal, state, local, and tribal regulators and planners, as well as by business and industry. The increased frequency of NAAQS revisions results in overlapping requirements to be implemented in short time spans. Regulators are confronted with obstacles to implementing the rules, planned and permitted facilities are subject to much uncertainty, making it difficult to appropriately plan for the preservation of air quality along with needed economic growth.

OCSPP:

- **Worker Protection Standard Rules:** In 2005, EPA updated the Agricultural Worker Protection Program with revisions to the Worker Protection Standards Rule providing training, information and safety requirements, as well as extending protections to families of pesticide workers and establishing a minimum age for handlers and workers performing early entry activities
- **Pesticide Registration Data Driven Decisions:** Commenters have asked EPA to reduce the need for new or extraneous data when sufficient data exists to make regulatory decisions. EPA was also asked to group similar crops or use other countries' data for tolerance setting, and to exclude certain biotechnology pesticides from data requirements. Commenters also suggest EPA allow for self-certification on product chemistry.
- **Nanomaterials Reporting under TSCA §8(a):** On January 12, 2017, EPA issued a rule requiring the reporting for certain existing nanoscale materials, as well as for new nanoscale materials, before manufacture is commenced. Commenters have said the one-time reporting requirements need to be revised to lower burden on small businesses. Several definitions in the rule are unclear and need to be revised.
- **TSCA:** TSCA was recently amended by the Lautenberg Chemical Safety Act. The new and revised requirement raise numerous regulatory and implementation issues.

OLEM:

- **Coal Combustion Residuals Rule:** The CCR Rule establishes minimum national criteria under Subtitle D of RCRA for coal combustion residuals landfills and surface impoundments at active coal fired power plants. Commenters have noted that that 2015 rule is overly restrictive and does not provide states needed flexibility to identify risks.

Portions of the rule have been remanded.

- **CERCLA §108(b) Financial Responsibility:** CERCLA §108(b) directs EPA to develop regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. On December 1, 2016, EPA proposed regulations for the hardrock mining industry. Commenters stated they believed the rule is unnecessary and duplicative of other Federal requirements.
- **Hazardous Waste Generator Improvement Rule:** On November 28, 2016, EPA revised the condition for exemption under RCRA's hazardous waste generator program that pose additional requirement for large and small generators (particularly retailers) that result in overly burdensome recordkeeping beyond what is currently required to demonstrate exemption.

OW:

- **Stormwater Management:** The NPDES stormwater program regulates some stormwater discharges from three potential sources: municipal separate storm sewer systems, construction activities, and industrial activities. Commenters noted a lack of flexibility in EPA rules and permits, as well as duplicative requirements with other Agency rules. The Combined Sewer Overflow policy was noted specifically by commenters.
- **Water Quality Criteria:** Commenters are concerned that EPA's national criteria and policy decisions require states to adopt stringent water quality standards that have high compliance cost (or are unattainable) and result in no additional human health protection.

IV. Recommended Next Steps

Given that the public comment period ended on May 15, 2017, the Task Force, OP, and the program offices have not yet had the opportunity to review and evaluate the tens of thousands of public comments received. The Task Force will request that each major program office continue to analyze the public comments and submissions, and use that information to identify and notify the Task Force of existing regulations that could be repealed, replaced, or modified consistent with the criteria in EO 13777:

- The regulation is outdated, unnecessary, or ineffective.
- The regulation eliminates jobs, or inhibits job creation.
- The regulation imposes costs that exceed benefits.
- The regulation is inconsistent with regulatory reform initiatives or policies.
- The regulation is inconsistent with the Information Quality Guidelines.
- The regulation derives from Executive Orders or other Presidential directives that have been subsequently rescinded.

The Task Force will work with program offices to prioritize the identified regulations based on strategic factors such as the following:

- The timing and urgency of the needed regulatory relief. Offices should consider the compliance deadlines of actions, and whether delay of such deadlines could significant reduce burdens while the action is under review.
- The associated costs and employment impacts. Offices should consider the estimated costs and employment losses associated with an action, including the original EPA estimates on impacted parties. Actions deemed economically significant (i.e. estimated impact of $100 million or more per year) should be prioritized for review.
- Associated with a Presidential directive or initiative. As indicated above, there are several executive orders and memoranda that are part of the President's regulatory reform agenda. Actions associated with the President's agenda should be prioritized (e.g., action may impact domestic energy resources or could reduce burdens on domestic manufacturers).
- Review would be swift and simple. Actions that could be repealed, replaced, or modified in a swift and simple fashion should be considered. These actions may include those that are non-controversial (e.g. viable for a direct final rule) or non-regulatory (e.g. a non-significant guidance document or an information collection request).

The Task Force will provide program offices with further, specific guidance on the information requirements and format to use when identifying priority reform opportunities. Program offices should work with the Office of Policy to assemble, review, and submit this information to the Task Force for their review by August 25, 2017.

The Task Force will review these program office submissions and approve or modify them. The Task Force will report back to the Administrator with additional recommendations and progress by November 24, 2017.

V. Conclusion

The Task Force believes EO 13777 offers an important and unique opportunity for EPA to revisit its regulations and identify and remedy those that are outdated or impose unnecessary burdens, that inhibit job growth, and those that impose costs that exceed benefits. The information provided so far by EPA offices and the public has provided valuable insights on which the Task Force will build firm recommendations.

EO 13777 has provided EPA an important spur to strengthen its institutionalization of regulatory reform initiatives and processes. There is much opportunity to reduce burden while maintaining a healthy environment based on the preliminary input the agency has already received. Regulatory reform should be a natural way of doing business for EPA, continually looking for

ways to improve regulations and remove unneeded and counterproductive obstacles to fulfilling the Agency's critical mission.

Environmental Protection Agency
Draft Final Report on the Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783

Executive Summary

America is blessed with abundant energy resources, fostering an enhanced quality of life for its citizens. Sound energy policy begins with the recognition that we have vast untapped domestic energy reserves right here in America. Prudent development and use of these domestic resources supports multiple policy goals including economic growth, job creation, and geopolitical security. The Trump Administration is committed to energy policies that lower costs for hardworking Americans and maximize the use of American resources. America is best served by healthy, competitive energy markets, unhindered by contentious environmental regulations.

Recent technological advances have increased the supply of domestic energy resources, ranging from oil and gas to wind and solar power. Improvements in energy storage have played a role as well, as have enhancements in environmental strategies, such as clean coal technologies, which allow Americans to continue to utilize judiciously a wide range of resources. Lifting unneeded restrictions on the development and use of these resources will greatly help American workers, creating jobs and increasing wages. Increased energy supplies and lower cost will spur employment and other economic benefits not just in the energy sector, but also in manufacturing and agriculture. Revenues from energy production can be used for needed infrastructure development and repair.

Executive Order (EO) 13783 directs Federal agencies to review all agency activities that could burden development or use of domestic energy. This includes review of regulations, orders, guidance documents and similar agency activities. As part of that executive order, agencies are directed to develop a plan for the review of potentially burdensome activities impacting the domestic energy sector. This draft report details the specific actions the EPA has taken and plans to take in response to EO 13783 and other Administration initiatives to address regulatory burdens on domestic energy resources.

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I. Introduction

a. Overview of Executive Order 13783[1]

On March 28, 2017, President Trump signed Executive Order 13783, Promoting Energy Independence and Economic Growth. The Executive Order establishes a national policy to promote the clean and safe development of domestic energy resources while avoiding unnecessary regulatory burdens. The Executive Order directs federal agencies to undertake several actions to further this goal. Specifically, the Executive Order directs federal agencies to "review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, "agency actions") that potentially burden the development or use of domestically produced energy resources[.]" The Executive Order also directs the Environmental Protection Agency (EPA) to review several specific rules.

Accompanying the call to review agency actions, the Executive Order directed agencies to develop a plan within 120 days of the order to carry out this review. Agencies are to "appropriately suspend, revise, or rescind those [existing regulations] that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." The report had to include specific recommendations that "could alleviate or eliminate aspects of agency actions that burden domestic energy production." On May 12, 2017, the EPA submitted its plan for review of agency actions under EO 13783.

b. Other Key Administration Initiatives

In addition to EO 13783, the Trump Administration is undertaking other regulatory review and key management initiatives. The EPA has utilized the information gathered from these initiatives to identify and prioritize additional energy-related actions that may be appropriate for repeal, replacement, or modification to make them less burdensome.

i. Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017.[2]

As directed by the Presidential Memorandum, the Department of Commerce issued a formal request for information (RFI) seeking information on the impact of Federal permitting requirements on the construction and expansion of domestic manufacturing facilities and on regulations that adversely impact domestic manufacturers. The EPA analyzed the 170 entries in the public docket received by Commerce for those that are relevant to the EPA's permitting and/or regulatory requirements. Public comments identified as relevant to the EPA and related to domestic energy production and use will inform the review of agency actions under EO 13783.

[1] 82 Fed. Reg. 16093 (March 31, 2017).
[2] 82 Fed. Reg. 8667 (January 24, 2017).

Based on these comments, the EPA identified key areas to review, mostly focused on air permitting programs, including:

- New Source Review (NNSR and PSD) permits;
- Title V operating permits;
- National Emissions Standards for Hazardous Air Pollutants (NESHAPS);
- Start-up, Shutdown, and Malfunctions (SSM);
- National Ambient Air Quality Standards (NAAQS);
- Waters of the United States Rule (WOTUS); and
- Section 404 and NPDES permits.

ii. EO 13777 – Enforcing the Regulatory Reform Agenda, issued February 24, 2017.[3]

Pursuant to EO 13777, Administrator Pruitt designated Samantha Dravis, Senior Counsel and Associate Administrator for Policy, to serve as the EPA's Regulatory Reform Officer (RRO) and a member of the Regulatory Reform Task Force (RRTF). Ryan Jackson, Chief of Staff, will serve as the Chairman of the RRTF. Other members of the RRTF include Byron Brown and Brittany Bolen, Deputy Chief of Staff for Policy and Office of Policy Deputy Associate Administrator, respectively.

Under EO 13777, the RRTF is charged with evaluating existing regulations and making recommendations to the Administrator regarding those that can be repealed, replaced, or modified to make them less burdensome. Specifically, the RRTF should identify regulations that: eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; are inconsistent with the requirements of the Information Quality Act or guidance issued pursuant to that law; or derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Because the RRTF is already charged with identifying and reviewing regulations across the EPA for burden reduction, it is well-positioned to identify the regulations that are specifically burdensome for the energy sector. Accordingly, in an April 19, 2017, Agency-wide memorandum, the Administrator directed the RRTF to lead the Agency's EO 13783 review as well.

EO 13777 also requires that the RRTF seek input from entities significantly affected by the Agency's regulations, including state, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations. In response, the EPA issued a request for comments on April 11, 2017, soliciting public input to inform the EPA's RRTF.[4]

Additionally, the Administrator directed key program offices to conduct more than a dozen public outreach meetings to solicit comments on EPA regulations and opportunities for reform. More than

[3] 82 Fed. Reg. 12285 (March 1, 2017).
[4] 83 Fed. Reg. 17793 (April 13, 2017).

200,000 stakeholders were independently invited by the program officers to participate in teleconferences and public meetings. As a result of this outreach, the EPA received over 460,000 comments, including a record-breaking number of individual comments (63,346).[5]

Specifically, the following program office meetings were held:

- The Office of Air and Radiation held a public meeting via teleconference on April 24, 2017.
- The Office of International and Tribal Affairs hosted an outreach call with tribal representatives on April 24, 2017.
- The Office of Small and Disadvantaged Business Utilization held a meeting on April 25, 2017.
- The Office of Congressional and Intergovernmental Relations hosted a meeting with intergovernmental representatives on April 26, 2017.
- The Office of Chemical Safety and Pollution Prevention (OCSPP) hosted a public meeting on May 1, 2017, on opportunities for regulatory reform as it relates to the Toxic Substance Control Act (TSCA) Subchapters I (Control of Toxic Substances), II (Asbestos Hazard Emergency Response) and VI (Formaldehyde Standards for Composite Wood Products) rules as well as EPCRA Subchapter II §11023 (Toxic Release Inventory program) rules.
- OCSPP hosted a public meeting on May 1, 2017, on opportunities for regulatory reform as it relates to TSCA Subchapter IV (Lead Exposure Reduction) rules.
- The Office of Water hosted a virtual listening session for the public on May 2, 2017.
- OCSPP held a public meeting with the Pesticide Program Dialogue Committee on May 4, 2017.
- The Office of Land and Emergency Management hosted a public meeting on May 9, 2017.

c. The EPA's Review Process for the Identification of Actions that Potentially Burden Domestic Energy Use and Production

Pursuant to Administrator Pruitt's memo on April 19, 2017, the RRTF, in coordination with the EPA Office of Policy and program offices, has begun to identify recurrent themes and comments from public meetings regarding the EPA's energy-related regulations. Internal analysis, as well as public input, have centered on specific rulemakings and/or specific provisions of rulemakings that unduly burden domestic energy production and use. The RRTF has used this information to select an initial set of regulations, in addition to those identified in EO 13783 related to the Clean Power Plan and the Oil and Gas NSPS that may be appropriate for suspension, revision, or rescission.

The RRTF will prioritize the identified regulations based on strategic factors such as the following:

[5] The docket contained 467,143 comments. The majority represented mass mail campaigns.

- *Timing and urgency of the needed regulatory relief.* Considering the compliance deadlines of actions, whether a delay of such deadlines could significantly reduce burdens while the action is under review.
- *Associated costs and employment impacts.* Actions likely to be deemed economically significant (i.e., estimated impact of $100 million or more per year) should be prioritized for review.
- *Associated with a Presidential directive or initiative.* As indicated above, there are several executive orders and memoranda that are part of the President's regulatory reform agenda. Actions associated with the President's agenda should be prioritized (e.g., actions that may streamline permitting processes, or that could reduce burdens on domestic manufacturers).
- *Review would be swift and simple.* Actions that could be repealed, replaced, or modified in a swift and simple fashion should be considered. These actions may include those that are non-controversial (e.g., viable for a direct final rule) or non-regulatory (e.g., a non-significant guidance document or an information collection request).

II. Status of EPA Actions Specifically Identified in EO 13783

The EPA has made progress towards fulfilling the policies outlined in EO 13783. Below is a summary of actions already taken regarding specific EPA regulations that have significant impacts on domestic energy production and use.

a. Clean Power Plan and Related Rules

EO 13783 §4 addresses the Clean Power Plan (CPP) and related rules that affect the electric utility sector, particularly utilities' fossil fuel-fired power plants – i.e., primarily coal and natural gas. The Regulatory Impact Analysis of the 2015 CPP indicated annualized cost of about $8 billion (2011$) through 2030. A revised analysis of the cost savings is likely to be significantly higher. Affected domestic energy resources include oil, natural gas, and coal. The EPA has initiated a review of two of the identified final rules and withdrew a proposed rule.

i. Guidelines to Reduce GHGs from Existing Electric Generating Units

Summary: On October 23, 2015, the EPA issued a final rule, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." This rule established guidelines for states to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units (EGUs).[6]

Background: On February 9, 2016, the Supreme Court stayed implementation of the CPP pending judicial review.[7] Following full merits briefing, oral argument was held before the D.C.

[6] 80 Fed. Reg. 64661 (October 23, 2015).
[7] *West Virginia v. EPA*, U.S., No. 15A773 (February 9, 2016).

Circuit, sitting *en banc*, on September 27, 2016. That case is currently pending in the D.C. Circuit.

Actions under the Trump Administration: Pursuant to EO 13783, Administrator Pruitt has taken the following actions as part of the EPA's review of the CPP:

- On March 28, 2017, the day EO 13783 was issued, Administrator Pruitt signed a notice to review this final rule.[8]
- On March 28, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the CPP. On April 28, 2017, the D.C. Circuit ordered the litigation regarding the CPP be held in abeyance for 60 days.[9]
- On March 30, 2017, Administrator Pruitt sent a letter to governors of the 47 states subject to the CPP, advising them that, as per the U.S. Supreme Court's stay of the rule, states and other interested parties have neither been required nor expected to work towards meeting the compliance dates set in the CPP rule and that it is the policy of the EPA that the states have no obligation to spend resources to comply with a rule that has been stayed by the U.S. Supreme Court.
- On May 15, 2017, the Department of Justice submitted a supplemental brief to the Court urging the Court to continue to hold the cases in abeyance while the EPA conducts its review of the CPP.
- On June 6, 2017, the EPA submitted a CPP proposal to the OMB that is under review.

The EPA has initiated a programmatic staff workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

ii. NSPS for GHGs at New, Modified, and Reconstructed Electric Generating Units

Summary: On October 23, 2015, the EPA issued a final rule, "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units." This rule established standards for emissions of carbon dioxide (CO_2) for newly constructed, modified, and reconstructed affected fossil fuel-fired EGUs.[10]

Actions under the Trump Administration: Pursuant to EO 13783, on March 28, 2017, the EPA initiated its review of the CPP, including the NSPS for GHGs at EGUs rule. In conducting this review, the EPA will follow each of the principles and policies set forth in EO 13783, as consistent with the EPA's statutory authority. The Agency will reevaluate whether the rule and alternative

[8] 82 Fed. Reg. 16329 (April 4, 2017).
[9] *West Virginia v. EPA*, D.C. Cir. *en banc*, No. 15-1363.
[10] 80 Fed. Reg. 64509 (October 23, 2015).

approaches are appropriately grounded in the EPA's statutory authority and consistent with the rule of law. The EPA will assess whether the rule and alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the states.

Administrator Pruitt has taken the following actions as part of the EPA's review of the NSPS for GHGs at EGUs rule:

- On March 28, 2017, the day the EO 13783 was issued, Administrator Pruitt signed a notice to review the final rule.[11]
- On March 28, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the NSPS for GHGs at EGUs rule, including the scheduled April 17, 2017, oral arguments. On March 30, 2017, the D.C. Circuit granted the request to hold the litigation in abeyance.[12]

The EPA has initiated a programmatic staff workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule (Review of NSPS for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: EGUs; RIN 2060-AT56). The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact. The Final EO 13783 Report will provide further details regarding the timing of this action.

iii. Federal Plan/Model Trading/Framework Rule[13]

Summary: On October 23, 2015, in connection with the CPP, the EPA published a proposed rule, "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule." This rule established a Federal plan to implement the CPP emission guidelines for model trading rules to aid implementation of the guidelines and for amendments to the existing framework regulations implementing CAA §111(d). Affected domestic energy resources include oil, natural gas, and coal.

Background: The October 23, 2015, notice proposed two approaches to a Federal plan for states and other jurisdictions that do not submit an approvable plan to the EPA: a rate-based emission trading program, and a mass-based emission trading program.

The October 23, 2015, notice also proposed model trading rules that states could adopt or tailor for implementation of the final CPP emission guidelines as well as amendments to the CAA §111(d)

[11] 82 Fed. Reg. 16330 (April 4, 2017).
[12] *North Dakota v. EPA*, D.C. Cir., No. 15-1381.
[13] 80 Fed. Reg. 64966 (October 23, 2015).

framework regulations related to the process and timing for state plan submissions and EPA actions.

Actions under the Trump Administration: Because theses CPP-related proposed rules are based on the specific requirements of the CPP, any changes to the CPP or new emission guidelines would most likely require changes to these CPP-related proposals. Thus, this preliminary action to withdraw these CPP-related proposals will allow the EPA to review them in light of its review of the CPP and to determine the appropriate next steps for these proposals.

Pursuant to EO 13783, Administrator Pruitt has taken the following actions as part of the EPA's review of the Federal Plan/Model Trading/Framework rule:

- On March 28, 2017, the day the EO 13783 was issued, Administrator Pruitt signed a notice withdrawing this proposed rule.[14] (The notice also included the withdrawal of the proposed design details of the Clean Energy Incentive Program (CEIP), a program that states could use to get early emission reduction projects under the CPP, which had been proposed separately.)[15]

b. Actions Related to Oil and Gas Production

EO 13783 §7 addresses one EPA rule related to oil and gas development:

i. Methane Oil & Gas Rule

Summary: On June 3, 2016, the EPA issued a final rule, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources." This rule included amendments to the existing standards for the oil and natural gas source category (subpart OOOO) and set first-time standards for both GHGs (specifically methane) and volatile organic compounds (VOC) (subpart OOOOa). The OOOOa regulations added sources not covered by the OOOO regulations, including hydraulically fractured oil well completions, pneumatic pumps, and fugitive emissions from well sites and compressor stations. They also required methane controls at certain sources already covered by OOOO, including hydraulically fractured gas well completions and equipment leaks at natural gas processing plants.[16] Based on analysis accompanying the proposed stay, administratively staying the provisions for which reconsideration has been granted will reduce cost in 2018 by $146 million (2016$); $21 million in reduced capital costs plus $153 million in reduced operating costs minus $28 million in lost product recovery revenue. Affected domestic energy resources include oil and natural gas.

[14] 82 Fed. Reg. 16141 (April 3, 2017).
[15] 81 Fed. Reg. 42940 (June 30, 2016).
[16] 81 Fed. Reg. 35824 (June 3, 2016).

Background: On August 2, 2016, the EPA received petitions for administrative reconsideration that raised numerous objections to the rule. The EPA recently granted reconsideration of several issues identified in the petitions (see bulleted timeline, below). The reconsideration covers several issues: (1) fugitive emissions monitoring and control requirements, including the inclusion of low-production wells and provisions relating to approvals for alternative means of emission limitation (AMEL); (2) the requirement that the design and capacity assessment of a closed vent system used to demonstrate compliance with a number of emission standards at affected facilities (i.e., centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels) be performed by a professional engineer; and (3) the requirement that the determination be made and certified by a professional engineer that it is technically infeasible to route a pneumatic pump to a control device or process.

Several administrative reconsideration petitions raised issues and questions regarding the AMEL provisions relative to the fugitive emissions requirements (e.g., who can apply for and who can use an approved AMEL), particularly as it relates to low production well sites. These inquiries and concerns suggest that the AMEL provisions included in the 2016 Methane rule may not be sufficiently clear to facilitate effective application and approval of AMEL and may make it difficult for states to develop their own control programs that achieve equivalent, or greater, emission reduction from their affected sources than the required reduction under the rule.

The 2016 Methane rule requires certification by a professional engineer that a closed vent system design and capacity assessment was conducted under his or her direction or supervision and that the assessment and resulting report were conducted pursuant to the requirements of the rule. Under the rule, this certification requirement must be met in order comply with the emissions standards for centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels. As such, this requirement impacts a wide range of sources with respect to their ability to show compliance. In addition to the closed vent system certification requirement, there are other issues that the EPA is reconsidering that may further complicate a source's ability to comply with the well site pneumatic pump standards. Specifically, the rule requires certification by a professional engineer of technical infeasibility in order for a well site pneumatic pump to qualify for an exemption from controlling emissions using an existing control or process.

Based on the great interest expressed by stakeholders (including states, industry, and manufacturers of emerging monitoring technology), in particular on the AMEL, the EPA anticipates receiving a large amount of information during the reconsideration proceeding. During the reconsideration proceeding, the EPA intends to request comment on the cost and other compliance burdens, among other relevant information, associated with the requirement for certification by a professional engineer {Was this in the proposal?}. The EPA believes that it is in the public interest that it addresses these other related issues at the same time it reconsiders the fugitive emissions requirements, well site pneumatic pumps standards, and requirements for certification by a professional engineer, thereby providing clarity and certainty for the public and regulated community with regard to these requirements.

Actions under the Trump Administration: Pursuant to EO 13783, Administrator Pruitt has taken the following actions as part of the EPA's review of the 2016 Methane rule:

- On March 28, 2017, the day EO 13783 was issued, Administrator Pruitt signed a notice to review the final rule.[17]
- On April 7, 2017, the Department of Justice requested that the D.C. Circuit hold in abeyance the litigation regarding the oil and gas methane rule, including the scheduled oral arguments. On May 18, 2017, the D.C. Circuit granted the request to hold the litigation in abeyance until the EPA has completed its review and reconsideration of the 2016 rule.[18]
- On April 18, 2017, Administrator Pruitt signed a letter, based on the criteria in CAA §307(d)(7)(B), that convened a proceeding for reconsideration of the following objections relative to the fugitive emissions requirements: (1) the applicability of the fugitive emissions requirements to low production well sites, and (2) the process and criteria for requesting and receiving approval for the use of an alternative means of emission limitations (AMEL) for purposes of compliance with the fugitive emissions requirements in the 2016 rule.
- On May 26, 2017, Administrator Pruitt signed a notice of reconsideration and partial stay. It noted that since issuing the April 18, 2017, letter, the EPA had identified objections to two other aspects of the 2016 rule that met the criteria for reconsideration under CAA §307(d)(7)(B). These objections relate to (1) the requirements for certification of closed vent system by a professional engineer, and (2) the well site pneumatic pump standards. In addition, the EPA stayed for three months the rule requirements pending reconsideration.[19]
- On June 12, 2017, Administrator Pruitt signed a notice proposing a second three-month stay and a separate notice proposing a two-year stay. The second three-month stay would extend beyond the initial three-month stay and serve as a stop-gap for the separately proposed two-year stay. Since the rulemaking for the two-year stay would likely be determined to be a major rule under the Congressional Review Act, it will not take effect until sixty days after publication of the final rule or after Congress receives the rule report, whichever is later. That extra time will extend beyond the initial three-month stay.[20] A public hearing was held on July 10, 2017, and the comment period for this proposal closes on August 9, 2017.

The EPA has initiated a programmatic staff workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule (Oil and Gas New Source Performance Standards for New, Reconstructed, and Modified Sources Reconsideration; RIN 2060-AT54). The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

[17] 82 Fed. Reg. 16331 (April 4, 2017).
[18] *API v. EPA*, No. 13-1108 (and consolidated cases) (D.C. Circuit).
[19] 82 Fed. Reg. 25734 (June 5, 2017). Note that the D.C. Circuit vacated the 90 day stay on July 3, 2017. A July 13, 2017, order delayed the vacature for a period of 14 days.
[20] 82 Fed. Reg. 27641 and 82 Fed. Reg. 27645 (June 16, 2017).

III. Status of Other Energy-Related Actions

As noted previously, the Trump Administration has initiated several regulatory reform efforts, allowing the EPA to leverage the ideas and information collected from those efforts to support and focus its activities to alleviate unnecessary burdens on the domestic energy sector. Public input has been received in response to both the Department of Commerce's request for information regarding streamlining permitting and reducing the regulatory burden on domestic manufacturing, and the EPA's request for comment regarding a general call to identify regulations that may be appropriate for repeal, replacement, or modification. The EPA has screened each docket for comments with substantive, specific suggestions to remove regulatory burdens on the development or use of domestic energy resources.

The RRTF has identified the following additional priority energy-related regulations for review:

a. Actions Related to Oil and Gas Production

i. Oil & Gas ICR

Summary: On November 10, 2016, the EPA sent an information collection request (ICR) to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. This ICR conducted pursuant to CAA §114 was to assist the Agency in developing emissions standards for existing oil and gas facilities pursuant to CAA §111(d).[21]

The withdrawal will allow the EPA to assess the need for the information that the Agency was collecting through these requests, and reduce burdens on businesses while the Agency assesses such need. The EPA estimated the burden of the information collection to be 284,751 hours, costing $42,453,050. (However, because some facilities submitted responses to the ICR prior to the withdrawal, the EPA now estimates that the withdrawal would avoid approximately $37 million in reporting burden.) Affected domestic energy resources include oil and natural gas.

Background: On June 3, 2016, the EPA issued a final rule, "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources." This rule included amendments to the existing standards for the oil and natural gas source category (subpart OOOO) and set first-time standards for both GHGs (specifically methane) and volatile organic compounds (VOC) (subpart OOOOa).[22] Under certain circumstances, when the EPA issues standards for new sources under

[21] EPA ICR No. 2548.01.
[22] 81 Fed. Reg. 35824 (June 3, 2016).

CAA §111(b), the EPA has the authority under §111(d) to prescribe regulations under which each state is to submit a plan to establish standards for existing sources in the same category.

The November 2016 ICR encompassed two parts. Part 1, referred to as the operator survey, was specifically designed to obtain comprehensive information from onshore petroleum and natural gas production facilities to better determine the quantity and types of equipment at production facilities. Part 1 sought to collect information regarding production operators (e.g., facility name, address, and contact information) as well as information on the location and types of equipment (e.g., number of wells, tanks, dehydrators, and compressors) present at well surface sites and centralized production surface sites. Part 1 was sent to all known U.S. operators of oil and gas production wells. The operators were to complete the Part 1 survey and provide equipment counts for all production facilities that they operate except for facilities selected to complete Part 2. Operators were sent the Part 1 survey by registered mail and given 60 days to respond.

Part 2, referred to as the detailed facility survey, was sent to selected oil and gas facilities (production, gathering and boosting, processing, compression/transmission, pipeline, natural gas storage, and LNG storage and import/export facilities) based on statistical sampling method. Part 2 was to collect detailed, unit-specific information on emission sources at the facility and any emission control devices or management practices used to reduce emissions. Operators were sent the Part 2 survey by registered mail and given 180 days to respond.

Actions under the Trump Administration: Pursuant to EO 13783, on March 2, 2017, Administrator Pruitt withdrew the Oil & Gas ICR.[23]

ii. Light-duty Vehicle Mid-Term Evaluation

Summary: On January 12, 2017, the EPA issued, "Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation." This rule determined that the GHG emission standards for MY 2022-2025 light-duty vehicles were appropriate.[24] The projected lifetime cost to meet the MY 2022-2025 GHG standards is between $26 billion to $36 billion (or $875 average per vehicle) (net present value in 2015$). This action affects domestic oil resources.

Background: The Mid-Term Evaluation (MTE) was established to review standards set in a 2012 joint rulemaking by the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA), which set federal GHG emissions and Corporate Average Fuel Economy (CAFE) standards for model year (MY) 2017 and beyond for light-duty vehicles.[25] These standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles

[23] 82 Fed. Reg. 12817 (March 7, 2017).
[24] 81 Fed. Reg. 87927 (January 12, 2017).
[25] 77 Fed. Reg. 62624 (October 15, 2012).

(i.e., sport utility vehicles, crossover utility vehicles, and light trucks), collectively referred to as light-duty vehicles.

The EPA and NHTSA finalized separate sets of standards under their respective statutory authorities. The EPA set GHG emission standards (including standards for emissions of CO_2, NO_x, methane, and air conditioning refrigerants) for MY 2017-2025 passenger cars and light-trucks under CAA §202(a). NHTSA set national CAFE standards under the Energy Policy and Conservation Act (EPCA) for MY 2017-2021 light-duty vehicles and issued augural standards for MY 2022–2025.

The 2012 joint rulemaking establishing these standards included a regulatory requirement for the EPA to conduct an MTE of the GHG standards established for MY 2022-2025 to assess whether the standards were appropriate. In July 2016, the EPA, NHTSA, and the California Air Resources Board (CARB) released for public comment a jointly prepared Draft Technical Assessment Report, which examined a range of issues relevant to GHG emissions and CAFE standards for MY 2022-2025.[26] On November 28, 2016, the EPA issued a proposed determination for the MTE.[27] On January 12, 2017, EPA Administrator Gina McCarthy signed the Final Determination of the MTE of light-duty vehicle GHG emissions standards for MY 2022-2025, which found the standards to be appropriate. This effort was premature pursuant to the regulations.

Under the 2012 joint rulemaking regulations, no later than April 1, 2018, the EPA Administrator must determine whether the GHG standards established under the 2012 joint rule for MY 2022-2025 are appropriate under CAA §202(a) in light of the record then before the Administrator. Given that CO_2 makes up the vast majority of the GHGs that the EPA regulates under §202(a), and given that the technologies available for regulating CO_2 emissions do so by improving fuel economy (which NHTSA regulates under EPCA/EISA), NHTSA's views with regard to what CAFE standards would be maximum feasible for those model years is an appropriate consideration in the EPA's determining what GHG standards would be appropriate under the CAA.[28] However, NHTSA has not yet considered what CAFE standards would be the maximum feasible standards for MY 2022-2025 {This is one reason but the MTE notice didn't say it} {Mention data on MY14 vehicles only included? Now we have MY15 & 16}.

For its part, NHTSA will continue to engage with stakeholders as it works to develop a notice of proposed rulemaking to set CAFE standards for MY 2022-2025. As explained in the 2012 final joint rule, this proposal will be part of "a *de novo* rulemaking conducted . . . with fresh inputs and a fresh consideration and balancing of all relevant factors, based on the best and most current

[26] 81 Fed. Reg. 49217 (July 27, 2016).
[27] 81 Fed. Reg. 87927 (December 6, 2016).
[28] See 40 CFR 86.1818–12(h)(1)(vii) (listing as one of the factors the EPA should consider in the MTE "[t]he impact of the greenhouse gas emission standards on the Corporate Average Fuel Economy standards and a national harmonized program").
[29] 77 Fed. Reg. 62624, at 62652 (October 15, 2012).

information before the Agency at that time."[29] A final rule for MY 2022 is statutorily required to be issued by NHTSA by April 1, 2020.

Actions under the Trump Administration: Pursuant to EO 13783, on March 15, 2017, Administrator Pruitt and Department of Transportation (DOT) Secretary Elaine Chao announced that they intended to reconsider the final determination in order to allow for additional consultation and coordination and to ensure that the record is based on the best available data in accordance with the 2012 regulations. A formal notice of reconsideration was published in the Federal Register on March 22, 2017.[30]

On May 2, 2017, Administrator Pruitt sent a letter to California Governor Jerry Brown about this Administration's commitment to cooperative federalism and working with state governments to review CAFE standards.[31]

In accordance with the schedule set forth in the EPA's regulations, the Agency intends to make a new Final Determination regarding the appropriateness of the MY 2022-2025 Light-duty Vehicle GHG Emissions Standards no later than April 1, 2018. As a part of this process, the EPA is examining a wide range of factors.

The Office of Air and Radiation will lead the programmatic staff workgroup with Christopher Grundler, Director, Office of Transportation and Air Quality, as the primary contact.

iii. Landfill Methane Rules

Summary: On August 29, 2016, the EPA issued two final rules: "Standards of Performance for Municipal Solid Waste Landfills" and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." The first rule established an NSPS intended to reduce emissions of landfill gas (i.e., methane) from new, modified, and reconstructed municipal solid waste (MSW) landfills, thereby updating standards that were issued in 1996.[32] The second rule revised guidelines for reducing emissions from existing MSW landfills, thereby updating the previous emissions guidelines, which also were issued in 1996.[33]

Background: On October 27, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of both rules pursuant to CAA §307(d)(7)(B).

[29] 77 Fed. Reg. 62624, at 62652 (October 15, 2012).
[30] 82 Fed. Reg. 14671 (March 22, 2017).
[31] Administrator Scott Pruitt to Governor Jerry Brown, May 2, 2017.
[32] 81 Fed. Reg. 59332 (August 29, 2016).
[33] 81 Fed. Reg. 59276 (August 29, 2016).

Actions under the Trump Administration: Pursuant to EO 13783, Administrator Pruitt has taken the following actions:

- On May 5, 2017, the EPA sent a letter to petitioners announcing it was convening a proceeding for reconsideration of the final rules and its intention to issue a 90-day stay of the effectiveness of both final rules.[34]
- On May 31, 2017, the Administrator signed a notice of reconsideration and issued a 90-day stay under CAA §307(d)(7)(B) for the regulatory provisions added or revised by the two rules.[35]
- The EPA prepared two proposals related to its review of these rules that have been under review by the OMB since May 25, 2017.

Both rules were included as initiatives in two reports identified for rescission in §3(b) of EO 13783 – The President's Climate Action Plan (June 2013) and the Climate Action Plan Strategy to Reduce Methane Emissions (March 2014).

The EPA has initiated a programmatic staff workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The Office of Air and Radiation will lead the workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

iv. Oil and Gas Control Technique Guidelines[36]

Summary: On October 27, 2016, EPA issued "Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry." In general, recommendations for reasonably available control technology (RACT) are based on the control options contained in the 2012 Oil & Gas NSPS (including its subsequent amendments) (subpart OOOO)[37] and the 2016 Oil & Gas NSPS (subpart OOOOa).[38] (Some control requirements in the 2016 rule applied only to methane emissions and were not included in the 2016 Control Technique Guidelines (CTG), which, as per the CAA, only includes VOC controls.) The 2016 Oil and Gas CTG was projected to affect about 190,000 wells that are in RACT controlled areas (17% of all wells). About 2% of wells would have been subject to fugitive emissions requirements. Projected capital costs were $390 million, and annualized costs were $140 million (2012$). Affected domestic energy resources include oil and natural gas.

[34] Administrator Scott Pruitt to Caroll W. McGuffey III, Barry Shanoff, Kevin J. Kraushaar, Carol F. McCabe, and Michael Dillon, May 5, 2017.
[35] 82 Fed. Reg. 24878 (May 31, 2017).
[36] 81 Fed. Reg. 74798 (October 27, 2016).
[37] 77 Fed. Reg. 49490 (August 16, 2012); 78 Fed. Reg. 58416 (September 23, 2013), 79 Fed. Reg. 79018 (December 31, 2014); and 80 Fed. Reg. 48262 (August 12, 2015).
[38] 81 Fed. Reg. 35824 (June 3, 2016).

Background: CAA §183 (Federal Ozone Measures) provides the EPA authority to issue, review, and update as necessary CTG for VOC sources, including stationary sources as well as consumer and commercial products. A CTG is a document that provides recommendations to state and local air agencies on establishing RACT for reducing emissions from covered stationary source equipment and processes.

CAA §182 requires that moderate or higher ozone nonattainment areas or areas within an ozone transport region must revise their state implementation plans (SIPs) to include RACT for each category of VOC sources covered by a CTG. (The measures identified in the CTG are recommendations only and are not legally binding.) States may use the recommendations in the CTG to inform their determinations as to what constitutes RACT for VOC and are free to implement other technically-sound approaches that are consistent with the CAA and the EPA's regulations. CAA §182(b)(2) requires that a CTG include a date by which states must submit SIP revisions in response to the CTG.

Actions under the Trump Administration: Because the EPA is reconsidering various provisions of the 2016 Oil & Gas NSPS that relate to the control of both methane and VOCs, the EPA is considering where it may be appropriate to review the CTGs that were largely based on that rule.

v. Petroleum Refineries Residual Risk and Technology Review

Summary: On December 1, 2015, the EPA issued a final rule, "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards." This rule included the risk and technology review (RTR) for two petroleum refinery NESHAPS, Refinery MACT 1[39] and Refinery MACT 2,[40] as well as technical corrections to Petroleum Refinery NSPS.[41] The rule also contained amendments to ensure compliance, including flare monitoring and operational requirements, requirements for relief valve monitoring, and emissions source performance tests for the fluid catalytic cracking units (FCCUs) at existing sources (Refinery MACT 2).[42] The Office of Air and Radiation, which leads the 2015 Refineries Residual Risk and Technology Review and New Source Performance Standards rulemaking, estimates annualized compliance costs of $74.2 million. Product recovery was projected at $11 million annually while total capital investment was projected to be $283 million.[43] This action affects domestic oil resources.

Background: CAA §112(d) requires the EPA to promulgate regulations establishing national emission standards (NESHAPs) for each category or subcategory of major sources of hazardous air

[39] 40 CFR part 63, subpart CC.
[40] 40 CFR part 63, subpart UUU.
[41] 40 CFR part 60, subpart J; and, 40 CFR part 60, subpart Ja.
[42] 80 Fed. Reg. 75178 (December 1, 2015).
[43] Economic Impact Analysis for Petroleum Refineries Final Amendments to the National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards, September 2015. EPA docket number: EPA-HQ-OAR-2010-0682.

pollutants (HAPs) listed pursuant to §112(c). "Major" sources are those sources that emit or have the potential to emit in the aggregate 10 tons per year (tpy) or more of any HAPs or 25 tpy or more of any combination of HAPs. The standards must require the maximum degree of emission reduction that the EPA determines to be achievable by each particular source category (i.e., maximum achievable control technology (MACT)). The "MACT floor" – the minimum level of HAP emission control – for new sources is equivalent to the level of HAP emission control achieved by the best-controlled similar source, and the MACT floor for existing sources is the average level of HAP emission control achieved by the best performing 12% of that industry group's currently operating sources.

CAA §112(f) requires the EPA to assess the risk to public health remaining after the implementation of NESHAP for each source category after eight years. If the "residual risk" for a source category does not protect public health with "an ample margin of safety," the EPA must promulgate health-based standards for that source category to further reduce HAP emissions. The EPA is required to set more stringent standards if necessary to prevent adverse environmental effects (considering energy, costs, and other relevant factors). CAA §112(d)(6) requires the EPA to review and revise the MACT standards every eight years, as necessary, taking into account developments in practices, processes, and control technologies. The EPA typically undertakes a combined residual RTR rulemaking to reassess each source category NESHAP if both reviews are required.

On June 16, 2016, the EPA granted reconsideration of five aspects of the final rule for which the EPA did not provide adequate opportunity for notice and comment: (1) work practice standards for pressure relief devices; (2) work practice standards for emergency flaring; (3) assessment of risk from the refinery source categories after implementation of the pressure relief device and emergency flaring work practice standards; (4) alternative work practice standards for delayed coking units employing the water overflow design; and, (5) reduced frequency of fenceline monitoring. The EPA proposed a response to the reconsideration issues on October 18, 2016.[44] At that time, the EPA also proposed a technical correction related to regulatory overlap of equipment leak regulations that was raised in one of the petitions and proposed to correct a referencing error related to that provision.

Actions under the Trump Administration: Pursuant to EO 13783, the EPA is working towards a final rulemaking by early 2018 in response to the issues for which the EPA granted reconsideration, as well as action on the technical correction and referencing error. {Was this in the regulatory agenda?}

The Office of Air and Radiation will lead the programmatic staff workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

[44] 81 Fed. Reg. 71661 (October 18, 2016).

vi. Effluent Limitations Guidelines for Oil &Gas

{Paragraph not necessary} The Clean Water Act (CWA) prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized, such as under the CWA §402 National Pollutant Discharge Elimination System (NPDES) permit program. Direct dischargers (those discharging directly to waters of the U.S.) must comply with effluent limitations in NPDES permits.

{Paragraph not necessary} CWA §307(b) provides general and specific prohibitions on the discharge to publicly owned treatment works (POTW) in order to prevent a "pass through" of pollutants from industrial sources that would cause or contribute to a violation of the POTW's NPDES permit or "interfere" with the POTW's operation or prevent biosolids use consistent with the POTW's chosen method of disposal. Pretreatment programs are designed to prevent industrial facilities from passing through such untreated pollutants to their POTW. The CWA also authorizes the EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge pollutants indirectly, by sending wastewater to POTWs. Specifically, CWA §§307(b) and (c) authorize the EPA to establish pretreatment standards for those pollutants in wastewater from indirect dischargers that the EPA determines are not susceptible to treatment by a POTW or would interfere with POTW operations.

Summary: On June 28, 2016, the EPA issued a final rule, "Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category." This rule established pretreatment standards to prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas extraction facilities to publicly owned treatment works (POTW).[45] Affected domestic energy resources include oil and natural gas.

Background: The EPA's rule record indicated that all unconventional oil and gas facilities were already meeting the zero discharge requirement – through underground injection, recycling, reuse, and transfer to centralized waste treatment facilities. Hence, the final rule was not projected to affect current industry practice or to result in incremental compliance costs.

After promulgation, the EPA received information from a coalition of Pennsylvania oil and gas operators indicating that some of the operators were discharging unconventional oil and gas wastewater to POTWs at the time of the final rule. These operators extract from formations that are considered "conventional" under Pennsylvania law but would be considered "unconventional" under the EPA's rule, which would subject them to the prohibition on discharge into POTWs. These operators did not comment on the proposed rule. Based on this new information, the EPA issued a rule in December 2016 extending the compliance deadline for three years until August 29, 2019, for facilities sending wastewater to POTWs at the time of the final rule.[46]

[45] 81 Fed. Reg. 41845 (June 28, 2016).
[46] 81 Fed. Reg. 88126 (December 7, 2016).

On November 18, 2016, the Pennsylvania Grade Crude Oil Coalition (the same coalition of Pennsylvania oil and gas operators) filed a petition for review in the Third Circuit. On June 15, 2017, the Pennsylvania Grade Crude Oil Coalition filed suit in the Third Circuit regarding the rule's definition of an "unconventional" operation.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, industry associations {Who?} asked that the Agency undertake a review of fracking wastewater management technologies and to consider revisions to the ELG based on the review.

Actions under the Trump Administration: Pursuant to EO 13783, the EPA is considering whether to review the 2016 ELG for Oil & Gas to determine if it has appropriately defined "unconventional" oil and gas extraction facilities and whether fracking wastewater management technologies should be included in a technology evaluation.

b. Actions Related to Electricity Generation and Coal

i. Steam Electric ELG

{Paragraph not necessary} The CWA has, as a national goal, the elimination of the discharge of all pollutants into the nation's waters.[47] The CWA establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the CWA. Under CWA §402, discharges may be authorized by an NPDES permit. The CWA establishes a dual approach for these permits, technology-based controls that establish a floor of performance for all dischargers, and water quality-based effluent limitations, where the technology-based effluent limitations are insufficient to meet applicable WQS. To serve as the basis for the technology-based controls, the CWA authorizes the EPA to establish national technology-based effluent limitations guidelines (ELG) and NSPS for discharges from categories of point sources (such as industrial, commercial, and public sources) that flow directly into waters of the U.S.

Summary: On November 3, 2015, the EPA issued a final rule "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category." This rule amended the ELG and standards for the steam electric power generating point source category (i.e., 2015 Steam Electric ELG). The amendments contained limitations and standards on various wastestreams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, flue gas desulfurization (FGD) wastewater, gasification wastewater, and combustion residual leachate.[48] The EPA estimated the 2015 Steam Electric ELG

[47] 33 U.S.C. 1251(a)(1).
[48] 80 Fed. Reg. 67838 (November 3, 2015).

rulemaking total annualized cost to industry at $496.2 million (2013$). Capital costs are estimated to be $300.4 million. This action affects domestic coal resources.

Background: EPA received seven petitions for review of the 2015 Steam Electric ELG rule. On December 8, 2015, the United States Judicial Panel on Multi-District Litigation issued an order consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit.[49]

In a letter dated March 24, 2017, the Utility Water Act Group (UWAG) submitted a petition for reconsideration of the rule and requested that the EPA suspend the 2015 Steam Electric ELG's approaching compliance deadlines. UWAG supplemented its petition with additional information in a letter dated April 13, 2017. On April 5, 2017, the Small Business Administration (SBA) Office of Advocacy sent the EPA a second petition for reconsideration of the rule, which expressly supported UWAG's petition and raises issues that SBA considers pertinent to small businesses. The petitions raise wide-ranging and sweeping objections to the rule and point to new data.

Actions under the Trump Administration: Considering the litigation and in response to the petitions for reconsideration, the EPA has taken the following actions:

- On April 11, 2017, the Administrator sent a letter to each state governor notifying them of the Agency's intent to consider postponing compliance dates as well as petitions for reconsideration of the final rule.
- On April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule and, using authority under the Administrative Procedures Act §705, to postpone compliance dates that have not yet passed pending judicial review.[50]
- On June 6, 2017, the Administrator proposed to postpone certain compliance dates until the EPA completes reconsideration of the 2015 Steam Electric ELG.[51] The comment period ended on July 6, 2017.

The EPA has initiated a programmatic staff workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The Office of Water will lead the workgroup with Jeff Lape, Deputy Director, Office of Science and Technology, as the primary contact.

ii. Greenhouse Gas Reporting Program

Summary: The Greenhouse Gas Reporting Program (GHGRP) requires reporting of GHG data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO_2 injection sites in the United States.[52] The GHGRP covers a total of 41 categories of reporters.

[49] *Southwestern Electric Power Co., et al. v. EPA*, No. 15–60821.
[50] 82 Fed. Reg. 19005 (April 25, 2017).
[51] 82 Fed. Reg. 26017 (June 6, 2017).
[52] 40 CFR Part 98.

Facilities determine whether they are required to report based on the types of industrial operations located at the facility, their emission levels, or other factors. Facilities are generally required to submit annual reports if: (1) GHG emissions from covered sources exceed 25,000 metric tons CO_2e per year; (2) supply of certain products would result in over 25,000 metric tons CO_2e of GHG emissions if those products were released, combusted, or oxidized; or, (3) the facility receives 25,000 metric tons or more of CO_2 for underground injection.

Background: In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, several commenters provided suggestions for modifications to the GHGRP to reduce reporting burden. Specifically, commenters noted streamlining opportunities related to reporting by electric utilities and petroleum and natural gas sources.

Subpart D sets the GHGRP reporting requirements for the electricity generation source category. Commenters noted that the GHGRP requires duplicative reporting of CO_2 emissions from sources already subject to the reporting requirements of 40 CFR Part 75 related to continuous emissions monitoring (including the Acid Rain Program). To avoid the need for duplicative reporting, commenters suggested that the EPA transfer reported CO_2 emissions under 40 CFR Part 75 to the GHGRP data systems.

Subpart W sets the GHGRP reporting requirements for the petroleum and natural gas systems source category. Commenters suggested that the EPA allow oil and gas facilities to report estimates of the GHG emissions from compressors by use of emissions factors in lieu of measuring and reporting direct emissions from these compressors.

Actions under the Trump Administration: Pursuant to EO 13783, the EPA is evaluating these and other opportunities to revise and streamline the GHG reporting requirements.

iii. Mercury and Air Toxics Standards E-Reporting Requirements

Summary: On February 16, 2012, the EPA issued a final rule, "National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units." This rule established NESHAPs for coal- and oil-fired electric steam generation units. The Mercury and Air Toxics Standards (MATS) rule included reporting requirements as well.[53] Affected domestic energy resources include oil and coal.

Background: The final MATS rule required affected sources to submit certain MATS emissions and compliance information electronically, using either the Compliance and Emissions Data

[53] 77 Fed. Reg. 9304 (February 16, 2012).

Reporting Interface (CEDRI) or the Emissions Collection and Monitoring Plan System (ECMPS) Client Tool. Commenters have suggested that the EPA could improve the reporting efficiency of the MATS rule by requiring all data to be reported to one system instead of two and setting one consistent format for all data reported through MATS. Furthermore, because the vast majority of sources covered under the MATS rule have been using the ECMPS Client Tool since 2009, the stakeholders have encouraged the EPA to consider consolidating the electronic reporting under ECMPS.

On March 24, 2015, the EPA issued a final to remove the requirement to submit MATS compliance reports to the CEDRI and, instead, requiring source owners or operators to use the ECMPS Client Tool to submit PDF version of the reports.[54]

Actions under the Trump Administration: Pursuant to EO 13783, the EPA is implementing the second phase of changing the MATS rule. In the second phase, the EPA is considering whether to issue another rulemaking that requires affected source owners or operators to submit the data elements required in MATS in a structured XML format using the ECMPS Client Tool.

The Office of Air and Radiation will lead the programmatic staff workgroup with Peter Tsirigotis, Director, Sector Policies and Programs Division, as the primary contact.

iv. Coal Combustion Residuals

Summary: On April 17, 2015, the EPA issued a final rule, "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Final Rule." This rule establishes minimum national criteria under subtitle D of the Resource Conservation and Recovery Act (RCRA) for Coal Combustion Residuals (CCR) landfills and surface impoundments at active coal fired power plants. The rule regulates surface impoundments and landfills that are actively accruing CCR, inactive surface impoundments still containing CCRs, and water both at operating power plants actively burning coal and those that burned coal in the past but have transitioned to use of an alternate fuel source.[55] The EPA estimated the 2015 CCR rule would affect 414 coal-fired electric utility plants and have annualized costs ranging from $509 million at a 7% discount rate to $735 million at a 3% discount rate (2013$). This action affects domestic coal resources.

Background: The requirements of the CCR rule are directly applicable to owner/operators of facilities where disposal units are located and can be enforced via citizen suit or under the "imminent and substantial danger" authority of RCRA §7002. Under the rule, owner/operators are required to place notifications in their operating record, on their website, and in some instances

[54] 80 Fed. Reg. 15510 (March 24, 2015).
[55] 80 Fed. Reg. 21302 (April 17, 2015).

provide notice to the directors of appropriate state agencies documenting the measures taken to comply with the rule.

This rule does not make a final Bevill regulatory determination as to whether CCRs warrant regulation as a hazardous waste under Subtitle C of RCRA, but instead defers a final determination until the EPA has more information on specific matters influencing the risks posed by CCRs, including: potential future changes in the toxicity characteristics of CCRs due to new air pollution control measures at EGUs; uncertainty surrounding the IRIS cancer slope factor for arsenic, which is currently under re-evaluation; and a better understanding of the adequacy of state programs to regulate CCRs.

Subsequent to the promulgation of the 2015 CCR rule, various environmental and industry groups submitted to the D.C. Circuit seven separate petitions for review, which have been consolidated into a single action. On June 16, 2016, the D.C. Circuit remanded with vacatur to the EPA specific provisions of the rule for further consideration.

On December 16, 2016, the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act,[56] which included language giving state agencies the authority to implement and enforce coal ash regulations under the 2015 CCR Final rule through EPA-approved state permit programs. The WIIN Act also gives the EPA the authority to regulate coal ash in states that choose not to implement state permitting programs and in states whose permitting programs are determined to be inadequate by the EPA. The EPA has direct implementing authority in Indian country.

Actions under the Trump Administration: Pursuant to EO 13783, Administrator Pruitt has taken the following actions:

- On April 28, 2017, Administrator Scott Pruitt sent letters informing states that the EPA is working on guidance for implementing state permitting programs under WIIN that allow flexibility in individual permits to manage the safe disposal of CCR. The EPA expects that its new guidance will allow for the safe disposal and continued beneficial use of coal ash while enabling states to decide what works best for their environment.
- On May 12, 2017, the Utility Solid Waste Activities Group, which represents the electric power sector on waste management issues, filed a petition with the EPA urging the Agency to reconsider numerous provisions of the 2015 CCR rule.
- On May 25, 2017, the EPA transmitted draft guidance to OMB for interagency review under EO 12866. The EPA submitted a revised version the same day.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, several commenters requested that the EPA extend the CCR compliance dates to allow for implementation through state or Federal permitting programs as per the WIIN Act. Many compliance deadlines in the final CCR rule have already passed, but some remain

[56] P.L. 114-322.

outstanding. Groundwater monitoring must begin by October 17, 2017. Where groundwater monitoring identifies exceedances, corrective action must be taken, and default cleanup targets have been described as very stringent. Commenters have requested that the EPA consider extending compliance deadlines for any corrective action that might be required until state permit programs are able to issue permits under provisions of the WIIN Act as state programs may define cleanup targets that are different than what would otherwise be required.

The EPA has initiated a programmatic staff workgroup to consider the provisions remanded by the D.C. Circuit, as well as the issues raised in the 2017 petition and other implementation issues raised by stakeholders. The Office of Land and Emergency Management will lead the workgroup with Barnes Johnson, Director, Office of Resource Conservation and Recovery, as the primary contact.

c. Actions that are Generally Applicable to Energy Sector

i. Waters of the United States[57]

{Paragraph not necessary} The CWA seeks "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Among other provisions, the CWA regulates the discharge of pollutants into "navigable waters," defined in the CWA as "the waters of the United States." The question of what is a "water of the United States" is one that has generated substantial interest and uncertainty, especially among states, small businesses, the agricultural communities, and environmental organizations, because it relates to the extent of jurisdiction for federal and relevant state regulations.

Summary: On June 29, 2015, the EPA issued a final rule, "Clean Water Rule: Definition of 'Waters of the United States'." Waters of the United States (WOTUS) is a definitional rule that affects the scope of the "waters of the United States;" it does not establish any regulatory requirements or directly mandate actions on its own. However, by changing the definition of the "waters of the United States," the rule changes the waters where other regulatory requirements that affect regulated entities come into play (e.g., the locations where regulated entities would be required to obtain certain types of permits).

The EPA and the Corp of Engineers prepared an illustrative economic analysis of the proposed repeal of the 2015 rule and the recodification of pre-existing rules to provide the public with information on the potential changes to the costs and benefits of various CWA programs that could result if there was a change in the number of positive jurisdictional determinations.[58] The 2015 rule is used as a baseline in the analysis in order to estimate the differential effects of restoring the pre-2015 status quo relative to the 2015 rule. (However, as noted previously, the 2015 rule has already

[57] 80 Fed. Reg. 37054 (June 29, 2015).
[58] https://www.epa.gov/wotus-rule/economic-analysis-proposed-definition-waters-united-states-recodification-pre-existing; "Economic Analysis for the Proposed Definition of 'Waters of the United States' – Recodification of Pre-existing Rules," June 2017.

been stayed by the Sixth Circuit, and the proposed rule would merely codify the legal status quo, not change current practice.) The illustrative economic analysis indicates that annual avoided costs range from $162 million to $476 million (2016$).

The recodification of the regulation previously in place and the issuance of a new definition will have wide-ranging effects on domestic energy production and use, including the permitting of oil, gas, coal, and renewable development sites, and the transmission and distribution of electricity.

Background: The EPA and the Department of the Army (Corp of Engineers) have promulgated a series of regulations defining "waters of the United States." The scope of "waters of the United States" as defined by prior regulations has been subject to litigation in several U.S. Supreme Court cases, most recently in its 2006 *Rapanos* decision.[59] As a result of that decision, the EPA and the Corp of Engineers issued guidance regarding CWA jurisdiction in 2007 and revised it in 2008.

In response to that guidance, members of Congress, developers, farmers, state and local governments, environmental organizations, energy companies, and others asked the EPA and Corp of Engineers to replace the guidance with a regulation. At the conclusion of that rulemaking process, the EPA and the Corp of Engineers issued the "Clean Water Rule: Definition of 'Waters of the United States.'" (2015 WOTUS rule).

Due to concerns about the potential for continued regulatory uncertainty, as well as the scope and legal authority of the 2015 WOTUS rule, 31 states and a number of other parties sought judicial review in multiple actions. Seven states, plus the District of Columbia, and additional parties then intervened in those cases. On October 9, 2015, the Sixth Circuit stayed the 2015 WOTUS rule nationwide pending further action of the court.[60]

Actions under the Trump Administration: On February 28, 2017, President Trump signed Executive Order 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" rule, which directed the EPA and the U.S. Army Corp of Engineers to review the 2015 WOTUS rule.[61] Provisions of the rule may have burdensome impacts on domestic energy production, including coal, oil, and natural gas.

Pursuant to EO 13778, as well as 13783, Administrator Pruitt has taken the following actions:

- On February 28, 2017, the day the EO 13778 was issued, Administrator Pruitt signed a notice to review the final rule.[62]
- On June 27, 2017, Administrator Pruitt signed a proposed rulemaking to repeal the 2015 WOTUS rule and reinstate the regulations in place prior to its issuance. (WOTUS

[59] *Rapanos v. United States*, 547 U.S. 715 (2006).
[60] *Ohio v. U.S. Army Corps of Eng'rs.*, 6th Cir., No. 15-3799 (October 9, 2015).
[61] 82 Fed. Reg. 12497 (March 3, 2017).
[62] 82 Fed. Reg. 12532 (March 6, 2017).

Recodification Rule; RIN 2040-AF74).[63] As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to establish the legal status quo in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 WOTUS rule. Currently, Step 1 is being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion. (RIN 2040-AF75).

The EPA has initiated programmatic staff workgroups to recodify the regulation that was in place prior to the 2015 WOTUS rule and consider a new definition that would replace the approach in the 2015 Clean Water rule with one that reflects the principles that Justice Scalia outlined in the *Rapanos* plurality opinion. The Office of Water will lead the workgroup with John Goodin, Acting Director, Office of Wetlands, Oceans, and Watersheds, as the primary contact.

ii. New Source Review and Title V Permitting Programs

The CAA establishes a number of permitting programs designed to carry out the goals of the Act. Numerous commenters have identified streamlining, burden reduction, and other reform opportunities, and provided specific recommendations for the EPA's primary permitting programs.

{Paragraph not necessary} New Source Review (NSR) is a preconstruction permitting program that ensures that the addition of new and modified sources does not significantly degrade air quality. NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source may be operated. There are three types of NSR permits: (1) Prevention of Significant Deterioration (PSD) (CAA Part C) permits, which are required for new major sources or a major source making a major modification in an attainment area; (2) Nonattainment NSR (NNSR) (CAA Part D) permits, which are required for new major sources or major sources making a major modification in a nonattainment area; and (3) Minor source permits (CAA § 110(a)(2)(C)).

{Paragraph not necessary} CAA Title V requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit. Sources with these "Title V permits" are required by the CAA to certify compliance with the applicable requirements of their permits at least annually. Regulations governing the Title V program are found at 40 CFR Part 70 – State Operating Permit Programs.

[63] Fed. Reg. publication expected July 27, 2017 (NPRM). Pre-publication version available at https://www.epa.gov/wotus-rule/pre-publication-version-proposed-rule-definition-waters-united-states-recodification-pre .

{Forward-looking – remove} The EPA is committed to producing an action plan, per the President's January 24, 2017, Memorandum on Streamlining Permitting, for NSR, Title V, and other permitting programs reform. Areas of emphasis will include: (1) the timely issuance of permits. The EPA will issue guidance on best practices and approaches to ensure timely issuance of permits based on a review of state, local, and tribal air agencies that are identified as among the best in issuing preconstruction permits in a timely manner; (2) facilitate flexibility in permitting in a nationally consistent manner. Promote and facilitate the use of flexible permitting mechanisms associated with PSD and Title V, including but not limited to plant-wide applicability limits (PALs) and alternative operating scenarios, and (3) simplify the CAA permitting requirements by evaluating and pursuing appropriate actions related to actual-to-projected-actual applicability test, project netting rulemaking, debottlenecking, and routine maintenance, repair, and replacement.

{Forward-looking – remove} The EPA is also conserving whether to take steps forward on the following actions: GHG Significant Emission Rate rulemaking,[64] which will provide a significance threshold for GHG emissions to determine when a best available control technology (BACT) analysis is required; improve the technical tools used to streamline air quality modeling by issuing final $PM_{2.5}$ and Ozone Significant Impact Levels (SILs) Guidance,[65] and final Modeled Emissions Rates for Precursors (MERPs) Guidance;[66] and Title V Permitting Program Petition Provisions Modification.[67]

iii. "Once In, Always In" Policy

Summary: On May 16, 1995, John Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum to EPA Regional Air Division Directors interpreting certain requirements of the NESHAP General Provisions entitled "Potential to Emit for MACT Standards—Guidance on Timing Issues" – i.e., the "once in, always in" policy.[68]

{Paragraph not necessary} As per CAA §112, a "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources" and subject to less stringent regulation than a major source.

{Paragraph not necessary} Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable CAA §112 Maximum

[64] 81 Fed. Reg. 67945 (October 3, 2016) (NPRM).
[65] https://www.epa.gov/sites/production/files/2016-08/documents/pm2_5_sils_and_ozone_draft_guidance.pdf (posted August 1, 2016).
[66] https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf (posted December 2, 2016).
[67] 81 Fed. Reg. 57822 (August 24, 2016) (NPRM).
[68] https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf ; May 16, 1995.

Achievable Control Technology (MACT) standard. However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT even if it subsequently reduces HAP emissions below major source levels at a later date. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

Background: On March 16, 1994, the EPA promulgated Part 63 General Provisions for NESHAPs and other regulatory requirements that are established under CAA §112.[69]

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, as well as other earlier public comment forums, states and many industry stakeholders have long expressed concern that the 1995 "once in, always in" policy inhibits innovation and penalizes good actions to reduce air pollution from industrial facilities.

In 2003 and 2007, the EPA proposed amendments to the Part 63 General Provisions to change parts of the "once in, always in" policy but was blocked by Congress from taking final action on the 2007 proposal.[70] Neither action was ever finalized.

Actions under the Trump Administration: Pursuant to EO 13783, the EPA is considering whether to revise its interpretation of CAA §112 through rulemaking to clarify the means by which a facility currently classified as a major source of HAPs can become an area source – i.e., by obtaining federally enforceable limits on its potential to emit.

The new regulation will strive to provide incentives to sources to minimize emissions and limit the number of sources (and reduce associated costs) required to comply with the MACT program.

iv. Ozone NAAQS Implementation

Summary: On October 1, 2015, the EPA issued a final rule, "National Ambient Air Quality Standards for Ozone." This rule revised the 8-hour primary and secondary Ozone NAAQS.[71] The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard. (The previous ozone NAAQS were set in 2008 and remain effective.)

Background: In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, as well as other earlier public comment forums, commenters have recommended that the EPA further revise the exceptional event rule and associated guidance to allow for greater state flexibility in flagging and excluding exceptional

[69] 59 Fed. Reg. 12408, at 12430 (March 16, 1994).
[70] See 68 Fed. Reg. 26249 (May 15, 2003) and 72 Fed. Reg. 69 (January 3, 2007).
[71] 80 Fed. Reg. 65292 (October 26, 2015).

events in the data set used to determine compliance with the NAAQS. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, state, or local air agencies may implement in order to attain and maintain the NAAQS. Exceptional events include wildfires, stratospheric ozone intrusions, and volcanic and seismic activities. On September 16, 2016, the EPA finalized revisions to the Exceptional Events rule to establish criteria and procedures for use in determining exceptional events influenced air quality monitoring data.[72]

Actions under the Trump Administration: Pursuant to EO 13783, Administrator Pruitt has recently taken administrative actions related to the implementation of the 2015 ozone standards. Using his CAA authority, the Administrator has announced a 1-year extension on the deadline for designating areas as attaining or not attaining the 2015 Ozone NAAQS.[73] This additional time will allow the EPA to further review the rule, and to evaluate a number of complex issues that may affect states' efforts to comply with ozone standards (e.g., the role of background ozone and properly accounting for international transport).

The EPA is considering whether to use the additional time afforded by the designations extension to finalize necessary guidance (e.g., updated exceptional events guidance and guidance on Significant Impact Levels (SILs)[74] and Model Emission Rates for Precursors (MERPs)[75]), as well as to finalize its 2015 Ozone NAAQS Implementation rule[76].

The Administrator has also formed the Ozone Cooperative Compliance RRTF to examine possible additional flexibilities for states to comply with ozone standards.

v. Texas Federal Implementation Plan Requirements for Interstate Transport Related to 1997 PM2.5 National Ambient Air Quality Standards

{Paragraph not necessary} CAA §110 requires that states submit a State Implementation Plan (SIP) for each primary and secondary NAAQS. CAA Part D requires SIP elements particular to nonattainment areas. As a first step in building a SIP, CAA §110(a)(1) & (2) requires that states include in their SIPs specific "infrastructure" elements that demonstrate how, through rules and procedures, the state will implement, maintain, and enforce a new or revised NAAQS – i.e., an Infrastructure SIP. The elements include emission inventories, monitoring network design, an air quality analysis, modeling results, enforcement mechanisms, and laws and regulations. Included within the infrastructure elements are the interstate transport requirements, including two sub-elements (or prongs) that must be addressed as per §110(a)(2)(D)(i)(I): the SIP must prohibit any source within the state from contributing significantly to (prong 1) or interfering with the

[72] 81 Fed. Reg. 68216 (October 3, 2016).
[73] 82 Fed. Reg. 29246 (June 28, 2017).
[74] https://www.epa.gov/sites/production/files/2016-12/documents/draft-ozone-pm25-sils-guidance.pdf
[75] https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf
[76] 81 Fed. Reg. 81276 (November 17, 2016).

maintenance of (prong 2) the NAAQS in other states. (Prongs 1 and 2 are frequently called the "Good Neighbor" provisions.)

{Paragraph not necessary} If the EPA disapproves a SIP provision, or the state has not submitted a required revision, the EPA may promulgate control measures in an action known as a Federal Implementation Plan (FIP). FIPs may cover comprehensive program or be limited to very specific provisions. If the state subsequently adopts the necessary provisions, and the EPA approves them, the provisions are incorporated into the SIP, and the FIP or specific FIP provisions can be withdrawn.

In 2011, the EPA initially promulgated the Cross-State Air Pollution rule (CSPAR) to address the obligations of the states and the EPA under the Good Neighbor provisions of the CAA. To reduce transported $PM_{2.5}$ pollution, CSAPR sets limits on annual emissions of NO_X and SO_2 as precursors to $PM_{2.5}$. To reduce transported ozone pollution, CSAPR sets limits on ozone-season emissions of NO_X as a precursor to ozone. CSAPR's emissions limitations are defined in terms of emissions ''budgets'' for the collective emissions from affected EGUs in each covered state. The emissions limitations are phased in, with the Phase 1 and Phase 2 budgets. Affected EGUs are subject to Federal Implementation Plan (FIP) provisions requiring them to participate in one or more of several CSAPR federal allowance trading programs established as flexible mechanisms to achieve compliance with the emissions budgets.

Following it 2011 promulgation, CSAPR was litigated in the D.C. Circuit and the Supreme Court. In 2014, the Supreme Court largely affirmed the rule but remanded specific issues back to the D.C. Circuit. In 2015, the D.C. Circuit remanded to the EPA the Phase 2 budgets for SO_2 and ozone season NO_x for Texas and several other states, finding that Phase 2 requirements may be more stringent than necessary to address Texas' $PM_{2.5}$ transport obligations.

On November 10, 2016, the EPA issued a proposal that would withdraw the FIP provisions requiring Texas EGUs to participate in the CSAPR federal trading programs for SO_2.[77] The EPA also proposed to determine that, following withdrawal of the FIP requirements, sources in Texas will not contribute significantly to nonattainment in, or interfere with maintenance by any other state with regard to the 1997 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). Therefore, the EPA will have no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution.

The EPA will finalize this action no later than September 9, 2017, as per a consent decree deadline in litigation related to federal plan obligations under the EPA's regional haze regulations.[78]

[77] 81 Fed. Reg. 78954 (November 10, 2016).
[78] *National Parks Conservation Association v. EPA*, No. 1:11-cv-1548 (D.D.C.).

vi. Title V Permitting Program Petition Provisions

{Paragraph not necessary} Title V of the CAA establishes an operating permit program. CAA §505 requires state, local, and tribal permitting authorities to submit a proposed Title V permit to the EPA Administrator for review for a 45-day review period before issuing the permit as final. The CAA provides that the Administrator shall object to the issuance of a permit within that 45-day review period if the Administrator determines that the permit contains provisions that are not in compliance with the applicable requirements under the CAA. If the Administrator does not object to the permit during the 45-day EPA review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to take such action. The Title V petition provisions of the current implementing regulations found at 40 CFR part 70 largely mirror the CAA and have not been revised since original promulgation in 1992.

Summary: On August 24, 2016, with 20 years of experience with Title V petitions as well as feedback from various stakeholders, the EPA issued a proposed rule, "Revisions to the Petition Provisions of the Title V Permitting Program." This rule proposed to changes to 40 CFR part 70 intended to provide clarity and transparency to the petition process, and to improve the efficiency of that process.[79]

Background: In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777 as well as the Department of Commerce's request for information on Federal permitting requirements, several commenters noted the need for a modification to the program to improve and streamline the process. The proposed changes are intended to benefit permitting authorities, permitted sources, and potential petitioners, as well as the EPA.

Permitting authorities and permitted sources are expected to benefit from early consultation with the appropriate EPA Regional Office when the permitting authority is preparing a permit to ensure it includes conditions that assure compliance with applicable requirements under the CAA and part 70. These early actions should minimize potential permit deficiencies and reduce the associated likelihood that a petition will be submitted on that Title V permit.

Potential petitioners are expected to benefit by having better notification of permits and review deadlines (e.g., the EPA is proposing to post on EPA Regional websites when a proposed permit is received and the corresponding 60-day deadline for submitting a petition) and by better access to permitting decision information (e.g., the permitting authority's written response to comments). These updates will clarify the expected minimum content of petitions and provide a standardized format, simplifying the process and enhancing the likelihood that petitions will be clear and complete. In addition, potential petitioners may also derive a benefit from more efficient responses to petitions and a better understanding of the process.

[79] 81 Fed. Reg. 57822 (August 24, 2016).

The EPA is expected to benefit by improving the Agency's ability to meet its statutory obligations to review proposed permits, respond to Title V petitions, and provide more transparency in the Title V petition process. These were concerns expressed by a CAA Advisory Committee task force in recommendations provided to the Agency in 2006.[80] The EPA believes that the proposed regulatory revisions and shared information are responsive to these concerns and could, if finalized, improve the efficiency of the Agency's response.

Actions under the Trump Administration: The Office of Air and Radiation will lead the programmatic staff workgroup developing a final rule in response to the August 24, 2016, proposal with Anna Marie Wood, Director, Air Quality Policy Division, as the primary contact.

vii. Risk Management Plan Rule

Summary: On January 13, 2017, the EPA promulgated amendments to the Risk Management Plan (RMP) rule.[81] The major provisions of the amendments included several changes to the accident prevention program requirements, the emergency response requirements, and the public availability of chemical hazard information. The accident prevention program provisions require all facilities with Program 2 or 3 processes to conduct a root cause analysis as part of an incident investigation of a catastrophic release or incident that could have reasonably resulted in a catastrophic release; to contract with an independent third-party, or assemble an audit team led by an independent third-party, to perform a compliance audit after the facility has an RMP reportable accident; and requires that Program 3 in certain NAICS codes conduct a safer technology and alternatives analysis as part of their every-five-years process hazard analysis. The emergency response provisions require that Program 2 or 3 processes coordinate with the local emergency response agencies at least once a year and conduct notification exercises annually, and that certain facilities conduct field exercises and tabletop exercise at least once every ten years. The provisions pertaining to public availability of information provisions require that all facilities provide certain basic information to the public upon request and that facilities hold a public meeting for the local community within 90 days of the RMP reportable accident.

Background: CAA §112(r) requires the EPA to publish regulations and guidance for chemical accident prevention at facilities that use certain hazardous substances. The Risk Management Plan (RMP) rule contains these regulations and guidance. The information required from facilities under RMP helps local fire, police, and emergency response personnel prepare for and respond to

[80] In 2004, the Clean Air Act Advisory Committee (CAAAC) established a Task Force to evaluate the Title V program. The 18-member panel, comprised of industry, state, and environmental group representatives, identified what Committee members believed was and was not working well. After hosting public meetings and receiving written feedback, and compiling the information with the personal experience of panel members, the Title V Task Force issued a final report that highlighted concerns and recommendations for improvement. See, Final Report to the Clean Air Act Advisory Committee on the Title V Implementation Experience: Title V Implementation Experience (April 2006). The Title V Task Force Final Report is available at: https://www.epa.gov/caaac/caaac- reports.
[81] 82 Fed. Reg. 4594 (January 13, 2017).

chemical emergencies. Making RMPs available to the public also fosters communication and awareness to improve accident prevention and emergency response practices at the local level.

The EPA RMP rule applies to stationary sources that hold specific "regulated substances" in excess of threshold quantitates. RMP aims to prevent or minimize the consequences of accidental chemical releases through the implementation of management program elements that integrate technologies, procedures, and management practices. In addition to requiring management program elements, the RMP rule requires covered sources to submit (to the EPA) a document summarizing the source's RMP.

The RMP rule establishes three "program levels" for regulated processes. Program 1 applies to processes that would not affect the public in the case of a worst-case release and that have had no accidents with specific offsite consequences within the past five years. Program 1 imposes limited hazard assessment requirements, requires coordination with local response agencies, and requires submission of an RMP. Program 2 applies to processes not eligible for Program 1 or subject to Program 3, and imposes streamlined prevention program requirements, including safety information, hazard review, operating procedures, training, maintenance, compliance audits, and incident investigation elements. Program 2 also imposes additional hazard assessment, management, and emergency response requirements. Program 3 applies to processes not eligible for Program 1 and either subject to OSHA's Process Safety Management standard under Federal or state OSHA programs or classified in one of ten specified industry sectors selected because they had a higher frequency of the most serious accidents as compared to other industry sectors.

On February 28, 2017, RMP Coalition, representing several trade associations submitted a petition requesting a reconsideration and a stay for the RMP rule amendments. On March 13, 2017, the Chemical Safety Advocacy Group (CSAG), a coalition of companies in the refining, oil and gas, chemicals and general manufacturing sector, submitted a petition for reconsideration. CSAG also submitted a supplement to their petition on March 14, 2017. On March 14, 2017, the state of Louisiana, joined by ten other states (Arizona, Arkansas, Florida, Kansas, Kentucky, Oklahoma, South Carolina, Texas, Wisconsin, and West Virginia) submitted a petition for reconsideration.

Actions under the Trump Administration: Pursuant to EO 13783, Administrator Pruitt has taken the following actions related to RMP:

- On March 13, 2017, Administrator Pruitt convened a proceeding for reconsideration of the RMP rule amendments.
- On March 16, 2017, the EPA published a final rule that provides a three-month (90-day) administrative stay of the effective date of the RMP rule amendments, delaying the effective date of the final rule to June 19, 2017.
- On June 14, 2017, the EPA published a final rule to further delay the effective date of the RMP rule amendments for 20 months until February 19, 2019. This action allowed the

EPA to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action.

The EPA has initiated a programmatic staff workgroup to consider the issues raised in the petitions for reconsideration and other implementation issues raised by stakeholders following publication of the final rule. The Office of Land and Emergency Management will lead the workgroup with Reggie Cheatham, Director, Office of Emergency Management, as the primary contact.

viii. Startup, Shutdown, and Malfunction

Summary: On June 12, 2015, the EPA issued a final rule, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction." This rule issued a SIP Call to 36 states (or air quality jurisdictions within those states), finding that their SIPs are substantially inadequate with due to the inclusion of provisions for (1) an affirmative defense for excess emissions during SSM events, or (2) a state director's discretion to unilaterally grant exemptions or variances from otherwise applicable emissions limitations, or (3) an automatic exemption for excess emissions during malfunctions, or (4) an enforcement discretion provision that purports to restrict citizen suits or federal enforcement.[82] (A state may exercise discretion in its enforcement program, provided that such discretion cannot apply to anyone other than state personnel; i.e., EPA or other parties pursuant to the citizen suit provision can still pursue monetary penalties as well as injunctive relief.)

Background: In a 1999 policy document, the EPA provided guidance to states with respect to SIP provisions addressed the issue of excess emissions from regulated sources that occur during startup, shutdown, and malfunction (SSM) events. EPA's policy has been that states may elect to have narrowly drawn affirmative defense provisions in SIPs, so long as they meet certain requirements (e.g., that they only apply to monetary penalties and not to injunctive relief).

The Sierra Club submitted a petition in 2011 requesting that the EPA address various types of alleged deficiencies with the Agency's SSM policy. {Rest of paragraph not necessary} The Sierra Club included three interrelated overarching requests concerning the treatment in SIPs of excess emissions from sources during SSM events: (1) The Petitioner argued that any SIP provision providing an affirmative defense for monetary penalties for excess emissions applicable in judicial proceedings is contrary to CAA §§113 and 304 in such a way that states could in effect alter the jurisdiction of the federal courts to impose monetary penalties for violations of the CAA requirements and, thus, EPA should rescind its interpretation of the CAA expressed in the SSM Policy that allows appropriately drawn affirmative defense provisions in SIPs. (2) The Petitioner argued that many existing SIPs contain impermissible provisions. The Petitioner identified specific

[82] 80 Fed. Reg. 33840 (June 12, 2015).

provisions in SIPs of 39 states that it considered inconsistent with the CAA, including automatic exemptions from applicable emission limitations during SSM events, director's discretion provisions that provide discretionary exemptions from applicable emission limitations during SSM events, enforcement discretion provisions that appear to bar enforcement by the EPA or citizens for such excess emissions, and inappropriate affirmative defense provisions that are not consistent with the CAA or the recommendations in the EPA's SSM Policy. (3) The Petitioner argued that the EPA should not rely on interpretive letters from states to resolve any ambiguity, or perceived ambiguity, in state regulatory provisions in SIP submissions. The Petitioner reasoned that all regulatory provisions should be clear and unambiguous on their face and that any reliance on interpretive letters to alleviate facial ambiguity in SIP provisions can lead to later problems with compliance and enforcement.

The Petitioner identified specific existing provisions in the SIPs of 14 states that were structured or characterized as affirmative defenses, regardless of whether the provisions in question were consistent with the EPA's SSM Policy as explained in the 1999 SSM Guidance. The Petitioner requested that the EPA issue a SIP call pursuant to CAA §110(k)(5) to require each state to revise its SIP.

The EPA published a proposed response on February 22, 2013, which with respect to the Petitioner's overarching claim that the EPA's interpretation of the CAA in the SSM Policy permitting states to have affirmative defenses in SIP provisions is in error, the EPA proposed to deny in part and to grant in part.

Subsequent to EPA's issuance of the February 2013 proposal, the D.C. Circuit ruled that CAA §§113 and 304 preclude the EPA's authority to create affirmative defense provisions in the Agency's own regulations imposing emission limits on sources, {rest of paragraph not necessary} because such provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. The EPA believes that the reasoning of the court in that decision indicates that the states, like the EPA, have no authority in SIP provisions to alter the jurisdiction of federal courts to assess penalties for violations of CAA requirements through affirmative defense provisions. If states lack authority under the CAA to alter the jurisdiction of the federal courts through affirmative defense provisions in SIPs, then the EPA lacks authority to approve any such provision in a SIP.[83] However, in that case, the court specifically declined to address the issue of whether EPA's approval of a SIP provision containing an affirmative defense provision that had recently been upheld by the Fifth Circuit.[84]

In response to the D.C. Circuit 2014 decision, the EPA issued a Supplemental Proposal that revised the earlier response in line with the logic of the Court's decision. The final rule clarified, restated, and revised EPA's interpretive guidance regarding CAA requirements for the treatment of excess

[83] *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).
[84] *Luminant Generation Co. v. EPA*, 714 F. 3d 841 (5th Cir. 2012), *cert. denied*, 134 S.Ct. 387 (2013).

emissions that occur during periods of SSM. The CAA prohibits exemptions for excess emissions during SSM events in SIPs; no automatic or discretionary exemptions or overly broad enforcement discretion provisions that would bar enforcement by the EPA or by other parties in federal court through a citizen suit are allowed. SIPs must contain emission limitations that "limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." However, SIP emissions limitations do not have to be numerical and do not have to apply the same limitation at all times; they may be composed of a combination of numerical limitations, specific technological control requirements, and/or work practice requirements, with each component of the limitation applicable during a defined mode of source operations. A state can develop special, alternative emission limitations that apply during startup or shutdown if the source cannot meet the otherwise applicable emission limitation in the SIP (i.e., as part of a continuously applicable emission limitation when properly developed and otherwise consistent with CAA requirements). However, if a non-numerical requirement does not itself (or in combination with other components of the emission limitation) limit the quantity, rate, or concentration of air pollutants on a continuous basis, then the non-numerical standard (or overarching requirement) does not meet the statutory definition of an emission limitation under §302(k).

Following issuance of the final SSM SIP Call, 13 petitions were filed challenging the rule. Petitioners included 19 states as well as corporations and industry groups. All cases have been consolidated in the D.C. Circuit.[85] On April 24, 2017, the D.C. Circuit granted an EPA request to postpone oral arguments scheduled for May 8, 2017, and hold the case in abeyance.

In response to the EPA's request for comments regarding the Administration's regulatory reform agenda under EO 13777, industry associations noted objections to the EPA's current SSM policy. Most stated that the EPA should consider withdrawing the SSM SIP Call and not act on any of the recent SIP submissions until it revises its interpretation of excess emission during SSM events. Commenters state that the current SSM Policy and the SSM SIP Call were not consistent with the system of cooperative federalism and unnecessarily interferes with states' authority to implement their programs. The EPA should establish work practices applicable to SSM events or amend emissions standards that can be achieved during SSM events. The SSM SIP Call was not based on any finding of air quality impacts or a finding that removing the provisions is necessary to meet other CAA goals.

Actions under the Trump Administration: Pursuant to EO 13783, the EPA will work with stakeholders to further understand their concerns and identify viable SSM events policies that adhere to the principals of cooperative federalism.

IV. Conclusion

[85] *Walter Coke Inc. v. EPA*, D.C. Cir., No 15-1166.

The EPA plays a critical role in shaping policies that may affect domestic energy resources. The EPA believes EO 13783 offers an important and unique opportunity to revisit its regulations and identify and remedy those that impose unnecessary burdens on domestic energy production and use. The EPA is taking regulatory reform very seriously, and has been proactive in soliciting input in a variety of venues that will inform the Agency's regulatory efforts related to EO 13783, EO 13777, and other Administration initiatives to identify and remedy regulations that are outdated, impose unnecessary burdens, inhibit job growth, and impose costs that exceed benefits.

There is much opportunity to reduce burden while maintaining a healthy environment based on the preliminary input the Agency has already received. Regulatory reform should be a natural way of doing business for the EPA, continually looking for ways to improve regulations and remove unneeded and counterproductive obstacles to fulfilling the Agency's critical mission.

{Need discussion at the beginning about what OMB asked for and the limitations (e.g., APA, prejudging outcomes); no cost estimates yet for new actions, but we will be committed to a typical rulemaking process based on robust record, sound science, rule of law, etc.}

EXAMPLES OF ENERGY-RELATED COMMENTS SUBMITTED BY INDUSTRY AND GOVERNMENT ASSOCIATIONS IN RESPONSE TO EPA'S APRIL 13, 2017 FEDERAL REGISTER NOTICE PUBLISHED IN ACCORDANCE WITH EO 13777

EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OLEM	Coal Combustion and Residuals (CCR) Rule	Reconsider/revise CCR rule to increase flexibility Extend compliance dates to allow for implementation of CCR requirements through state or federal permitting programs (in light of Water Infrastructure Improvements for the Nation Act (WIIN) Act) Extend compliance dates so CCR and Effluent Limitations Guidelines (ELG) rules can work together (in light of stay of ELG requirements) Revise to allow site-specific flexibility for groundwater monitoring (similar to municipal solid waste (MSW) regulations and state-based risk-based cleanup programs) Revise tonnage threshold Modify so that inactive surface impoundments are not subject to regulation Repeal alternative closure provision under 40 CFR Part 257.103	Regulation	Coal, Electric power
OLEM	Hazardous Waste Generator Improvements Rule	Revise "condition for exemption" provisions Revise requirements for remote sites Revise provisions regarding central accumulation areas and life span tracking	Regulation	Oil, Natural Gas
OLEM	Aboveground Storage Tanks for Hazardous Substances	Revise proposal	Regulation	Natural Gas
OLEM	Hazardous Waste Rules and Regulations (40 CFR 245 Subparts AA, BB and CC)	Revise to reference the Air Program's more restrictive emission standards requirements for process vents, tanks, surface impoundments, and containers, thereby reducing unnecessary duplication	Regulation	Oil
OLEM	CERCLA 108(b) Financial Assurance Regulations	Do not propose additional regulations Consider petitioning the court for an extension of the December 1, 2017, deadline to issue a final rule, in order to allow sufficient time to fully consider public comments Make a determination that financial responsibility is not necessary for petroleum, mining, or refining	Regulation	Oil, Coal, Electric Power

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EPA Office	EPA Regulation, Guidance Document, or Policy	Commenter Recommendations	Type of Action	Affected Energy Resources
OLEM	Hazardous Waste Import-Export Rule	☐ Withdraw rule ☐ Withdraw proposed internet posting rule	Regulation	Oil
OLEM	Polychlorinated Biphenyls (PCB) Ban	☐ Revise and simplify PCB use authorization ☐ Revise PCB storage and disposal regulations	Regulation	Natural Gas
OLEM	PCB Disposal Regulations	☐ Revise to allow disposal of all wastes with PCB contamination of less-than 50 PPM in modern, engineered landfills such as MSW landfills and other non-TSCA units	Regulation	Electric power
OLEM	RCRA Corrosivity Hazardous Waste Characteristic Regulation	☐ Finalize tentative denial to maintain current definition of corrosive hazardous waste	Regulation	Oil
OLEM	RCRA Regulatory Determination	☐ Determine that oil and natural gas production waste is nonhazardous under RCRA Subtitle D	Regulation	Oil
OLEM	Risk Management Program (RMP)	☐ Withdraw rule ☐ Proceed with stay of regulation and proposal to delay effective date until February 9, 2019 ☐ Perform local government impact analysis and consultation with cities, counties and mayors before finalizing rule ☐ Initiate new rulemaking to coordinate with OSHA and reduce burdens	Regulation	Oil

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FROM: Samantha Dravis

TO: Sarah Dunham, Mike Shapiro, Nancy Beck, Wendy Cleland-Hamnett, Patrick Davis, Barry Breen

CC: Ryan Jackson, Byron Brown, Brittany Bolen, Sarah Greenwalt, Mandy Gunasekara, Sarah Rees

Pursuant to Executive Order 13783, "Promoting Energy Independence and Economic Growth," EPA is to submit a draft final report by July 26, 2017, to the Vice President, the OMB Director, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of CEQ that includes specific recommendations that could alleviate or eliminate aspects of agency actions that burden the use or production of domestic energy.

The Regulatory Reform Task Force (RRTF) is leading the development of this report and is looking for input from your office by June 28. Specifically, we are looking for additional suggestions for changes to regulatory actions, guidance documents, policies, and similar actions, that would reduce or remove regulatory burden on domestic energy use or production, beyond actions that EPA has already publicly announced. Suggestions informed by the public meetings that were held pursuant to EO 13777 and/or comments received in the associated EPA docket would be particularly useful. You'll find attached outlines by program area of some of the key ideas we are aware of, grouped by program office. At a minimum, the RRTF asks that your office identify several of those ideas that are the most promising, and any that are not feasible, by June 28. To the extent you identify ideas that are not feasible, please describe the specific challenge or why the idea is not feasible.

In order to make sure we stay on track in developing the draft report, would each of your offices please identify a single staff point of contact who can work directly with Sarah Rees, the Director for the Office of Regulatory Policy and Management in OP. Thank you.

DRAFT DELIBERATIVE 6/20/2017

OCSPP SUGGESTIONS TO INFORM DRAFT REPORT:
ENERGY-RELATED COMMENTS SUBMITTED BY INDUSTRY AND GOVERNMENT ASSOCIATIONS FOR EPA'S APRIL 13, 2017 EO 13777 FEDERAL REGISTER NOTICE

Toxic Release Inventory (TRI) Reporting

- **Comment: Revise to exempt mining releases.**
  - EPCRA authorizes the Administrator to add or delete Standard Industrial Classification Codes, "but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of [TRI]." 42 USC 11023(b)(1)(B). In 1997, EPA determined that adding the metal and coal mining sectors was relevant to the purposes of TRI, relying on a robust administrative record, and that specific determination was upheld by a federal court. TRI reporting on mining operations is important information for the program in that these facilities report the largest quantities of toxic chemicals released.

OCSPP Suggestion/Response: Before taking this on OCSPP would need a better understanding of why the exemption is being requested. If there is a particularly burdensome reporting requirement that is problematic for the mining industry, perhaps we could focus on targeted changes.

- **Comment: Withdraw decision to add natural gas processing facilities to TRI.**
  - In January 2017, EPA proposed the addition of natural gas processing facilities to the scope of the industrial sectors covered by TRI. The comment period closed in May and EPA is currently reviewing comments and considering next steps.

OCSPP Suggestion/Response: As we are considering public comments on the proposed rule, we will take comments like this into account as we decide whether or not to finalize the rule.

Toxic Substances Control Act (TSCA)

- **Comment: Revise Interpretation of 'conditions of use'.**
  - TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, required EPA to issue two procedural rules by June 22, 2017 – one to establish EPA's process for identifying chemicals for risk evaluation ("Prioritization Rule") and one to establishing EPA's processes for evaluating chemicals to determine whether they present an unreasonable risk to health or the environment ("Risk Evaluation Rule").

OCSPP Suggestion/Response: The final rules, released June 22, 2017, address this concern. ***Action Completed.***

- **Comment: Allow 'robust summaries' in lieu of full reports.**

OCSPP Suggestion/Response: EPA believes that robust summaries can play a useful role in the risk evaluation process; however, these summaries do not often include all the raw data and other information needed by EPA to ensure that we are developing transparent high quality assessments. We would like to find a path forward to work with data owners and the EU to have access to underlying data.

- **Comment: Allow manufacturers to voluntarily submit risk evaluations.**

OCSPP Suggestion/Response: TSCA as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act does allow for this. On June 22, 2017 EPA released 'Guidance to Assist Interested Persons in Developing and Submitting Draft Risk Evaluations Under the Toxic Substances Control Act (TSCA), which gives clarity and predictability, by providing the scientific and data quality standards and steps to take in developing and submitting draft risk evaluations to be considered by EPA. ***Action Completed.***

- **Comment: Reduce unnecessary reporting for TSCA Inventory.**

OCSPP Suggestion/Response: After considering public comments on the proposed rule, in the final rule, finalized June 22, 2017, EPA streamlined the reporting requirements and added exemptions for manufacturers and processors to help reduce regulatory burden. ***Action Completed.***

- **Comment: Reduce substantiation of confidential business information claims**

OCSPP Suggestion/Response: EPA has taken and continues to undertake several activities to reduce industry burden for compliance with the reporting requirements of TSCA as amended:

  - To ease industry reporting burden, EPA's CDX electronic reporting systems for TSCA submissions were modified to accept substantiations for CBI claims in March 2017.
  - To assist industry in complying with the new substantiation provisions, EPA conducted two webinars in March 2017 covering the use of CDX for electronic substantiation.
  - To ease reporting burden, EPA developed substantiation templates that may be used in preparing their CBI substantiations.
  - EPA is planning additional webinars to further assist industry in complying with the substantiation requirements.

- **Comment: Revise reporting under the Chemicals Data Reporting rule (CDR), allow non-punitive correction to the inventory.**

OCSPP Suggestion/Response: We have a few things underway that could potentially be places where we consider this suggestion:

- Regarding CDR reporting, as required by TSCA as amended, in June 2017, EPA established a negotiated rulemaking committee under the Federal Advisory Committee Act (FACA), the objective of which is to negotiate a proposed rule limiting chemical data reporting requirements under section 8(a) of TSCA, including CDR, for manufacturers of any inorganic byproducts, when such byproducts are subsequently recycled, reused, or reprocessed. We could incorporate something about inventory corrections relate to this activity in the rule.
- EPA also intends to issue a proposed rule that will include other refinements to CDR reporting requirements; that proposed rule is in the early stages of development. This comment will be considered as part of that rulemaking.

- Regarding correction to the Inventory, based on comments received, EPA finalized, on June 22, 2017, the TSCA Inventory Notification (Active-Inactive) rule to allow a limited corrections process associated with retrospective reporting and forward-looking reporting.

- **Comment: Revise proposed rules to address comments from industry stakeholders.**

OCSPP Suggestion/Response: on June 22, 2017 significant changes were made to the rules to address public comments, including those from industry. ***Action Completed.***

Changes include:

- Change in approach to 'conditions of use' to address (as elaborated upon above).
- Change in the 'form and manner' under which manufacturers may request an Agency-conducted risk evaluation. In the proposed rule manufacturers requesting a risk evaluation had to submit all the information necessary to conduct an evaluation, including information on all the conditions of use. Many industry commenters expressed the concern in submitting information on uses for which they do not manufacturer the chemical for. The final rule limits this request to allow manufacturers to just submit the information on the condition(s) of use of interest to the manufacturer.
- In the final rule, EPA has provided definitions to key science terms as requested by industry. Industry requested these to be included, as the definitions provide more transparency and clarity in how the Agency is approaching its implementation of these provisions.
- Commenters requested that EPA engage with small businesses throughout the risk evaluation process. As a result, EPA codified collaboration with other Agencies, which will include the Small Business Administration.
- A number of industry commenters requested that EPA allow for early risk determinations, specifically on those uses that do not present an unreasonable risk. The final Risk Evaluation rule allows for the conditions of use included in the risk evaluation to receive individual risk determinations and for early determinations, for both does or does not present an unreasonable risk, to be made any time before the 3 – 3.5 year statutory deadline for completion of the risk evaluation.

How is EPA tackling the myriad comments submitted in the docket (putting them in buckets? assigning teams?)

- As we expected, our regulatory reform docket generated a lot of interest and we received over 460,000 comments
- Our first priority is identifying and evaluating comments associated with the energy sector, as we have a draft report due in late July as part of the Energy Independence Executive Order
    - That report requires that we report on our progress in reviewing regulations, orders, guidance documents, etc. that potentially burden development or use of domestic energy
- OP and program office staff are reviewing energy-sector related comments to identify additional specific actions that could be candidates for repeal or modification

What are EPA's priorities for the coming year?

- In the regulatory world, we have a lot of "big policy" regulations that we need to address as a result of the Executive Orders, as well as other items – like Steam Electric – which are priority items
- It is also a priority for us to meet our statutory obligations, and so will work hard to meet rule deadlines required by statute, such as RFS

Can EPA share how it is tackling some of the "big policy" reforms, such as WOTUS and the CPP? Are they being handled by your office, or driven by the program offices?

- All major rulemaking efforts at EPA involve a cross-agency effort.
- Program offices take the lead for regulations that are associated with their specific programs – e.g., OW is the lead office for WOTUS
- But other offices are also heavily involved, including OGC and OP
- OP manages the process to ensure that agency decision makers are informed as to status and are able to provide input and guidance to program office staff to ensure that the regulation is developed in accordance with the Administrator's goals and priorities

For the issues that already are under review (*e.g.* ELGs), does the agency have any deadlines internal or otherwise for completing those reviews?

- One priority is to ensure that if there were any compliance dates upcoming in any of these actions that we stay or postpone those dates while evaluating how to revise or modify the rule to provide immediate relief from those requirements
- As you know, some of these regulations – like the Steam Electric ELG – are fairly complex; while we are moving quickly it is important that we take the time to consider the information available and to develop a strong and defensible rule

Is there anything you can share about staffing? It seems as though the Office of Policy is pulling double duty; is there a plan to spread the pain (essentially was the question).

- There is certainly a lot of work associated with the regulatory reform efforts; much of that work falls to OP, however OP is working with the program offices to get the work done

Speaking to the big policy issues, has the agency begun to look at the CSAPR Update rule and the pending petitions for reconsideration?

[I have no information on this and I don't believe we've done anything publicly-facing on this, but I may not be in the loop]

How can we help?

- The comments you've already provided to our regulatory reform docket have already been helpful, as you provided specific, actionable examples of regulations that could be modified or changed that would reduce burden

What can industry do that would be most helpful as you go through both the big and the day-to-day reforms?

- In addition to specific recommendations of regulations to modify, an idea of what your top priorities would be helpful. For example, of the comments you've provided us, what are the top ones that would provide the most "bang for the buck" in terms of burden reduction.

WOTUS:

- EPA has been directed by Executive Order to review the Waters of the US Rule
- Yesterday we signed our proposal to rescind the definition of WOTUS as the first step in this process
    - Rescind the definition established in the 2015 rule
    - Re-codify the definition which currently governs pursuant to a stay issued by the 6th Circuit
- The second step will be a more substantive rulemaking to reconsider the definition of WOTUS
- Public comment period will run 30 days after date of publication in the Federal Register

Steam Electric ELG

- In June we proposed to postpone the compliance dates of the Steam Electric ELG while we consider next steps
    - Proposed postponing compliance dates that had not already passed; taking comment on whether to postpone for a specific period of time
    - Comment period ends July 6
- We had already determined that the petitions asking EPA to reconsider the rule raised sufficient issues to warrant reconsideration

CPP

- EPA has been directed by the Energy Independence Executive Order to review CPP
- In April we announced that we've begun reviewing CPP, the New Source Rule
- At that time, we also withdrew the suite of proposed federal rules associated with CPP (the federal plan, model trading rules, and the Clean Energy Incentive Program)
- We currently have a proposal at OMB regarding a more substantive review of CPP

American Chemistry Council | Biocides Panel

May 15, 2017

Submitted via http://www.regulations.gov

EPA Regulatory Reform Task Force
c/o Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy (mail code 1803A)
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington DC 204060

Re: Evaluation of Existing Regulations, Docket EPA-HQ-OA-2017-0190

Dear Dr. Rees:

The American Chemistry Council's (ACC) Biocides Panel (Panel)[1] appreciates the opportunity to respond to the U.S. Environmental Protection Agency's (EPA or Agency) request for recommendations on regulations, guidance, policy or practices that should be repealed, replaced, or modified pursuant to President Trump's Executive Order 13777, "Enforcing the Regulatory Reform Agenda."[2] The Panel identifies below regulations and policies in the regulation of antimicrobial pesticides that are unnecessary, ineffective, and/or impose costs that exceed benefits and suggests actions EPA should take to address these issues. We also provide some suggestions for improvement in the way EPA regulates antimicrobials. Action on these suggestions would yield greater government efficiencies, greater predictability as to the legal requirements for the antimicrobial pesticide registrant community and ultimately save tax dollars.

I. Mutual Recognition between FDA and EPA is Needed

There are clear opportunities for EPA and the U.S. Food and Drug Administration (FDA) to reduce duplication of work. As described below, when FDA and EPA have standards that are sufficiently similar to one another, FDA and EPA could cut down on administrative burdens and duplication by recognizing each other's reviews.

A. EPA's Pesticides Program Should Return to Following the Long Established Position of FDA's Foods Program that a Potable Water Rinse Removes

[1] The Panel is composed of more than 50 companies that manufacture and formulate antimicrobial pesticides for use in industrial processes, material preservation, marine antifouling, industrial water treatment, public health applications and numerous other uses. The Panel focuses on the broad range of scientific, regulatory, legislative, legal and educational issues unique to antimicrobial pesticides, as well as those issues affecting all pesticide products.

[2] *See* 82 Fed. Reg. 17793 (April 13, 2017).

Residues of Concern

EPA's Office of Pesticide Programs (OPP) Antimicrobials Division (AD) recently expanded the scope of its dietary risk assessments for antimicrobial pesticides, including both active and inert ingredients. This change has been implemented as EPA implements its 2013 data requirement regulations for antimicrobials, 40 CFR Part 158, Subpart W (158W) but is not required by those rules. Without any public documentation or process, the Agency has set aside both its own and the FDA's longstanding approach to potable water rinse (PWR) and adopted a new regulatory interpretation that imposes burdens on both EPA and registrants with no corresponding benefit. Significantly, in many cases, EPA is re-reviewing substances already cleared by FDA for the same uses but doing so using a different standard.

The Food Quality Protection Act (FQPA) of 1996 changed the jurisdictional division of antimicrobials used in food-related applications between the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). FQPA amended certain provisions of the Federal Food, Drug and Cosmetic Act (FFDCA), and in the process, transferred to EPA from FDA regulatory jurisdiction certain new food safety criteria as requirements for pesticide registration.

Accordingly, EPA is now responsible for the administration of section 408 of the FFDCA, which requires pesticide residues on food to have a tolerance or exemption from tolerance.[3] FDA, on the other hand, is responsible for administration of section 409 of the FFDCA, which requires food additives—including antimicrobials used in food or that may become a component of food as a result of their intended use—to meet certain standards. For over 50 years, FDA's position has been that a PWR removes residues of substances used on food contact surfaces (e.g., components of dish washing liquids) such that they do not require regulation. EPA applied the same rationale as FDA after it assumed jurisdiction over antimicrobial residues in 1996 until this year. In other words, the use of a hard surface disinfectant (HSD) when followed by a PWR was considered a non-food use and, thus, a dietary risk assessment was not required.[4]

More recently, however, EPA has taken the position that it will no longer accept the FDA approach.[5] EPA has not publicized its rationale for this change in position or for its sudden implementation. No public process has taken place. Notice and comment rulemaking to support

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[3] While tolerances apply only to foods in commerce, EPA applies the same standard to pesticide residues on foods in homes through FIFRA section 2(bb), which provides that "[t]he term "unreasonable adverse effects on the environment" means . . . (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) . . ." 7 U.S.C. § 136(bb).

[4] EPA's past policy was consistent with FDA's policy that products with a PWR do not require a tolerance. *See* "Sanitizing Solutions: Chemistry Guidelines for Food Additive Petitions." US Food and Drug Administration. January, 1993. EPA continued this policy in effect until very recently. In fact, EPA continues to reference this FDA guidance document, included it in the 158W docket, and uses the FDA method for the default determination of dietary consumption.

[5] *See*, Letter from Stephen Knizner, Director, Antimicrobials Division, to Hasmukh Shah, Manager, Biocides Panel, November 15, 2016 (Attachment A).

this change that has regulatory consequences has not occurred. EPA representatives have said in meetings with the Panel, and in a letter to the Panel in November 2016, that data submitted showing measurable residues of one active ingredient following a potable water rinse, underlie its new position. However, there is no public documentation of EPA's change in position. EPA has failed to acknowledge the magnitude of its change, seek input on the issue of whether this response is an appropriate response or, most importantly, to consider alternative approaches based on existing science.

Instead, AD unilaterally and without any advance notice or public process has begun asserting that an antimicrobial for use on hard surfaces even if followed by a PWR will be considered a food use unless the registrant demonstrates "no reasonable expectation of residues." AD has not provided any guidelines on what the "no reasonable expectation of residues" means. EPA fails to acknowledge that proving such a negative is a scientific impossibility or that FDA, and even EPA until recently, has applied *de minimis* thresholds for decades.

The requirement for risk assessments and tolerance exemptions will apply to all antimicrobial active and inert ingredients regardless of whether a potable water rinse is required on the label. The burden on EPA and industry will be massive, with literally thousands of inert ingredients (such as fragrance components) suddenly requiring approval. It also results in the anomalous situation that uses FDA does not consider as potentially leaving residues on food are considered to do so by EPA. For example, a dishwashing detergent that makes no antimicrobial claims is regulated only by FDA. Due to the dishwasher's rinse function, FDA considers these products to leave no residue and thus does not require an approval. If the same product, however, were to have an antimicrobial claim, EPA will require additional data, perform a dietary risk assessment and possibly require a tolerance exemption.

EPA's additional requirement imposes tremendous burdens on industry and EPA for little, if any, benefit. There are other ways--applying sound science--to address legitimate concerns raised by residue data (for one active ingredient) submitted to EPA, rather than entirely discarding a policy that has served EPA, FDA and the public well for over 50 years. It also makes little sense for two agencies with jurisdiction over virtually the same uses to follow such different procedures.

This is a significant issue of concern for the Panel's member companies and all registrants and applicants of antimicrobials. The Panel urges EPA to revert to the approach developed by FDA and, until very recently, applied by EPA. This requires no regulatory action, just a change in EPA policy. Such action presents an opportunity to reduce burdens that were imposed without being fully vetted through the necessary process. These burdens will weigh on EPA as much as industry, and they will waste EPA resources on efforts that cannot be justified in relation to the commensurate risk to the public. In the event EPA finds it imperative to develop a new approach, it should proceed through notice and comment, which the Panel submits is legally required for such a significant and burden-increasing change.

B. EPA Should Accept GRAS Substances and other FDA Authorizations in lieu of Performing Separate Assessments

Prior to 1996, FDA regulated hard surface sanitizers used on food contact surfaces as indirect

food additives. FDA's regulations at 21 CFR § 174.5(d)(1) permit unrestricted use of substances that are generally recognized as safe (GRAS) for any use in food as indirect food additives. Under this regulation, FDA recognized that the likely intake of antimicrobials from indirect food additive uses would be trivial compared to any use involving direct addition to food. FDA also recognized that performing additional risk assessments for such trivial uses in antimicrobials was a waste of the Agency's resources. Pursuant to this regulation, FDA had no restriction on indirect uses of GRAS substances other than good manufacturing practice. Thus, prior to August 1996, substances with GRAS uses in food could be freely and legally used in antimicrobials with food contact applications, including hard surface sanitizers. The logic and the applicable science underpinning FDA's conclusion have not changed; yet EPA now burdens itself and the industry with unnecessary risk assessments and unnecessary regulations.

Given the Administration's objective to reduce unnecessary regulations, EPA should consider avoiding a needless number of regulations by adopting one that is similar to FDA's regulation at 21 CFR 174.5(d)(1). By following FDA's standing determination that a substance that has GRAS uses in food is acceptable generally in indirect food uses, EPA could exempt such substances from the requirement of a tolerance when they are used as inerts in antimicrobial formulations. This would avoid the development of hundreds of new regulations that regulations that even FDA has concluded are unnecessary. EPA would also avoid wasting resources that are needed elsewhere. If EPA were to proceed as suggested, it should exempt substances whether in the GRAS use listed in FDA's regulations or favorably reviewed by FDA under its current GRAS notice program or in another equivalent manner and permitting such substances to be used as inerts in antimicrobials.

In addition to GRAS reviews by FDA itself, the FDA recognizes reviews by other organizations that establish GRAS status of substances for use in food under FFDCA. A prime example is the process established by the Flavor Extracts Manufacturer's Association (FEMA) to assess food flavors for GRAS status under the law. Food flavors are often natural or synthetic versions of substances in food which yield the flavor of the food. Today, most food flavors marketed in the US meet the FEMA standard for GRAS and are marketed solely on that basis. For over 50 years, FEMA has conducted its reviews and shared its findings with FDA. During that period, FDA has never formally challenged FEMA's process or conclusions in any significant way. To the contrary, FDA lists information on flavors FEMA has reviewed in publically available databases on FDA's web site. Based on its knowledge of the rigor and credibility of the FEMA reviews, FDA has not sought to regulate as food additives many thousands of food flavors that FEMA has reviewed. Moreover, over two thousand such flavors have been confirmed as safe for their food uses by the FAO/WHO Joint Expert Committee on Food Additives and by the European Food Safety Authority. Therefore, EPA can have confidence in applying a standard that substances reviewed by FDA as GRAS for use in food contact petitions or notice processes as well as substances determined to be GRAS by other equivalent standards should be exempted from the requirement of a tolerance as inert ingredients in antimicrobials generally.

In addition, EPA should further accept as exempt from tolerance requirements as an inert in antimicrobials any substance that is expected to result in a trivial intake compared to its safe level in food or food contact materials. FDA has applied such an approach under its threshold of regulation (TOR) exemption process for over 25 years.[6] The TOR exemption permits substances

resulting in very low dietary intakes or in intakes that are small compared to established safe levels in food. EPA should follow this TOR exemption approach as well.

Finally, EPA should further accept for use as an inert component of an antimicrobial, any substance that FDA has authorized for indirect food use without restriction to food type or condition of use.[7] In establishing the safety of such a substance, FDA's review establishes a highly conservative intake assessment and may require larger margins of safety relative to animal testing than typically applied by EPA.[8]

C. EPA and FDA Should Issue the SOPs to Implement the MOU regarding Dual-Approval Antimicrobials

The Biocides Panel worked closely with FDA and EPA between 2011 and 2013 to establish a memorandum of understanding (MOU) to eliminate duplicate reviews of antimicrobial uses.[9] Following execution of the MOU, FDA and EPA committed to adoption of standard operating procedures (SOPs) for implementing the MOU. It is almost four years since the MOU was signed yet the SOPs have not been issued. Industry has been hesitant to submit to the dual review process anticipated in the MOU without clear SOPs. EPA can facilitate development of products subject to joint jurisdiction by following through on the commitment to develop and publish SOPs. This will provide a clearly described process so industry can take advantage of the MOU to avoid unnecessary duplication.

D. EPA and FDA should Develop a Single, Harmonized Approach to Food Additives/Antimicrobial Residues that Eliminates the need for Dual Agency Review

For those antimicrobials that require approval under section 408 of FFDCA, EPA should not duplicate FDA's risk assessment. FDA has long been recognized as an authority on safety assessments.[10] Thus, EPA should not reinvent a process that has evolved based on 50 years of strong science and is a global standard. EPA and FDA should work together (with FDA in the lead) to continue to evolve one standard for risk assessment for uses that are authorized as safe under section 409 of the FFDCA. In this way EPA should be able to accept FDA's assessment of intake and safety as meeting the requirements of section 408 of FFDCA.

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[6] 60 FR 36595 (July 17, 1995).

[7] *See* https://www.fda.gov/Food/IngredientsPackagingLabeling/PackagingFCS/FoodTypesConditionsofUse/default.htm.

[8] FDA always applies a minimum 1000-fold safety margin for subchronic animal data.

[9] *See* 80 Fed. Reg. 10682 (February 27, 2015) and docket EPA-HQ-OPPT-2003-0004 at https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2003-0004.

[10] FDA's EU counterpart, the European Food Safety Authority applies similar principles to such safety assessments in Europe as do other regulators worldwide.

E. EPA Should Defer to FDA Jurisdiction over Antimicrobials Intended for Use on or in Class II-III Medical Devices.

FIFRA and the FFDCA provide EPA and FDA, respectively, with jurisdiction over antimicrobials that are intended for use in medical settings. As a result, antimicrobial products used in medical settings are often subject to overlapping and duplicative reviews and approvals by EPA and FDA. This redundancy results in substantial delay with respect to obtaining required approvals, as well as uncertainty within regulated industry regarding the approvals that may be required for a particular antimicrobial application in a medical setting.

The Panel suggests that EPA use the regulatory reform initiative to resolve this issue by adopting FDA's approvals for certain antimicrobials used in medical devices. Specifically, the Panel suggests that EPA defer to FDA jurisdiction with respect to the following products:

i. Any liquid or non-liquid antimicrobial product, including any "pesticide device" as defined under FIFRA, that is intended for use on a Class II-III device that includes sterilization claims and/or associated public health claims. In general: (i) Class II devices include those that contact mucous membranes on a human, do not penetrate the blood barrier, and should be sterilized; and (ii) Class III devices include those that are introduced directly into the human body and require sterilization.

ii. Any antimicrobial treatment that is included in a Class II-III device regardless of claims.

iii. Any antimicrobial product used in a medical device that is subject to a change in device classification that triggers the need for FDA review and approval.

FDA's review and evaluation process, as required under the FFDCA, is sufficient to evaluate the safety and efficacy of the antimicrobial products identified above. Additional FDA regulatory requirements, including Quality System Regulation/Good Manufacturing Practices and adverse event reporting requirements, help to further ensure that the antimicrobial products and applications are safe and effective for their intended use.

Accordingly, to the extent that FDA approval has been obtained for the antimicrobial products identified above, the Panel suggests that EPA regulation, registration, labelling and record keeping not be required for that antimicrobial use. EPA could achieve this result by issuing its own guidance document or a joint guidance document with FDA that sets forth EPA's position that it is deferring to FDA jurisdiction and approval for these antimicrobial products. Such a position could include an administrative adoption of FDA's approvals as being sufficient to satisfy EPA regulation, registration, labeling and recordkeeping requirements.

II. The Human Subjects Review Board Should be Given A More Limited Mandate and Reconstituted

EPA created the Human Subjects Review Board (HSRB the Board) in response to section 201 of

the FY 2006 Appropriations Act.[11] The HSRB is a Federal Advisory Committee intended to implement enhanced protections for human subjects intentionally exposed to pesticides for research that would be submitted to or relied upon by EPA. The Panel's Antimicrobial Exposure Task Force II (AEATF) has worked with EPA and the HSRB for the past 11 years to obtain approval of 7 studies evaluating exposure to antimicrobial pesticides during application. As a result of this experience, the Panel has the following recommendations to streamline the HSRB process.

The Panel supports and recognizes the intended purpose of the HSRB and, thus, based on our experience and our support for the Board, we suggest the following to increase increase its efficiencies and reduce costs. Most importantly, the Panel suggests that EPA consider limiting the HSRB to reviewing intentional human exposure studies *intended to evaluate toxicity endpoints*. This is consistent with the statutory mandate and will result in greatly reduced burdens. Protection of human subjects will not be compromised in studies that do not evaluate toxicity endpoints because these studies involve exposures allowed under current labelling and other protections remain in effect.

The Panel is also concerned that the HSRB is not constituted appropriately to review many of the studies put before it. For example, the HSRB recently was called upon to review human studies involving sensitization, yet there was only one member with a background in this highly specialized area of toxicology and medicine. Thus, the Panel suggests EPA ensure that the HSRB is appropriately constituted for the studies it is asked to review. This can be accomplished by considering the areas in which studies are being proposed during the preparation for each meeting, and then adding a modest number of relevant experts for review of studies in a particular discipline during that meeting. It may be most effective to have a standby group of pre-cleared experts in scientific specialties (*e.g.,* dermal sensitization) who can be called upon when studies in their areas of expertise are being reviewed.

III. EPA Should Develop and Implement New and Amended Efficacy Methods Through a Robust, Transparent Process

An important step in the process of obtaining EPA approval to market a new antimicrobial product is efficacy testing. For public health products, EPA requires submission of efficacy data. To be accepted by EPA, efficacy studies must be conducted in accordance with protocols that have been recognized and accepted by EPA. Some of these protocols are developed through standard-setting organizations such as AOAC International. Others are developed privately, reviewed and accepted by EPA, and others are developed in-house by EPA's microbiology laboratory in the Biological and Ecological Effects (BEAD) Division of OPP. The BEAD Laboratory also has a process of continually changing its implementation of accepted methods through amendments to its Standard Operating Procedures (SOPs). These are not subject to any review and, once implemented, all members of the regulated community are expected to follow them.

Through its BEAD laboratory process, EPA has implemented several efficacy testing policies

[11] *See* 71 Fed. Reg. 6071 (February 6, 2006).

that have not been adequately vetted by the scientific community. These typically have not been tested on multiple actives in multiple laboratories to ensure reproducibility. Thus, there is no certainty the methods appropriately measure efficacy. For example, EPA recently implemented new efficacy testing guidance for the human pathogen *Candida auris* (a yeast).[12] The EPA seeks to require use of a new, non-validated, efficacy method for *C. auris* rather than using the long-accepted method required to demonstrate efficacy against all other yeasts. Similarly, EPA has for decades relied upon the AOAC Use Dilution Method and the AOAC Germicidal Spray test to assess efficacy of hard surface antimicrobials. While the AOAC test methods have not changed, the BEAD laboratory has continually changed its procedures for implementing those two methods over those years. This has changed the test, resulting in products that passed using the procedures in place at the time of registration no longer passing.

EPA should adopt new efficacy testing methods that reflect the current state of science. However, it also has a responsibility to make sure those methods are robust, reliable and reflect a realistic level of effectiveness. To accomplish this goal, EPA should follow a transparent public process to adopt its principal new methods. Where protocols involve widely-used types of products (e.g. hard surface antimicrobials or pre-moistened towelettes), the process should include completion of full collaborative studies to ensure results are fully validated and reproducible. Protocols for niche products or emerging areas or pathogens (*e.g.,* active antimicrobial surfaces) can be subject to a different process, but the Agency should be careful to apply a consistent standard to reviewing all such applications.

IV. Conclusion

The Panel requests that EPA carefully consider these suggestions. Each offers real opportunities to allow EPA to accomplish its statutory goals in a less burdensome way.

Please feel free to contact Komal K. Jain at (202) 249-6212 or komal_jain@americanchemistry.com if you have any questions about these comments or require additional information.

Sincerely,

Komal K. Jain
Senior Director, American Chemistry Council
Biocides Panel

[12] Interim Guidance for the Efficacy Evaluation of Products for Claims against Candida auris; *see* https://www.epa.gov/pesticide-registration/interim-guidance-efficacy-evaluation-products-claims-against-candida-auris-0 (last accessed May 13, 2017).

May 15, 2017

EPA Regulatory Reform Task Force
c/o Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy (mail code 1803A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted electronically via www.regulations.gov

Re: Docket EPA-HQ-OA-2017-0190

Dear Dr. Rees:

The American Chemistry Council (ACC) [1] welcomes the opportunity to comment on existing EPA regulations in need of repeal, replacement, or modification in response to the Federal Register notice published on April 13, 2017 (82 FR 17793). ACC has publicly called for and supported efforts to better address the burden of regulation and implement regulatory reform. The chemical industry needs a sound regulatory landscape in order to maximize the historic competitive advantage provided by shale gas. This shale gas advantage represents a game-changer for U.S. manufacturing, and the Administration can and should leverage this competitive advantage through improved public policy.

Reducing overly complex regulatory burdens is a key step for enhancing the chemical industry's ability to help drive economic growth and job creation throughout the broader economy. ACC represents a diverse set of companies engaged in the business of chemistry, which drives innovations that e nable a more sustainable future, provides 810,000 manufacturing and high -tech jobs—plus nearly six million related jobs —that

[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.

support families and communities, and enhances safety through a diverse set of products and investments in R&D.

Existing Regulations Deserve More Scrutiny

Historically, agencies, including EPA, spend relatively little time on improving existing regulations through retrospective review and devote the bulk of their resources to the development and issuance of new regulations and regulatory requirements. This is unfortunate, because the country could achieve greater protection at less cost if it were to regulate in a smarter manner, such as focusing on minimizing regulatory burden while still protecting human health and the environment.[2] For this reason, regulatory experts and economists support greater attention to retrospective review to improve existing regulations.[3] Under the Trump Administration's regulatory reform agenda, federal agencies are being asked to shift resources from developing and issuing new rules to examining and eliminating or improving existing regulations to reduce burdens. ACC supports this shift in focus.

The Appropriate Societal Goal is to Reduce Opportunity Cost

At the heart of the Trump Administration's regulatory reform agenda is the goal of reducing the opportunity cost of existing regulations. In his February 2, 2017, memorandum to federal agencies, Dominic Mancini, Acting Administrator of the Office of Information and Regulatory Accountability (OIRA), wrote, "Costs should be measured as the opportunity cost to society. OMB Circular A-4 defines this concept." According to Circular A-4, "The principle of willingness to pay captures the notion of opportunity cost by measuring what individuals are willing to forgo to enjoy a particular benefit."

In his April 5 memorandum to federal agencies (M-17-21), Acting Administrator Mancini expanded upon this point:

> For regulations that expand consumption and/or production options — sometimes referred to as "enabling" regulatory actions or regulations — cost savings should include the full opportunity costs of the previously foregone activities. Opportunity cost in this context would equal the sum of consumer and producer surplus, minus any fixed costs. ...Generally, "one-time" regulatory actions (i.e., those actions that are not periodic in nature) that expand production or consumption options would qualify as EO 13771 de-regulatory actions.

This criterion—reducing opportunity cost—is not new and enjoys widespread support from economists and policy analysts alike. It also resonates with elected officials seeking to preserve the benefits of regulation while fostering innovation and economic growth.

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[2] Tengs, Tammy O., and John D. Graham. "The opportunity costs of haphazard social investments in life-saving." In *Risks, costs, and lives saved: Getting better results from regulation,* Robert Hahn, Ed. (1996): 172.

[3] Aldy, Joseph E. "Learning from experience: an assessment of the retrospective reviews of agency rules and the evidence for improving the design and implementation of regulatory policy." Administrative Conference of the United States (2014).

To this end, ACC recommends a three-step screening process for reducing opportunity cost: (1) focus on regulatory requirements of greatest concern to manufacturers; (2) apply a screen to identify reforms where opportunity cost reductions are relatively clear or obvious; and (3) prioritize reforms that can be implemented as quickly as possible (i.e., "reform-ready" proposals) to ensure that the resulting public benefits accrue as quickly as possible. Each step in this sequential process is important, as the remainder of this section describes.

1) Focus on Regulations Affecting Manufacturers

ACC recommends that the Task Force focus on regulations imposing unnecessary costs on the U.S. manufacturing sector, because the economic activity generated from manufacturing has a greater multiplier effect than that of any other major sector of the economy. According to the National Association of Manufacturers:

> For every $1.00 spent in manufacturing, another $1.81 is added to the economy. That is the highest multiplier effect of any economic sector. In addition, for every one worker in manufacturing, there are another four employees hired elsewhere.[4] With that said, there is new research suggesting that manufacturing's impacts on the economy are even larger than that if we take into consideration the entire manufacturing value chain plus manufacturing for other industries' supply chains. That approach estimates that manufacturing could account for one-third of GDP and employment. Along those lines, it also estimated the total multiplier effect for manufacturing to be $3.60 for every $1.00 of value-added output, with one manufacturing employee generating another 3.4 workers elsewhere.[5]

U.S. manufacturers represent a powerful engine of economic growth, so the Task Force should pay particular attention to regulations affecting U.S. manufacturers, including chemical manufacturers. Within the broad manufacturing sector, the value-add provided by the business of chemistry is particularly notable. About 96% of all manufactured goods are directly touched by the business of chemistry, which is an almost $800 billion enterprise that employs more than 800,000 people in the USA.

2) Screen Regulations of Concern Based on the Clarity of Opportunity Cost Reductions

The best candidate regulations for reform are those where reductions in opportunity cost are clear and obvious. The following types of regulations fit this description: existing regulations that are outdated based on the evolution of science or new technology; existing regulations that address an insignificant problem as determined by credible new science or data; existing regulations that are ineffective due to a credible (e.g., peer-reviewed) retrospective review; existing regulatory requirements that are particularly

[4] Source: NAM calculations using IMPLAN. See the NAM website at: http://www.nam.org/Newsroom/Facts-About-Manufacturing/

[5] Source: Manufacturers Alliance for Productivity and Innovation. See the MAPI website at: https://www.mapi.net/forecasts-data/how-important-us-manufacturing-today

uncertain or ambiguous ; and existing regulations that present an unnecessary barrier to entry for a product or service . In addition, reform candidates include existing regulatory requirements where net benefits are not maximized per a credible (e.g., third-party, peer-reviewed) cost-benefit analysis.

When prioritizing among dozens, if not hundreds, of regulations of concern nominated by the public , the Task Force would be on solid economic footing if it focused on regulations where there is a clear pathway to reduction of the opportunity cost.

3) Prioritize Reforms that can be Implemented Quickly

Once candidates for reform are identified, prioritization can be facilitated by identifying the time needed to achieve reform. In other words, regulators ought to prefer reforms that can be achieved quickly (e.g., within a few months) versus slowly (e.g., over multiple years). For example, a reform that can be achieved without going through a lengthy public comment period should be preferred over a reform that requires notice-and-comment rulemaking in this particular circumstance . The sooner the reform can be implemented, the sooner the net benefits will accrue to the public. In addition, because agencies are required to eliminate two regulations for every new significant rule per EO 13771, agencies would be wise to "bank" opportunity cost savings as soon as possible in order to "pay" for future regulatory actions.

The Task Force should reach for the "lowest hanging fruit" when it comes to selecting among candidate reforms.

Specific Recommendations for Reform

ACC utilized this three-step process to identify specific candidates for reform. Of several dozen regulatory requirements identified by ACC members, the following meet the previously described screening criteria and are deemed "most promising" in terms of their potential to reduce the opportunity cost relatively quickly, meaning in less than one year's time. We recommend that EPA prioritize these specific reforms.

Eliminate "Once In, Always In" Policy

In 1995, EPA issued a memorandum setting forth a policy to address when a "major" stationary source of hazardous air pollutants (HAPs) can reduce its emissions to become an "area" source and therefore not subject to Clean Air Act (CAA) Section 112 major source requirements such as the stringent maximum achievable control technology (MACT).[6] This memo allowed a major source to become an area source by obtaining federally enforceable limits on its potential to emit HAPs if it did so before the initial compliance date of the applicable MACT standard. The memo only allowed this narrow window for a major source to voluntarily reduce its emissions to become an area source, meaning if a source did not reduce its emissions during this one-time opportunity, it

[6] Memorandum from John Seitz, Director OAQPS to [Regional Administrators], "Potential to Emit for MACT Standards – Guidance on Timing Issues." May 16, 1995. https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf

would be required to comply with the MACT standards in perpetuity. Therefore, this policy became known as the "Once In, Always In" policy.

The policy is neither required nor supported by the Clean Air Act. The memo was meant to be initial and transitional guidance until a formal policy could be established through rulemaking; however, EPA has never codified the policy and instead applies it with binding effect as though it were a rule. The regulated community has long opposed this policy and EPA's enforcement of it as if it were a rule.

EPA should withdraw this policy to allow a major source to voluntarily accept enforceable emissions limitations below the major source threshold and be reclassified as an area source with respect to MACT applicability. Withdrawing "Once In, Always In" would result in positive environmental, economic, and energy impacts. There will be a strong incentive for those sources able to reduce their HAP emissions below major source thresholds to do so in order to lessen the administrative burdens and costs of complying with myriad regulations applicable to major sources. Because the "Once In, Always In" policy was issued by Agency memorandum, it could be withdrawn without going through the public notice-and-comment process.

Fix New Source Review (NSR)

In 2001, President Bush's National Energy Policy Development Group issued findings and recommendations for a National Energy Policy which included a recommendation that EPA review NSR regulations, including administrative interpretation and implementation of those regulations. In 2002, EPA finalized changes to NSR that would provide greater regulatory certainty while preserving environmental protections and benefits derived from the NSR program. In spite of legal challenges to various aspects of this NSR reform, the D.C. Circuit Court largely upheld EPA's rules. In September 2006, the Bush-EPA proposed various revisions to the NSR regulations to "remove barriers that the NSR program can impose to prevent…sources from operating their facilities in the most efficient manner." [7] The rulemaking was not finalized before President Bush left office, but EPA should revisit and finalize the multiple improvements that could be made to the program that were included in the rule package. Some regulatory experts have offered specific recommendations to improve the program via guidance, via regulation, and via legislation.[8]

In addition to these short-term reform opportunities, ACC identified the following specific candidates for reform where opportunity cost savings could be achieved over a longer period of time (longer than one year). We recommend that EPA also pursue these specific reforms, because the opportunity cost savings could be significant and justify a longer implementation period.

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[7] *See,* "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting," 71 FR 54235, (Sept. 14, 2006). https://www.gpo.gov/fdsys/pkg/FR-2006-09-14/pdf/E6-15248.pdf

[8] Fraas, A., John D. Graham, and Jeff Holmstead. "EPA's new source review program: time for reform? *Environmental Law Review* (2017).

Review and Repeal 2015 NAAQS for Ground-level Ozone

In 2015, EPA finalized a more stringent ozone NAAQS despite the fact that the Obama-EPA's out-of-cycle reconsideration of the 2008 ozone NAAQS left states scrambling to fully implement the 2008 standard. EPA did not finalize designations until May 2012 and failed to finalize SIP guidance until February 2015. Significant portions of the population live in areas that do not meet the 2008 standard primarily due to EPA's reconsideration and the subsequent implementation delays. These areas should be given appropriate time to implement the 2008 standard of 75 ppb and come into attainment before pivoting to meeting the 70 ppb standard, particularly in light of EPA's conclusion that almost the entire U.S. would meet a 70 ppb standard by 2025 by implementing on-the-books rules.

Should EPA proceed with design ating areas as non -attainment with the 70 ppb standard as soon as October 2017, communities and areas designated as "nonattainment" will have a harder time attracting and retaining industry and sustaining economic activity and growth. Industry located in a n onattainment area faces increased operating costs, permitting delays, and restrictions on building or expanding facilities. These challenges increase the "time to market" for innovative new products. Air permitting is further complicated since new facilit ies and proposed expansions in nonattainment areas cannot proceed until their precursor emissions are offset at ratios greater than 1:1. Some areas will be subject to these offset programs for the first time under the 2015 standard, which will present additional burdens for the areas. Offsets are not always readily available even in areas that have been desig nated non-attainment previously, and, in some cases, offset prices can be extremely high. For example, offset prices in the Houston -Galveston-Brazoria, TX, nonattainment area are currently more than $200,000/ton for NOx and $300,000/ton for VOC.

For these reasons, ACC both supports EPA expeditiously reviewing the 2015 Ozone NAAQS and congressional action to delay designations under the standard, should EPA opt to maintain it. This will allow states to capture these anticipated air quality improvements before progressing designations.

During the 2015 ozone NAAQS rulemaking, and in subsequent evaluations, EPA correctly identified that there are instances where naturally occurring, or background, ozone concentra tions exceed the selected level of the standard. In the final rule, EPA decided not to consider proximity to background ozone levels even though the Agency retains the discretion to do so – and has done so in the past: in 1997, proximity to background ozone levels was one of three factors that led EPA to reject a 70 ppb standard and instead establish the standard at 0.08 ppm. Still, during the most recent evaluation, EPA did not make full use of the flexibility afforded in the statute to provide relief to areas affected by substantial backgr ound ozone concentrations. To the contrary: EPA proposed in its November 17, 2016, SIP Implementation Rule to further narrow the application of international transport provisions. In the event EPA proceeds with implementing the 70 ppb standard, it should at least provide the maximum flexibility to address background ozone and provide meaningful implementation tools to ease state and regulated community burden.

In addition and due to the 70 ppb standard being so close to background concentrations , EPA should revisit its Exceptional Events Rule (EER) to provide for exclusion of air quality data influenced by lightning and biogenic events. EPA should not unnecessarily limit EER's applicability to only the narrow band of five regulatory actions. In particular, exceptional events data should be excludable from the calculation of background concentrations used in PSD permit air quality analysis. Finally, EPA should address international transport through EER to the broadest degree possible. A natural confluence of weather patterns that exacerbates routine international transport should be excludable as an exceptional event. EPA could also amend methodologies and data handling conventions in Appendix I to 40 C.F.R . Part 50 to address data where the principal contributor to an exceedance is attributable to background concentrations.

Streamline Rules on Leak Detection and Repair

EPA's Leak Detection and Repair (LDAR) rules are antiquated, in need of consolidation, and too costly. An alternative to the time -intensive effort required to overhaul these rules is to improve EPA's rule on using optical gas imaging cameras (40 CFR 60.18). Current LDAR rules require Method 21 point -by-point monitoring for leaks for every LDAR component, which includes but is not limited to valves, pumps, compressor seals, and pressure relief devices. Infrared cameras are now voluntarily used in manufacturing to detect leaks in a much more expedient and efficient manner. There seems to be no real need to overlap a periodic individual component monitoring program (Method 21) with the alternative (camera) leak monitoring, but this is what the Agency has done – resulting in no effective advantage for the camera monitoring option.

An option to use the optical gas imaging camera technology should be allowed in lieu of traditional Method 21 LDAR monitoring. To further incentivize the use of the optical gas imaging camera, EPA should remove the current requirement in the alternative work practice (40 CFR 60.18 (g)(h) and (i] to require an associated annual Method 21 survey of each component. The annual Method 21 survey adds additional costs and complexity and does not result in additional emission reductions.

To further improve the alternative work practice for the optical gas imaging camera, EPA should revise the recordkeeping requirements to clarify that a video record is not required for each individual valve, connector, or other piece of equipment surveyed. A video record of each area or portion of the plant that covers multiple pieces of equipment should suffice, such as a short video segment to document leaking components only.

In addition, the cost of connector monitoring via EPA Method 21 versus environmental benefit is extremely high in most circumstances . Thus, EPA should evaluate whether the current rules that require connector monitoring should be revised and perhaps exclude it from these existing rules, as appropriate.

Reduce Oversight Charges to PRPs at CERCLA Sites

The majority of potentially responsible parties (PRPs) agree that CERCLA oversight charges, including multipliers to address "indirect costs" not associated with a particular site, have become excessive due to guidance documents (i.e., directives) that should be

modified to limit charges to just those applicable at the site. [9] GAO and EPA's Inspector General have also been critical of the Agency's oversight charges. There are many ways EPA could reform these practices, including amending the National Contingency Plan at 40 CFR 300 to define and put reasonable limits on EPA's oversight charges, and modifying directives[10] that created this problem. Another alternative would be to modify the 2002 Memorandum entitled, "CERCLA Future Response Costs: Settlement, Billing and Collection," to clarify the documentation requirements for EPA to demonstrate that a response cost is not inconsistent with the NCP. The memo should also be modified to state that it can be relied on by PRPs.

Improve the Whole Effluent Toxicity (WET) Test

EPA addresses WET in NPDES permits to control the discharge of specific substances. EPA first distributed its draft WET implementation guidance in December 2004, in which the Agency noted that the WET guidance was designed to provide recommendations for the implementation of NPDES WET programs to state authorities. EPA has also issued guidance on the "Test of Significant Toxicity" (TST) approach, which is designed to help determine if discharges have a "reasonable potential" under WET and thus receive permit limits for WET. In May 2012, EPA issued a WET Spreadsheet, which is designed to be used to determine this "reasonable potential" and to assess permit compliance. [11] A significant concern during the development of the WET test was EPA's overlooking the presence of "false positives." Despite this, states including California have adopted it and rolled this test into their programs.

EPA should reexamine the WET test to account for some of the concerns raised during its development. This issue is discussed in greater detail in the comments submitted by the Federal Water Quality Coalition, which ACC supports. [12]

Add Aerosol Cans to Federal Universal Waste Regulations (40 CFR 273)

Non-empty aerosol cans are not included in the federal definition of a universal waste despite their fulfillment of the relevant criteria. EPA's three goals in administering the universal waste program are to: 1) encourage resource conservation while ensuring adequate protection of human health and the environment; 2) improve implementation of the current Subtitle C hazardous waste regulatory program; and 3) provide incentives that result in less of these wastes disposed in municipal landfills or incinerators. When EPA first promulgated the universal waste regulatory program in 1995, it listed selection criteria for wastes to be considered universal.[13] These include a waste generated in a wide variety of nonindustrial settings, generated by a vast community, and ones that may be present in significant volumes in nonhazardous waste management systems. Non-empty

[9] In 2015, EPA billed private parties more than $100 million in oversight charges. See EPA, "Superfund Remedial Annual Accomplishments."
[10] For example, OSWER Directive No. 9832.13, "Transmittal of the Superfund Cost Recovery Strategy," July 16, 1988, requires a PRP to pay for "costs incurred by EPA in obtaining assistance from third parties...and may also involve the recovery of past costs incurred by the Agency" (page 32).
[11] http://cfpub.epa.gov/npdes/docs.cfm?view=allprog&program_id=45&sort=date_published.
[12] ACC also supports the FWQC's comments on EPA's TMDL policies.
[13] 60 FR 25493 (May 11, 1995).

aerosol cans, as well as paint and paint -related wastes and waste antifreeze, satisfy all of these criteria. States like Californ ia and Colorado have been safely and responsibly managing aerosol waste cans as a universal waste for several years. Ohio also proposed addition of all three (non -empty aerosol cans, paint and paint related wastes, hazardous antifreeze) in late 2016.

EPA should amend the federal universal waste rules codified at 40 CFR 273 to designate non-empty aerosol spray cans , including paint and paint -related wastes, and waste antifreeze, as a new category of universal waste. This would provide generators increased flexibility by not counting them against the generators' monthly total of hazardous waste (thereby affecting its generator status) as well as reduce notification and recordkeeping requirements. This chang e would come without any interruption in the safe and responsible management of waste aerosol cans.

Enhance Coordination of the e-Manifest System (40 CFR 260, 262-265, 271)

EPA is current ly working with states, industr y, and related stakeholders to develop a national electronic manifest system that will facilitate the electronic transmission of the uniform manifest form. It is intended to make the use of the manifest more effective and convenient for its users. Some states already administer an e-Manifest program similar to the one EPA is de veloping for the national level , and U.S . DOT separately regulates shipments of hazardous waste under 40 CFR 171 -180. Under these requirements, facilities are required to sign and verify a hard copy hazmat shipping p aper. EPA has stated on its website that , independent of its own national e -Manifest system, "A paper copy will still be required to meet U.S. DOT purposes."[14]

EPA should ensure that its new national e -Manifest system aligns with existing state - level e-manifest programs, including the reporting timelines. To the extent possible, EPA and U.S. DOT should coordinate to ensure that manifest requirements between the t wo agencies are not duplicative, and U.S. DOT should consider accepting electronic versions of its shipping paper.

Improve "Mixture" and "Derived From" Rules (40 CFR 261.3(a) and 261.3(c)(2)(i))

EPA's "mixture" rule generally provides that a mixture of solid waste and one or more hazardous wastes listed in subpart D of Part 261 is a hazardous waste unless it has been excluded from §§261.3(a)(2) under §§260.20 and 260.22, or §§261.3(g) or (h). Separately, under the "derived -from" rule, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate (but not including precipitation run -off) is a hazardous waste, except as otherwise provided in §§261.3(c)(2)(ii), (g) or (h). Thus, sludges from waste treatment or leachate from a hazardous waste disposal facility i s often classified as hazardous simply because it was generated from a hazardous waste. The mixture and derived -from rules operate regardless of whether the mixing or treatment eliminates the properties (in that particular batch) that originally caused EPA to list the waste. This has resulted in potential over-classification of mixtures or treated materials as

[14] https://www.epa.gov/hwgenerators/hazardous-waste-electronic-manifest-system-e-manifest#frequent.

hazardous wastes, introducing a number of potentially unnecessary regulatory requirements for their management that may not be necessary given that some of these wastes may lack the appropriate hazardous nature.

EPA should modify or amend both these existing rules to require that the hazard determination be made based on the actual composition of the waste at the time of disposal following its treatment or mixture. EPA itself has acknowledged "inequities" in both of these rules. This change would greatly improve the appropriate classification and management of wastes that are actually hazardous.

Finalize Denial of PEER Petition to Revise RCRA Corrosivity Characteristic

In April 2016, EPA tentatively denied a petition from the Public Employees for Environmental Responsibility (PEER) that requested EPA revise the alkaline hazardous waste thresholds under RCRA used to designate a waste as "corrosive." The Agency's denial was appropriately supported in part by information compiled in comments by a coalition of industry trade associations in September 2015. ACC participated in this coalition to highlight the significant concerns associated with an unnecessary revision of the corrosivity characteristic, including the universe of wastes that would be inappropriately classified as corrosive under the revised pH level. EPA granted PEER's request for a 210-day extension to the comment period on its tentative denial. ACC, through its industry coalition, submitted supplemental comments during this extended period that supported EPA's decision and confirmed that its denial was an appropriate choice.

As EPA stated in its decision, it would be inappropriate to revise the corrosivity characteristic as requested by the PEER petition. Despite this fact, PEER has significantly delayed the denial process for more than a year. ACC recommends that EPA resolve this matter by finalizing its denial of the PEER petition.

Modify Regulation of Wastewater Emissions Under the Clean Air Act

40 CFR 63 Subpart G and JJJ contain MACT standards for HAPs for the production of synthetic organic chemicals and Group IV Polymers and Resins. Within these subparts, HAP emissions from wastewater streams generated by the production processes are defined as either Group 1 or Group 2 with HAP concentration thresholds. Group 1 streams (those with over 1,000 ppm organic HAP) must be managed by either recovery systems, incineration, or in closed/covered wastewater treatment systems. These two regulations were among the first in the MACT program written by EPA. Later, a better, more cost-effective approach was developed for first, the pharmaceutical industry (Subpart GGG) and, then, for the miscellaneous chemical manufacturing industry (Subpart FFFF) based on learnings from the earlier rules. This was to establish a separate category for "soluble HAPs" with a higher Group 1 threshold of 30,000 parts per million.

Methanol, an organic compound used in chemical manufacturing, is infinitely soluble in water and also highly biodegradable. Subpart G and JJJ cause chemical manufacturers to spend inordinate amounts of capital and operating expense to avoid managing wastewater

streams with over 1,000 ppm methanol in open -type wastewater treatment systems. This additional cost results in negligible impacts to the environment. This overly -protective and seemingly arbitrary/unfounded regulation also impedes the manufacture of other potential products. For these reasons, ACC supports de-listing methanol as a HAP.

Modify the RCRA Tank System Daily Inspection Requirement

Daily tank system visual inspections are required on all pipes, valves, pumps, tanks, secondary containment, and any other equipment that contacts hazardous waste and is part of the tank system. The costs associated with conducting these inspections on a daily basis is overly burdensome, and the requirement for these inspections to occur daily is unnecessary. For example, data from one ACC member facility indicates that the annual cost associated with daily inspections for one facility's 14 tanks is $118,625. On the other hand, the annual cost for these same tank inspections on a weekly basis would be $16,900—a significant difference of $101,725 at just one facility. Another ACC member facility spends seven hours every day inspecting its four RCRA tank systems. This results in an annual cost for daily inspections of about $153,300 . If these inspections were conducted on a weekly basis, the annual cost would be $21,840, a difference of $131,460. If EPA reduced the frequency of these required inspections, the cost savings modeled by these two facilities would be mirrored throughout industry, leading to a substantial burden reduction for a relatively simple change.

EPA should modify this overly burdensome daily inspection requirement for RCRA tank systems (40 CFR 265.195). ACC recommends that EPA change the required inspections to occur on a weekly basis instead of daily. If these weekly inspections revealed an issue of concern, EPA could then require daily inspections for a specified period of time following the company's remedy of the issue. The reduced frequency and additional flexibility in the frequency of these inspections would have a significant and immediately tangible reduction on the burden on industry.

Specific Recommendations on TSCA

On June 22, 2016, the Toxic Substances Control Act (TSCA) was amended by the Frank R. Lautenberg Act for Chemical Safety for the 21st Century Act (" LCSA"). LCSA was passed with overwhelming bipartisan support, the result of years of negotiation and with input from industry, environment, public health, animal rights, and labor groups . LCSA protects Americans' health and our environment, supports economic growth and manufacturing in the U.S., and promotes America's role as the world's leading innovator.

The LCSA overhaul of TSCA is substantial. EPA began implementation expeditiously, with many new provisions taking immediate effect on enactment. Enactment also started the clock on the promulgation of a series of important "framework" regulations essential to LCSA implementation. The three "framework" regulations for Inventory "reset," prioritization of chemicals for risk evaluation, and for the performance of risk evaluations, are nearing completion and scheduled to be promulgated in June 2017. After these rules are published, EPA has only an additional year (until June of 2018, again by statutory mandate) to develop any supporting policies, procedures, and guidance needed for LCSA implementation, including implementation of the framework regulations.

ACC is strongly committed to the effective implementation of LCSA. This support includes completion and promulgation of the regulations required by statute. Effective implementation of LCSA should remain an Agency priority. In that vein, ACC has offered numerous comments and suggestions to EPA in the regulatory dockets for the proposed framework and other LCSA implementing regulations. Our comments here are intended to supplement, and not detract, from those ongoing efforts.

New Chemicals Program

Statutory changes to the way EPA reviews new chemicals before manufacture and market entry took effect on June 22, 2016. An important change was that EPA must now make an affirmative safety determination before manufacture can start. The statute, however, did not change the safety standard itself, which continues to require measures to protect against unreasonable risks if needed. Likewise, the statute did not change the timeline expected for most pre-market reviews to be completed by the Agency within 90 days. Nevertheless, immediately upon enactment, a backlog swelled of Pre-Manufacture Notice (PMNs) review, the majority of which are not completed within the 90-day prescribed time frame period. Each of these represents a new chemical product that cannot be manufactured while the chemical company that developed it, and its supply chain, waits on EPA to complete the review. Chemistry touches 96% of all domestic products, so a delay at the top of the supply chain has adverse ripple effects throughout the economy. Inability to begin production of new chemicals directly impacts jobs and job creation, both with respect to the manufacture of the chemistry and the inability to develop improved and more competitive consumer products and services that rely on the new chemistries.

ACC has separately urged EPA to resolve this backlog as quickly as possible. Some recent Agency efforts appear to have nibbled at the backlog, but more needs to be done, and quickly, to restore the expeditious review of PMNs. As part of this effort, it would be helpful for EPA to commit to providing engineering reports and other documentation supporting PMN review to submitters and articulating a defined process for early and frequent consultation with respect to the adequacy of the PMN and supporting documentation, to reduce the overall process burden and review delays. It would also be helpful for EPA to post its new guidance and instructions on making PMN submissions in easy-to-find locations to a public website for transparency purposes (for example, guidance in the form of power point presentations offered at recent stakeholder meetings). Existing PMN guidance should be updated promptly to align with new LCSA interpretations and requirements.

Framework Rules

LCSA offers an integrated and systematic process to conduct risk evaluations of chemicals in commerce. The process is based on a careful and rational design that allows the Agency to target and focus on highest priorities for review first, which preserves Agency resources, assures pace and throughput of reviews, and delivers the greatest benefits and value for public health purposes. The first framework rule requires EPA to sort the chemicals on the TSCA Inventory based on whether they are currently used in

commerce. EPA can use this information as an input for risk -based, tiered screening for selection of chemicals for prior itization for risk evaluation. Recently reviewed new chemicals entering commerce, as well as chemicals no longer active in commerce, can be assigned lower priority for risk evaluation by the Agency.

Because the Inventory Reset rule and Prioritization rule would be under development for a year after LCSA enactment, to begin the first risk evaluations under the new statute promptly, Congress "kick started" the risk evaluation process by directing EPA to select the first 10 chemicals for risk evaluation from its Work Plan chemic als list. This has been done. The amended statute, however, contains throughput and pace requirements for risk evaluations, and to meet statutory requirements, additional chemicals wi ll need to be selected for high -priority designation to move them into the risk evaluation process. These selections must be made in accordance with the prioritization process to be set out by regulation in June. Completing the prioritization and risk evaluation rules in the manner directed by Congress is thus essential to achieving efficient and effective implementation of LCSA, and should continue to be a top priority for EPA.

Chemical Data Reporting

By regulation under Section 8 of TSCA , EPA requires chemical manufacturers and importers to report periodically with respect to chemicals on the TSCA Inventory. The last such submission cycle , ending in 2016 , was a major undertaking that placed a substantial burden on manufacturers to make an electronic submission of a wide variety of information about manufacture and import of chemicals. While this Chemical Data Reporting (CDR) rule originally focused on production and use of chemicals in commerce in large quantities, more recent reporting cycles have r equested information in smaller and smaller quantities.

We urge EPA seek opportunities to reduce the reporting burden on industry in the next chemical data reporting cycle , scheduled to occur in 2020 . It would be helpful for EPA to justify the needs for data to ensure that data collection appropriately supports prioritization screening under LCSA with appropriate focus, and does not impose an unnecessary collection burden on industry.

Nomenclature

Procedures to assign new chemicals "names" are complex, and there are multiple naming conventions recognized and reflected for ch emicals on the TSCA Inventory. A consequence of this is that over the years, many chemically identical substances appe ar on the Inventory multiple times with multiple names. Section 8(b)(3) of LCSA includes a new nomencla ture provision that allows the Agency to recognize chemically identical substances appearing on the Inventory multiple times as a single chemical substance. The Inventory Reset rule has not yet been promulgated, so it is unclear whether and how EPA plans to operationalize this provision as part of the Inventory Reset. However, effective implementation of this provision could yield meaningful and su bstantial regulatory burden reductions for industry, since companies may be able to streamline and aggregate numerous operations for chemically identical substances – everything from storage to transportation to training. A nomenclature equivalency exercise should be

conducted as a counterpart to the Inventory Reset process. At the same time, where current nomenclature assigns the same CAS name to substances that pose different hazards, EPA has the opportunity to address these assignments in a manner that will help support LCSA implementation, which itself depends on inputs of high quality and accurate information. As a counterpart to the Inventory Reset process, EPA should evaluate opportunities to improve current nomenclature to ensure that hazard information and classifications are accurate for each substance.

Conclusion

Thank you for the opportunity to submit recommendations for reform. ACC recognizes that the Task Force will have to choose among hundreds of potential reforms. A screening and prioritization process based on reducing opportunity cost is appropriate and consistent with the Trump Administration's regulatory agenda. ACC utilized such a process and identified several specific reforms for the Task Force to consider. In some cases, the Agency can implement the reform relatively quickly. In other cases, implementation will take lo nger. In every case, reform can reduce the opportunity cost, which will benefit the public without sacrificing regulatory objectives. With respect to implementation of the recently enacted TSCA reform law, ACC recommends that the Agency adhere to the implementation schedule as required under the statute, with the aim of providing sufficient transparency and certainty for the regulated community and to avoid creating any disincentives for market innovation.

Sincerely,

Anna Burhop

May 15, 2017

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 7401-M
EPA East Building
Washington, DC 20460
Submitted via www.regulations.gov

Re: Docket ID # EPA-HQ-OA-2017-0190; Stakeholder Input on Regulations Appropriate for Repeal, Replacement or Modification; the Formaldehyde Emission Standards for Composite Wood Products

Dear Sir or Madam:

The American Chemistry Council's[1] Formaldehyde Panel (Panel) appreciates this opportunity to provide comments to the EPA's Office of Pollution Prevention and Toxics (OPPT) regarding regulatory reform opportunities involving regulations governing chemical safety activities under the Toxic Substances Control Act (TSCA) and identification of those regulations that might be appropriate for repeal, replacement or modification per Executive Order 13777 on Enforcing the Regulatory Agenda. In follow-up to the oral comments presented by the Panel during the May 1, 2017 public meeting, the Panel has identified aspects of the Formaldehyde Emission Standards for Composite Wood Products [2] that should be modified to alleviate unnecessary regulatory burdens.

The Panel has long supported the establishment of national emission standards which are performance-based and set emissions levels that are equivalent to the levels established under the California Air Resources Board (CARB) Airborne Toxic Control Measure (ATCM). Although EPA states the final rule is "consistent, to the extent EPA deemed appropriate and practical considering TSCA Title VI, with the requirements currently in effect in California under the California Air Resources Board's (CARB) Air Toxics Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (ATCM) (Ref. 1),"[3] it instead goes well beyond Congressional intent and is inconsistent with the CARB standard. The rule as currently written represents a departure from the performance-based standard intended by Congress and as implemented under the CARB ATCM. Notably, the differences in the EPA's final rule and the CARB standard will create compliance confusion, stifle innovation and increase manufacturing

[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.
[2] 81 Fed. Reg. 89674 (Dec. 12, 2016).
[3] Id. at 89675.

costs. The Panel submitted significant detailed comments in October 2013[4] and May 2014,[5] when the EPA's rule was in development, but the issues raised in our previous comments have not been adequately or sufficiently addressed. Below we highlight two specific issues in the final rule that should be modified to ensure that it does not unduly disadvantage technologies that clearly meet the emissions standards.

1. **The EPA's Final Rule Should Adopt CARB's Approach For The Treatment of Laminated Products**

   While the emissions levels set in the EPA's final rule are equivalent to the CARB ATCM for formaldehyde emissions from composite wood products, the treatment of laminated products bonded to urea formaldehyde resins is a departure from the technology neutral CARB ATCM standard. EPA's current approach creates a situation where laminated products made by attaching a wood or woody grass veneer to a compliant core or platform with either a phenol-formaldehyde resin or a resin formulated with no added formaldehyde as part of the resin cross-linking structure are treated differently than other laminated products.

   Recommended Amendment to Final Rule - Section III.A.3 of the final rule should be modified to explicitly exempt all laminated products from the definition of hardwood plywood. Any future EPA action associated with laminated products should be evaluated through a separate formal notice and comment period.

2. **The EPA's Final Rule Should Not Endorse a Move Away From Urea-Formaldehyde-Based Resin Technologies**

   EPA's final rule encourages a move away from urea-formaldehyde-based resins, despite the fact that this chemistry has been proven to meet established CARB emissions standards. The approach in EPA's final rule to regulating laminated products would favor the use of no added formaldehyde resins over formaldehyde-based resins. The experience under CARB and the scientific underpinnings of testing and certification processes demonstrate that a performance-based approach that does not discriminate against technologies meeting the standards can ensure compliance with the statutorily mandated emissions limits while meeting diverse market needs and minimizing economic impact. There is no basis to support an approach to regulate laminated products that would promote the use of no added formaldehyde resins over formaldehyde-based resin technologies, including ultra-low emitting formaldehyde resins. Notably, manufacturers of composite wood products continue to rely on urea-formaldehyde-based resin technologies in products that comply with or perform better than the CARB Phase 2 emissions standards, which is a testimony to the effectiveness and capability of urea-formaldehyde-based resins.

   By taking a performance-based approach tied to emissions limits, the CARB program encouraged advancement in all technologies and provided the widest array of options for panel

[4] Docket ID # EPA-HQ-OPPT-2012-0018-0581.
[5] Docket ID # EPA-HQ-OPPT-2012-0018-0610.

manufacturers and the downstream chain of commerce. CARB's performance-based regulation for laminated products is consistent with the ASTM test methodology for assessing performance under temperature and humidity conditions. Notably, the statute prescribes the use of temperature and humidity levels set by ASTM E -1333 test method and if a laminated product meets the emission test under those conditions, it would be in compliance, regardless of whether it contained ultra-low emitting formaldehyde or no-added formaldehyde resins. Manufacturers of laminated products should have the flexibility to comply with EPA's rule using any chemistry meeting set emission standards.

Recommended Amendment to Final Rule - This final rule should clearly include an exemption for laminated products made with compliant platforms.

Recommended Amendment to Final Rule - This final rule should refrain from prescribing resin chemistries or formulations that can qualify as ultra-low emitting formaldehyde technology.

As summarized above, to improve the final rule, EPA should exempt the inclusion of laminated products from the final rule and address this issue in a separate formal notice and comment period. EPA should also modify the rule to clarify that any technology that effectively meets the established emissions standards complies with the final rule and that EPA does not encourage a move away from those technologies which meet the standards. We appreciate the opportunity to provide input as the Agency identifies ways to improve its rulemaking process.

Feel free to contact me by phone (202-249-6707) or email (kimberly_white@americanchemistry.com) with any questions related to these comments.

Sincerely,

Kimberly Wise White, PhD
American Chemistry Council (ACC)
Senior Director, Chemical Products & Technology Division
On Behalf of the ACC Formaldehyde Panel

May 15, 2017

Submitted via www.regulations.gov
Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
Environmental Protection Agency (EPA)
Mail Code 1804A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Evaluation of Existing Regulations, 82 Fed. Reg. 17793 (April 13, 2017);
Docket ID No. EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

The American Chemistry Council's Hexavalent Chromium Panel (Panel)[1] appreciates the opportunity to submit these comments in response to the Environmental Protection Agency's (EPA) request for public input to inform its Regulatory Reform Task Force (Task Force) evaluating existing regulations. The Panel requests the Task Force support the development and completion of a risk assessment for hexavalent chromium (Cr(VI)). The completion of this risk assessment will alleviate unnecessary regulatory burdens.

EPA has suffered much public criticism for its lack of progress on evaluating and taking appropriate action on substances found in drinking water. The Panel understands and supports the need for EPA's deliberate assessment and review of the science prior to making a decision whether to establish a drinking water standard or health advisory, or to defer a chemical to state regulatory action. EPA should complete the process of determining whether Cr(VI) meets the criteria for EPA regulatory action under the Safe Drinking Water Act (SDWA).

[1] 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 the nation's largest exporter, accounting for fourteen percent of all U.S. exports.

The SDWA is clear in its requirements that EPA regulate only those substances that meet the Act's criteria:

- The contaminant may have an adverse effect on the health of persons.
- The contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern.
- In the sole judgment of the Administrator, regulation of the contaminant presents a meaningful opportunity for health risk reductions for persons served by public water systems.[2]

This process has three steps: 1) the development of a risk assessment to evaluate whether the substance may have an adverse effect on human health; 2) an analysis of the occurrence of the substance in public water systems; and 3) a determination whether the presence in water systems occurs at levels posing a human health concern.

EPA has started the process for Cr(VI) and should complete it. We offer our perspective on these three steps:

1. Can Cr(VI) have an adverse effect on human health?

   In 1981, EPA set an enforceable drinking water standard, the maximum contaminant level (MCL), for total chromium at 100 parts per billion (ppb) to be health protective for all forms of chromium, including Cr(VI). The total chromium standard assumes that 100 percent of the chromium in drinking water is Cr(VI).[3]

   In 2008, a governmental 2-year rodent study conducted by the National Toxicology Program (NTP) reported that small intestine cancers were observed late in the study in a few of the mice, but not in rats, at the higher doses (doses greater than 30,000 ppb) used in this study.[4] This finding is important because it was the first observation of this type of effect. This finding triggered a series of other studies to investigate how these tumors were formed (mode of action (MOA) studies). Importantly, these studies investigated whether the effects in laboratory mice are relevant for humans at the far lower levels present in groundwater as reported by EPA.

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[2] 42 U.S.C. § 300g-1(b)(1)(A).
[3] See https://www.epa.gov/dwstandardsregulations/chromium-drinking-water.
[4] NTP. 2008a. Final technical report on the toxicology and carcinogenesis studies of sodium dichromate dihydrate in F344/N rats and B6C3F1 mice, available at http://ntp.niehs.nih.gov/files/546_web_FINAL.pdf; NTP. 2008b. NTP Toxicology and Carcinogenesis Studies of Sodium Dichromate Dihydrate (CAS No. 7789-12-0) in F344/N Rats and B6C3F1 Mice (Drinking Water Studies). Natl Toxicol Program Tech Rep Ser. 546: 1-192, available at https://www.ncbi.nlm.nih.gov/pubmed/18716633.

Using only NTP data, EPA issued a draft Integrated Risk Information System (IRIS) assessment of Cr(VI) in 2010, which was reviewed by an independent expert peer review panel in May 2011. The peer review panel urged EPA to consider the results of significant new MOA research on Cr(VI) before finalizing the assessment.[5] In 2012, EPA rescheduled the time frame for completion of its assessment to allow for consideration of the MOA research.

The MOA research has been completed. The research investigated the biochemistry, *in vivo* genotoxicity, histopathology, toxicogenomics, and *in vitro* genotoxicity of Cr(VI). In addition, toxicokinetics data measured the rates and capacity of Cr(VI) reduction to trivalent chromium in human and rodent stomach contents. The MOA data were used to develop a physiologically based pharmacokinetic (PBPK) model, which allows policy analysts to extrapolate high dose rodent data to low doses and to translate rodent data to humans, including sensitive individuals. A list of the peer-reviewed publications resulting from the MOA research is attached (Attachment A).

EPA should complete an assessment for Cr(VI) using all of the NTP and MOA data to answer the question of whether Cr(VI) can have an adverse effect on human health.

2. Does Cr(VI) occur in US groundwater used for drinking water?

EPA's Office of Drinking Water has completed its occurrence study for Cr(VI) as part of the third Unregulated Contaminant Monitoring Rule (UCMR-3).[6] The UCMR-3 monitoring data indicate low levels of Cr(VI) occur throughout the United States in groundwater sources used for drinking water. EPA collected over 62,000 samples from 4,500 large water systems (greater than 10,000 households) and 800 smaller systems (less than 10,000 households). EPA data indicate that the levels of Cr(VI) in 95% of the systems sampled reported levels less than 3.4 ppb. These levels are well below the MCL of 100 ppb for total chromium.

Natural Cr(VI) is found in groundwater, typically at low levels (generally 1 to 5 ppb), and in certain geologic formations containing chromium minerals, such as serpentine rocks. Scientists at the U.S. Geological Survey have reported that Cr(VI) found in groundwater and some drinking water sources in the Mojave Desert is naturally occurring from chromium-containing minerals from geologic formations, including serpentine rock in those

[5] See https://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=221433.
[6] See https://www.epa.gov/dwucmr/third-unregulated-contaminant-monitoring-rule.

formations. Much of the rest of California has naturally-occurring levels of chromium in rocks, soil and stream sediments.[7,8]

Duke University researchers monitored groundwater in North Carolina and reported, "*the groundwater chemistry and strontium isotope variations are consistent with water-rock interactions as the major source for Cr(VI) in groundwater. Our results indicate that Cr(VI) is most likely naturally occurring and ubiquitous in groundwater from the Piedmont region in the eastern United States*…"[9]

3. Does the presence in water systems occur at levels posing a human health concern?

EPA concludes in its recent six-year review of existing drinking water standards that the national primary drinking water regulation (NPDWR) for Cr(VI) is "not appropriate for revision at this time" because "health effects assessment in process (as of December 2015) or contaminant nominated for health assessment,"[10] further noting "Chromium VI is being assessed by the EPA IRIS Program."[11] According to IRIS Program website, Cr(VI) is in step 1 of the process, which is draft development.[12] Thus, until EPA completes its health risk assessment, this question remains unanswered for EPA.

While the Panel agrees that the NPDWR should not be revised until the health effects assessment is completed, we urge EPA to accelerate completion of its risk assessment for Cr(VI).

If EPA chooses to not complete its own risk assessment, it can be informed by assessments completed by other regulatory agencies. Health Canada and the Texas Commission on Environmental Quality (TCEQ) have each reviewed the NTP and MOA data and published their analyses.

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[7] Izbicki JA, Ball JW, Bullen TD, and Sutley SJ. 2008. Chromium, chromium isotopes and selected trace elements, western Mojave Desert, USA. Appl Geochem, 23(5): 1325-1352, available at http://ca.water.usgs.gov/news/2008/Chromium-report.pdf.

[8] Bailey A, Kubran WJ, Merlone M, Michelotti E, Mosiak C, and Pedroja D. 2013. A Water Supply Optimization Strategy--Santa Ynez River Water Conservation District No. 1, available at http://www.bren.ucsb.edu/research/2013Group_Projects/documents/SYWater_Report_Final.pdf

[9] Vengosh A, Coyte R, Karr J, Harkness JS, Kondash AJ, Ruhl LS, Merola RB, and Dywer GS. 2016. Origin of Hexavalent Chromium in Drinking Water Wells from the Piedmont Aquifers of North Carolina Environ Sci Tech Let, 3: 409–414, available at http://pubs.acs.org/doi/abs/10.1021/acs.estlett.6b00342

[10] Table VI-1, National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment and/or Information on Related Issues, 82 Fed. Reg. 3518, 3525 (Jan. 11, 2017).

[11] Table VI-2, 82 Fed. Reg. at 3527.

[12] https://cfpub.epa.gov/ncea/iris2/chemicalLanding.cfm?substance_nmbr=144

TCEQ completed a risk assessment of Cr(VI), considering the NTP and MOA data as well as the PBPK model. TCEQ set a reference dose that corresponds to 100 ppb for oral exposure to Cr(VI). TCEQ considers this value to protect against potential long-term and short-term adverse health effects (*i.e.*, to be protective of both non-carcinogenic and carcinogenic effects).[13]

Completion of an EPA determination is vitally important for the US public.

While EPA's total chromium MCL of 100 ppb covers all forms of chromium, including Cr(VI), this MCL was based upon a dermatitis endpoint. With the NTP study findings of small intestine cancer at high doses and no EPA determination related to this effect, states have little scientific basis upon which to make their regulatory decisions.

Media stories, using the aspirational California Public Health Goal (PHG) as their basis,[14] imply that the low levels of Cr(VI) reported in the UCMR-3 data are a public health risk, raising unwarranted public concern about the safety of drinking water.[15] This concern has resulted in increasing state legislative action to set enforceable standards for Cr(VI) in drinking water, often without full consideration of the scientific data.[16] Moreover, these media stories have generated fear among the public about drinking tap water with very low ppb levels of Cr(VI) and undermined public confidence in their tap water.

California provides an example of why EPA should complete its health risk assessment. In 2011, the California Office of Environmental Health Hazard Assessment (OEHHA) set a PHG

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[13] TCEQ. 2016. Development Support Document, Final, September 23, 2016, Hexavalent Chromium Oral Reference Dose, CAS Registry Number: 18540-29-9, available at https://www.tceq.texas.gov/assets/public/implementation/tox/dsd/final/chromium_ord.pdf. See also Haney J. 2015a. Use of dose-dependent absorption into target tissues to more accurately predict cancer risk at low oral doses of hexavalent chromium. Regul Toxicol Pharmacol, 71: 93-100, available at http://www.sciencedirect.com/science/article/pii/S0273230014002608; Haney J. 2015b. Implications of dose-dependent target tissue absorption for linear and nonlinear/threshold approaches in development of a cancer based oral toxicity factor for hexavalent chromium. Regul Toxicol Pharmacol, 72: 194-201, available at http://www.sciencedirect.com/science/article/pii/S0273230015000926; Haney J. 2015c. Consideration of non-linear, non-threshold and threshold approaches for assessing the carcinogenicity of oral exposure to hexavalent chromium. Regul Toxicol Pharmacol, 73: 834-852, available at: http://www.sciencedirect.com/science/article/pii/S0273230015300957.

[14] California defines a Public Health Goal as "the level of a chemical contaminant in drinking water that does not pose a significant risk to health. PHGs are not regulatory standards." See https://oehha.ca.gov/water/public-health-goals-phgs.

[15] See, e.g., "New report finds 'Erin Brockovich' chemical in US drinking water," available at http://www.cnn.com/2016/09/20/health/chromium-6-in-drinking-water/; "What is chromium-6 and how did it infiltrate America's drinking water?," available at http://www.pbs.org/newshour/rundown/chromium-6-wash-many-drinking-supplies/.

[16] See, e.g., New York State Senate Bill S4381, available at http://legislation.nysenate.gov/pdf/bills/2017/S4381.

of 0.02 ppb for Cr(VI).[17] The PHG was based largely on data from the 2008 NTP study, and did not consider the MOA research or PBPK model. This contrasts with the TCEQ assessment that did consider all of the data (NTP, MOA, and PBPK) in its analysis to set a reference dose that corresponds to the EPA 100 ppb total chromium drinking water standard.

Using the 0.02 ppb PHG, the California Department of Public Health (DPH)[18] finalized an MCL for Cr(VI) of 10 ppb in 2014[19] with a compliance date of 2020. In its supporting materials, DPH reported that the aggregate cost of complying with the 10 ppb MCL would be $870 million, based on 130 water systems that could not easily meet the 10 ppb standard.[20] California reported that water bills for consumers in water systems that required treatment to meet the 10 ppb standard could increase by $5,600 per year or $469.17 per month.[21] DPH reported that "for the smaller water systems, no more than 0.3 [theoretical excess cancer] cases might be avoided for any of the seven evaluated MCLs."[22]

On May 5, 2017, the 10 ppb MCL was voided by the Superior Court of California, County of Sacramento. The Court ruled that the California DPH failed to conduct an economic feasibility analysis as required by law. The Court remanded the case to the DPH with orders to withdraw the current MCL and establish a new MCL that considers economic feasibility and pays particular attention to small water systems.

By completing the health risk assessment step required under the SDWA, EPA can provide clarity to the states when addressing levels of this natural substance in drinking water.

Given the broad occurrence of Cr(VI) across the US, largely from geologic formations and minerals, the Panel urges EPA to make the development of a risk assessment for Cr(VI) a high priority. Moreover, this assessment should be based on the full scientific database, including

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[17] See https://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-support-document-public-health-goal-hexavalent.

[18] While the MCL was established by the California DPH, a restructuring has moved future drinking water actions to the State Water Control Board.

[19] See http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Chromium6.shtml.

[20] On January 9, 2017, Mark Bartson, head of the Technical Operations Section of the State Board's Division of Drinking Water, stated that there were a total of 7,588 public water systems in California. Of these, 4,430 were either community water systems or non-community, non-transient water systems that must comply with MCLs. Approximately 197 of these water systems operated one or more water sources that contained Cr(VI) at levels exceeding the 10 ppb MCL. Mr. Bartson stated that the Division of Drinking Water is "not tracking" 67 of these systems because they had an "easy out," a simple and straightforward way of achieving compliance, such as taking a well out of service. Mr. Bartson stated that the Division of Drinking Water was then "tracking" approximately 130 water systems with respect to compliance with the new MCL.

[21] Initial statement of reasons, Table 8; available at https://archive.cdph.ca.gov/services/DPOPP/regs/Documents/DPH-11-005HCMCLISOR.pdf

[22] Id. at 25.

the recent MOA research on Cr(VI) and the PBPK model.[23] We urge that EPA set an aggressive completion schedule, including public comment and scientific peer review.

Given the availability of new research and the disparate approaches to assessing the potential public health risk of Cr(VI) taken by California and Texas, state regulatory agencies and the public would greatly benefit from a federal risk assessment of Cr(VI) in drinking water.

We appreciate EPA's consideration of these comments. If you have any questions about these comments, please contact Ann M. Mason at ann_mason@americanchemistry.com or 202.249.6704 or Laura Brust at laura_brust@americanchemistry.com or 202.249.6139.

Sincerely,

Ann M. Mason
Senior Director, American Chemistry Council

Attachment A: List of Peer-Reviewed MOA Research Publications

[23] This research has resulted in more than 20 peer-reviewed publications. A complete list of publications is included as Attachment A. The research data, publications, and other details of this research are available at http://cr6study.info/.

Attachment A
List of Peer-Reviewed MOA Research Publications

Overview

The Cr(VI) Mode of Action (MOA) Research Study was designed to understand how hexavalent chromium [Cr(VI)] in drinking water is associated with carcinogenesis in rats and mice. The project involved investigators from multiple institutions and conducted two 90-day drinking water studies, using one in the same mouse (B6C3F1) and rat (Fisher 344) strains used in the NTP study. The in-life portions of the study (i.e. the exposure, macro- and microscopic examinations, and some biochemical analyses) were conducted at the same research facility that conducted the NTP study to further minimize inter-study variability. Histological lesions, biochemical analyses, toxicogenomic analyses, pharmacokinetic analyses, and mutational analyses were examined in the target tissues of interest, i.e. the small intestine and oral mucosa, of the mice and rats. In addition, in vitro cell culture studies were conducted to further inform the Cr(VI) MOA. The Cr(VI) MOA Research Study used the same concentrations of Cr(VI) in drinking water as the NTP study and also included lower Cr(VI) concentrations, which are more indicative of possible environmental exposures, such as U.S. drinking water.

See http://cr6study.info/ for more information on the MOA research.

Publications

Cullen JM, Ward JM, Thompson CM. 2016. Reevaluation and classification of duodenal lesions in B6C3F1 mice and F344 rats from 4 studies of hexavalent chromium in drinking water. Toxicol Path. 44(2): 279-289.

De Flora S, Camoirano A, Micale RT, La Maestra S, Savarino V, Zentilin P, Marabotto E, Suh M, Proctor DM. 2016. Reduction of hexavalent chromium by fasted and fed human gastric fluid. I. Chemical reduction and mitigation of mutagenicity. Toxicol Appl Pharmacol. 306: 113-119.

Kirman CR, Suh M, Proctor DM, Hays SM. 2017. Improved physiologically based pharmacokinetic model for oral exposures to chromium in mice, rats, and humans to address temporal variation and sensitive populations. Toxicol Appl Pharmacol. 325: 9-17.

Kirman CR, Suh M, Hays SM, Gürleyük H, Gerads R, De Flora S, Parker W, Lin S, Haws LC, Harris MA, Proctor DM. 2016. Reduction of hexavalent chromium by fasted and fed human gastric fluid. II. Ex vivo gastric reduction modeling. Toxicol Appl Pharmacol. 306: 120-133.

Kirman CR, Aylward LL, Suh M, Harris MA, Thompson CM, Haws LC, Proctor DM, Lin SS, Parker W, Hays SM. 2013. Physiologically based pharmacokinetic model for humans orally exposed to chromium. Chem-Biol Interact. 204(1): 13-27.

Kirman CR, Hays SM, Aylward LL, Suh M, Harris MA, Thompson CM, Haws LC, Proctor DM. 2012. Physiologically based pharmacokinetic model for rats and mice orally exposed to chromium. Chem-Biol Interact. 200(1): 45-64.

Kopec AK, Thompson CM, Kim S, Forgacs AL, Zacharewski TR. 2012. Comparative Toxicogenomic Analysis of Oral Cr(VI) Exposure Effects in Rat and Mouse Small Intestinal Epithelium. Toxicol Appl Pharmacol. 262(2): 124-138.

Kopec AK, Kim S, Forgacs AL, Zacharewski TR, Proctor DM, Harris MA, Haws LC, Thompson CM. 2012. Genome-wide gene expression effects in B6C3F1 mouse intestinal epithelia following 7 and 90 days of exposure to hexavalent chromium in drinking water. Toxicol Appl Pharmacol. 259(1): 13-26.

O'Brien T, Ding H, Suh M, Thompson C, Parsons BL, Harris MA, Winkelman WA, Wolf JC, Hixon JG, Schwartz AM, Myers MB, Haws LC, Proctor DM. 2013. Assessment of K-Ras mutant frequency and micronucleus incidence in the mouse duodenum following 90-days of exposure to Cr(VI) in drinking water. Mutat Res. 754(1-2): 15-21.

Proctor DM, Suh M, Aylward LL, Kirman CR, Harris MA, Thompson CM, Gürleyük H, Gerads R, Haws LC, Hays SM. 2012. Hexavalent chromium reduction kinetics in rodent stomach contents. Chemosphere. 89(5): 487-493.

Rager JE, Ring CL, Fry RC, Suh M, Proctor DM, Haws L, Harris MA, Thompson CM. 2017. High-Throughput Screening Data Interpretation in the Context of *In Vivo* Transcriptomic Responses to Oral Cr(VI) Exposure. Toxicol Sci.

Suh M, Thompson CM, Kirman CR, Carakostas M, Haws LC, Harris M, Proctor D. 2014. High concentrations of hexavalent chromium in drinking water alter iron homeostasis in F344 rats and B6C3F1 mice. Food Chem Toxicol. 65: 381-388.

Thompson CM, Bichteler A, Rager JE, Suh M, Proctor DM, Haws LC, Harris MA. 2016. Comparison of in vivo genotoxic and carcinogenic potency to augment mode of action analysis: case study with hexavalent chromium. Mutat Res-Gen Tox En. 800-801: 28-34.

Thompson CM, Rager JE, Suh M, Ring CL, Proctor DM, Haws LC, Fry RC, Harris MA. 2016. Transcriptomic Responses in the oral cavity of F344 rats and B6C3F1 mice following exposure to Cr(VI): implications for risk assessment. Env Mol Mut. 57: 706-716.

Thompson CM, Seiter J, Chappell MA, Tappero RV, Proctor DM, Suh M, Wolf JC, Haws LC, Vitale R, Mittal L, Kirman CR, Hays SM, Harris MA. 2015. Synchrotron-based imaging of chromium and γ-H2AX immunostaining in the duodenum following repeated exposure to Cr(VI) in drinking water. Toxicol Sci. 143(1): 16-25.

Thompson CM, Wolf JC, Elbekai RH, Paranjpe MG, Seiter JM, Chappell MA, Tappero RV, Suh M, Proctor DM, Bichteler A, Haws LC, Harris MA. 2015. Duodenal crypt health following exposure to Cr(VI): Micronucleus scoring γ-H2AX immunostaining, and synchrotron X-ray fluorescence microscopy. Mutat Res. 789-790: 61-66.

Thompson CM, Young RR, Suh M, Dinesdurage HR, Elbekai RH, Harris MA, Rohr AC, Proctor DM. 2015. Assessment of the Mutagenic Potential of Cr(VI) in the Oral Mucosa of Big Blue Transgenic F344 Rats. Environ Mol Mutagen. 56: 621-628.

Thompson CM, Kirman CR, Proctor DM, Haws LC, Suh M, Hays S, Hixon JG, Harris MA. 2014. A chronic oral reference dose for hexavalent chromium-induced intestinal cancer. J Appl Toxicol. 34: 525-536.

Thompson CM, Proctor DM, Suh M, Haws LC, Kirman CR, Harris MA. 2013. Assessment of the mode of action underlying development of rodent small intestinal tumors following oral exposure to hexavalent chromium and relevance to humans. Crit Rev Toxicol. 43(3): 244-274.

Thompson CM, Fedorov Y, Brown DD, Suh M, Proctor DM, Kuriakose L, Haws LC, Harris MA. 2012. Assessment of Cr(VI)-Induced Cytotoxicity and Genotoxicity Using High Content Analysis. PLoS ONE. 7(8): e42720.

Thompson CM, Hixon JG, Proctor DM, Haws LC, Suh M, Urban JD, Harris MA. 2012. Assessment of Genotoxic Potential of Cr(VI) in the Mouse Duodenum: An In Silico Comparison with Mutagenic and Nonmutagenic Carcinogens Across Tissues. Regul Toxicol Pharmacol. 64(1): 68-76.

Thompson CM, Proctor DM, Suh M, Haws LC, Hebert CD, Mann JF, Shertzer HG, Hixon JG, Harris MA. 2012. Comparison of the Effects of Hexavalent Chromium in the Alimentary Canal of F344 Rats and B6C3F1 Mice Following Exposure in Drinking Water: Implications for Carcinogenic Modes of Action. Toxicol Sci. 125(1): 79-90.

Thompson CM, Proctor DM, Harris MA. 2012. Duodenal GSH/GSSG Ratios in Mice Following Oral Exposure to Cr(VI). Toxicol Sci. 126(1): 287-288.

Thompson CM, Proctor DM, Haws LC, Hebert CD, Grimes SD, Shertzer HG, Kopec AK, Hixon JG, Zacharewski TR, Harris MA. 2011. Investigation of the Mode of Action Underlying the Tumorigenic Response Induced in B6C3F1 Mice Exposed Orally to Hexavalent Chromium. Toxicol Sci. 123(1): 58-70.

Thompson CM, Haws LC, Harris MA, Gatto NM, Proctor DM. 2011. Application of the U.S. EPA Mode of Action Framework for Purposes of Guiding Future Research: A Case Study Involving the Oral Carcinogenicity of Hexavalent Chromium. Toxicol Sci. 119(1): 20-40.

Young RR, Thompson CM, Dinesdurage HR, Elbekai RH, Suh M, Rohr AC, Proctor DM. 2015. A Robust Method for Assessing Chemically Induced Mutagenic Effects in the Oral Cavity of Transgenic Big Blue Rats. Environ Mol Mutagen. 56: 629-636.

May 15, 2017

Docket EPA-HQ-OA-2017-0190
Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

Re: Evaluation of Existing Regulations, Docket EPA-HQ-OA-2017-0190
(82 *Fed. Reg.* 17793, April 13, 2017)

Dear Sirs:

The Chemical Products and Technology Division of the American Chemistry Council (ACC/CPTD)[1] requests that the Agency review policy guidance issued in 2014 by the Office of Solid Waste and Emergency Response (OSWER)[2] as part of its evaluation of regulations that, among other things, eliminate jobs or inhibit job creation, impose costs in excess of benefits, or rely on information that has not been reproduced. This 2014 guidance – related to remediation of sites contaminated with trichloroethylene (TCE) – imposes significant costs on the public and private sector and impedes progress towards productive use of brownfield land with little or no public benefit. The potential impact is highlighted by the recent addition of a subsurface intrusion component to the Hazard Ranking System for placement of a site on the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[3]

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[1] 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. ACC's Chemical Products and Technology Division is composed of a wide range of more than 60 self-funded product and sector groups that are focused on specific chemistries and related technologies. Members participating in these groups include large and small manufacturers, formulators, downstream users, distributors, suppliers and other trade associations.

[2] US EPA. Memo from Robin H. Richardson (Acting Director, Office of Superfund Remediation and Technology Innovation. Compilation of Information Relating to Early/Interim Actions at Superfund Sites and the TCE IRIS Assessment (August 27, 2014). (Richardson memo) OSWER is now known as the Office of Land and Emergency Management (OLEM).

[3] 82 *Fed. Reg.* 2760 (January 9, 2017).

Despite the fact that the 2014 guidance has been interpreted by many as having the force of law or regulation regarding early mitigation at remediation sites and interpretation of data on developmental effects, it was not subject to public notice and comment. In response to repeated calls for review of the policy, EPA has argued that the guidance memo is "not a regulation nor a rule," while simultaneously noting that it "operationalized the [EPA Integrated Risk Information System (IRIS)] TCE Assessment."[4] Although not a formal regulation, such "operationalization" is clearly covered by Executive Order 13771 which indicates that --

> [f]or purposes of this order the term "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.[5]

As such, we urge EPA to consider the 2014 guidance memo, and related memos issued by EPA regional offices, as part of its review of regulations that impose costs that exceed benefits or are based on irreproducible information.

EPA's Assessment of the Non-Cancer Effects of TCE Differs from Other Authoritative Groups

EPA's 2011 IRIS assessment for TCE reestablished cancer potency factors and lowered the chronic (lifetime) reference concentration (RfC - for inhalation) and reference dose (RfD – for water consumption) for non-cancer effects significantly.[6] The non-cancer reference values are based primarily on developmental effects (*i.e.*, fetal heart malformations, or FHM) reported in studies from a single laboratory. The results are inconsistent with GLP studies conducted by other researchers. Published reviews of the studies that observed these effects have described numerous limitations in the methodology, including the use of non-standard statistical methods, the failure to run concurrent control experiments, and the pooling of control groups.[7]

In reviewing the same data, the National Research Council dismissed the FHM findings because of the unusually flat dose-response curve and the inconsistency of the results with those from other, better conducted studies.[8] Similarly California's Office of Environmental

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[4] Letter from Enrique Manzanilla, Director Superfund Division, EPA Region 9, to Mr. Mike Mielke, Silicon Valley Leadership Group (November 19, 2015).

[5] Executive Order 13771. Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

[6] US EPA. IRIS Toxicity Profile for Trichloroethylene (CASRN 79-0 1-6). Washington DC, USEPA (2011).

[7] For example, Hardin PD *et al.* Trichloroethylene and dichloroethylene: a critical review of teratogenicity. *Birth Defects Research (Part A)* 73:931-955 (2005).

[8] National Research Council (NRC). Assessing the Human Health Risks of Trichloroethylene: Key Scientific Issues. Washington, DC: National Academies Press. (2006).

Health Hazard Assessment (OEHHA) rejected the FHM studies because they did not produce a meaningful or interpretable dose-response relationship.[9] OEHHA also noted that the results are not consistent with earlier developmental and reproductive toxicological studies done outside this lab in other animal species. More recently, in a 2014 update of the assessment of the fetal heart data, seven of 11 EPA scientists characterized the confidence in the dose-response evaluation of the cardiac data as "low," a conclusion that differs significantly from that of the 2011 IRIS assessment.[10] Despite the clear concern about the FHM studies expressed by scientists -- including many within the Agency -- EPA has made no attempt to update or correct its assessment.

EPA Guidance Memos Establish Short-Term Action Levels

Following the release of the IRIS assessment for TCE, EPA's Regions 9 and 10 issued policy guidance outlining investigation approaches and response measures to address exposures to TCE in indoor air from the subsurface (*i.e.*, vapor) intrusion pathway.[11,12] In both cases, the policy established action levels based on the RfC from the 2011 IRIS assessment and provided guidance on "accelerated and urgent response actions." As a result of confusion generated by the release of guidance from the two regional offices, OSWER subsequently issued its 2014 guidance memo which indicated that the Agency "expects to take early actions" based on the IRIS RfC. The 2014 memo further noted –

> [I]n most cases, it is assumed that a single exposure at any of several developmental stages may be sufficient to produce an adverse developmental effect, but the RfC for a single exposure hasn't been determined yet by EPA.[13]

Despite acknowledging that the RfC was developed to protect against chronic (i.e., lifetime) exposure to TCE, the memo has been interpreted to require action based on sampling results in excess of the RfC collected over 24 hours or less.

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[9] Office of Environmental Health Hazard Assessment (OEHHA). Public health goals for chemicals in drinking water – trichloroethylene. OEHHA. Sacramento, CA (2009).

[10] TCE developmental cardiac toxicity assessment update (undated). (Document ID EPA-HQ-OPPT-2012-0723-0045 available at http://www.regulations.gov)

[11] Memo from Enrique Manzanilla, Director Superfund Division, EPA Region 9. EPA Region 9 Response Action Levels and Recommendations to Address Near-Term Inhalation Exposures to TCE in Air from Subsurface Vapor Intrusion (July 9, 2014).

[12] Memo from Joyce C. Kelly, Office of Environmental Assessment, EPA Region 10. OEA Recommendations Regarding Trichloroethylene Toxicity in Human Health Risk Assessments (December 13, 2012).

[13] Richardson memo, at 2.

The application of the low levels dictated by the RfC to acute (short-term) exposures to TCE outlined in the 2014 memo has dramatically expanded the number of buildings requiring investigation at remediation sites and the number of indoor air samples to be collected and analyzed in these buildings. Concerns among federal, state, and local authorities regarding the potential for future vapor intrusion exposures have resulted in calls for cleanup of groundwater contamination beyond that otherwise required by CERCLA or state requirements. Public outreach about potential TCE exposure by EPA and state authorities has generated unnecessary confusion and concern.

Operationalization of the Guidance Memos has had a Significant Economic Impact

Enforcement of the very low levels indicated by the RfC has resulted in unnecessary evacuations of residences, dramatic expansion of the number of buildings requiring investigation and the number of samples to be collected and analyzed, and calls for remediation of groundwater not used as drinking water. According to an April 2014 memo from EPA Region 9, the Agency's decision to expand the area to be monitored at four remediation sites in the South Bay region in California based on TCE vapor-intrusion concerns resulted in an almost four-fold increase in the number of residences (from 96 to 358) and commercial buildings (from 59 to 270) requiring investigation. [14] Earlier this month, EPA's Region 5 announced the need to conduct indoor air testing in at least 75 residences at the PMC Superfund site in Michigan as a result of TCE in soil gas samples. [15] Significantly, Region 5 had previously touted the PMC site as an example of successful redevelopment of contaminated land.[16]

The costs of the implementation of the accelerated action policy outlined in the memos from Region 9 and 10[17] and supported by the 2014 Richardson memo are difficult to estimate. In the rulemaking to add subsurface intrusion to the ranking system for NPL sites issued earlier this year, EPA estimates that the cost of an investigation would increase by between $35,000 and $69,000 with the addition of a vapor intrusion assessment.[18] Based on these estimates, the

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[14] Briefing Memo from Melanie Morash, Remedial Project Manager, to Enrique Manzanilla, Director, Superfund Division (April 29, 2014).

[15] EPA to test for toxic vapors in some homes. Petoskey News (May 9, 2017) Available at http://www.petoskeynews.com/featured-pnr/epa-to-test-for-toxic-vapors-in-some-homes/article_c66e31bf-8e55-5352-9686-a2d5531ce8ba.html.

[16] US EPA. Success Story – PMC Groundwater Superfund Site (October 2010). Available at https://semspub.epa.gov/work/05/928680.pdf.

[17] EPA Region 7 issued a similar memo relating to action levels for TCE in November 2016.

[18] US EPA. Addition of a subsurface intrusion (SsI) component to the Hazard Ranking System (HRS) – Regulatory Impact Analysis (December 2016). Available at https://www.regulations.gov/document?D=EPA-HQ-SFUND-2010-1086-0108.

cost of the recently announced sampling at the PMC site in Michigan would total between $330,000 and $645,000. Extrapolating this estimate for a single site to the more than 1000 sites that EPA suggested could be impacted by this year's NPL rulemaking generates an estimated cost of $330 million or more.[19]

In light of the significant impact that EPA's policy guidance related to addressing TCE exposure from subsurface vapor intrusion has had, and will continue to have, we urge EPA to consider the OSWER and regional guidance memos as part of its review of the impact of Agency regulations. Please feel free to contact me at srisotto@americanchemistry.com, or at 202-249-6727, if you have questions about the above information.

Sincerely,

Steve Risotto

Stephen P. Risotto
Senior Director

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[19] The EPA estimate of 1073 sites is based on those locations the Agency considered eligible for federal NPL listing and does not include the large number of sites that are being addressed at the state and local level. While the NPL evaluation was not explicitly limited to TCE contamination, TCE and related substances currently are a primary factor in vapor intrusion investigations. ACC estimates that the potential number of sites affected by EPA's TCE policy far exceeds the estimate in the NPL rulemaking.

May 15, 2017

Docket EPA-HQ-OA-2017-0190
Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

Re: Evaluation of Existing Regulations, Docket EPA-HQ-OA-2017-0190
(82 *Fed. Reg.* 17793, April 13, 2017)

Dear Sirs:

The Polychlorinated Biphenyls (PCB) Panel of the American Chemistry Council (ACC)[1] requests that the Agency review several aspects of its regulations and guidance regarding the handling, use, and disposal of PCBs. In particular, the PCB Panel requests that EPA --

- Eliminate the regulatory confusion surrounding the disposal options for PCB remediation wastes with as-found concentrations[2] of less than 50 parts per million (<50 ppm) PCB by clarifying that all such wastes can be managed in disposal facilities other than those regulated under the Toxic Substances Control Act (TSCA), including in municipal solid waste landfills,
- Expressly authorize the management of in-use/in-commerce PCBs based on actual concentrations, not on the original source of the PCBs or on the date on which PCBs were added to the material, and

[1] 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 PCB Panel represents companies and trade associations with an interest in the assessment of risks presented by exposure to these compounds.

[2] The preamble to 40 C.F.R. § 761.61 states: "Any person cleaning up and disposing of PCBs managed under this section shall do so *based on the concentration at which the PCBs were found*." (Emphasis added.) The significance of the "as found" concentration is made clear by 40 CFR § 761.50(b)(3).

- Make the regulatory interpretations of the terms "use" and "disposal" consistent with their plain meanings.
- Modify the PCB analytical rules to authorize use of the automated soxhlet EPA-approved extraction method available for individual and composite samples (Method 3541).

Eliminate the Regulatory Confusion Surrounding Disposal of PCB Remediation Wastes Containing <50 ppm

The ACC PCB Panel supports and incorporates by reference the comments of the Utility Solid Waste Activities Group (USWAG) on this docket to the extent those comments relate to the disposal of as-found <50 ppm PCB remediation waste, and the corresponding need for regulatory clarity regarding the disposal of these wastes.

EPA has long recognized that remediation waste containing <50 ppm PCBs "has little inherent potential to pose an unreasonable risk to health or the environment" and consequently has historically not required that wastes containing <50 ppm PCBs be managed in disposal facilities regulated under TSCA.[3]

Consistent with the view that wastes containing < 50 ppm PCBs do not require disposal in a TSCA disposal unit, one of the major objectives of EPA's 1998 amendments to the PCB regulations was to establish a common-sense regulatory regime for the disposal of remediation wastes containing low-level PCBs. In a report prepared by EPA's Office of Pollution Prevention and Toxics used to support the proposed 1998 PCB amendments, EPA explained that:

> The proposed regulation makes a number of changes in disposal requirements for remediation wastes: wastes would be regulated on "as found" basis, instead of according to the original concentration of materials . . . wastes may be disposed in the minimum technique necessary to protect human health and the environment. Since much PCB remediation wastes are found in low concentrations (including large quantities of wastes found in concentrations of less than 50 ppm), substantial quantities will be disposed in municipal solid waste landfills.[4]

EPA highlighted this important change in the final rule as one of the most significant cost-saving elements of the entire package of 1998 amendments, explaining that "[s]ignificant

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[3] 68 *Fed. Reg.* 4934, 4937 (January 31, 2003).

[4] US EPA. Final Report: Costs of Compliance with the Proposed Amendments to the PCB Regulation. at 4-104 (December 6, 1994).

cost savings result from changes to the disposal requirements for PCB remediation waste. EPA will now allow wider latitude in selecting disposal methods for PCB remediation wastes, resulting in a lowering of disposal costs, and producing a cost savings estimated at approximately $80.5 million/year."[5]

The Agency reiterated this point when describing the new disposal option for wastes containing <50 ppm PCBs when it noted that "[t]oday's rule expands the options for off-site disposal; for example, PCB remediation waste containing <50 ppm PCBs may be sent off-site for disposal in State-approved land disposal facilities for the management of municipal solid waste landfills…."[6] In establishing this common-sense approach, EPA explained that "[i]n finalizing several variances from the anti-dilution rule, EPA is simply recognizing that where PCBs have already been released, the critical disposal issue is to mitigate the damage from the release."[7]

Notwithstanding the plain language of EPA's regulations and the supporting rulemaking record, considerable confusion has arisen over the years about whether the regulations allow all (versus only a subset of) as-found <50 ppm PCB remediation wastes to be disposed of in a municipal solid waste landfill. For example, while EPA's PCB Question and Answer Manual, originally issued in September 2001 and updated from time to time ("Q&A Manual"), states that all PCB remediation wastes may be managed based on the actual concentration of PCBs in the waste (*i.e.*, the "as-found" concentration),[8] other portions of the Q&A Manual suggest that this option is limited to only a certain subset of remediation wastes found with concentrations of <50 ppm PCBs.[9] The Q&A Manual has been interpreted as meaning that remediation wastes found at concentrations <50 ppm PCBs can be disposed of in non-TSCA units only when the wastes are generated under the so-called "self-implementing cleanup option" (under 40 C.F.R. § 761.61(a)), while *identical* wastes generated under the alternative performance-based cleanup option (under 40 C.F.R. § 761.61(b)) or the PCB Spill Cleanup Policy must be managed in TSCA landfills. Not only does this guidance contradict the plain language of the regulations, it also lacks support from an environmental risk perspective.

> Recommended Action: EPA should clarify its PCB disposal regulations to expressly provide that *all* PCB remediation wastes with as-found concentrations <50 ppm PCB may be managed in non-TSCA disposal facilities, including municipal solid waste landfills,

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5 63 *Fed. Reg.* 35384, 35433 (June 29, 1998).

6 *Id* at 35409

7 *Id*. at 35388.

8 *See*, *e.g.*, EPA, PCB Question & Answer Manual ("Q&A Manual"), 75 (June 2014) ("As-found concentration," Q. 1, Q. 6).

9 *See*, *e.g.*, *id* at 48 (June 2014) ("§ 761.50(b)(3)(ii) Post-'78 Waste" Q.1, suggesting PCB remediation waste managed under the PCB Spill Cleanup Policy must be disposed of based on the concentration of the source of the spill and not on the as-found concentration of the PCB remediation waste).

regardless of whether those wastes are managed under any part of 40 C.F.R. §761.61 or under the PCB Spill Cleanup Policy. The requested clarification will provide regulatory certainty and eliminate unnecessary costs, therefore promoting efficient and environmentally protective cleanups.[10]

Regulate the Use and Distribution in Commerce of PCB-Containing Products Based on their Actual Concentrations

As discussed above, the federal PCB regulations provide that PCB remediation wastes be managed based on the concentration at which PCBs are found in the waste (as opposed to the concentration of the PCBs in the original source material). This approach reasonably reflects the fact that any risks that might be presented by PCBs depend upon the concentration of the PCBs at the time of exposure (thus, in the context of PCB remediation waste, disposal). EPA should expand this common sense, risk-based principle to regulation of the use and distribution in-commerce of PCB-containing materials.

Currently, the PCB regulations authorizing use and distribution in commerce of PCB-containing materials do not reflect such a risk-based approach, at least not in a consistent manner. Instead, these authorizations and corresponding regulatory requirements vary in some instances depending on the history of the product. For example, while the regulations deem certain materials (*i.e.*, those that contain <50 ppm PCB, provided they were "legally manufactured, distributed in commerce or used before October 1, 1984 …" and have not been contaminated with PCBs as a result of spills, leaks or other improper disposal) "excluded PCB products" which are not subject to the federal PCB use and disposal requirements, other materials with similar PCB concentrations (*i.e.*, <50 ppm PCB) must be managed as TSCA waste if they are contaminated by "PCB bulk product waste." As a practical matter, this could mean that two items with identical concentrations of PCBs, may be subject to different requirements simply because of the history of the equipment.[11]

Recommended Action: EPA should therefore revise the federal PCB regulations to make clear that the regulations impose no obligation to establish and/or document the history of PCBs in a given material and/or piece of equipment in order to determine whether they fall within the scope of a use or distribution in-commerce authorization. In

[10] *See*, *e.g.*, EPA, letter from John Melone, EPA National Program Chemicals Division, to M. Kelly McTigue (August 13, 1999).

[11] Note that while EPA's reinterpretation of the definition of "PCB bulk product waste" (October 24, 2012) provides some practical relief, it does not go far enough. For example, it applies only in the disposal context and not to in-use or in-commerce materials. Even in the disposal context, it may only be used where PCB bulk product waste and associated contaminated material are attached at the time of designation for disposal

> addition, EPA should amend the definition of "Excluded PCB Products" to eliminate the requirement that the PCBs came from a source that was authorized in 1984.

Make the Regulatory Interpretations of "Use" and "Disposal" Consistent with Their Plain Meanings

TSCA explicitly prohibits most uses of PCBs except to the extent authorized by EPA. Pursuant to that authority, EPA has promulgated extensive PCB use authorizations in 40 CFR § 761.30. These use authorizations, for the most part, encompass what would normally be considered actual uses of PCBs (*e.g.*, transformers using PCB-containing dielectric fluid). However, EPA has previously attempted to equate the use of property contaminated by spills of PCBs with the use of PCBs by suggesting that the "[u]se of the contaminated property is prohibited unless it has been decontaminated pursuant to 40 CFR §761.30(u)." [12] Use of a building that is contaminated with PCBs is no more a use of PCBs than using a wet floor is use of the water.

Given the ubiquity of PCBs, the interpretation suggested by EPA in 2005 would unnecessarily transform thousands, if not millions, of property owners and their tenants into "unauthorized users" of PCBs. Certainly, EPA can conclude that exposure to PCBs above a certain level poses an unreasonable risk to human health or the environment that must be addressed under the appropriate program, but that is very different from asserting that the mere presence of PCBs in a structure constitutes the unauthorized use of PCBs by those who use the structure.

Similarly, the Agency's inconsistent interpretation of what constitutes "disposal" has created confusion in the regulated community and impeded redevelopment of brownfields properties. Section 6(e) of TSCA directs EPA to "promulgate rules to prescribe methods for disposal of polychlorinated biphenyls." "Disposal" is not defined in the statute, and under rules of statutory construction should be given its plain meaning (*i.e.*, "to get rid of something"). That meaning is reflected in the definition found at 40 CFR § 761.3:

> Disposal means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions relating to containing, transporting, destroying, degrading, decontaminating, or confining PCBs.

Under this definition, only activities that "complete or terminate the useful life of PCBs" qualify as "disposal". Problems arise, however, when EPA classifies or describes other types of

[12] 70 *Fed. Reg.* 37837 (June 30, 2005).

activities or events (*e.g.*, cleanup or remedial activities, or migration of PCBs through soil) as "disposal." For example, EPA regional offices have asserted that the post-1978 migration of PCBs that were spilled or otherwise released into the environment before 1978 constitutes "illegal disposal" within the meaning of the rules. The EPA regions have asserted that position even though the regulation explicitly states that sites containing such wastes are presumed not to present an unreasonable risk of injury,[13] and that the Regional Administrator can require the owner or operator to dispose of such waste only if he/she first finds that the contamination presents an unreasonable risk.[14]

The interpretation by the regional offices is inconsistent with the rule, the preamble, and the definition of disposal; subjects every owner of property that has pre-1978 PCB contamination to potential enforcement actions for "illegal disposal;" and, given the ubiquity of PCBs, impedes redevelopment of brownfields properties. Further, the interpretation is wholly unnecessary, given EPA's extensive risk-based cleanup authority under CERCLA and numerous state cleanup programs.

> Recommended Action: EPA should clarify that the use of a property contaminated with PCBs below a level that presents an unreasonable risk does not constitute unauthorized use of PCBs under 40 CFR § 761.30; EPA also should ensure consistency in the interpretation of the term "disposal" such that the natural migration of PCBs released into the environment before 1978 does not constitute "illegal disposal" within the meaning of the regulations.

Modify the Rules for Analysis of PCB Remediation Wastes

EPA's PCB disposal regulations specify particular analytical methods that must be employed when extracting samples of PCB wastes for purposes of determining appropriate disposal options and cleanup verification. In particular, the regulations specify the use of a traditional soxhlet extraction procedure (Method 3540) rather than the equally effective, significantly faster and much more cost-effective automated soxhlet extraction method (Method 3541). EPA's own labs acknowledge the advantages of Method 3541, and Method 3541 is routinely used by EPA in other contexts including Superfund cleanups. There is no scientific, environmental, or risk-based rationale for not allowing the regulated community to use the automated soxhlet extraction method to analyze PCB content under the federal PCB program.

> Recommended Action: EPA should modify the PCB analytical rules throughout 40 C.F.R. Part 761 (including 40 C.F.R. §§ 761.61(a)(5)(B)(iv), 761.253, 761.272, 761.292, 761.358

[13] 40 CFR § 761.50(b)(3)(i)(A).

[14] 63 *Fed. Reg.* 35384, 35401 (June 29, 1998).

and 761.395) to expressly authorize the use of the most recent EPA-approved extraction method available for the chemical extraction of PCBs from individual and composite samples (currently Method 3541).

Please feel free to contact me at srisotto@americanchemistry.com, or at 202-249-6727, if you have questions about the above information.

Sincerely,

Steve Risotto

Stephen P. Risotto
Senior Director

American Chemistry Council | Diisocyanates Panel

Submitted Via Email

May 15, 2017

Sarah Rees
Director
Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
www.regulations.gov, Laws-Regs@epa.gov

Re: Evaluation of Existing Regulations, Docket EPA-HQ-OA-2017-0190

Dear Ms. Rees,

The American Chemistry Council Diisocyanates Panel[1] appreciates the opportunity to provide comments to the U.S. Environmental Protection Agency (EPA) in response to the Agency's request for comments on regulations that may be appropriate for repeal, replacement, or modification in accordance with Executive Order 13777 "Enforcing the Regulatory Reform Agenda." The Panel would like to highlight the following issues for substances methylene diphenyl diisocyanate (MDI) and toluene diisocyanate (TDI) that impose unnecessary regulatory burdens on the diisocyanates industry and should be considered for review by the Agency.

1. EPA Should Remove TDI from the Drinking Water Candidate Contaminants List (CCL) and the Endocrine Disruptor Screening Program (EDSP) List

TDI was identified for inclusion on the Final EDSP List 2 solely because of its inclusion on the Third Candidate Contaminants List (CCL3), and with no regard for the physical/chemical and reactive properties which preclude occurrence of the substance in drinking water sources. As is the case for most isocyanate substances, TDI hydrolyzes rapidly upon contact with water making TDI's occurrence in water scientifically implausible. Moreover, TDI's high reactivity with water would render EDSP test results irrelevant. The inclusion of TDI on the Agency's EDSP List 2 creates the potential for costly, unnecessary and wasteful regulatory testing.

[1] The Diisocyanates Panel represents the U.S. companies that manufacture or import methylene diphenyl diisocyanate (MDI) and/or toluene diisocyanate (TDI). The Panel is comprised of BASF Corporation, Covestro LLC, Dow, Huntsman Corporation and Wanhua Chemical (America) Co., Ltd."

The Panel urges EPA to promptly remove TDI from EDSP List 2 and the CCL3. For additional information, *see* Attachment A: Panel Comments Submitted to EPA on Draft Drinking Water Contaminant Candidate List 4, April 6, 2015.

2. EPA Should Update its New Chemicals Guidance for Isocyanates-Based Substances

The diisocyanates industry has seen an increase in Significant New Use Rules (SNURs) being issued for new isocyanate-based substances applying for a Premanufacture Notice (PMN) under EPA's New Chemicals Program. EPA has issued a series of at least 35 proposed or final SNURs for PMN chemicals on isocyanate-based polymers and related chemicals with vaguely supported explanations. For example, with regard to one SNUR, EPA provided the following as its rationale: "Based on SAR [structure-activity relationship] analysis of test data on analogous diisocyanates, EPA identified concerns for respiratory sensitization." [2] It is difficult for any member of the public to submit informed and meaningful comment when so little information is provided in support of the SNURs. Indeed, even the PMN submitters, who have access to confidential business information (CBI) about their PMN substances, likely also lack a clear understanding of EPA's reasoning. EPA should be more transparent about why it is proposing such SNURs consistent with required protection of CBI.

ACC has previously commented [3] on the lack of scientific basis for SNURs on isocyanate-based chemistries. Clearly, this is an area of chemistry where innovation is vigorous but where EPA's lack of clarity could stifle this innovation. To guide companies as they continue to develop new chemical substances, EPA should provide a detailed explanation of the basis for its concerns about diisocyanates. EPA itself has acknowledged that its current (2010) explanation of those concerns (not revised since 1997) is outdated.[4] EPA should revise and update that explanation since it is continuing to rely on a 1997 summary. In addition, EPA should provide each PMN submitter with EPA's internal analysis (redacting any CBI) of any risk that may be presented by the former PMN chemical.

More recently, the Agency has indicated in a proposed rulemaking that for new isocyanate-based substances submitted as PMNs, the Agency expects to issue consent orders imposing

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[2] See e.g. 81 Fed. Reg. 74755 (October 27, 2016) (PMNs P-15-378, P-15-559); 81 Fed. Reg. 21830 (April 13, 2016) (PMNs P-15-27, P-15-247, P-15-221; 80 Fed. Reg.59593 (Oct. 2, 2015) (PMNs P-15-221, P-15-247, P-15-278); 80 Fed. Reg. 845 (Jan. 7, 2015) (PMNs P-13-365, P-13-392, P-13-393, P-13-471, P-13-563, P-13-617, P-13-618, P-13-619, P-14-60, P-14-478); 79 Fed. Reg. 63821 (Oct. 27, 2014) (PMN P-14-357); 78 Fed. Reg. 48051 (Aug. 7, 2013) (PMNs P-13-232, P-13-338); 78 Fed. Reg. 27048 (May 9, 2013) (PMN P-11-60); 78 Fed. Reg.12684 (Feb. 25, 2013) (PMNs P-11-115, P-12-73); 77 Fed. Reg. 61118 (Oct. 5, 2012) (PMNs P-08-611, P-11-485, P-11-486, P-11-488, P-11-489, P-11-548, P-11-635, P-11-636); 77 Fed. Reg. 58666 (Sept. 21, 2012) (PMN P-04- 834); 77 Fed. Reg. 20296 (Apr. 4, 2012) (PMN P-11-662).

[3] Comments of the American Chemistry Council and Its Diisocyanates and Aliphatic Diisocyanates Panels on Proposed Significant New Use Rules for Certain Isocyanate-Based Substances, Docket Nos. EPA-HQ-OPPT-2014-0760, EPA-HQ-OPPT-2014-0277, EPA-HQ-OPPT-2014-0166, April 23, 2015, PMNs P-13-365, P-13-392, P-13-393, P-13-471, P-13-563, P-13-617, P-13-618, P-13-619, and P-14-60; Docket No. EPA-OPPT-2015-0388, May 13, 2016, PMNs P-15-221, P-15-247, P-15-278.

[4] EPA, TSCA New Chemicals Program (NCP) Chemical Categories (Aug. 2010), https://www.epa.gov/sites/production/files/2014-10/documents/ncp_chemical_categories_august_2010_version_0.pdf

0.1% limits on total residual isocyanates if used in a process that generates a vapor or particulate.[5] The Panel has submitted comments asking EPA to provide their scientific rationale for the 0.1% limit as it is unclear why the Agency is taking this approach. If EPA is applying different criteria when reviewing isocyanate-based PMN substances, the diisocyanates category guidance document should be updated to reflect this shift in Agency policy with these chemistries. EPA should also provide adequate justification for any modifications. EPA needs to explain and be more transparent regarding the basis for its decision making and ensure its rationale is scientifically valid. Without this updated guidance, the regulated community lacks clear direction regarding the parameters EPA considers when issuing SNURs or consent orders on isocyanate-based PMN substances.

Each of the proposed PMN SNURs incorporates recordkeeping requirements as specified in certain provisions of 40 C.F.R. § 721.125.These requirements for other SNURs have proven to be quite burdensome to downstream chemical users, adversely impacting the marketplace, and of little utility to EPA. SNUR recordkeeping requirements can stifle technology and innovation of improved materials. Downstream processors (especially small businesses) frequently opt to use a substance that will not require all of the onerous requirements associated with using the chemical that has a SNUR, which could be a less hazardous material than the substance without a SNUR. Therefore, the recordkeeping requirements may discourage innovative technologies and "greener" chemicals from entering the marketplace. Consequently, EPA should ensure that recordkeeping requirements are commensurate with their benefits.

For additional information, *see* Attachment B: Comments of the American Chemistry Council Diisocyanates Panel on Proposed Significant New Use Rules for Certain Isocyanate-Based Substances, March 6, 2017.

3. EPA Should Approve the Panel Petition to Delist MDI from the List of Hazardous Air Pollutants (HAPs) Under the Clean Air Act

The Panel urges EPA to grant its petition to remove MDI from the list of hazardous air pollutants (HAPs) under Section 112(b) of the Clean Air Act (CAA). The petition was submitted on December 23, 2002. Over twelve years ago, EPA announced that the petition was complete - the first phase of review - as of March 7, 2005. See 70 FR 30407. EPA has not notified the Panel of any action on the second phase of review, the substantive technical review.

The Panel submitted the petition and supplemental materials that support EPA's delisting of MDI based upon its assessment of the human health impacts associated with people living in the vicinity of facilities emitting MDI, and the environmental impacts associated with emissions of MDI to the ambient air and deposited onto soil or water. As the original petition and the supplemental materials demonstrated, MDI has a very low vapor pressure, emissions to the air, therefore, are minimal. Because of its reactivity, it is rapidly hydrolyzed by water, and so has a very short lifetime in the environment.

Beyond the fence line of MDI facilities, potential exposures to MDI are expected to be extremely

[5] 81 Fed. Reg. 74757 (October 27, 2016); Significant New Use Rule on Certain Chemical Substances; Docket EPA–HQ–OPPT–2015–0810.

low. The data demonstrate that MDI "may not be reasonably anticipated to cause any adverse effects to human health or the environment," 42 U.S.C. Section 7612(b)(3)(C), and MDI therefore should be removed from the HAPs list.

EPA is required under Section 112(b)(3)(A) of the CAA to either grant or deny a petition to delist a specific HAP within 18 months of the receipt of a complete petition. In this matter, the statutory period passed in September 2007, almost 10 years ago. Therefore, the Panel seeks an approval of the petition expeditiously.

For additional information, *see* Attachment C: Petition of the American Chemistry Council Diisocyanates Panel to Remove 4,4'-Methylene Diphenyl Diisocyanate from the List of Hazardous Air Pollutants Under Section 112(B) of the Clean Air Act.

Also, please note the following EPA docket houses all the MDI petition submissions:
EPA Docket ID: EPA-HQ-OAR-20050085
http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2005-0085

4. EPA Should Approve the Panel Petitions to Delist MDI and TDI From Regulation as Volatile Organic Compounds (VOCs) Under the Clean Air Act

The Panel urges EPA to grant its petitions to exempt MDI and TDI from regulation as volatile organic compounds (VOCs) under the CAA. On January 2, 1998, the Panel submitted a petition to exempt TDI from regulation as a VOC. The Panel submitted a similar petition to exempt MDI from the definition of VOC on August 19, 1998. The petitions provide data which demonstrate that both compounds are ozone inhibitors under most environmental conditions. EPA has taken no official action on either petition despite the fact that TDI and MDI clearly meet all criteria for VOC exemption. Exempting these compounds would further the purposes of the CAA by focusing regulatory attention on substances that actually contribute to ozone formation. The Panel therefore urges EPA to move forward expeditiously to exclude TDI and MDI from the regulatory definition of a VOC at 40 C.F.R. § 51.100(s).

EPA has recognized that there are important policy reasons to exempt ozone-inhibiting compounds from the definition of a VOC. In particular, doing so ensures that states are not wasting their efforts on reducing emissions that do not appreciably affect ambient ozone levels. *See* 57 Fed. Reg. 3941, 3945 (Feb. 3, 1992). Exempting such compounds helps ensure that public and private resources aimed at improving air quality are focused on pollutants that actually contribute to ozone formation. Instead, because EPA has not exempted TDI and MDI from regulation as VOCs, states continue to receive credit for reducing TDI and MDI emissions even though such reductions do not help states attain the national ambient air quality standards. This is contrary to the very purpose of the CAA.

For additional information, *see* Attachment D: Petition to Exempt Toluene Diisocyanate from Regulation as a Volatile Organic Compound, January 21, 1998; and Attachment E: Petition to Exempt Methylene Diphenyl Diisocyanate from Regulation as a Volatile Organic Compound, August 18, 1998.

The Panel welcomes this effort to identify and alleviate examples of regulatory burdens that have accumulated for industry over the years. We look forward to working with the Agency as the regulatory reform effort continues. If you have any questions or require additional information, please contact me at sahar_osman-sypher@americanchemistry.com or 202-249-6721.

Sincerely,

Sahar Osman-Sypher
Director, Diisocyanates Panel

Attachments

List of Attachments

Attachment A: Panel Comments Submitted to EPA on Draft Drinking Water Contaminant Candidate List 4, April 6, 2015

Attachment B: Comments of the American Chemistry Council and Its Diisocyanates and Aliphatic Diisocyanates Panels on Proposed Significant New Use Rules for Certain Isocyanate-Based Substances, March 6, 2017

Attachment C: Petition of the American Chemistry Council Diisocyanates Panel to Remove 4,4'-Methylene Diphenyl Diisocyanate from the List of Hazardous Air Pollutants Under Section 112(B) of the Clean Air Act

Attachment D: Petition to Exempt Toluene Diisocyanate from Regulation as a Volatile Organic Compound, January 21, 1998

Attachment E: Petition to Exempt Methylene Diphenyl Diisocyanate from Regulation as a Volatile Organic Compound, August 18, 1998

Mon May 22 15:24:38 EDT 2017
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FW: Letter from Economists and Legal Scholars Addressing Executive Order 13771
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From: Krupnick, Alan [mailto:Krupnick@rff.org]
Sent: Monday, May 22, 2017 11:07 AM
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Cc: Nelson, Peter <Nelson@rff.org>; Linn, Joshua <linn@rff.org>; Cohen, Dave <DCohen@rff.org>
Subject: Letter from Economists and Legal Scholars Addressing Executive Order 13771

Dear Director Mulvaney, Director Cohn, (Acting) Administrator Mancini, Administrator Pruitt, Secretary Perry, Secretary Purdue, Secretary Acosta, Secretary Ross and Secretary Chao:

Attached is a letter signed by 95 professional economists and lawyers who share concerns about EO 13771. We hope you understand our concerns and find our suggestions useful.

Please feel free to contact us if you have any questions or if we can be helpful in any way.

Sincerely,

Joshua Linn, PhD

Senior Fellow

Resources for the Future

Alan J. Krupnick, PhD

Senior Fellow and Co-Director, Center for Energy and Climate Economics

Resources for the Future

1616 P St., NW

Washington, DC 20036

202-328-5000

May 22, 2017

Subject: Economists and Legal Scholars address Executive Order 13771

Dear Director Mulvaney, Director Cohn, Acting Administrator Mancini, Administrator Pruitt, Secretary Perry, Secretary Perdue, Secretary Acosta, Secretary Ross, and Secretary Chao:

We write as economists and legal scholars who have devoted our careers largely to research and public service on the effects of regulation. We share the goal of improving regulation and believe that the recent guidance from the Office of Management and Budget on implementing Executive Order 13771 substantially improves upon the administration's interim guidance. Nevertheless, we are concerned that because Executive Order 13771 focuses exclusively on the costs of regulation, while ignoring its benefits, the Order is misguided and, if not implemented properly, will likely harm the American public. We offer specific suggestions for improving regulatory review and pursuing regulatory reform.

Executive Order 13771 requires any agency imposing a new regulation to identify two existing rules for repeal for every new rule issued, and to find cost savings from eliminated rules at least equal to the costs imposed by the new regulation.
In addition, each agency will have an annual regulatory cost limit—or "budget."

Since President Reagan issued Executive Order 12291 in 1981, executive branch agencies establishing significant new regulations must show that the benefits of that regulation exceed or justify its costs and, if possible, that such regulations maximize net benefits, which are the total benefits to society minus costs. These principles, currently reflected in Executive Order 12866, have disciplined federal regulation since the 1980s. They mean that government should not regulate too much, but also not too little.

This does not mean that regulations, once issued, should endure forever. Many factors can lead to reasoned calls for change. New information or analysis often emerges that supports changing existing regulations. Over the past decade, for example, the stunning rise of natural gas production from shale formations has contributed to a cleaner electric power sector, reducing the costs of regulations helping to meet air quality goals. There may also arise reasonable disagreements about the measurement of benefits and costs.

For nearly 40 years, both Democratic and Republican administrations have called upon regulatory agencies to identify improvements to existing regulations, including through the rescission of regulations that are no longer necessary or net-beneficial. In doing so, each administration has emphasized that consideration of both costs and benefits should guide such retrospective reviews of existing regulations.

The new Administration has endorsed the requirements of Executive Order 12866 to do cost–benefit analyses on significant rules. However, Executive Order 13771 lays on top of 12866 an approach to eliminating existing regulations that emphasizes costs and retreats from the long-accepted principle of maximizing net benefits. By tying new regulations to the elimination of existing regulations, and by not requiring consideration of the foregone benefits of the eliminated regulations, Executive Order 13771 opens the door to arbitrary and haphazard regulation that could harm the public.

For example, consider the possibility that new science emerges showing that the effects of air pollution on infant health are much greater than was previously believed. The benefits of reducing air pollution would thus be much greater than had been believed. But under the principles in Executive Order 13771, the Environmental Protection Agency could issue a new regulation to reduce air pollution only if it could find offsetting regulations that were sufficiently costly—and only if the new regulation didn't exceed the agency's overall regulatory cost budget. As a second example, consider new vehicle automation technologies that are making cars safer to drive. Executive Order 13771 could be used to prevent the Department of Transportation from issuing a new regulation that reduces traffic accidents and fatalities unless it meets the terms of the order. Thus, Executive Order 13771 could stand in the way of the net public benefits of reducing air pollution or traffic fatalities, departing from the long-standing practice of adopting regulations when benefits justify the costs.

We recognize that the Administration has preserved Executive Order 12866. Further, Executive Order 13777, which focuses on modifying or eliminating existing regulations, includes net benefits as a criterion for such changes. However, without requiring the analysis of the foregone benefits from deregulatory actions called for by both 13771 and 13777, agency actions taken to comply with the order may end up harming the public on balance.

We make three suggestions for improving both new and existing regulations:

First, we urge the Administration to consider further steps that would rescind the cost-only approach contained in Executive Order 13771, such as amending or eliminating the order itself.

Second, even if Executive Order 13771 is not amended or rescinded, we urge that the Administration issue further guidance directing that all deregulatory actions taken under the order be shown to pass a benefit–cost test. This approach should also apply to Executive Order 13777, which appropriately directs agencies to eliminate "unnecessary" and "ineffective" regulations whose "costs … exceed the benefits," but also includes other criteria that could encourage agencies to eliminate net-beneficial regulations. We urge an approach to implementing these executive orders that will ensure that agencies will focus on eliminating regulations for which benefits fall short of costs and that cannot be justified on other reasonable grounds.

Third, when engaging in the retrospective review of their existing regulations, agencies should look for regulations for which costs and benefits differ substantially from what was originally expected—and then change their regulations accordingly. Such an approach will mean that, rather than focusing exclusively on eliminating a regulation or lessening its stringency as directed under Executive Order 13771, sometimes agencies should make their regulations more stringent if supported by new analysis.

Finally, we endorse the overarching objective, advanced by both the Administration and Congress, of making regulations more flexible and efficient—and more market-oriented. Such regulations can often reduce the costs without sacrificing the benefits that they deliver to the public.

Signatories to this letter are listed on the following pages.

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Ad-Hoc INDUSTRY

NATURAL RESOURCE MANAGEMENT GROUP

May 15, 2017

MEMORANDUM

TO: Samantha Dravis, Esq.
Regulatory Reform Officer, United States Environmental Protection Agency

FROM: Barbara J. Goldsmith
Executive Director, Ad-Hoc Industry Natural Resource Management Group

RE: Request for Review -- The Inter-Relationship Between EPA Policies and Regulations and the Natural Resource Damage Assessment Regulations of the US Department of the Interior (43 CFR Part 11) and NOAA (990 CFR Part 15)

Summary of Requested Action

Since many of the nation's hazardous waste sites involve Natural Resource Damage (NRD) issues, there are potential opportunities to create a more cost -effective way to approach natural resources damages at Superfund sites. While EPA's responsibility relative to NRD is limited (with the notable exception of its role as trustee in the Deepwater Horizon Natural Resource Damage Assessment), in practice, cleanup and NRD are often tied together, notably related to data -- and in some cases, synergies between remedial actions and restoration projects (with both positive and negative outcomes). Since there are problems with the Interior and NOAA regulations (highlighted below), we believe that review of the Interior and NOAA regulations should also include a review of the interface with EPA regulations and policies to identify possible actions that could result in a more effective overall practice via regulatory or other changes.

Introduction and Purpose of Memorandum

This memorandum is written on behalf of the c ompanies that make up the nearly 30 year old Ad -Hoc Industry Natural Resource Management Group ("Group"). This unique group of major multinational companies is singularly focused on the interface between natural resources (air, water, land, biota) and industrial, energy and transportation activities. We have been the key industry group engaged with all five Federal Government "trustee" Departments and Agencies. In addition to providing comments on relevant US DOI and NOAA NRDA rulemakings over the years, we have had in place (since 1999) mechanisms to permit ongoing communication and practice exchange and we have more recently launched cooperative database and other initiatives -- all aimed at encouraging a reasonable, balanced, and predictable practice arena.

While there have certainly been advancesin NRD practice over the years, we are at a critical juncture following the unprecedented effort expended by private and public sectors alike to assess and settle natural resource damages related to the Deepwater Horizon incident. This provides an ideal time to assess what is and is not working and the

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role that the current Interior and NOAA regulations play in this. We are heartened by the President's current efforts to examine those regulations that may be a candidate for change or replacement or repeal. It is our view that the Interior regulations at 43 CFR Part 11 and NOAA Regulations at 990 CFR Part 15 are appropriate candidates for Regulatory Task Force review by those agencies per the President's Executive Order 13777. Further, it is our view that these reviews might entail examination of the interface with EPA (and Coast Guard too) to identify possible opportunities and needs via regulation or otherwise. More effective NRDA regulations to remedy current problems and/or alternate (non-regulatory) approaches to assessing and settling natural resource damage issues could result in faster and more cost-effective cleanups.

Synopsis of Regulation

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund") provides that responsible parties for releases of hazardous substances are liable, in addition to cleanup, for "damages for injury to, destruction of, or loss of natural resources" caused by their releases (CERCLA § 107(a)(C)) – referred to as natural resource damages (NRD). It provides further that NRD recovered may be used "only to restore, replace, or acquire the equivalent of [the injured] natural resources" (*id*. § 107(f)(1)). Similarly, the Oil Pollution Act of 19 90 (OPA) provides for the recovery of NRD for discharges of oil (OPA § 1006). Under both statutes, NRD are assessed and recovered by federal, state, and/or Indian tribal trustees for the natural resources affected. Two sets of regulations have been issued to govern the NRD assessment process – those promulgated by the Department of the Interior (DOI) under CERCLA pertaining to hazardous substance releases (43 CFR Part 11) and those promulgated by the National Oceanic and Atmospheric Administration (NOAA) under OPA pertaining to oil discharges (15 CFR Part 990). Use of the regulations is optional per CERCLA and OPA; however, if a trustee uses the regulations, its NRD assessment is entitled to a rebuttable presumption in its favor in a judicial action to recover the NRD. However, despite the optional nature of the regulations, they form, in most cases, the basis of -- or the benchmark for – assessments, in whole or part, which are then used to settle cases. Thus, the practical effect of the regulations' importance cannot be minimized.

Effects of the NRDA Regulations

There are a number of problems with the Interior regulations and their implementation by the Department acting as "trustee" (for natural resources as defined under CERCLA) that make the assessment process inefficient, ineffective, and unduly contentious, lead to unreasonably large and unbounded claims for NRD, and hinder prompt and cost-effective restoration of the affected natural resources. Some of these problems are similarly present via the NOAA regulations. These problems include the following:

1. While the regulations set forth a step -wise process for assessment and more recently focus on projects to restore injured natural resources, the NRD assessment process prescribed by the regulations is complicated and cumbersome and often leads to excessive delays in settlement and/or in restoring natural resources. Moreover, there are no cost or time limits imposed by the regulations. Trustees often spend many years – sometimes decades – conducting endless studies of the resources without restoring them.

2. In determining the natural resource injuries that are compensable in NRD, trustees sometimes improperly include impacts that have occurred over time but were not caused by responsible parties' releases, such as those resulting from naturally occurring substances/conditions, general industrial development, other sources, and permitted discharges.

3. Given the broad definitions of injuries, especially in the DOI regulations, trustees often include effects that have not caused any actual or demonstrable harm to the environment or to services provided by the resources to the public – such as impacts to groundwater that is not used by anyone, effects on individual biological organisms that have not been shown to affect local populations of the plants or animals, effects

shown only in laboratory studies or at other sites and not at the actual site involved, effects derived from speculative injury models, etc.

4. While the regulations provide for NRD to include the cost of restoring the damaged resources (called "primary restoration"), they also allow recovery of NRD based on the asserted value of the interim loss of the resources or their services prior to primary restoration (called "compensable value" in the DOI regulations). They allow trustees to estimate that value through a variety of techniques, some of which are highly speculative, including techniques for attempting to estimate "non-use" value (value that the public may derive from the existence of a resource without using it, which is notoriously difficult to measure). This can lead trustees to seek the largest monetary damage payment their experts can devise, rather than seeking to implement the most cost-effective projects that can promptly restore the resources.

Better or Different Regulations Needed

Given problems such as those cited above, the NRD regulations meet the criteria of Section 3(d) of Executive Order 13777 (Enforcing the Regulatory Reform Agenda, Feb. 24, 2017) for regulations that an agency's Regulatory Reform Task Force should identify for potential repeal, replacement, or modification. Those criteria include regulations that are "outdated, unnecessary, or ineffective." This is clearly true of the NRD assessment regulations.

Specific Issues Needing Task Force Review

The Group is separately writing to the US Departments of the Interior and Commerce to request that the NRD assessment regulations and related implementation protocols be reviewed and revised to impose logical boundaries on the NRD assessment process. Such action would prevent or minimize the current potential for lengthy studies and unconstrained damage claims and lead to more expeditious and cost-effective restoration of affected resources. These reviews should incorporate review of the trustee/EPA interface to identify opportunities for improved regulatory effectiveness on remedial and NRD sides, recognizing the synergies inherent in the two programs.

Closing

The Group is prepared to provide case histories and data to aid US EPA's Regulatory Task Force review of the interface with NRD issues when it addresses US EPA regulations that are candidates for modification, replacement or repeal.

We would be happy to answer any questions you may have and/or meet with the Task Force as desired. I may be reached at 202-628-6818 or by email at bjg@nrdonline.org.

Respectfully,

Barbara Goldsmith

FOR: Ad-Hoc Industry Natural Resource Management Group

Note: Nothing in this memorandum should be construed as representing the views of any individual member company of the Ad-Hoc Industry Natural Resource Management Group.

AmericanCoatings
ASSOCIATION

May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket Number EPA-HQ-OA-2017-0190;
Executive Order 13777, Enforcing the Regulatory Reform Agenda

Dear Associate Administrator Dravis:

The American Coatings Association, Inc. (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint, coatings and adhesives industry and the professionals who work in it. Our membership includes paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA membercompanies collectively produce some 95% of the total dollar volume of architectural paints and industrial coatings in the United States.

ACA member companies operate nearly 1,300 manufacturing facilities, warehouses and distribution centers in all 50 states. More than 275,000 people in the United States are employed in the paint and coatings industry, including those who manufacture, distribute, store, sell, and apply our products. Product shipments by U.S. paint and coatings producers totaled an estimated $28 billion in 2015.

ACA appreciates the opportunity to participate in this regulatory reform effort and provide the agency with the benefit of its experience regarding certain EPA regulations and requirements. We have participated in several of the public meetings, providing information about regulatory requirements that have been costly and problematic for our industry for many, many years.

ACA is hopeful that the regulatory reform effort will allow the agency to take a holistic approach to regulations and modernize requirements with an eye towards synergistic compliance. ACA urges EPA to examine those regulations and requirements that are unnecessary, costly and inconsistent with other requirements and do not further the mission of environmental protection. Below we highlight such requirements and provide cost data along with a specific recommendation for repeal, replacement or modification.

ACA is providing comments on the following regulations and requirements:

1. The 8-Hour Ozone Standard, EPA-HQ-OAR-2008-0699;
2. "Once-in, Always-in" Policy Under National Emissions Standards for Hazardous Air Pollutants for Source Categories;
3. National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA—HQ—OAR—2006—0971;
4. Triennial Reporting for Aerosol Coatings, EPA—HQ—OAR—2006—0971;
5. TSCA Nanomaterials Reporting Rule, EPA-HQ-OPPT-2010-0572;
6. TSCA, Section 5(e) Consent Orders: Regulation of Chemicals Pending Development of Information During the PMN Process;
7. FIFRA: Requirement to Gain Final Approval for a Reformulated FIFRA-registered Paint Product prior to Distribution or Marketing;
8. FIFRA, Prohibition of Truthful Comparative Information on a Label;
9. FIFRA, Language Requirements for Export Labels;
10. FIFRA, Review of Label Elements upon Application for a Label Amendment;
11. FIFRA, Regulation of Product Claims for Paint Products with Antimicrobial Agents; and
12. EPA Environmentally Preferable Purchasing Program Pilot to Assess Standards and Ecolabels for EPA's Recommendations to Federal Agencies

1. The 8-Hour Ozone Standard, EPA–HQ–OAR–2008–0699

Issue: In October 2015, the National Ozone Standard was lowered from 0.75 ppm to 0.70 ppm.

Implementation of the new standard requires U.S. states to identify whether they are in attainment or in non-attainment by February 2017. Reviewing the ozone standard is a recurring mandate under the Clean Air Act.

Concern: EPA's final rule on the ozone standard is forcing a significant number of states that are currently "in attainment" to "non-attainment" status, triggering a requirement to revise their State Implementation Plans and adopt even stricter volatile organic compound (VOC) emission regulations for coatings. This triggering event is being realized as ozone monitors across the country are demonstrating a marked improvement in air quality under the 2008 standard of 0.75 ppm. Indeed, the previous standard of 0.75 ppm was not yet fully implemented.

Cost to the Coatings Industry: EPA's final stringent ozone standards will limit business expansion in nearly every populated region of the United States. and impair the ability of U.S. companies to create new jobs. EPA's lowered range adds unnecessary red tape for companies seeking to expand even in areas that can attain those standards. Increased costs associated with restrictive and expensive permit requirements will likely deter companies from siting new facilities in a nonattainment area. ACA shares the practical concerns of

manufacturers regarding potential exorbitant costs this regulation would create for the paint and coatings industry without commensurate benefits to public health or the environment. *A study conducted by the National Association of Manufacturers (NAM) and NERA Economic Consulting, estimated this final rule could cost the economy $140 billion per year, result in 1.4 million fewer jobs, and cost the average household $830 per year in the form of lost consumption — making this the "costliest regulation in history" and threatening manufacturing.*

Recommended Solution: ACA urges a two-step solution to this problem: 1) EPA should revert to the 2008 standard of 0.75 ppm and fully implement this standard so that the forward progress already achieved can be extended without unnecessarily burdening the paint and coatings industry with increased standards and costs for many years to come; and 2) EPA should amend the Clean Air Act Regulations to extend the time for review of the ozone standard to every 10 years. Currently the law requires a review every five (5) years. Extending the review of the ozone standard to every 10 years will allow for more stability in the marketplace for formulators while still protecting human health and the environment.

2. **"Once in, Always in" Policy under National Emission Standards for Hazardous Air Pollutants for Source Categories**

This "regulation" is a May 16, 1995 EPA memorandum titled, "Potential to Emit (PTE) for MACT Standards – Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors — commonly known as the "Once in, Always in" memo — and may be found here: https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

Issue: A "major source" is defined as a source that has the potential to emit (PTE) hazardous air pollutants (HAP) up to 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Sources below this threshold are considered "area sources."

Under the "once in, always in" policy, a major source may become an area source (i.e., minor source) by limiting its PTE HAP below the major source thresholds by no later than the first compliance deadline listed under the applicable Maximum Achievable Control Technology (MACT) standard (also referred to as National Emission Standards for Hazardous Air Pollutants or NESHAP). However, a source that fails to achieve "area source status" by the first MACT compliance deadline must remain subject to the MACT *even if it subsequently reduces HAP emissions below major source levels at a later date*. In other words, sources will always be subject to the MACT rules, regardless of whether the source is no longer a major source of HAP.

Note that that EPA published a proposed rule on January 3, 2007 to replace the "once-in always in" policy rule - (docket number EPA-HQ-OAR-2004-0094. https://www3.epa.gov/ttn/atw/gp/fr03ja07.pdf). However, this rulemaking was never finalized.

Concern: The coatings manufacturing industry has substantially reduced the use of HAPs since the 1990s. In fact, many facilities subject to the Miscellaneous Coatings Manufacturing (MCM) and Miscellaneous Organic Chemical Manufacturing MACT (MON) MACTs are now "area source" facilities, but still must comply with the MCM requirements even though they are not major source facilities. While many coating and resin manufacturing operations could reduce emissions prior to the first compliance date of the MCM and MON, other facilities could not. Facilities that could not reduce their emissions have since installed expensive thermal oxidation units.

This guidance is outdated and unnecessary and imposes a substantial burden on industry that well exceeds any benefits. This "policy" or "guidance" has been applied by EPA as a "rule," with binding effects on the regulated community, including very burdensome compliance costs. Industry resources spent on compliance could be used instead for R&D, or modernization activities. This policy also acts as a disincentive for industry, since facilities have no incentive to voluntarily reduce HAP emissions below major source thresholds.

Cost to the Coatings Industry: Thermal oxidation units require a significant capital investment (millions of dollars per facility) and annual operation and maintenance costs (several hundred thousand dollars per facility per year in fuel cost alone). These units consume large amounts of electricity and natural gas, which results in additional emissions of carbon dioxide, nitrogen oxides and carbon monoxide. *EPA has estimated that installation and operating of air pollution controls for the MCM and MON rules would require an overall energy demand increase of 5.83 trillion BTUs; a total capital expenditure of $184 million; yearly operating costs of nearly $91 million; and an increase in NOx, CO, SOx emissions of 987 tons per year.*

Recommended Solution: ACA recommends that EPA withdraw or rescind this policy.

3. **National Volatile Organic Compound Emission Standards for Aerosol Coatings, EPA—HQ—OAR—2006—0971**

Issue: The regulatory landscape for aerosol coatings has historically been relatively simple. There are two primary regulating agencies that govern aerosol coatings: the U.S. EPA and the California Air Resources Board (CARB). In 2008, EPA finalized a national rule for aerosol coatings that largely mirrored CARB's 1999 aerosol coatings regulation. Since EPA's initial rulemaking in 2008, scientific research has resulted in a more accurate mechanism for calculating the

reactivity of specific compounds. As a result, CARB amended its aerosol coatings regulations and updated its reactivity values in 2010. CARB's standards are now more stringent than EPA's standards.

Concern: There are no longer consistent, uniform categories or standards for aerosol coatings throughout the country. EPA's Table of Maximum Incremental Reactivity (MIR) Values are outdated and no longer align with CARB's Table of MIR Values. Thus, a significant compliance challenge exists as there are now two different MIR Values for a single compound: one that needs to be employed for compliance calculations in California and a different one that will apply for the EPA national rule. This has complicated classification, formulation, calculation, and labeling for aerosol coatings manufacturers.

Impact on Industry: The impact of CARB's amendments has been substantial on the aerosol coatings industry because EPA's standards are no longer consistent with CARB's standards. The most pressing concern for aerosol coatings manufacturers is calculating two different values for compliance purposes. The process takes more time, costs more money, and expends more resources. In addition, EPA's outdated standards are stifling innovation and not utilizing the most recent scientific research available. Under EPA's current regulations, it is not worth it for industry members to come up with different formulations using new compounds with lower VOC emissions because the trade-off is having to use a high default value. Overall, the inconsistencies between EPA and CARB's aerosol coatings regulations have created burdens with compliance that is costly for industry.

Recommended Solution: ACA recommends that EPA modify its aerosol coatings regulations by updating the reactivity values in MIR Tables 2A, 2B and 2C, adjusting the default value, amending the regulatory language to allow for changing the value of existing compounds, and adding new compounds to the tables. These slight modifications would align EPA's aerosol coatings regulations with the most recent scientific research available and promote uniformity and consistency throughout the country. ACA is not asking EPA to impose California's regulations across the country; rather, ACA is asking EPA to update its standards and reactivity values. Since EPA's aerosol coatings regulations are originally based on CARB's regulations, this harmonization seems to be natural and practical. Most importantly, it will resolve inconsistencies and reduce burdens and costs on the aerosol coatings industry.

4. **Triennial Reporting for Aerosol Coatings, EPA—HQ—OAR—2006—0971**

Issue: EPA's current aerosol coatings regulations require regulated entities to report certain information to EPA every three years (40 CFR § 59.511(i)). In these triennial reports, aerosol coatings manufacturers must report VOC formulation data, VOC amounts, individual product codes, and other identification information.

Concern and Impact on Industry: These triennial reporting requirements are not only burdensome and costly for aerosol coatings manufacturers, but they also provide little, if any, useful value or information to EPA. This additional reporting requirement costs the industry in time, money, and resources. Plus, if there are compliance issues, this same information can be requested by the Agency and manufacturers would then be required to provide it. So, this additional triennial reporting requirement is unnecessary.

Recommended Solution: ACA urges EPA to eliminate the triennial reporting requirements for aerosol coatings manufacturers. This same information can be requested by EPA at any time should compliance issues arise.

5. **TSCA Nanomaterials Reporting Rule, EPA-HQ-OPPT-2010-0572**

EPA's "Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements - Final Rule" was published on January 12, 2017.

Issue: Our industry consists of downstream processors of emulsions and dyes containing some particles in the nanoscale. These raw materials are used during manufacture to produce a final product with no inhalation risk for nanomaterials. Reporting from such downstream processors is duplicative, unnecessary, and costly

The final EPA "Nanomaterial Reporting" rule requires a one-time report and recordkeeping of existing exposure and health and safety information on nanoscale chemical substances in commerce. This rule requires companies that manufacture, import or process certain chemical substances already in commerce as nanoscale materials to notify EPA of certain information, including specific chemical identity; production volume; methods of manufacture; processing, use, exposure and release information; and available health and safety data. The compliance deadline for this report is August 14, 2018.

Impact on Coatings Industry: The use of emulsion polymers and the milling of pigments during the coating manufacturing process could fall below the 100 nanometers threshold and potentially trigger reporting under the final rule. Emulsion polymers and milling processes have been conducted for decades in the coatings industry and there is minimal opportunity for exposure to the nanoscale material after the film cures. Nanoscale materials which may be incorporated into paint products would not be available since they would be bound in the dry coating film. During the manufacturing process, existing OSHA requirements for engineering controls and PPE adequately control any risks. A requirement to report on these materials would be unnecessary and duplicative. Given the low exposure and low risk of these applications, EPA should exempt these substances from the reporting requirements.

ACA estimates that about 10 to 15 coatings companies would report under this rule. Using a conservative estimate, the reporting requirement alone would cost at least $3.5 million to the coatings industry. These figures are based on EPA estimates and information from ACA member companies. EPA estimates that across all industry sectors, about 823 companies will be affected by this rule, with a distribution of 80/20 of large to small companies.[1] The agency estimates 295 companies will report each year, at 4.7 reportable substances per company.[2] However, this is contrary to the information industry has provided. Companies estimate upwards of 50 reportable substances. EPA estimates each report would take up to 175 hours to complete,[3] at a cost of $10,533 just to complete the form, excluding other related activities.[4] A company with 30 to 50 reportable substances could easily spend $300,000 to $530,000 to comply, bearing in mind some companies will have more than 50 substances to report.

Recommended Solution:
ACA recommends that EPA exempt processors from this reporting requirement. Reporting imposes significant costs on processors and does not provide EPA with new information. Exemption of processors would allow EPA to more effectively gather relevant information by reducing the number of superfluous processor reports.

ACA is also recommending that EPA exempt nanoscale materials that are incorporated into paint products. These processes are known to be low risk and the final product has a low exposure risk because nanoscale materials are encapsulated in a dried paint film. Existing OSHA regulations provide adequate safety standards. The addition of this reporting rule would be overbearing on industry and is duplicative as OSHA requirements address this risk.

ACA also urges EPA to extend the compliance period from one year after the effective date to two years after the effective date. This extension would allow upstream and downstream users of nanomaterials an appropriate amount of time to prepare these reports, which EPA estimated will take 175 hours to complete.

6. TCA, Section 5(e) Consent Orders: Regulation of Chemicals Pending Development of Information During the PMN Process

Under the revised Toxic Substances Control Act (TSCA), EPA must render a determination after considering each Pre-manufacture Notice (PMN) submission. (TSCA, Section 5(a)(3)). Companies expect EPA to increase the number of

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[1] RIN 2070-AJ54, *Economic Analysis for the Final TSCA Section 8(a) Reporting Requirements for Certain Chemical Substances as Nanoscale Materials*, p. 2-8, prepared by: Economic and Policy Analysis Branch; Chemistry, Economics, and Sustainable Strategies Division; Office of Pollution Prevention and Toxics.
[2] *Id.* at p. 2-6
[3] *EPA Nanomaterials Reporting Form*, available at Docket No. EPA-HQ-OPPT-2010-0572 (EPA reporting form estimates 175 hours to complete).
[4] *Id.* at f.n. 1, p. 3-3.

consent orders under Section 5(e), allowing restricted use of a PMN substance after EPA determines information is insufficient for a final determination. A Section 5(e) consent order allows a company to use a chemical while developing information that assists EPA in coming to a final determination. EPA issues complex consent orders with a variety of requirements including:

- Testing requirements for environmental fate and toxicity;
- Personal protective equipment;
- New chemical exposure limits;
- Hazard communication requirements;
- Restrictions on releases to water, air and/or land; and
- Recordkeeping.

These requirements are detailed in consent orders that are often more than 70 pages.
ACA supports EPA's efforts to expeditiously evaluate the current backlog of PMN submissions and control risks with consent orders while companies develop test data. EPA can reduce duplicative and excessive requirements in consent orders while maintaining the same degree of protection to public health and the environment.

With revisions to TSCA, EPA will now issue an interim consent order or a final determination for every PMN filed by a company – compounding costs and administrative difficulties associated with compliance. Requirements in consent orders often address issues covered under other EPA programs or OSHA requirements. Industry is burdened with developing a secondary compliance program for consent orders. Requirements in consent orders may also vary from requirements in other programs, creating a patchwork of compliance obligations and sometimes irregular compliance dates, as explained below.

Such requirements do not advance protections to public health or the environment, but increase the regulatory burden and associated costs to industry. Companies that remain committed to environmental responsibility find certain requirements in consent orders unnecessary and burdensome. One such company maintains a staff of five of employees devoted to product compliance full time at the corporate level, with 75% of time devoted to TSCA compliance. At the facility level, one employee at each facility devotes about 10% of their time to TSCA compliance activities. This company estimates at least 11760 hours per year devoted to TSCA compliance. Reduction in duplicative and inconsistent requirements in consent orders would reduce the administrative burden on such companies.

ACA suggests the following improvements:

- Reduce the number of requirements imposed in consent orders by referencing other statutory programs where an issue is already covered. Water discharges could be regulated through National Pollutant Discharge Elimination System (NPDES) permits or Resource Conservation and Recovery Act (RCRA) requirements rather than a restriction in a Section 5(e) consent order.
- EPA could repeal duplicative EPA hazard communication and burdensome PPE testing requirements while maintaining references to OSHA hazard communication and PPE requirements in consent orders.
- EPA could also stop requiring reporting of production and/or processing volumes while companies develop test data required in consent orders.

Additional details are included below:

a. Limits to discharges into waterways

Issue: Restrictions on effluent discharges in consent orders may duplicate or sometimes impose additional restrictions not included in a facility's NPDES permit, although the chemical at issue does not pose an eco-toxicological risk. To comply, companies must implement new control and monitoring systems, beyond those used to comply with NPDES requirements. Although an NPDES permit may not cover discharges from new pollutants, NPDES permits restrict overall percent nitrogen and phosphorous discharged, including contributions from new pollutants. Hazardous waste requirements under RCRA require containment and disposal of effluent discharge with new chemicals where appropriate.

Concern: Limits to discharge in consent orders do not enhance protections to environment and public health while imposing significant costs to industry. These restrictions are interim measures while companies submit additional eco-toxicological data. Similar protections are included in a facility's NPDES permit or through RCRA requirements.

Impact/Cost to the Coatings Industry: Companies can incur significant costs with little to no additional protection to public health or the environment. One company reports additional costs of $600,000 per year to comply with discharge requirements in just one order. This estimate does not include employee hours. Costs are compounded since companies are now subject to multiple consent orders. One company reports that it anticipates about 40 consent orders where it previously only had to comply with one or two orders per year.

Recommended Solution: ACA recommends that EPA issue consent orders that reference NPDES permit requirements and RCRA requirements without imposing additional restrictions to discharge. EPA should also rescind existing discharge requirements in consent orders currently in effect.

b. Hazard Communication standards (HCS) in consent orders

Issue: Human health hazard and precautionary statements required on safety data sheets for PMN substances are not aligned with OSHA's HCS. Consent orders typically replicate hazard communication specified for chemicals subject to SNURs at 40 CFR 721.72(g) and (h). In addition to health hazard and precautionary statements, consent orders include basic information that must appear on SDS and labels, such as manufacturer's identity, exposure levels and chemical identity. Although EPA largely replicates OSHA's SDS and labeling requirements, requirements are not identical, placing companies in a tenuous position by requiring compliance evaluations under both EPA and OSHA requirements.

Concern:
ACA believes that the human health hazard and precautionary statements prescribed in consent orders pose duplicative and unnecessary burdens on the coatings industry and create confusion among the workers. Given that the intention of these requirements is to communicate hazards to employees, providing similar hazard statements to employees in two different verbiages (HCS statements vs EPA statements) creates unnecessary complexity for employers and simply confuses workers. EPA's data requirements for SDS add another layer of complexity, requiring companies to check for compliance with both EPA and OSHA data requirements.

Impact to the Coatings Industry:
Our members must develop two compliance systems for hazard communication requirements, while evaluating differences and similarities of both systems to comply. This seemingly benign dual hazard communication system has aggregate impacts for management. Written hazard communication programs must be aligned with EPA and OSHA requirements. Companies must also align management systems, train workers, and correct SDS and labels as necessary to comply.

Recommended Solution:
ACA recommends that EPA minimize hazard communication requirements in consent orders to those relevant to environmental hazards (not covered by OSHA); and that EPAinclude one sentence requiring compliance with OSHA's HCS for all other requirements.

c. PPE testing requirement in consent orders

Issue: Consent orders adopt two standards related to permeation tests for PPE not required by OSHA: 1) ASTM F739, "Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact," and 2) ASTM F1194-99(2010), "Standard Guide for Documenting the Results of Chemical Permeation Testing of Materials Used in Protective Clothing Materials." Companies must test and maintain records as specified in these standards.

Concern: EPA creates a secondary permeability assessment that may vary from a company's current testing practice for compliance with OSHA's requirement. EPA's testing standards may not be the most current or effective test methods. In contrast to EPA's requirement, OSHA's PPE maintenance requirement gives companies flexibility in implementing appropriate and current tests.

Impact / Cost to the Coatings Industry: Companies must modify policies and practices designed for OSHA compliance to meet EPA testing requirements. The costs of EPA-specified tests are in the range of $5,000-$10,000.

Recommended Solution: ACA recommends that EPA modify consent order language to delete references to permeability testing standards while maintaining reference to OSHA requirements for PPE at 29 CFR 1910.38 (hand protection) and 29 CFR 1910.133 (eye and face protection).

d. Volume reporting in consent orders

Issue: Consent orders require companies to report cumulative manufacture volumes every six months from the date of commencing manufacture, while developing test data. Reports must be submitted every six months until the PMN submitter develops final submission of test data.

Concern: This reporting requirements is of marginal use to EPA, but imposes administrative costs on industry. Moreover, the requirement causes staggered reporting dates that can be difficult to track when attempting to comply with several consent orders. EPA presumably uses data to enforce production limits for PMN substances, but other methods of reporting could achieve the same result.

Impact/Cost to the Coatings Industry: Administrative costs to industry can be significant when tracking compliance dates and drafting multiple reports. This burden is compounded by irregular compliance dates set every six months from the date of manufacture of each PMN substance.

Recommended Solution: ACA recommends that EPA repeal this requirement. Reported information is of little to no value to EPA, but significantly adds to a company's administrative burden. EPA could require a one-time submission of production volumes with final test data, once developed. In the interim, companies could report to EPA, if they exceed production limits or anticipate excess manufacture. At a minimum, EPA should require annual volume reporting at one set time during the year, instead of requiring reporting every six months from the date of manufacture.

7. **FIFRA: Requirement to gain final approval for a reformulated FIFRA registered paint product prior to distribution or marketing**

Issue: Paint and coatings manufacturers sometimes modify a FIFRA registered paint product with an active ingredient registered under FIFRA, triggering an application for amended registration under 40 CFR 152.44. Product reformulation does not alter the active ingredient. Coatings manufacturers must obtain EPA approval prior to marketing or distributing the reformulated product, potentially leading to delays or temporary withdrawal from market, pending final approval.

Concern: EPA has already deemed the active ingredient in the reformulated product as safe for the use at issue. Requiring prior approval inhibits innovation and delays bringing new formulations to market.

Impact on the Coatings Industry: ACA member companies can lose profits from delays in bringing a reformulated product to market while waiting for final approval.

Recommended Solution: ACA recommends that after submitting an application for amended registration, but prior to final approval, EPA allow formulators to market or distribute a reformulated product that is substantially similar to an existing FIFRA registered paint product. EPA can implement this change by amending language in 40 CFR 152.44.

8. **FIFRA - Prohibition of Truthful Comparative Information on a Label**

Issue: FIFRA prohibits the sale of misbranded pesticides (FIFRA Section 12(1)(E)), including pesticides with labels that are "false or misleading in any particular" (FIFRA Section 2(q)(1)(A)). FIFRA details its prohibition on false or misleading claims on labels at 40 CFR 156.10(a)(5) with specific examples, including, "A false or misleading comparison with other pesticides or devices..." In practice, EPA interprets this section to refuse approval of labels with truthful, non-misleading claims on a proposed label.

Concern: Manufacturers of FIFRA-registered paint products and non-registered paint products containing antimicrobials are barred from providing accurate information about their product, due to EPA's broad interpretation of "false or

misleading" claims. Paint and coatings manufacturers carefully formulate products with antimicrobials to optimize performance. Accurate comparative information on a label can assist buyers in purchasing a paint product that best meets their needs. Comparative statements also encourage competition and drive down product costs. Moreover, the prohibition of "false or misleading" claims under FIFRA is duplicative of Section 5 in the Federal Trade Commission Act prohibiting unfair or deceptive practices.

Cost to the Coatings Industry: Paint and coatings companies may not be maximizing market share for certain high-performance products because, in practice, EPA prohibits even truthful comparative information on labels of paints and coatings containing antimicrobials.

Recommended Solution: ACA recommends that EPA modify language in 40 CFR 156.10(a)(5)(ix) and (x), currently prohibiting safety claims in general to prohibit only "false or misleading" safety claims, thereby allowing legitimate safety claims and comparative statements. EPA should also generate guidance for industry and EPA staff encouraging truthful statements in labels while discouraging EPA staff from misinterpreting FIFRA prohibitions against false and misleading statements to prohibit truthful comparison claims.

9. <u>FIFRA - Language Requirements for Export Labels</u>

Issue: EPA requires that pesticides prepared for export include a label on the immediate product container in multiple languages — namely, in English — the language of the country of destination, and the official language of the importing country. (40 CFR 168.69(c)). To place a product in a foreign market, exporters must comply with domestic labelling laws of the foreign country, including language requirements. In effect, EPA's language requirement is burdensome and unnecessary, requiring compliance with a U.S. label requirement for products placed in foreign markets.

Concern: EPA's requirement creates an unnecessary labeling requirement that can significantly increase costs when EPA requires a label in a language not required by the product's destination country. EPA's requirement also creates an additional administrative burden to evaluate compliance.

Cost to the Coatings Industry: Companies may be forced to design, print and place multi-language labels on a product. Associated costs can be significant.

Recommended Solution: ACA recommends that EPA repeal 40 CFR 168.69(c) in its entirety.

10. FIFRA - Review of Label Elements upon Application for a Label Amendment

Issue: Amendments to labels of FIFRA-registered products, including FIFRA-registered paint products, require an application under section 40 CFR 152.108. EPA review of applications often results in EPA re-evaluating and requiring changes to label elements that it had previously approved, beyond the text of the requested amendment. These changes are due to shifts or evolution of EPA policy or practice regarding existing claims made on the label.

Concern: Upon application to amend a label, a paint or coatings manufacturer may be disadvantaged in the marketplace when EPA requires a change to previously approved label elements beyond the requested amendment when competitors are not required to change labels at the same time. EPA's approach creates an unlevel playing field by reopening review of settled label elements only for an applicant seeking an amended label.

Cost to the Paint and Coatings Industry: Paint and coatings manufacturers may lose market share due to varying label requirements.

Recommended Solution: ACA recommends that during review of an application for an amended label, EPA should reserve any issues with previously approved label elements, beyond the requested amendment, for a separate process, while focusing evaluation of the application on requested amendments. EPA should then require all registrants comply at the same time with any decisions about the reserved label elements. To require this approach, EPA can amend text of 40 CFR § 152.108 to require a separate proceeding when it initiates changes to label elements not proposed by the applicant.

11. FIFRA - Regulation of Product Claims for Paint Products with Antimicrobial Agents

Issue: Under an exemption to FIFRA registration requirements at 40 CFR §152.25, articles — including paints and coatings — containing antimicrobial pesticides are not subject to registration when the antimicrobial agent is used to protect the article itself and any related claims on the label relate to protection of the article, rather than any benefit to the user. However, where a product label includes claims that antimicrobial agents used to treat the article may also benefit the user, a manufacturer must register the paint or coating as a pesticide.

Concern: A paint or coating treated with an antimicrobial agent reduces bacterial contamination in the paint or coating itself. The antimicrobial agent prevents contamination since water is a highly sensitive breeding ground for bacterial growth; minimizes additional transportation and refrigeration during the distribution stage; and increases the products' lifespan and minimizes waste. In addition, the antimicrobial agent may also provide an ancillary public health benefit. Yet, manufacturers that wish to indicate any ancillary public health benefit on a label are required to register their paint or coating product as a

pesticide. Registration can be costly and time consuming while adding a disincentive for manufacturers to reformulate products containing antibacterial agents, thereby stifling innovation.

Cost to the Paint and Coatings Industry: Paint and coatings manufacturers may not be maximizing market share by failing to fully describe benefits of paints containing antimicrobial agents, without registering the paint or coating as a pesticide.

Recommended Solution: EPA should create a list of standard approved phrases for use with articles treated with specified antimicrobials. This approach would provide truthful public health claims for articles treated with antimicrobials where the article might have some ancillary public health benefit, but that benefit is not the main purpose of using the antimicrobial agent. This approach would also relieve manufacturers from registering articles whose main function is not as a pesticide, thereby conserving both agency and manufacturer resources.

12. EPA Environmentally Preferable Purchasing Program Pilot to Assess Standards and Ecolabels for EPA's Recommendations to Federal Agencies

Issue: Executive Order 13693 directed the U.S. Government to specify federal standards and ecolabels, such as Energy Star, WaterSense, and Safer Choice -- labels that identify products meeting strict federal standards for energy efficiency, water efficiency, and safer chemicals. EPA developed "Guidelines for the Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement" to create a "transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels to support the agency's mission and federal sustainable acquisition mandates." The guidelines were developed and piloted with participation and comments from multiple stakeholders, including industry, and finalized in December 2016.

Concern: ACA supports the stated goals of the pilot, "to create a transparent, fair, and consistent approach to selecting environmental performance standards and ecolabels that support the Agency's mission and federal environmentally preferable purchasing mandates." However, ACA is concerned that major changes were made to the guidance document after the public comment period closed and without participation and feedback from the interested and impacted participants on the paint panel. While the results of the pilot indicate that many Standards Development Organizations (SDOs) could not comply with certain criteria, we understood that those criteria would signal the SDO community to improve their standards in the future. Instead, it appears that where the SDOs were unable to achieve critical criteria, such as open, transparent stakeholder involvement in standard development, the bar has been lowered to allow for closed door, arbitrary standard development.

Impact on the Coatings Industry: By requiring select standards or certification for products specified and purchased by the federal government industry must expend time and money to achieve or certify products to these multiple, and in some cases, arbitrary standards and ecolabels.

Recommended Solution: ACA recommends that EPA consider abandoning the guidelines or amendments to provide manufacturers flexibility to accommodate the variety of approaches to and types of standards and ecolabels that exist in the marketplace today.

Conclusion

ACA is encouraged by EPA's efforts to solicit the opinions and comments from affected parties. Our members are constantly working to understand and comply with the environmental requirements imposed by the agency and are pleased to see this Administration undertake such a comprehensive effort. We believe that there is a significant number of modifications and changes that can be made to some of the regulations that will streamline compliance efforts without jeopardizing the environment or the health and safety of customers, employees and the public. We have provided twelve (12) examples of regulations that are ineffective, outdated and inconsistent with other more relevant requirements. Regulatory reform is desperately needed to ensure a competitive and sustainable coatings industry.

Thank you for the opportunity to submit comments on this very important matter; we look forward to talking with you further about efforts to modernize these specific requirements.

If I may answer questions or provide additional information, please do not hesitate to contact me at 202.719.3686 or hmcauliffe@paint.org.

Respectfully submitted,

Heidi K. McAuliffe
Vice President, Government Affairs

Courtesy Copies:

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

OFFICE OF
ENVIRONMENTAL INFORMATION

MEMORANDUM

SUBJECT: OEI's Response Evaluating Existing OEI Regulations for Burden

FROM: Steve Fine, Ph.D.
Acting Assistant Administrator and Acting Chief Information Officer

TO: Samantha Dravis,
Associate Administrator, Office of Policy
EPA's Regulatory Reform Officer

The Office of Environmental Information (OEI)) evaluated whether we have any existing regulations that could be "repealed, replaced or modified to make them less burdensome" pursuant to Executive Order 13777. After review, OEI has no regulations that should be considered for repeal, replacement or modification.

OEI is responsible for the administration of one regulation, the Cross-Media Electronic Reporting Rule (CROMERR). CROMERR provides the framework for electronic reporting which includes technology-neutral standards for identity-proofing users, signing documents, creating and maintaining copies of record. It is the basis for EPA and its co-regulators to convert paper-based reporting to electronic which significantly reduces burden while increasing efficiencies for industry and states. CROMERR also standardizes electronic reporting processes across EPA and state programs further increasing efficiencies and reducing costs.

Since 2013, CROMERR has undergone extensive streamlining of the implementation processes and the development of shared solutions. This has been done in collaboration with our stakeholders and is an on-going practice of the program. In fact, OEI holds ongoing dialogues with stakeholders to ensure the efficacy and efficiency of program implementation. To date, OEI has worked extensively with our partners to successfully optimize CROMERR implementation.

In July 2016, OEI underwent a reorganization and the Toxic Release Inventory (TRI) program

was moved to the Office of Chemical Safety and Pollution Prevention (OCSPP). OCSPP will provide feedback on regulations and rules under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the TRI program that might be recommended for repeal, replacement or modification.

cc: Matt Leopard, OIM
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Executive Order 13777
Enforcing the Regulatory Reform Agenda

The Office of Congressional and Intergovernmental Relations' Activities in Support of EPA's Regulatory Reform Task Force

Intergovernmental Association Outreach Meeting on E.O. 13777

On **April 26, 2017**, the Office of Intergovernmental Relations hosted its Quarterly Intergovernmental Association Outreach Meeting for the singular purpose of discussing the Agency's plans for implementing Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda." Dr. Sarah Rees, Director of EPA's Office of Regulatory Policy and Management, provided the group with background information on the Order, particularly emphasizing its directives relative to the solicitation of input and assistance from State and local governments – among other stakeholders – to identify existing regulations that may be candidates for repeal, replacement or modification, with special emphasis on rules that may have the effect of eliminating jobs or inhibiting job creation, may be outdated or ineffective, may have implementation or compliance costs that exceed environmental health benefits, or may impede the E.O. 13777 review process. The group was further advised of the establishment of EPA's Regulatory Reform Task Force, and how this senior policy group will rely heavily on substantive input from EPA's intergovernmental partners to inform its path forward.

Meeting Participants

In terms of key EPA participants, the session was chaired by OCIR Associate Administrator Troy Lyons and attended by OCIR Deputy Associate Administrators Layne Bangerter, Robin Richardson and Tate Bennett. State/Regional Partnerships Director Ken Wagner and State/Local Relations Director Jack Bowles also were present. Representing the major regulatory programs were: Peter Smith (OCSPP); Sandy Evalenko (OW); Richard Mattick (OLEM); Carissa Cyran and Josh Lewis (OAR). Dr. Sarah Rees, as noted, and Bridgid Curry represented the Office of Policy.

With regard to external participants, representatives of thirty intergovernmental associations were invited to the meeting, as well all governors' staffs and members of EPA's Local Government Advisory Committee. The following organizations/persons participated.

In person:

American Legislative Exchange Council – Michael Bowman
American Water Works Association – Steve Via
Association of Clean Water Administrators – Julian Gonzales
Association of State Drinking Water Administrators – Darrell Osterhoudt

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National Association of City/County Health Officials – Eli Briggs
National Association of Clean Water Agencies – Chris Hornback
National Association of Counties – Julie Ufner
National Association of Clean Air Agencies – Bill Becker
National Association of State Departments of Agriculture – Dudley Hoskins
National Conference of State Legislatures – Ben Husch, Kristen Hildreth
National Governors Association – Alex Schaefer
National League of Cities – Carolyn Berndt
National Rural Water Association – Mike Keegan
U.S. Conference of Mayors – Judy Sheahan

By teleconference:

National Governors Association – Andrew Kambour
Office of Gov. Kent Brown (OR) – Drew Johnston
Office of Gov. Eric Holcomb (IN) – Rebecca Holwerda
Office of Gov. Asa Hutchinson (AR) – Katie Beck
Office of Gov. Jay Inslee (WA) – Sam Ricketts
Office of Gov. Dannel Malloy (CT) – Dan DeSimone
Office of Gov. Matt Mead (WY) – Colin McKee
Office of Gov. Bruce Rauner (IL) – Kathy Lydon
Office of Gov. Scott Walker (WI) – Kyle Roskam
Association of Air Pollution Control Administrators – Clint Woods
Connecticut Dept of Energy and Environment – Robert Kalszewski
Interstate Oil and Gas Compact Commission – Gerry Baker
Vermont Department of Natural Resources - Julie Moore
Office of Wyoming Attorney General – Elizabeth Morriseau
Commissioner Kitty Barnes – Catawba County, NC, LGAC member
Scott Bouchie, Director of Environmental Mgt, Mesa, AZ, LGAC member
Mayor Bob Dixon – Greensburg, KS, LGAC member
Dr. Hector Gonzalez, Director, City of Laredo, TX Health Dept, LGAC member
Susan Hann, Director of Planning, Brevard County Schools, Malabar, FL, LGAC member
Commissioner Merceria Ludgood - Mobile County, AL, LGAC member
Mayor Sal Panto – Easton, PA, LGAC member
Commissioner Victoria Reinhardt – Ramsey County, MN, LGAC member
Representative Tom Sloan – Kansas Legislature, LGAC member
Nils Tilstrom – City of Portland, OR
Mayor Steve Williams - Huntington, WV, LGAC
Chairman Shawn Yanity – Stillaguamish Tribe (WA) LGAC member

Discussion

(E.O. 13777 process)

Dr. Rees fielded a number of questions/comments relating to Agency plans for implementing E.O. 13777, including:

1 – How much detail does the Reg Reform Task Force want to see about regulatory concerns? Should we assume that more detail is better? (in short, yes)

2 – What does EPA plan to do with the comments?

3 – To what extent will EPA be considering health impacts of revising or repealing regulations? While it is true that some standards are costly and burdensome, please consider the "human costs" – such as premature mortality or morbidity – of repealing or revising regulations.

4 – We would strongly advise that this be an iterative process, circling back with intergovernmentals sometime after the May 26 progress report to the Administrator is complete.

5 – Please ensure that "per capita affordability" is considered, especially for infrastructure investment. Rural areas are economically disadvantaged to begin with, and "human economics and costs of living" must be factored in.

6 – EPA's various "guidance" documents/policies should be fair game for repeal or revision.

7 – Many State/local groups' issues do not neatly match up with regulations that can be repealed or revised. (Integrated Planning for water, etc) Some of our comments will not align with specific CFR cites, and may cross programmatic and statutory authorities.

8 – Will regulatory repeals and revisions go through the formal notice and comment process? (yes)

9 – Regulatory changes based on costs must consider that some companies, businesses and jurisdictions have invested in compliance, while others have not. Entities that have delayed investing in compliance should not be rewarded for doing so.

10 – We would like to offer recommendations on EPA's organizational practices and policies (e.g. OECA as a stand-alone office or integrated back into programs; reboot relationship between EPA Regions and states; the fact that some Regions are much heavier handed than others; Regions not honoring HQ memoranda, etc)

11 – Even though the budget was taken off the agenda for today, we would like to ask why EPA believes that its stated plan to work more closely with states and localities is consistent with the Administration requesting a 31% cut in categorical grants to states. We were not surprised that the proposed budget includes a staff cut of roughly 1/3, but the grant cuts are inexplicable. It's fine to *not* increase states' funding, but please do not cut it. Can the funding levels cited in the "Bloom memo" be changed?

12 – EPA needs to understand that it's difficult for national associations to formally weigh in. Some states would like to see certain rules revised or repealed, others would not. Our group must have 75% of states agree before clearing a policy resolution; that's a high bar.

13 – Please consult more with tribes, especially on treaty trust responsibilities.
14 – Please keep us apprised of how the "2 for 1" policy will work against the backdrop of E.O. 13777's goals.

Regulation/Program-Specific Comments

15 – EPA's SSO, CSO, blending and by-pass policies, and WOTUS should be repealed. Also, a revised lead and copper rule could potentially cost America's cities billions of dollars. Please let cities set their own priorities.

16 – Counties and cities needed more time to come into compliance with the 75 ppm ozone standard before having the 70 ppm standard finalized. Please repeal the 75 ppm standard.

17 – If costs for EPA's Response Management Plan were properly estimated, it would have triggered formal E.O. 13132 (Federalism) consultation and we would have had ample opportunity to weigh in early in the process. Please repeal this rule, which will cost local governments considerably more than EPA estimated.

18 – TMDLs should be reviewed and revised, especially for the Chesapeake Bay. Counties in the six bay-area states are already overburdened, and forthcoming Watershed Implementation Plans are likely to make the situation worse.

19 – The Pesticides General Permit should be a candidate for revision. Federal standards that existed prior to the PGP were more than adequate.

20 – Be advised that the U.S. Conference of Mayors and the National League of Cities support the Clean Power Plan and related efforts to reduce GHGs.

21 – Please reconsider PM fine standards.

National Governors' Association Meeting on E.O. 13777

On **May 10, 2017**, the National Governors' Association hosted EPA's Office of Intergovernmental Relations and Office of Policy at NGA headquarters for the purpose of discussing the Agency's plans for implementing EO 13777. Tate Bennett, OCIR Deputy Associate Administrator, and Dr. Sarah Rees, Director of EPA's Office of Regulatory Policy and Management, provided the group with background information on the Order, particularly emphasizing its directives relative to the solicitation of input and assistance from state and local governments to identify existing regulations that may be candidates for repeal, replacement or modification.

Meeting Participants

In addition to Tate Bennett and Sarah Rees, EPA participants included OCIR staff Latonia Cheatham-Strickland, Kaitlyn Shimmin, and Becky Cook-Shyovitz.

With regard to external participants, representatives of the governors were invited to the meeting. The following states/persons participated.

In person:

National Governors Association – Alex Schaefer, Anna Davis, Aliza Wasserman, Neil Ohlhausen
Office of Gov. Edmund Brown (CA) – Katie Wheeler Mathews
Office of Gov. Dan Malloy (CT) – Dan DeSimone
Office of Gov. Terry McAuliffe (VA) - Liz Natonski
Office of Gov. Brian Sandoval (NV) – Ryan McGinness
Office of Gov. John Carney (DE) – Danielle (staff intern)
Office of Gov. Bruce Rauner (IL) – Kathy Lydon
Office of Gov. Chris Christie (NJ) – Dona DeLeon
Office of Gov. Andrew Cuomo (NY) – (staff intern)
Office of Gov. Scott Walker (WI) – Kyle Roskam, Sally Fox
Office of Gov. Terry Branstad (IA) – Stephanie Groen
Coalition of Northeastern Governors – Jay Lucey

By phone:

Office of Gov. Charlie Baker (MA) – Tom Daley
Office of Gov. Bill Walker (AK) – Amy Dobson
Office of Gov. Eric Holcomb – Rebecca (staff intern)
Office of Gov. John Hickenlooper (CO) – Laurie Williams

Discussion

EO 13777 (Process)

Dr. Rees and Tate Bennett fielded a number of questions/comments relating to Agency plans for implementing EO 13777, including:

1-What is the process/timeline going forward?

2 - What happens once the Agency identifies a regulation that would benefit from repeal, replacement, or modification? (everything will go through the formal, public APA process)

3 - In the past, some parts of the regulatory process have felt like a "box-checking exercise" with EPA. For example, the Agency would go to ECOS or NGA to seek their opinions, then "check the box" saying they've consulted with states. That doesn't always get back to the states – we need more actual engagement between the Agency and states directly during the regulatory process. (this concern is why NGA & EPA hosted this meeting)

4 - Is there a separate effort for revising the Clean Power Plan, or is that included in this EO? (yes – separate EO and process)

General Comments

5 - EPA is a critically important federal agency for our states. Messages we've gotten from the Administrator seem to point to a "pull back" in EPA's role, which is a concern for us. States view EPA as a public health agency.

6 - States want the ability to regulate above and beyond any retreat of the EPA.

Regulation/Program-Specific Comments

7 - Our state's Clean Water Act is older than the federal act. WOTUS didn't affect us – we were already far beyond that as a state.

8 - Reducing carbon emissions/RGGI – we've made great progress.

9 - Vehicle emissions – concerned about rollbacks. If we're preempted and it causes us to fall back below the federal standard, that's contrary to where our state wants to be.

10 - Importance of TMDLs – need more funding (Chesapeake Bay and Great Lakes)

11 - Ozone transport – states need EPA to level the playing field. There are some areas where we could shut down every emissions source, and the area would still be out of attainment from both interstate and international transport.

EPA's Local Government Advisory Committee: Workgroup Meetings on E.O. 13777

EPA's Local Government Advisory Committee (LGAC) is a chartered federal advisory committee comprised of 35 representative members of elected and appointed state, local and tribal government members. **The LGAC convened seven (7) Workgroup meetings between April 26, 2017 and May 12, 2017,** with the specific purpose discussing and making recommendations for EPA's implementation of E.O. 13777, entitled "Enforcing the Regulatory Reform Agenda." This summary of the LGAC workgroup meetings reflects the views of individual workgroup members.

The LGAC workgroup members were provided with background information on E.O. 13777, particularly emphasizing its directives relative to the solicitation of input and assistance from State and local governments – among other stakeholders – to identify existing regulations that may be candidates for repeal, replacement or modification, with special emphasis on rules that may have the effect of eliminating jobs or inhibiting job creation, may be outdated or ineffective, may have implementation or compliance costs that exceed environmental health benefits, or may impede the E.O. 13777 review process. LGAC workgroup members were further advised of the establishment of EPA's Regulatory Reform Task Force and how this senior policy group will rely heavily on substantive input from EPA's intergovernmental partners to inform its path forward. They also were made aware of and were provided a docket link through which to submit comments of their respective cities, counties, state or tribal governments.

Meeting Participants

Key EPA participants attending these workgroup meetings from OCIR included: Associate Administrator Troy Lyons; Deputy Associate Administrators Layne Bangerter, Robin Richardson, Tate Bennett; State/Regional Partnerships Director Ken Wagner; State/Local Relations Director Jack Bowles; Fran Eargle, DFO for the LGAC; Demond Matthews, DFO for the Small Community Advisory Subcommittee; and, Becky Cook-Shyovitz. Also participating during water-related discussions were John Goodin, Acting Director, Office of Wetlands, Oceans and Watersheds; and Mindy Eisenberg, Acting Director, Wetlands Division. Other participants also included Cindy Barger, representing the Assistant Secretary, Department of the Army, Civil Works.

Local Government Advisory Committee Members (participating in the seven (7) Workgroup Meetings (via Teleconference)

Mayor Bob Dixon – Greensburg, KS, LGAC Chair
Councilor Jill Duson, Portland, Maine, LGAC Vice-Chair
Dr. Hector Gonzalez, Director, City of Laredo, Department of Public Health
Susan Hann, Director of Planning, Brevard County Schools, Malabar, FL
Mayor Sal Panto, Easton, PA
Commissioner Victoria Reinhardt, Ramsey County, MN
Representative Tom Sloan, Kansas Legislature

Mayor Steve Williams, Huntington, WV
Commissioner Dr. Robert Cope, Board Member, City of Salmon Planning Committee, Small Community Advisory Subcommittee Chair
Ms. Terri Goodmann, Assistant City Manager, Dubuque, IA
Mayor Mark Stodola, Little Rock, AR
Mr. Rodney Bartlett, Town Administrator, Peterborough, NH
Legislator Manna Jo Greene, Ulster County, NY
Samara Swanston, Esq., Counsel to NYC Council, Environmental Protection Committee, New York, NY
Mayor Hardie Davis, Augusta, GA
Commissioner Kitty Barnes, Catawba County, NC
State Representative Stephanie Chang, House District 6, State of Michigan
Mayor Elizabeth Kautz, Burnsville, MN
Mr. Kevin Shafer, Executive Director, Milwaukee Metropolitan Sewerage, Milwaukee, WI
Jeff Witte, Secretary of Agriculture, State of New Mexico, Las Cruces, NM
Mayor Karen Freeman-Wilson, Gary, IN
Mayor Norm Archibald, Abilene, TX
Council Member David Bobzien, Reno, NV
Councilor Andy Beerman, Park City, UT
Council Member Brad Pierce, Aurora, CO
Supervisor Ryan Sundberg, Humboldt County, CA

Others
Lindsey Rogers, Water Alliance Now, (On behalf of Commissioner Cynthia Koehler, Marin County, CA)

Discussion

(E.O. 13777 Process)

1 - Chairman Mayor Dixson - Federalism principles are very much needed in rural America. States work very differently but they also work together. Collaboration and communication is needed in going forward. Excited to have the opportunity to give LGAC input on Regulatory Reform.

2 - Chairman Cope - Many regulations or problems that are identified tend to affect small communities and have a more powerful effect on a per capita basis.

3 - Rodney Bartlett - Explaining regulatory impacts to elected officials, citizens and taxpayers has become more difficult than it's ever been in the past. Effective communication is critical.

4 - Rodney Bartlett - In clean-up activities in the City of Peterborough, NH, the lending institution funding a historic town building sought clarification on regulations which were not even applicable. Regulations sometimes are used by other agencies or lending institutions which may misuse the information or not understand the regulations and rules.

5 - Representative Tom Sloan - Regulations should be reviewed to make certain the nation has the flexibility to adapt to potentially changing economics of various energy sources and not eliminate the possible utilization of any economically efficient fuel sources that may arise in the future.

6 - Legislator Manna Jo Green - Unless environmental protection goals have been reached, there should not be a requirement to rescind regulations based on a "2 for 1" policy.

7 - Terri Goodmann - Regulatory reform has important concerns for our agricultural community. We are committed to green infrastructure approaches and to deal with flood disasters and must consider how these issues are impacted.

8 - Mayor Bob Dixson - Regulations should be subject to ongoing review and analysis, identifying those that are outdated, in need of revision, replacement or modification. When a regulation is changed it should be written so that it is clear that it supersedes, replaces or modifies a current regulation.

Environmental Justice

9 - Dr. Gonzalez - Interested in how the EJ 2020 plan is being implemented and weighing the impacts of regulations on small and disadvantaged communities.

10 - Mayor Steve Williams - From my city (mining town), regulatory reform is important to balance pollution minimization with EJ concerns and economic justice. Account for the effect of regulations and how they impact economic justice and communities' ability to "*put people to work.*"

11 - Samara Swanston - New York City is fairly aggressive at protecting public health and the environment, especially in EJ communities. Many of these minority communities need to be protected and regulations often are the only protective measures. In NYC regulations actually create more jobs than they eliminate.

12 - Legislator Manna Jo Green - The public engagement process, especially in EJ communities, can lead to better regulations and implementation. In Kansas City, MO, a storm water consent decree yielded better results by engaging the EJ community on environmental problems and solutions. These decisions allowed the community to opt for green infrastructure which had enormous economic gains for the city.

Regulation/Program-Specific Comments

<u>Waters of the U.S. (WOTUS)</u>

13 - Mayor Elizabeth Kautz - Would like to see the LGAC's work, specifically two reports, considered within the process of Regulatory Reform: *Clean and Safe Drinking Water, LGAC's*

Findings and Recommendations [1]and *Report and Initial Findings Pertaining to EPA's Clean Water Act Waters of the U.S. Proposed Rule*. [2] These reports represent the views of elected and appointed officials across the U.S.

14 - Mayor Norm Archibald – Permitting issues are important to the city of Abilene, Texas. The city is in the process of building a major reservoir currently that will involve a Clean Water Act Section 404 permit and we do not want the permitting process to hinder its development. The reservoir is too important to our community for drinking water.

15 - Commissioner Victoria Reinhardt – "Waters of the U.S." needs clear definitions. This is very important and there may need to be regional determinations.

16 - Council Member Dave Bobzien - Nevada is one of the driest states in the nation. The mining industry, agricultural interests and municipalities have a reliance on water from the Colorado River. Not only is quantity an issue but water quality is very important. It is our drinking water supply and we are dependent on it economically because we are a recreation town. Our boaters, anglers and other folks certainly are following this issue.

17 - Mayor Elizabeth Kautz - On WOTUS, the LGAC pulled together views from across the country to help everyone understand its impact on our waters as well as the economic balance. In Minnesota, the Mississippi River is important to us, as are wetlands and continuous surface connections to those main water bodies. Wetlands also filter our water and have an impact on our aquifers.

18 - Susan Hann - With respect to withdrawal of the WOTUS rule, it provides another opportunity in the context of permit reform. It will be much more successful because the permitting process is really what needs to be fixed in order to make it more predictable and more timely.

Clean Water Act Section 402 -NPDES

19 - Rodney Bartlett - Effluent discharges under new NPDES permits must meet a lead standard that is more restrictive than the drinking water lead standard. The fact that effluent needs to be cleaner than drinking water or background river levels produces concerns results in a lot of local pushback for elected officials by rate payers.

20 - Council Member Andy Beerman - Park City, Utah, has challenges with water sources which come from mining tunnels. The City must provide treatment for a percentage that must be returned back into the stream for aquatic life, which has a higher standard than for consumption/culinary purposes. The City constructed a $220 million water treatment plant to meet the regulatory requirements for stream quality. This has resulted in expensive water bills for a small community of 800 people.

[1] https://www.epa.gov/sites/production/files/2016-10/documents/lgac_water_report_-final-draft_3.1.pdf

[2] https://www.epa.gov/sites/production/files/2015-10/documents/11.5.14_w.o.t.u.s._report.pdf

21 - Secretary Jeff Witte - On the NPDES Pesticides application rule, there often are conflicts with other statutes such as the Rodenticide Act and other state laws. States are often in the middle trying to interpret. There should be more state flexibility.

Safe Drinking Water Act

22 - Chairman Robert Cope - Standards should take into account natural background levels of potential contaminants. In Idaho there are challenges in meeting compliance levels for arsenic in the drinking water. However, natural source water has high levels of background arsenic. Regulations should take into account natural background levels.

23 - Dr. Hector Gonzalez - Of particular concern are emerging contaminants. We need to make sure that we have the appropriate regulations to protect against current contaminants, but also look toward the future at what other contaminants need to be addressed, and potential impacts of those regulations.

Clean Air Act

24 - Commissioner Robert Cope - EPA should delay the tightened ozone standard (75 ppb) until the current standard has been fully implemented. The ozone standard should roll back to 70 ppb.

25 - Commissioner Kitty Barnes- Counties are both regulator for and regulated entity under the Clean Air Act. States' duties with counties are very different. For example, 45% of counties own and maintain American roads. In a nonattainment area, we're required to do transportation conformity, which is expensive and time consuming. States have to cut back on the number of monitors they have. Counties who have them are at a higher risk of being designated nonattainment. Many counties don't have the staff or technical expertise to implement some of these rules and it leaves counties open to lawsuits.

26 - Commissioner Kitty Barnes – EPA must consider the cost of the regulation beyond just the cost of environmental compliance. (public safety, education, housing) Counties are faced with a wide array of unfunded mandates, and the environmental realm is just one area of those. A county designated as nonattainment for ozone lost 25,000 jobs within 4 years. Many of those 25,000 employees lost their health coverage, leading to higher healthcare costs for the county.

27 - Representative Tom Sloan - In Kansas, spring burning for agricultural production in state pastures puts us out of ozone compliance. (also helps control wildfires) Changing the standard would help a lot of the agricultural states economically.

28 - Commissioner Robert Cope - The Clean Power Plan rule requiring retrofits to existing plants is very problematic. It's not always cost-efficient for plants to change over from coal-fired to natural gas.

29 - Commissioner Kitty Barnes - Mobile sources are a major contributor to PM nonattainment.

However, counties have no control over what's passing through our counties and therefore should not be penalized.

30 - Commissioner Robert Cope - In areas not meeting attainment, there should be a way to determine the source of the problem to actually determine whether it is within that nonattainment area or outside of it. If the source is outside the jurisdiction, the jurisdiction should not be penalized.

31 - Commissioner Kitty Barnes - On Clean Air Interstate Rule, we have not seen the changes expected from that rule.

Worker Protection Standard

32 - Secretary Jeff Witte - Exclusion zones in the Worker Protection Standard pose challenges for pesticide applications. For example, the 100 feet exclusion poses problems near highways. There needs to be more flexibility while keeping provisions to protect workers.

33 - Dr. Hector Gonzalez - Training for the Worker Protection Act should be expanded and presented in multilingual formats and communicated in ways that it is understood.

Brownfields Clean ups

34 - Chairwoman Duson - The Brownfields Program has earned a lot of positive feedback on local job creation for the green economy and local economic growth. The Agency should consider the LGAC letters on Brownfields clean up and job training programs.[3]

[3]https://www.epa.gov/sites/production/files/2016-02/documents/lgacbrownfields-dec9-2015.pdf

May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Ave. NW.
Washington, D.C. 20460-0001

Docket ID No. EPA-HQ-OA-2017- 0190
Re: Evaluation of Existing Regulations

We are aware several organizations are submitting comments to the docket regarding EPA regulatory issues. However, we want to specifically introduce an issue which is of extreme concern to not only Midwestern corn farmers, but farmers across the U.S., whether engaged in the production of corn, grain sorghum, sugar cane, citrus or numerous other commodities. The issue is the long, drawn-out re-registration of atrazine. A coalition of farm groups across the nation formed the Triazine Network in 1995 specifically to give farmers a voice in EPA's regulatory process related to atrazine and other triazine herbicides.

Atrazine is a herbicide which has been used by farmers for over 50 years. We believe it is the most researched herbicide in history. Over 6,000 studies have shown the safety of atrazine. Farmers and crop scientists can attest to the positive benefits of using atrazine to control problem weeds that waste water and nutrients in commodity production. Atrazine also plays a key role to help farmers use ecologically beneficial practices like conservation tillage on their fields. And in the case of corn production, the cost to move away from atrazine to other products coupled with the loss of effectiveness in weed control would cost corn farmers across America over $2 billion annually. Simply put, farmers cannot afford to move to other products which cost more and are less effective.

Several of EPA's own Scientific Advisory Panels (SAPs) have concluded atrazine is safe to use by applicators, has demonstrated no human health issues associated with its use, and has not been found harmful to mammals, fish, birds and amphibians. From an ecological standpoint, atrazine has not been shown to adversely affect algae or aquatic life. These were the facts until EPA staff chose to re-include several studies, some over 10 years old, which the SAPs had said were either poorly done, or were disqualified for other reasons.

Yet, EPA chose to re-introduce those discredited studies and pollute the re-registration process. By choosing to ignore the science, as well as altering previously used models to give different results, EPA effectively abandoned the normal re-registration process for pesticides, seemingly to arrive at a desired outcome influenced by an activist agenda.

It is important to have an orderly regulatory process providing for robust environmental oversight while allowing credible science to dictate regulatory outcomes. EPA seems to have allowed outside bias to alter and circumvent the normal re-registration process.

We believe there can and should be a normal, reliable process for reviewing pesticides for registration and re-registration which uses sound science as the basis for decision-making, and these decisions should be made in a timely fashion. The convoluted re-registration process for Atrazine that has lasted over 10 years, certainly relates to many of the points listed in the docket in accordance with President

Trump's Executive Order "Enforcing the Regulatory Reform Agenda", and is a prime example of how the rulemaking process can and should be improved.

Thank you for allowing us the opportunity to comment to the docket on this important issue.

Sincerely,

Missouri Corn Growers Association

Kansas Corn Growers Association

Nebraska Corn Growers Association

Illinois Corn Growers Association

Michigan Corn Growers Association

Kentucky Corn Growers Association

Iowa Corn Growers Association

Triazine Network

May 15, 2017

U.S. Environmental Protection Agency
Washington, D.C. 20004

RE: Docket EPA-HQ-OA-2017-0190

The undersigned organizations commend the Environmental Protection Agency [the agency] for opening this docket and are pleased to submit the attached comments in response to the agency's request.

Our organizations represent individuals engaged in agricultural production, both for crops and livestock. Requirements imposed by the agency through its regulations can have significant impacts on our members; many of these impacts can be felt in the areas outlined by the agency for review[1] In the attached comments, we have sought to meet the agency's request to be as specific as possible. In some instances, where information responsive to the agency's request for "supporting data or other information such as cost information" is not available, we have attempted to quantify the impact of the regulatory burden as concretely as possible and to "provide specific suggestions regarding repeal, replacement or modification." We welcome questions from your office or the Task Force if these comments need further amplification and will do our best to respond in as prompt and comprehensive a manner as possible. We greatly value this effort and hope the agency succeeds in alleviating unnecessary and costly regulatory burdens on the agriculture community.

In this context, we wish to make a brief preparatory remark. As of mid-May, the docket exceeded 17,000 comments, the overwhelming majority of them anonymous. These are presumably submitted from well-intentioned individuals but they preponderantly assume that the agency's initiative is to undo, weaken, rescind or otherwise impair the nation's environmental safeguards. We see nothing in the Federal Register notice that supports such an inference. We wish to state for the record that the undersigned organizations are not requesting that the agency engage in, nor would we expect the agency to pursue, an effort to impair, rescind, weaken or in any way retreat from health or environmental safeguards that have been authorized by Congress. Nothing in Executive Order 13777 would have the agency ignore its statutory obligations to administer the environmental laws Congress has passed. We are not asking the agency to weaken its commitment to health and the environment. We have identified regulatory obligations that can be modified or repealed consistent with the laws Congress has enacted and we strongly encourage the agency to consider these recommendations.

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[1] In its notice, EPA has specifically asked for recommendations that address regulations that, *inter alia,* "(i) eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard or reproducibility…"

We appreciate your consideration of these comments. If you have questions or wish to discuss any specific issue in this submission, please contact Paul Schlegel at the American Farm Bureau Federation at (202) 406-3687 or pauls@fb.org.

Sincerely,

Agri-Mark Dairy Cooperative, Inc.
American Dairy Coalition
American Farm Bureau Federation
AmericanHort
American Soybean Association
American Sugarbeet Growers Association
American Sugar Cane League
California Specialty Crops Council
Dairy Cares
Dairy Farmers of America
Dairy Producers of New Mexico
Dairy Producers of Utah
Exotic Wildlife Association
Federal Forest Resource Coalition
GROWMARK, Inc.
Idaho Dairymen's Association
Missouri Dairy Association
National All-Jersey
National Aquaculture Association
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Peach Council
National Pork Producers Council
National Milk Producers Federation
National Sorghum Producers
National Turkey Federation
Northeast Dairy Farmers Cooperatives
Panhandle Peanut Growers Association
Professional Dairy Managers of Pennsylvania
Select Milk Producers, Inc.
Society of American Florists
South East Dairy Farmers Association
Southwest Council of Agribusiness
St. Albans Cooperative Creamery

Upstate Niagara Cooperative, Inc.
US Apple Association
USA Rice
US Cattlemen's Association
Washington State Dairy Federation
Western Peanut Growers Association
Western United Dairymen

I. 'Waters of the US' (WOTUS) Rule (80 Fed. Reg. 37054, June 29, 2015)

On February 28, President Trump signed Executive Order 13778 directing EPA to review the WOTUS rule and to publish a proposal rescinding or revising it. We strongly support the President's EO and urge EPA to pursue this effort aggressively.

Recommendation: We recommend that the agency:

(a) repeal the existing rule (80 Fed. Reg. 37054).

(b) in a separate rulemaking, propose a revised rule that more closely adheres to the language of the Clean Water Act and Supreme Court decisions in *Riverside Bayview*, *SWANCC* and *Rapanos*.

II. Spill Prevention Control and Countermeasures (SPCC) Rule (40 CFR 112)

While EPA attempted to address concerns of the agriculture community raised by the SPCC rule, the program presents nearly insurmountable difficulties for agricultural producers. That assessment is borne out by the agency's own Regulatory Impact Analysis (RIA). EPA examined the Clean Water Act violation data from 2001 to 2006. In over 10,000 violations in that time period, only 292 involved oil spills of any type, and only **one** of those involved a farm. Many other estimates in the RIA were incorrect as well. EPA estimated an approximate figure of 152,000 affected farms based on USDA numbers. Nowhere did EPA mention the USDA numbers presented in the 2005 round of proposals that numbered potentially affected farms closer to 400,000. Yet despite these facts, EPA moved to place a costly and burdensome rule on the agricultural industry with no data to show a risk justifying the cost. EPA included other incorrect assumptions to bolster the cost-savings analysis. They estimated a savings of $3.6 million due to exempting pesticide application equipment but that cost was only based on a report from one state. They estimated $2,000+ savings from not regulating home heating oil tanks but those tanks were exempted in the original 1973 rule and no one has ever applied SPCC to those tanks anyway. While Congress granted the agency flexibility to address any concerns on farms, the agency rejected this approach and imposed the strictest limit possible.

Recommendation: The SPCC for farms should be repealed.

III. CERCLA/EPCRA

(a) On April 11, 2017 the US Court of Appeals for the DC Circuit issued a ruling in long running litigation that struck down a 2008 rule providing an exemption from federal reporting of emissions from livestock farms and providing a partial exemption from state/local reporting of such emissions. As a result of the DC Circuit ruling, in late May or early June 2017 livestock farmers will be responsible for calculating the rate of various chemical emissions associated with the storage of manure for use as a fertilizer, and treat and report these emissions as "emergency releases" to state and local authorities under 42 U.S.C. § 11004 (EPCRA § 304) and to the Coast Guards National

Response Center under 42 U.S.C. § 9603 (CERCLA § 103). These reports provide little emergency planning/response benefit to regulators or the public, and in fact could have a detrimental impact on emergency response programs (and the public's reliance on them) because the receipt of hundreds of thousands of reports of livestock odor will overwhelm a system designed for responding to true emergencies. Failure to file the reports will subject livestock farmers to expensive citizen suit litigation filed by eco and animal rights activists.

(b) In recent years, efforts have been made to extend the liability provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 and the Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986 to livestock and poultry operations for emissions or discharges from manure produced in those operations. Animal agriculture operations are already regulated under the Clean Water Act, the Clean Air Act, and various state laws to protect the environment; these statutes provide for permitting, enforcement and, if needed, remediation. Manure is not a superfund waste and was not intended by Congress to be regulated as such.

Recommendation: EPA should promulgate regulations confirming that manure is not regulated under CERCLA or EPCRA.

IV. Worker Protection Standards (WPS) rule (40 CFR Part 170)

(a) Designated Representative. In the WPS rule promulgated November 2, 2015, EPA included a provision that permits anyone claiming to be a 'designated representative' (DR) to gain access to a farmer's proprietary records relating to pesticide use.[2] This provision provides farmers with no protection from fraudulent or counterfeit claims; does not assure that records released by the farmer will actually be shared with workers; and imposes no constraints on what DR's may do with documentation once it is obtained. EPA has never cited any data or facts that demonstrate that such a provision would improve worker safety. Thus, the regulation imposes an unnecessary regulatory burden and cost, while exposing farmers to legal liability, with no discernible benefit.

Recommendation: EPA should repeal 40 CFR § 170.311(b)(9) and related provisions.

(b) Application Exclusion Zone (AEZ). In the final WPS, EPA inserted a final articulation of the Application Exclusion Zone (AEZ) that unduly burdens state agencies and the regulated community.[3] As finalized, the AEZ goes beyond the Agency's stated intent

[2] The specific requirement is at 40 CFR 170.311(b)(9).

[3] WPS provision at 170.405(a)(1) establishes the applicable AEZ distances, and WPS provision 170.405(a)(2) establishes a requirement for the agricultural employer not to allow any worker or other person in the AEZ within the boundaries of the establishment until the application is complete. Provision at 170.505(b) establishes a requirement for the handler to suspend the application if any worker or other person is anywhere in the AEZ. Thus,

to create a one-hundred foot buffer surrounding the application equipment that, according to the regulations now in place, extends beyond the agricultural establishment, arguably jeopardizing a grower's ability to manage all his land and prohibiting appropriate pest mitigation activities if there is any kind of structure, permanent or otherwise, inhabited or vacant within one hundred feet of the agricultural establishment. Furthermore, any individual, structure, or a passing vehicle within one hundred feet of the property can effectively cease the grower's application activity. After the final rule was promulgated, EPA's Office of General Counsel (OGC) was working to issue interpretive guidance clarifying the Agency's intent under the final regulation; however, Agency guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity to assist state regulatory agencies or the grower community with compliance and enforcement activities. In short, both EPA and the state regulatory agencies are still uncertain on how to enforce or deliver compliance assistance on the AEZ.

Recommendation: EPA should revoke the Application Exclusion Zone (AEZ), which goes beyond EPA's original intent and creates an unworkable and unenforceable provision that does not provide any additional regulatory protections beyond those already required under law.

V. Resource Conservation and Recovery Act

In 1979, EPA promulgated regulations that reflect Congress' intent that the agency not regulate manure or crop residue under the Solid Waste Disposal Act (42 U.S.C. § 6903(27)). Certain court decisions, however, have injected uncertainty in this area of the law. Legislation is now pending in Congress (the Farm Regulatory Certainty Act) to provide legal certainty for farmers.[4] The legislation would also amend Section 7002 of the Solid Waste Disposal Act (42 U.S.C. § 6972(b)(1)) to clarify that farmers are not to be targeted twice if they are engaged in legal action with a federal or state regulatory entity to address identified issues.

Recommendation: EPA should continue its policy of not regulating agricultural nutrients under RCRA. The EPA also should vigorously defend existing regulatory actions should a farming operation be targeted with a third-party lawsuit for an alleged violation that is already being addressed by a federal or state legal or administrative proceeding.

VI. "Normal farming" activities under § 404(f) of the Clean Water Act (33 CFR § 323.4)

Sec. 404(f)(1) of the Federal Water Pollution Control Act (33 U.S.C. § 1344(f)(1)) provides an exemption from 404 "dredge and fill" permitting for a wide range of normal farming,

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the AEZ goes beyond the boundaries of the establishment in question and applies to any area on or off the establishment within the AEZ while the application is ongoing.

[4] The Farm Regulatory Certainty Act would amend Section 1004(27) of the Solid Waste Disposal Act to codify EPA's existing regulations.

ranching and silviculture activities, including plowing, seeding, cultivating, harvesting for the production of food, fiber, and forest products as well as construction or maintenance of farm or stock ponds or irrigation ditches and for the maintenance of drainage ditches. Even though this broad language is written in the statute, the Corps' regulation (33 CFR § 323.4) and EPA's and the Corps' guidance and information interpretations have narrowed the scope of 'normal' farming, ranching and silviculture activity.[5] Thus, even some explicitly exempt activities (i.e., plowing) have come under enforcement action. Congress has included appropriations riders directing EPA and the Corps to eliminate funding for the so-called "recapture" provision at Sec. 404(f)(2), which the agencies use to sweep otherwise exempt activities back into the regulatory program, yet EPA and the Corps have ignored Congress' directives.

Recommendation: EPA and the Corps should undertake a rulemaking that supersedes the Corps' existing regulation as well as prior guidance from the agencies and codifies the normal farming, ranching and silviculture exemption under § 404(f)(1) of the Clean Water Act consistent with the text of the statute.

VII. Total Maximum Daily Loads (TMDLs) (40 CFR Part 130)

EPA has used guidance and informal interpretation of sparse statutory text (Clean Water Act Sec. 303(d)) and ambiguous decades-old regulations to create a regulatory mechanism that puts EPA bureaucrats and technocrats in the role of land use planners. This has blurred the lines of authority between the Federal and state governments and robbed state environmental agencies of the ability to devise and adapt their own plans to most effectively and efficiently achieve water quality standards. This EPA overreaching raises the cost of achieving water quality goals, inhibits adaptive management and unlawfully puts EPA in the role of regulating farming practices. EPA's existing rules also fail to ensure that established water quality goals are in fact *achievable* before burdensome or even economy-breaking implementation measures are imposed. This is of particular concern where water quality impairment results largely from naturally occurring "pollutants.".

Recommendations: EPA should revise its TMDL regulations to provide clarity and certainty to the regulated community and state and local governments by assuring that:

(a) States, not EPA, have the authority to set pollutant "allocations" for waters within their borders and incorporate the allocations into state implementation plans. This provides states and localities with the flexibility they need to change allocations when needed.
(b) EPA's TMDL authority is limited to approving or setting the *total* maximum load for a particular pollutant, as required by the statutory term "*total* maximum daily load."

[5] For example, while the Act itself does not restrict the exemption, the agency has seemingly used the recapture provision in 404(f)(2) to claim that the exemptions for normal activities only apply to 'established, ongoing' operations. It has further extended this interpretation to claim that changing an operation from one agricultural activity (e.g., grazing cattle) to another (e.g., planting, cultivating and harvesting crops) constitutes a 'change in use' and therefore negates the exemption provided in the law. See https://efotg.sc.egov.usda.gov/references/public/NM/CWA_404(f)_Ag._Exemptions.pdf

VIII. Prior Converted Cropland (33 CFR § 328.3(b))

In 1993, EPA and the Army Corps of Engineers promulgated a regulation that clarified that wetlands converted before 1985 into farmland were 'prior converted croplands' (PCC) and therefore, not "waters of the US." The preamble to the rule clearly provided that land remains as PCC regardless of the use to which the land is put. Yet, in 2005, the Army Corps of Engineers issued guidance eroding this exemption by proclaiming that land is no longer PCC if it is put to a non-agricultural use. A federal court found the guidance is unlawful because it conflicts with the 1993 rule,[6] but the Corps ignored the court's decision and continues to implement the guidance in order to re-regulate land.

Recommendation: EPA should undertake a rulemaking to clarify the 1993 rule that PCC lands are not subject to CWA regulation as jurisdictional wetlands regardless of the use to which the land is put.

IX. Army Corps of Engineers 1987 Wetlands Delineation Manual and Regional Supplements

In 1993, Congress prohibited the U.S. Army Corps of Engineers from using appropriated funds to delineate wetlands under the 1989 Wetlands Delineation Manual.[7] Congress further stated that no funds shall be used to implement *any subsequent manual adopted without the public notice and comment* procedures of the Administrative Procedure Act (APA). In the meantime, Congress authorized the Corps to use the 1987 Wetlands Delineation Manual, but only until the adoption of a final delineation manual.

Almost 25 years later, the Corps has failed to propose, much less adopt, a final wetlands delineation manual. Instead, the Corps continues to use the 1987 Manual, adding regional "supplements" to modify the very same delineation criteria Congress disallowed in 1993. Rather than placing the Manual and regional supplements through the rulemaking process, the Corps has used the supplements to avoid the Congressional directive to formally promulgate a final Manual.

Recommendation: We recommend that EPA clarify that no regional supplements should be used in making determinations of what constitutes "navigable waters" and/or initiate a joint

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[6] *New Hope Power Company and Okeelanta Corporation v. U.S. Army Corps of Engineers and Stockton* 2010 WL 3834991 (S.D. Fla. September 29, 2010)

[7] See Energy and Water Development Appropriations Act, Pub. L. No. 102-377, 106 Stat. 1315: "None of the funds in this Act shall be used to identify or delineate any land as a "water of the United States" under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 or any subsequent manual adopted without notice and public comment. Furthermore, the Corps of Engineers will continue to use the Corps of Engineers 1987 Manual, as it has since August 17, 1991, until a final wetlands delineation manual is adopted. PUBLIC LAW 102-377—OCT. 2, 1992 106 STAT. 1325 None of the funds in this Act shall be used to finalize or implement the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in Federal Register, Vol. 55, No. 197, Thursday, October 11, 1990."

rulemaking with the Corps that subjects the wetlands delineation manual through the rigors and transparency of the APA's public notice and comment process.

X. EPA's proposed revision regarding objection to administratively continued permits (40 CFR § 123.44) (Docket ID No. EPA-HQ-OW-2016-0145c)

EPA has proposed granting to itself the power to object to administratively continued permits by providing EPA Regional Administrators the discretion to change the status of an administratively continued permit to "proposed permit," an outcome that would trigger the robust federal review process outlined in 81 Fed. Reg. 31344, 31372 (May 18, 2016).

This proposed revision marginalizes a valuable tool afforded to states with authorized NPDES permit programs – the ability to administratively continue an existing NPDES permit in lieu of permit reissuance. This tool is important because it allows states to prioritize limited resources and limited personnel to ensure the most efficient management of their state NPDES program. This revision, if finalized, further erodes State authority to manage their own programs and will discourage unauthorized states from assuming NPDES authority.

Denial of an administratively continued permit, which this rule revision entails, would leave agricultural producers who hold NPDES permits without permit coverage and vulnerable to citizen lawsuits. It also raises a constitutional concern due to the lack of due process considerations given that there is no procedure to challenge the EPA's decision to change a permit's status to "proposed." The revision raises additional concern because it exceeds EPA's statutory authority. Clean Water Act § 402(d) grants EPA the authority to review proposed permits and to object to them, which if objected to prohibits the permit from issuing. The revision here would replicate this administrative power and apply it to administratively continued permits, a step that goes beyond the power Congress granted to EPA in the Clean Water Act.

Finally, this effort by EPA is not needed because EPA already manages a largely successful effort that resolves the underlying issue. The Priority Permit Measure provides an avenue for EPA to target state-issued NPDES permits to undergo the reissuance process by designating them as "priority permits".

Recommended: EPA withdraw its proposed revision regarding objection to administratively continued permits (40 CFR § 123.44) (Docket ID No. EPA-HQ-OW-2016-0145c)

XI. National Ambient Air Quality Standards (NAAQS) for Coarse Particulate Matter (PM_{10})

The NAAQS and definition for coarse particulate matter are overly broad and do not take into account naturally occurring sources like dust found on farms.

Recommendation: EPA should clarify its NAAQS regulations to ensure that agricultural producers are not found to be in violation of the Clean Air Act for conditions beyond their control when operating under general farming practices.

PPC

PESTICIDE POLICY COALITION

A Coalition Working for Sound Pest Management Policies

May 15, 2017

U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Ave. NW.
Mail Code 1803A
Washington, D.C. 20460-0001

Submitted via Federal eRulemaking Portal

Re: Evaluation of Existing Regulations; Docket ID No. EPA-HQ-OA-2017-0190

The Pesticide Policy Coalition (PPC or "the Coalition") is pleas ed to submit comments to the U.S. Environmental Protection Agency (EPA) on its evaluation of existing regulations in accordance with Executive Order (EO) 13777, Enforcing the Regulatory Reform Agenda.

PPC is an organization of food, agriculture, forestry, pest management and relate d industries that support transparent, fair and science -based regulation of pest management products. PPC members include: nationwide and regional farm, commodity, specialty crop, and silviculture organizations ; cooperatives; food processors and marketers ; pesticide manufacturers, formulators and distributors ; pest-and vector -control operators ; research organizations ; and other interested stakeholders. PPC serves as a forum for the review, discussion, development and advocacy around pest management regulation and policy.

COMMENTS

The following comments refer to the regulations and polic ies PPC has identified as top candidates for regulatory reform actions, including modifications, replacement and/or elimination of specific regulations, or requirements within those rules. These recommended reforms will further the Administration's goals set forth in the EO of

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eliminating regulatory requirements that inhibit job growth, impose burdensome costs that exceed environmental benefits, are unnecessary and ineffective, or are not substantiated by available data or are inconsistent with the data guidelines implementing the Information Quality Act.

I. Modifications and Revisions

A. Certified Applicator and Training Rule (82 Fed. Reg. 952).

The previous Administration recently finalized a regulation on certification and training of applicators of restricted use pesticides (RUPs). The responsibility of administering pesticide applicator certification programs rests solely with state, tribal and territorial authorities. EPA would not be able to effectively implement the program without this federal-state partnership. The certification and training rule brings a number of significant changes and increased certification requirements with which applicators must now comply, and state certifying authorities must implement in their respective state certification plans. The final rule underestimates the time and cost to overhaul state certification programs. Implementation of the rule is a resource-intensive process, and in some states will require legislative actions. Among other changes, the new rule sets a new minimum age requirement for commercial RUP applicators at 18 years. Prior to the new rule, individuals under the age of 18 could apply RUPs if they met certification and training requirements. No health or environmental risk or rationale is provided to justify or support such change. Further, several states allow individuals under 18 to apply RUPs. Implementation of the new age limit will require many of those states to pursue legislative action to amend applicable state law without any benefit to public health or the environment.

Faced with a largely unfunded federal mandate, and limited resources, some state legislatures could recommend returning the program to EPA. EPA does not have the capacity to run programs of the same scale, depth and caliber as do the state and local partners. Any loss of state/local partnerships would result in a significantly pared down program and potential increased risks to public health and the environment.

The PPC recommends that EPA modify the rule to eliminate the minimum age requirement. Absent the federal requirement, individual states are free to set age requirements at the state level, and the removal of this requirement will alleviate the need for state legislative actions in several states. The PPC also recommends that EPA delay implementation of the final rule and work with state authorities to identify a realistic implementation timeline to provide flexibility to account for states' resource concerns and needs.

B. Agricultural Worker Protection Standard (80 Fed. Reg. 67496)

Promulgated in November 2015, EPA's new worker protection standard (WPS) for agricultural workers increased the frequency of required training, added recordkeeping requirements and introduced new concepts, including the "application exclusion zone" and "designated representative." Most of the new standard's requirements became effective in January 2017, in spite of a petition filed by groups representing farmers and state departments of agriculture requesting a delay to provide adequate time for implementing the changes. EPA failed to provide state lead agencies with enforcement guidance and training materials, and resources necessary to effectively implement the rule ahead of the effective date and to assist farmers and ranchers with compliance.

The PPC remains concerned about the concept of a "designated representative." Farmers and ranchers are entitled to a reasonable expectation of privacy in their businesses; this provision in the rule could result in disclosure of confidential and proprietary information, and also subject farmers to harassment and unfair criticism for the lawful and safe use of EPA-approved pesticides on their properties. EPA has not provided any assurance to growers that fraudulent requests by designated representatives will not expose them to legal liability, nor has EPA taken steps to limit disclosure of proprietary farm data to unrelated third parties. At no time has EPA brought forth evidence demonstrating that the provision would result in greater worker safety. The PPC urges the Task Force to recommend a revision of the WPS to eliminate or revise this "designated representative" provision to restore reasonable privacy protections for farmers and ranchers.

The Coalition also recommends that EPA amend the final WPS rule to eliminate the Application Exclusion Zone (AEZ). The AEZ created a one-hundred foot buffer surrounding the application equipment that, according to the regulations now in place, extends beyond the agricultural establishment. The AEZ prohibits pest mitigation activities if there is any kind of structure, permanent or otherwise, inhabited or vacant within one hundred feet of the agricultural establishment. Additionally, any individual, structure, or a passing vehicle within one hundred feet of the property can effectively cease the grower's application activity. This provision unduly burdens state agencies and grower without any additional regulatory benefits. Subsequent to finalization of the WPS rule, EPA's Office of General Counsel was working to issue interpretive guidance clarifying the EPA's intent under the final regulation. Guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity for state agencies tasked with compliance and enforcement activities, and regulatory certainty for farmers and pesticide applicators. The PPC recommends modifying the final WPS rule to remove the AEZ provision.

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Finally, in order for states and local authorities to implement the final rule, and to account for necessary training and certification, the PPC encourages the Task Force to recommend the WPS rule be revised to delay the effective date until 2018 at the earliest.

C. National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)

The PPC urges the Task Force to recommend modifications of the NPDES PGP requirements to decrease reporting and recordkeeping burdens. The PGP was first issued in 2011 in response to a 6th Circuit Court of Appeals decision. In that litigation, EPA was aligned with the regulated community in opposing the imposition of Clean Water Act (CWA) permitting requirements for pesticide applications into, over and near Waters of the United States. Pesticides and pesticide applications are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). All pesticides undergo a rigorous review process before being approved by EPA for use. Such testing requirements include extensive studies examining potential human health and environmental effects. FIFRA requires that pesticides used according to label instructions will not generally cause unreasonable adverse effects on the environment. Under FIFRA, applicators also are required to keep detailed records documenting the time, location, type of pesticide, target pests, amount of pesticide applied and pesticide application method. Applicators also must report any knowledge of adverse incidents associated with the use of such pesticides. Failure to comply with FIFRA requirements can result in civil and criminal penalties.

The dual regulation of pesticide application under FIFRA and CWA is duplicative, burdensome, and does not result in enhanced environmental benefit or protection. The potential legal jeopardy from CWA citizen suits for alleged PGP violations has had a chilling effect on the industry. An operator could spend substantial resources defending against a CWA citizen suit for alleged failure to meet reporting and recordkeeping requirements —mere paperwork violations that do not result in environmental harm. The PGP includes a provision that holds all operators jointly and severally liable for violations that occur in connection with permitted activities, including any action or inaction of others that is beyond their control. The threat of legal jeopardy has led some applicators to decline contracts for mosquito-control services. The Benton County Mosquito Control District in Washington State has set aside twenty percent of its annual budget in the event that it becomes party to a CWA lawsuit. These resources could be better spent combatting mosquito-borne illnesses, including the Zika virus.

The PPC recommends scaling back the permitting requirements to eliminate Notice of Intent and annual reporting and recordkeeping requirements, as well as the

permit's joint and several liability provision. An operator should only be held liable for those permitted activities that are completely within his/her control.

II. Process and Policy Reform

The Task Force should consider long overdue reforms of EPA's process and policies that form the foundation for regulatory decision-making. While not regulations per se, under FIFRA, pesticides undergo rigorous study, and registrants spend an estimated $ 250 to 280 million to evaluate risk to human health and the environment prior to pesticide registration with label uses approved by EPA. Pesticide products play a vital role in crop production and public health. The rotation and mixture of a variety of pesticide products is integral to integrated pest management. The availability of a wide array of pesticide products is critical to the sustainable and safe use of pesticides and resistance management.

In recent years, EPA's risk assessment approach as part of a FIFRA pesticide registration and registration review has deviated dramatically from the fair, transparent, and risk-balancing process that Congress intended. EPA has relied on flawed science, including data that lacks reliability and reproducibility, in proposed tolerance revocations for a number of pesticide active ingredients. EPA has previously proposed revoking all tolerances for chlorpyrifos based largely on epidemiological studies that EPA's FIFRA Scientific Advisory Panels (SAP) questioned. EPA has failed to address the significant concerns expressed by three FIFRA SAP on these risk assessments, including lack of study validation and unavailability of raw data from studies used in regulatory decision making. Other respected regulatory agencies around the world have reviewed these epidemiological studies and rejected their use in risk assessments that way that EPA has proposed. These data quality issues also run afoul of reproducibility and transparency standards required by the Information Quality Act. EPA's drinking water assessment for chlorpyrifos and many other compounds need further refinement to avoid overly conservative and unrealistic exposure scenarios. Similarly, EPA's preliminary ecological risk assessment for pyrethroids —an entire class of pesticides—relies on modeling approaches to develop a risk assessment for ecological exposure to the pesticides that is not reflective of actual exposure. The models grossly overestimate exposure and will result in the loss of critical tools for farmers.

In December 2016, EPA's Office of Pesticide Programs (OPP) released its "Framework for Incorporating Human Epidemiologic & Incident Data in Risk Assessments for Pesticides" (Framework). This Framework has not been the subject of public notice and comment and requires stakeholder review. As such, the Administration should review and revise the framework with input from relevant

stakeholders, and subject to peer review, before it is used to inform any regulatory decision-making.

The PPC encourages a return to a risk-based approach that is fair, transparent, and relies on verifiable scientific input. The PPC recommends delaying the finalization of these recent actions until further review and refinements ensure that overly conservative and unsupported limitations are not placed on these pesticide products.

CONCLUSION

The PPC appreciates the opportunity to provide input on regulations for the Task Force's recommended regulatory reform actions. The success of many federal regulations hinges on partnerships with state and local authorities, and EPA should ensure those vital a uthorities have adequate time and assistance with implementation of new rules and standards. As highlighted above, many regulations do not result in increased net environmental benefits, and in some cases may even divert resources fro m environmental and public health protection efforts. Finally, any regulatory review should examine the process es and policies that have informed regulato ry decisions , and ensure that actions are based on sound and credible science. We look forward to working to further assist the Task Force and Administration with identifying ways to decrease ineffective regulatory burdens on agricultural interests that hinder economic growth and innovation.

Sincerely,

Ethan Mathews
Chair, Pesticide Policy Coalition

Beau Greenwood
Vice Chair, Pesticide Policy Coalition

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NATIONAL CORN GROWERS ASSOCIATION

May 15, 2017

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

Docket ID Number: EPA-HQ-OA-2017-0190

Dear Administrator Pruitt,

On behalf of the National Corn Growers Association (NCGA), I would like to thank you for the March 24 memo establishing a Regulatory Reform Task Force to evaluate existing regulations and make recommendations regarding those that can be repealed, replaced or modified to make them less burdensome. NCGA wishes to provide comments to the Environmental Protection Agency [the agency] regarding your April 11 notice (EPA-HQ-OA-2017-0190) seeking public comment on regulatory reform.

Founded in 1957, NCGA represents approximately 40,000 dues-paying corn growers and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state associations and checkoff organizations work together to help protect and advance corn growers' interests. Requirements imposed by the agency through regulations can have significant impacts on America's farmers; many of these impacts can be felt in the areas outlined by the agency for review.[1] Below, we have identified regulatory obligations that can be modified or repealed consistent with the environmental laws and the statutory intent that Congress has enacted.

We applaud the agency for seeking public comment, and we stand ready to work with you as you consider these recommendations. We greatly value your efforts and wish your agency success as you move forward in alleviating the unnecessary and costly regulatory burdens on America's farmers. If you have any further questions, please do not hesitate to contact our DC office at 202-628-7001.

[1] In its notice, EPA has specifically asked for recommendations that address regulations that, *inter alia,* "(i) eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard or reproducibility…"

I. Reid Vapor Pressure (RVP)

A strong biofuels sector is vital not only to corn growers' economic security, but important to our nation's energy security as well. In the 2016 crop year, nearly a third of U.S. corn production, or 4.2 billion bushels, was used as feedstock to produce more than 15 billion gallons of ethanol, and ethanol production returned 1.1 billion bushels of corn to feed livestock and poultry in the form of distillers' grains.

Ethanol production reached an all-time high in 2016. Looking forward, corn growers want to build on the effective volume level of 15 billion gallons EPA set for 2017 through the annual Renewable Fuel Standard (RFS) rulemaking, in line with Congressional intent. With stability in administration of the RFS, corn growers can increase demand for home-grown ethanol that saves consumers money at the pump, has 43 percent lower greenhouse gas emissions than gasoline and supports thousands of jobs in rural communities, all while supporting the bottom line of corn growers nationwide.

Recommendation: In order to expand market access for renewable fuels, NCGA recommends EPA take the following actions:

- Use EPA's authority to provide regulatory relief to allow year-round use of ethanol blends greater than 10 percent, such as EPA-approved E15. Providing E15 with the same Reid Vapor Pressure 1 psi waiver as EPA provided E10 will allow retailers in all areas of the country to sell E15 year round, providing environmental benefits in the form of lower exhaust emission, more competition to lower fuel prices for consumers and increased market access for farmers.

II. Renewable Fuels Standard (RFS)

The Energy Independence and Security Act of 2007 established lifecycle greenhouse gas (GHG) emission thresholds for different types of renewable fuel when compared to lifecycle GHG emissions for gasoline or diesel. EPA last updated its lifecycle analysis for corn-based ethanol in 2010, projecting that corn-based ethanol would produce 21 percent fewer GHG emissions when compared to gasoline by 2022. This outdated lifecycle analysis for corn-based ethanol is hindering ethanol exports, as well as expansion of domestic ethanol use.

Recommendation: In order to reflect the 10 years of ethanol expansion since the RFS2 law was put in place in 2007, NCGA believes it is imperative for EPA to update its lifecycle analysis.

- Update EPA's lifecycle analysis for corn ethanol as the agency committed to do in the 2010 RFS2 rulemaking process and review and update EPA modeling and procedures that affect biofuels.

Other federal government agencies have issued updated GHG lifecycle analysis for ethanol based on actual corn and ethanol production experience and new data, producing significantly more relevant information. Most recently, an analysis prepared for the U.S.

Department of Agriculture and released in 2017 shows corn-based ethanol results in 43 percent fewer GHG emissions when compared to gasoline.

If additional GHG-reducing technologies trends continue, GHG emissions reductions could reach 48 percent by 2022, and if new ethanol and corn production technologies become widespread, emissions reductions could be 76 percent less than gasoline, according to the USDA analysis. The law requires EPA to determine a GHG threshold. Other parties, such as export customers, use this threshold as a basis for decisions; therefore EPA must update its very outdated lifecycle analysis.

Related as part of EPA's regulatory review, NCGA believes EPA should also review and update its emissions modeling and fuel petition procedures in order to help ensure sound regulatory decision making for future high-octane fuels such as higher ethanol blends, including the MOVES2014 model and the fuel petition and registration processes.

III. 'Waters of the US' (WOTUS) Rule (80 Fed. Reg. 37054, June 29, 2015; 40 CFR 230.3)

NCGA is supportive of Executive Order 13778, which directs EPA and the Army Corps to review the 2015 WOTUS rule.

Recommendation: We have serious concerns with the 2015 rule and support Agency efforts to rescind and replace with a rule that is grounded in the 1972 CWA's foundational concept that WOTUS are part of US "commerce" and that navigability is their defining feature leading to commerce.

NCGA is committed to working with the Agency on a rule that provides both clarity and certainty for farmers and that achieves the CWA's underlying goal of protecting the chemical, physical, and biological integrity of the nation's waters.

May 2, 2017 US EPA, Office of Water Listening Session on Reducing Regulatory Burden: Transcript of Verbal and Written Comments

In response to Executive Order 13777 (Enforcing the Regulatory Reform Agenda), on May 2, 2017 EPA's Office of Water held a three hour listening session by telephone and web conference to get public input on existing water regulations that could be repealed, replaced or modified to make them less burdensome. More than 850 people joined in with participants giving either verbal or written comments. The transcript of these comments (edited to remove extraneous comments such as operator instructions or participants commenting on the sound quality) are below.

Christine Ruf: I'm Christine Ruf, the Associate Director of the Water Policy Staff here at EPA. I'll be facilitating today's call along with two other colleagues from Water Policy staff.

Sandy Evalenko: Good morning. My name is Sandy Evalenko. I'm the Senior Regulatory Manager for the Office of Water on the Water Policy Staff.

Bob Rose: Good morning. My name is Bob Rose and I'm a Senior Policy Analyst also with the Water Policy Staff.

Christine Ruf: Thank you, Bob and Sandy. The Office of Water is hosting today's call because we're interested in hearing about the steps that EPA can take to reduce regulatory burdens. So let me first start by providing a quick overview of the listening session.

First, we'll hear a few opening remarks from Mike Shapiro, our Acting Assistant Administrator for the Office of Water. And then following Mike's remarks, I'll provide a quick summary of the logistics for today's three-hour call. And then we'll turn it over to you folks for your verbal and written comments.

So, Mike, I'll hand it over to you.

Michael Shapiro: Thanks, Christine. Good morning and thank you to everyone for joining us

both on the phone and the web conference. My name is Michael Shapiro and I'm the Acting Assistant Administrator for the Office of Water.

On February 24th of this year, President Donald Trump issued Executive Order 13777 on Enforcing the Regulatory Agenda. The Executive Order establishes the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people. Among other things, it requires each agency to create a Regulatory Reform Task Force to evaluate existing regulations and identify any that should be repealed, replaced or modified.

To inform these recommendations, EPA is holding today's public listening session so that we can listen and learn from those directly affected by our regulations. This includes federal state, local and tribal governments, small businesses, non-governmental organizations, trade associations and the general public, in general everyone who is impacted by our regulatory programs.

To inform these recommendations – well, as well part of the Executive Order, we're particularly interested in regulations that you feel may no longer be necessary, regulations with benefits that do not justify cost, regulations that are redundant or inconsistent, or regulations that otherwise do more harm than good.

We invite you to take this opportunity to share your views today. We also invite you to submit your comments to EPA's regulatory reform docket. The docket, which is accessible through www.regulations.gov, will remain open through May 15, 2017. We will give equal consideration to input provided through the docket or through today's listening session both via teleconference and the webinar.

Both audio and written – and the written part of this listening session will be transcribed and submitted to the EPA docket as well as (that) received through other meetings and written comments will inform EPA's regulatory reform efforts and help us fulfill the commitment to complying with Executive Order 13777.

Today's listening session is only one of several meetings that the EPA has been holding on regulatory reform. The administrator has directed the other EPA offices to provide recommendations and consult with their stakeholders in doing so just as we are doing.

Some of you may have participated in those sessions last week or earlier this week. A list of all of the EPA's planned meetings can be found on our Regulatory Reform website. This is a big one, www.epa.gov/laws-regulations/regulatory-reform. I know everyone got that.

Under the Executive Order, the Regulatory Reform Task Force is tasked to provide and report to EPA's administrator detailing the agency's program – progress by May 26th.

Once again, thank you for joining us today. I'm going to turn it back over to Christine for some logistics for today's call.

Christine Ruf: OK. Thank you, Mike. And I think our sounds as improved on the Adobe Connect line. As you know we are broadcasting by telephone and by Adobe Connect.

By those that joined us by the conference today, you will be able to submit written comments through the chat module and see other comments that are written. We posted a one-page PowerPoint at the top, about the goals of today's meeting and where you can find EPA's docket. We requested through written remarks be suitable for posting and be concise. But folks on the webinar will not be able to provide verbal input.

For those joining by phone who pre-registered, everyone has two minutes to deliver your remarks. We realize this is a short amount of time but we wanted have as many people voicing their comments today as possible.

At the one and a half minute mark you will hear short chime saying that you have 30 seconds remaining. It will sound like this. So when you hear that sound, if you could start to wrap up. We may – if you go pass that two-minute time limit, we may interrupt you so that we can move on to the next speaker.

I want to emphasize that we will be in listening mode. We do not have the opportunity today to answer any questions by phone or text, including those questions you might have about specific rules or actions. It's possible the callers who signed up and got a pre-registered number to call in may not end up having enough time to speak. If that's the case or if you have additional remarks that go beyond your two-minute time, please submit your comments to the docket as Mike indicated, and EPA will give equal consideration to input provided through today's session or those through the docket,

START OF VERBAL COMMENTS

Christine Lederer: OK. For a specific comment on the NPDES General Permit for Oil and Gas Operations, which is GMG290000 for Region 6. As the language is currently written, it only covers our offshore rigs when we are drilling for oil and gas. It would be good to have that language clear, that the permit coverage extends while we are not drilling and waiting for a contract. Many of our rigs are not operating and the language is not very clear and even the attorneys with the EPA would not give us the OK to operate under that permit.

Our discharges are exactly the same while we are drilling or when we are not drilling. However they're actually less when we're not drilling. So that's the end of that comment. The one thing I did want to make as a general note is that when EPA is collecting – requiring us to collect a report data for the EPA to assess whether regulations need to be imposed. They really need to look at whether we are already collecting that information or if we have to make an investment in either equipment or higher outside personnel to collect that. So that's just some of the things that we have to deal with on our end. And that's it.

Operator: Your next comment comes from the line of (Brian Mohanon) representing himself.

(Brian Monahan): (Brian Monahan) who works for 36 years in the (Comwap) Massachusetts at

the local level. I just simply wanted to acknowledge the work of the existing EPA staff (while I) always sound supportive I think one thing that would help reduce regulatory burden is to increase staffing who can provide assistance to the regulated community. I think they should – EPA should build upon the existing partnerships with state, county and local officials. I always found that clear, concise enforcement in the use of (supplemental), environmental penalties was very helpful.

The web pages I think should be reviewed and improved, I found them very good but there are certain things that are hard to find, so I think that's important to look at. And I just wanted to comment that I don't really think it's a regulatory burden, it's an obligation to protect all. Thank you very much.

Operator: And your next comment comes from the line of (Rock Mishra) from (REFPET).

(Rock Mishra): Good morning. I am (Rock Mishra) and I work for environment concerning the (mid-east spec) as a senior environmental engineer. Thanks for the opportunity to speak on this executive order on reducing regulatory burden. The way that (E.O.) is verdict, it seems like the environmental demolition cause excessive economic burden on a society and impede growth. In my professional career my primary focus has been water quality modeling to investigate water quality issues across the United States.

Today I would like to present a case how the regulation related to my research and profession can help a society and provide an economic boast. As a native of India who visits India regularly to meet family and the water research faculty there, I would also draw contrast by focusing on the effect of ineffective and pure regulations.

The U.S. has made a significant progress since the Clear Water Act of 1972. It is a vast amount of work that needs to be done to ensure clean and healthy water ways. Just focusing on surface water there are existing regulations that limit the number of pollutants that can enter a water body without negatively affecting its intended use, such as drinking water leakage. These regulations may appear burdensome to the entities which (discussed) the water body, but

the resulting positive economic effect of cleaner water can only (ousted).

Cleaner surface water ensures that the downstream communities can get cleaner drinker water (process). In contrast (fewer) ineffective regulations and enforcement in some developing nations such as India can turn the entire rivers into (sewer) channel. I have witnessed community of the (starting region ways) on cities and factories directly into the water body. The unregulated discharge (deserves) many preventive water-borne disease.

I have witnessed drinking water pipes going right to the (ways of show). There are simply no incentive for the discharges to process the pollutants. Proper regulations for surface water ensures that the current and future populist are not constantly affected by water-borne diseases and can realize the full economic potential while using these natural resources. Innovative research improves our understanding of how to address pollution more effective and what new pollutants must be addressed.

If anything water-related research must be funded to enhance our scientific understanding of the current and future issues affecting the availability of clean water to the cities of United States. Thank you.

Operator: Your next comment comes from the line of Beth Stewart from Cahaba River Society.

Beth Stewart: Good morning. The Cahaba River is the main drinking water source for the Birmingham area and a global biodiversity treasure but increasingly degraded and not achieving water quality restoration goal. Clean water regulations needs to be strengthened not weakened. Clean water is essential to our health, our businesses, biological diversity, our quality of life and the majority of American support clean water protection. These are not burdens.

The EPA needs to step up its game. Many programs under the Clean Water Act are not achieving the goals of the act because of inadequate regulatory systems and too many loopholes. Nonpoint source pollutions flow protection, drinking water safeguard, storm water (consoles) are example. Under no circumstances should regulatory change reduce existing clean water or

drinking water protection.

Any proposal should be analyzed based on sound science with inclusive opportunity for diverse public participation and education. We need strong federal regulations because our state is not doing near enough to restore degraded rivers especially from flow, storm water runoff and waste water. Without EPA our state has and would at time do less than the minimum under the Act, and the minimum is not achieving the goals of the Act to clean up our water and protect it.

The waters in the U.S. rule is a science-based necessary restoration of the scope of the Clean Water Act. Don't weaken it and allow uncontrolled pollution discharge that will eventually make its way into water resources that people and wildlife depend on. In 2002 it was only because of the original (specific) Act that we were able to stop horrendous chicken processing ways into small seasonal creak that eventually (sour) our entire river above the drinking water intake. Without the new rule this could go unchecked.

Please increase your focus on environmental justice and protecting communities with color and low-income from environmental impact. Provide the external civil rights compliance office, adequate funding to ensure civil rights complaints are timely addressed. Three complaints in Alabama have impending unaddressed for two to nearly four years. Expect that state and local agencies that apply for federal funding demonstrate they have adequate financial resources, personnel, legal authority and effective program to ensure that (desperate) impact on minorities are prevented. Thank you.

Operator: Your next comment comes from the line of Luke Frazza from National Environmental Banking Association.

Luke Frazza: Thank you. Ecosystem services like Clean Air and Water are required for human well-being providing economic and non-economic benefits. Wetland filter and store water naturally creating urban and agricultural runoff by reducing pollutants, lowering nitrate and trapping sediments. Wetlands provide water during droughts and they soak up runoff and flood waters avoiding (cause of) flood damage. They sustain essential habitat for wildlife,

birds and fish to feed, nest, breed, spawn and rear their young.

The National Environmental Banking Association represents environmental banks across the U.S. This industry's phenomenal success was formalized in 2008 with the final rule for mitigation which put mitigation banks as the top priority in the hierarchy of mitigation options. Today these banks drastically reduce permitting time and regulatory staff and are the most dependable option for mitigation.

Private investors are lined up to build these banks to enable compensatory mitigation through preservation in order to meet government requirements, but they need the rules to be applied consistently. Too often the 2008 rule is not uniformly applied and the mitigation hierarchy not followed.

Regulatory adherence for the 2008 rule and the mitigation hierarchy will remove unfair competitions of private industry and will resolve the historical conflicts between economic development and responsible.

It will unleash private investment in wetlands, streams, (species) and other environmental restoration fueling infrastructure and business expansion. The environmental (alteration) industry accounted for approximately 126,000 jobs in the U.S. in 2014. The National Environmental Banking Association believes that if EPA will strictly and consistently implement the 2008 rule and its hierarchy regulatory burden will be reduced, private sector jobs will be created and sustained and local economies will be boasted. Thank you.

Operator: Your next comment comes from the line of Andrew Grinberg for Clean Water Action.

Andrew Grinberg: Hi there. My name is Andrew Grinberg. I'm with Clean Water Action. I appreciate the opportunity to comment and I thank the Office of Water for all their hard work protecting our most vital resources. Clean Water Action, our organization strongly objects to the promise behind Executive Order 13777 and this whole process. Regulations including environmental and health protections are not holding back our country. On the contrary regulations that protect our water and health are some of the most powerful driving forces for

out economy and our communities.

We need more protections for water not less. Whether it's water for drinking, fishing, swimming, boating, irrigation, food production, brewing other industries clean water is the essential input. It's the foundation of our healthy communities. The benefits of environmental and health regulations have repeatedly been shown to far outweigh the cost and we hope that this process takes an honest look at the many benefits of regulation. For any regulation under review EPA must quantify all the benefits, not just the cost. That includes cost in water treatment, cost to downstream communities, health-related cost including medical bills, lost productivity as a result of missed work days from pollution-related illness and even death.

2013, OMB study found that the benefits of regulations far outweigh the cost across numerous agencies. At EPA though the benefits are most striking, over the preceding decade the benefits of EPA regulations were as high as $600 billion and only cost the economy as much as 45 billion. This excellent return on investment is even more stark when looking at cost and benefits of source water protection. According the EPA website every dollar spent on protecting a drinking water source results in savings of $27 on water treatment.

With such clear benefits at relatively low cost rather than looking for regulations to cut EPA should be working to develop new protections that bring with them even greater benefits. EPA's own policy dictates that it must prioritize drinking water protection. Since 1980 it has been the agency's policy as part of its human health criteria not to pass on the burden of water pollution to drinking water users or the providers who are responsible for treatment.

Clean Water Action strongly objects to rolling back any protections for drinking water, our nation's water ways or public health. A number of regulations have already been named by this administration and others have been identified by polluting interest for potential rollbacks in other stakeholder meetings, so we want to flag those. First and foremost the clean water rule which protects drinking water sources for one in three Americans. The steam electric ELGs which keeps toxic chemicals from power plants out

of our water ways.

And finally unconventional oil and gas ELGs which prohibits waster water from fracking and other …

Operator: Your next comment comes from the line of John Divine, from National Resources Defense Council.

John Divine: On behalf of NRDC, more than 2 million members and supporters please don't sacrifice our water to a reckless and unfounded search for allegedly burdensome regulations without a meaningful detailed investigation of the benefits that Americans get from rules. Water's value becomes clear when there's a drought, a sewage spill, a boil-water alert or a closed beach. But that value is there everyday.

Accordingly the Clean Water Act directs EPA to develop federal regulations in order to restore and maintain the integrity of the nation's waters. Congress adapted this framework in 1972 to fix weak laws that allowed water waste to literally catch fire and others to become biologically dead. EPA rules under the act provides significant benefits, discharge limits for 58 industries set a level playing field for tens of thousands of facilities and prevent more than 700 billion pounds per year of toxic water pollution.

Wetland protection regulations help reduce flood risk, benefiting people owning approximately 800 to 900 billion in property located in flood plains. But the Act's work isn't done. Most water bodies assessed don't meet one or more data established standards designed to protect uses like swimming and fishing. During 2004 to 2009 the rate of Wetland loss accelerated 140 percent, nitrogen and phosphorus caused serious harms across the country.

Without a basis to presume environmental protections are hurting the economy the administration seemed bound to undermine beneficial clean water rules and for these remaining challenges by seeking complains about existing safeguards. EPA allowed only four and half weeks for public input on the value of all agency safeguards adapted in its 46 years plus history, and today's session allows only a few of us to speak.

That's bad enough but the administration couldn't even wait for this sham process before rolling back the protections they most want to kill. Take the clean water rule which ironically is estimated to produce as many as $572 million a year in benefits and to exceed cost while improving protections for the kinds of water that feed drinking water supplies of 117 million Americans. Administrator Pruitt and President Trump has targeted this from the beginning.

Americans strongly protect …

Operator: Your next comment comes from the line of Maia Raposo from Waterkeeper Alliance.

Maia Raposo: Hi my name is Maia Raposo and I'm the Director of Comminutions & Marketing at Waterkeeper Alliance. Waterkeeper Alliance strengthens and grow the global network of grassroots leaders protecting everyone's right to clean water. We are comprised of 320 waterkeeper organizations and affiliates in 35 countries in six continents covering over 2.5 million square miles of watersheds.

Waterkeeper Alliance and our 165 waterkeeper organizations and affiliate in the U.S. work closely with communities to protect and preserve local waterways. We have first-hand knowledge of how important EPA regulations are for public health and the environment. These regulations were implemented to put the health of Americans before corporate interest. They are necessary for protecting our citizens.

The Clean Water Act (both) U.S. policy and the appropriate legal standards for protecting and restoring our nation's waters. It's EPA's legal duty to implement these policies and standards. EPA does not have the authority to alleviate industry of their legal obligation to comply with laws. There is not evidence that environmental safeguards prevent job growth. In reality clean water is the economic lifeblood of many American communities.

Anglers alone generated nearly $115 billion in economic activity in 2011, (breathing) life into rural communities and supporting more than 1 million

jobs. The only entities that benefit from revoking or weakening regulations are companies that will increase process by pushing pollution cost on to communities. If EPA rolls back environmental protections American citizens will suffer the cause of painted drinking water sources, fish that are unsafe to eat and the closure of recreational areas due to dangerously high pollution level.

Finally the rate at which this regulatory review is happening is irresponsible, environmental regulations have many complex interactions with federal and state statutes and laws that cannot be accurately assessed in such a short timeframe. The public needs more time to comment on specific regulations that have been I.D.'d for repeal replacement or modification. Thank you for this opportunity to speak.

Operator: And your next comment comes from the line of Julia Anastasio from Association of Clean Water Administrators.

Julia Anastasio: Good morning and thank you for providing us with the opportunity to provide comments on the executive order. My name is Julia Anastasio and I'm the Executive Director & General Counsel for the Association of Clean Water Administrators. ACWA is an independent, non-partisan national organization of state and interstate water program managers who on a daily basis implement the water quality programs of the Federal Clean Water Act.

Many of our members have responsibility for clean water programs, drinking water programs and groundwater protection programs. In order to advance the most focused and results-oriented program as possible, EPA must maintain a priority of involving states early in this process. And as you undertake this process we would like to provide you with the following high-level principles to guide your work.

Jointly prioritized regulatory review actions with your state water quality program partners ACWA is here to service your conduit. States and EPA must work together to maintain the current progress, avoid future declines in water quality and invest in those programs areas were the most important and meaningful water quality benefits can be achieved. EPA headquarters,

regions and states must jointly plan, evaluate and better orchestrate federal and state clean water programs to direct resources and expertise for the highest priority water quality problems for that region and/or state.

Moreover do not proceed quickly, take the time to evaluate recommendations since these regs are complex and interwoven. And what may seem like a simple tweak may have quite the domino effect. Preserver enhanced flexibility for states to implement the Clean Water Act. Streamline processes and eliminate duplicative requirements, rely on sound science to guide your decisions. No backsliding, preserve the gains that we've already made. And as much as possible please limit unfunded mandates, state resources are already stretched very thin and any reductions in that funding will make it more difficult for them to continue to implement the Clean Water Act as they see fit in their states.

Once again thank you for the opportunity to provide comments, and we look forward to working with our partners in the Office of Water.

Operator: And your next comment comes from the line of Peg Bostwick from Association of State Wetland Managers.

Peg Bostwick: Good morning. This is Peg Bostwick. I'm the Senior Staff Policy Analyst with the Association of State Wetland Managers which is a professional non-profit organization. Our primary interest today is in speaking regarding Section 404 of the Clean Water Act which regulates dredge and fill activities in wetlands and other waters. Like other water programs Section 404 has a very long 40-year history of cooperative federalism, this is nothing new for us. Under 404, qualified states and tribes maybe authorized to (some) administration of this program and many but not all waters of the U.S.

However today only two states have fully taken advantage of the opportunity to assume the program, this is for multiple reasons but one of them is because of uncertainly over the scope of waters that maybe assumed under the program. This is issue will be addressed in a report to the EPA to be provided later this month through a federal advisory committee process that's been going on for a couple of years now. And we urge EPA to consider the

majority recommendations in this report and to adapt these recommendations in revising EPA's Section 404 state program regulations at 40 CFR Part 233.

I also would like to echo the previous speaker and more broadly encouraging EPA as it proceeds to carefully consider the extensive collaboration among states and tribes and federal agencies. This is very important in addressing multiple concerns and integrating those in the permitting process. Such concern is not only state and federal water quality but (hand) drinking water programs, flood plain management and so on. And of course we are concerned with providing and timely and efficient service to those land owners and agencies to apply for a permit.

Any revision of the federal regulation that desynchronizes this integrated process may result in delays and an increase in regulatory burdens rather than what is intended. So we encourage you to look at these regulations in a context of the local administration. Thank you.

Operator: Your next comment comes from the line of Jane Gerdes from the City of Peoria, Illinois. Jane your line is open.

Jane Gerdes: Oh, thank you so much. My name is Jane Gerdes I am with the Public Works Department at the City of Peoria, Illinois. We're a community of about 115,000 located along the Illinois River. Today I'd like to specifically talk about the NPDES requirements for combined sewer overflow or CSO communities. And so my comments basically relate to the facts that these are unfunded mandates on small communities. We like clean water, we know the State of Illinois likes clean water, we know the EPA likes clean water. Everyone does but small communities are very challenged to pay for these unfunded mandates.

So in order to use our resources more likely or more wisely at the local state and federal levels, we'd encourage EPA to let the community's technical judgment stand instead of having, you know, many reviews on a state level and on a federal level, to allow the maximum use of adapted managements and project selections addressing CSO. And we'd like to have flexibility to

change our projects, our technologies as the years go by to better avail ourselves of new best management practices.

We'd also like EPA to recognize that the affordability challenges and its 2 percent of median household income does not address things like local governments, municipal budget, taxing authority. If I could wrap up I love what EPA does, I think they should focus on providing resources and funding to address clean water issues. Thank you very much.

Operator: Your next comment comes from the line of Edward Dorsey representing himself.

Edward Dorsey: Hello, I'm Edward Dorsey and I want to thank you for giving me this opportunity to speak. I have 27 years working in regulatory programs for municipal POTWs. And today I just wanted to say in general that I believe that the regulations worked well and they worked well for years. I believe we need to continue to have environmental protections that have good remedies to enforce the regulations. I do believe that if you look specifically at some of the regulations there are opportunities for efficiencies to be built that will help small communities and help municipalities implement these regulations more efficiently.

For instance under 40 CFR Part 403, the pretreatment regulations. There's a requirement that we inspect permitted users on an annual basis. This is not necessary during a five-year term if we inspected each facility twice during that five-year term and then perhaps if that individual was found to be insignificant, noncompliance and other inspection can be done. Affluent monitoring should certainly be done annually. Another example of inefficiency that could be built in relates to permit extensions when permits expire.

Under 40 CFR 403 we're required to renew permits after a five-year period and there's no allowance for an administrative extension. However under 40 CFR Part 1 226 there's an allowance for administrative extensions. I ask that that be also be allocated to Part 403. Finally I think that it's important that we look at the electronic reporting (rules chrome) 40 CFR Part 3 and allow

electronic submission of signed PDF documents. Currently we got fax documents and that's a big burden, we should be able to submit them electronically. Again thank you very much for your hard work and I appreciate your consideration.

Operator: Your next comment comes from the line of Mark Oliver representing himself.

Mark Oliver: Hi there. My name is Mark Oliver, thanks for this opportunity to provide my input. I have 30 years of Clean Water Act permitting and wetland and river restoration for a diverse number of clients throughout the forth quarter states. My comments related primarily to Section 404, the Clean Water Act. I believe its regulations provide only a minimum standard to protect water quality and wildlife habitat. The EPA and the Army Corps of Engineers are already basically a permitting agency. They're not really a regulatory agency since Clean Water Act permits are pretty easy to obtain.

The regulatory burden stems from the lack, if there is any, stems from the lack of personnel at EPA, Army Corps of Engineers, Fish and Wildlife Service, State Historic Preservation Office and tribal offices to process these relatively simple applications within a timely manner. It's the lack of personnel not the regulations that are causing time delays and burden if there is a burden. So I believe these agencies need to hire additional staff to turn permits around in a timely manner.

Violations also need to be rigorously addressed and persecuted because a lot of the agencies don't have the time to deal with these issues. And then one last thing is the jurisdiction of irrigated wetland needs to be revised as some (core) districts, take jurisdictions of irrigation water that's on a slope because wetland becomes established on a slope. And that normally would not persist in nature in most cases. And so, that's one thing I would like for EPA and Corps to take a look at.

That's all I have, thanks for your ability to take my input. Thanks.

Operator: Your next comment comes from the line of Renee Hoyos from Tennessee Clean Water Network.

Renee Hoyos: Hello, thank you for the opportunity to speak with you today. As the only state-wide organization in Tennessee dedicated to protecting the state's waterways TCWN has used the EPA OW rules and regulations to help meet our goals of safe drinking water and clean water for use for recreation. It is the position of the Tennessee Clean Water Network board of director, staff and its members that any changes to the regulatory framework should only be made after extensive research and public input on the topics and not driven by an artificial deadline of a new administration.

When you say making regulations less burdensome I have to ask less burdensome for whom? Certainly not the public. Polling show overwhelmingly the public wants clean water to drink. These regulations should not be relaxed for the convenience of industry but should continue to help protect the nation's waters that provide drinking water for millions of water and provide economic development through recreational opportunities for many as well.

Industry will always find regulation burdensome but they are not the only ones who live here. They are happy to use the resource and then share the pollution with the rest of us without having to pay their fair share of the burden they create. Rules and regulations that have helped protect our nation should not be changed in just 104 days. As a matter of fact we need more rule making from EPA to help protect our citizens from health threatening water pollution.

TCWN is part of 10 state collaborative tracking and fighting new (trends) pollution in the Mississippi River, the largest watershed in the U.S. and the third largest in the world. Right now states in the Mississippi River basin pollute the water with so much nitrogen and phosphorus, the beaches are regularly closed, drinking water is under constant threat and people's pets are dying. We want numeric standards for new (trends) nationwide.

EPA has battled this problem for decades with no avail, protecting the Mississippi River will take more common sense regulations not less. Thank you for this opportunity to speak.

Operator: And your next comment comes from the line of Eva Dillard from Black Warrior Riverkeeper.

Eva Dillard: I represent Black Warrior Riverkeeper, clean water advocacy group based in Birmingham, Alabama. We asked EPA Director Pruitt and the President not to rollback federal clean water protections unless you aim is to remake the entire nation and the image of Alabama. Federal laws and regulations provided critical regulatory minimum in places like Alabama which are essential to protect the public health and environment. Alabama always – already struggles to meet his minimum. We're number one in fresh water biodiversity but also number in rare species that at risk of extinction because of our failure to protect water quality.

Diseases more commonly found in the developing world are still found in the areas of Alabama plagued by sewage problem. We are beginning another recreation season where people will swim in sewage because our infrastructure is failing and we don't have a consistent or robust sewage notification policy. This is the result when there are many programs under the Clean Water Act that are not operating as intended because the regulatory systems are not sufficiently developed, implemented, funded or enforced.

Rolling back clean water regulations or cutting program funding weakens the minimum requirements in states like Alabama. You risk reigniting a race to the bottom that will harm the nation and the economy. Stakeholders have devoted years of careful study and thought to regulations like the Waters of the U.S. Rule, the Clean Power Plan and the Coal Combustion Residuals Rule. Rules like this protect the public health and environment but also afford certainty, debt measure goal and keep the playing field level and encourage innovation.

And importantly their economic benefits exceed their cost. Please make your focus bringing states like Alabama inline with the rest of the nation, thank you.

Operator: And your next comment comes from the line of Bob Zales from National Association of Charterboats.

Bob Zales: Yes, my name is Bob Zales II I'm President of the National Association of Charterboats operators. We represent Charterboats owners and operators across the United States and we are platforms and provide the opportunity for anglers to recreationally fish.

Our comment has to do with the NPDES general vessel permit issues. And we've been involved with this issues since 2007 and have fortunately have been able to have Congress to give us a current temporary exemption to the requirements for this PGP requirement.

And the fact sheets that EPA put out in 2008, they said that there were 13 million recreational vessels, 81,000 commercial 53,000 fret and tank barges. The 13 million recreational vessels have been completely exempted from these requirements. In the charter boat industry the vast majority of charter boats are simply a recreational vessel that has been licensed to operate commercially and has to have a U.S. coast license captain to carry passengers for hire. There's essentially no difference at all between the vessels that we own and operate versus the recreational vessel.

We're simply looking for this exemption instead of being temporary which runs out this coming December to be a permanent exemption because of all the issues that are here. This general permit would require the deck wash including rain runoff (inaudible) or among the many discharges that will require a permit to allow the discharge. These – currently we're regulated by the United States Coast Guard and by state resource agencies to ensure that the runoffs and discharges that we have comply with all the EPA's slated requirements.

So there's no need to burden us even further with more permitting, more log books, more possibilities, more liability for noncompliance and things of this nature. So we would recommend that this exemption, temporary that we have be applied permanently to the charter boat fleet in the United States. Thank you very much.

Operator: And you next comment comes from the line (Dulah Abusen) from Sierra

Club.

(Dulah Abusen): Oh, thank you very much. Sorry I was on mute. Good afternoon and thank you for the time. Today I wanted to highlight the importance of the EPA in ensuring clean and healthy waters across the nation. As a child from Southern West Virginia I've spent many days playing in a small creak catching crayfish, salamanders and frogs and I never thought and neither did my parents, I'm sure, think twice about letting me play all day in the creak in front of my cousin's house.

However as I became older and my world expanded beyond that small creek I learned that that creak was just a small part of a larger watershed and I learned about things like mountaintop removal in Southern West Virginia and its negative and polluting impacts not only on the water bodies near the mining sites but on the many smaller water bodies across Appalachia like my childhood creak.

I bring up these memories because EPA was established decades ago to deal with such scenarios, to look at the natural environment as a whole and to make it safe and healthy for all Americans. And even though the EPA has made many strides in protecting our waters, there's still a lot of work to be done. Too many communities across the nation often low income or communities of color still lack access to clean water. EPA needs to follow through in its core mission, not eliminate protections to ensure that all of us no matter where we live and work are protected from risks and have access to clean water.

We cant' afford EPA right now to pull back on its mission to protect human health and the environment even though it's being dictated right now by President Trump and Administrator Pruitt. Thank you. We may hear today about our environment and – a strong environment and building a strong economy are at odds with each other. But I think that if you look over the last course of the four decades you'll see that a strong economy equal – excuse me, clean water equals a strong economy and a healthy workforce.

So I close with thank you EPA staff and the Office of Water for their

dedication to out nation's waters and the all the work you have done in the past. And I ask that you continue your core mission of this agency to ensure that my children and all children across the U.S. can continue catching frogs and playing in their local waters that are safe and healthy. Thank you for the time.

Operator: Your next question comes from the line of Aviva Glaser from National Wildlife Federation.

Aviva Glaser: Yes hello, my name is Aviva Glaser, I'm with the National Wildlife Federation. I want to thank you for the opportunity to address the important issue of water regulation. We have 6 million members, supporters and affiliate from the country, the National Wildlife Federation is the largest national wildlife conservation organization in United States. It goes without saying that clean water is critically important for public health and the environment. We need stronger relations in place in order to present clean water for drinking, for public health, for businesses in order to maintain healthy fish and wildlife habitat for sports men and women and to support the (outdoor) economy and $887 billion a year (history).

The conversation we are having must be how to strengthen not weaken these safeguards. Safeguards like the clean water act and the clean water rules. These safeguards are there for a reason, to protect public health and the environment. We depend on the health of our streams and wetlands and forest waters and we depend on the EPA to protect these water bodies. EPA regulations work analyses of water regulations show that it yields tremendous economic public health and environmental benefit.

So we need the EPA now more than ever to standup for people and public health and the environment. To make sure there are strong national safeguards in place so that all Americans have access to drinkable water and breathable air, and so sufficient wildlife that hunters and anglers (dependence) in water need truly have that crystal clear water. The last thing we should be discussing right now is weakening the commonsense protections that make our water, (clinical), feasible and drinkable.

We are also concerned that this process comes short of the necessary public input required to made decisions of this scale, decisions that could result in real danger to the health of our communities and our environment. And so we urge you to have a more robust public input process before making these critically important decisions. Thank you for the opportunity to provide comments and we look forward to continuing to work with EPA and protect the health of our waters.

Operator: Your next comment comes from the line of Hayley Carlock from Scenic Hudson.

Hayley Carlock: Hi, thank you. I am the Director of Environmental Advocacy for Scenic Hudson. We are an organization that preserves land and farms and creates parks that connect people with the inspirational power of the Hudson River while fighting treats to the river and natural resources that are the foundation of the Hudson Valley prosperity.

Scenic Hudson is deeply opposes the proposed rollbacks of this nation's bedrock environmental safeguards under the Clean Water Act and other laws. The clean water act and the regulations that implemented have been vital to the Hudson Valley's economic and environmental resurgence over the past 40 some years. Today the Hudson River is the lifeblood of this region which is home to over 2 million people and it's the foundation of our $5.2 billion tourism economy.

It's easy to take for granted all of the environmental health and economic benefits that the Hudson River bring to our region today. But before the Clean Water Act the majestic river that inspired the Hudson River's wall painting was essentially a cesspool and dumping ground for industries. For most of the 28th century the Hudson River was considered a nuisance and a scourge to the region. Communities abandon their river fronts seeing river front as a liability rather an asset.

People who lived downstream from the General Motors factory in Sleepy Hollow, in Winchester stated that they would know what color G.M. was painting the cars on any given day because of the color of the river. The

discharge brought sewage into the Hudson lead to bacterial level over 170 times the safe limit in the 1960s.

(Off-Mic)

… reduction in develop Oxygen so severe, it wipes out nearly all fish for 25 miles downstream. But today our natural resource economy is thriving and attracting outside investment and creating jobs. Far from being a job killer clean water regulations have been a boon to the Hudson Valley's economy. Regulations like the clean water rule would help further enhance Hudson Valley's economic health, ensuring that clean water necessary for drinking water supplies, hunting and fishing and water-based recreation will be protected from pollution.

Going back on the fundamental goal of the Clean Water Act to make all water swimmable and fishable would be enormously detrimental to our economic health, our quality of life and not to mention environmental and public (households). Thank you.

Operator: Your next comment comes from the line of John Noel from Clean Action.

John Noel: Hi, my name is John Noel of Clean Water Action. We oppose any efforts to bring in private sector lawyers to help rewrite the Clean Water Rule. It will remove the cornerstones of regulatory development, transparency and accountability. Large polluting industry is right now believes they should have the freedom to operate at the lowest possible level of environmental and public health standards. (It's a reasonable) update the EPA rule and attack on their freedom too, but there's another type of freedom, it is freedom.

We should be able to raise our families and communities free from pollutants from coal ash, ag runoff and oil and gas waste water discharges. We should be able to live free from pollutants discharge by industries operate at the lowest cost possible at the expense of everyone else downstream. In this vein we strongly support EPA's work on ELGs for unconventional oil and gas dissolving.

This is a commonsense step to protect community downstream from oil and gas development. Drinking water protections need to evolve along with industry practices and this rule striking appropriate balance that protects drinking water at zero cost and includes an extended deadline of compliance for operators who requested it. We also strongly support the UIC program. The number of injection while it's being drilled is increasing but EPA resources in this program have (flat line).

In order to protect drinking water from the continued expansion of oil and gas development it's imperative to fund this program at increase levels. The program must also be able to provide enough grant funds and state programs so these states can safely manage drinking water resources in tandem with oil and gas development. EPA should look in removing aquifer exceptions provisions which are currently not being implemented or managed correctly in many states across the country.

The aquifer exception rules are written 30 years ago and do not reflect current drinking water reality. We should also be clear about this process. It is not a good faith discussion about (wait solve) serious problems, this is about reducing the government's ability to do set minimum protections for public health and the environment while maximizing profits for polluting industries that are influential in Oklahoma political circles. Thank you.

Operator: Your next comment comes from the line of Navis Bermudez from Southern Environmental Law Center.

Navis Bermudez: Thank you. Hi. This is Navis Bermudez with Southern Environmental Law Center. SELC works in six states in southeast with local and national partners to protect the environment of its citizens. We believe that EPA should not be getting rid of regulations for the benefit of polluting industries. Instead EPA should be focused on its mission to protect human health and the environment by implementing, enforcing and strengthening protections.

I'll mention two regulations that we feel should immediately be implemented. The first is the 2015 Clean Water Rule. Under all scenarios the agency's analyses has indicated that there are more benefits than cost to this rule. And

in the southeast, in our region at least, 20 million people get their drinking water from sources that are feed by streams, wetlands and other waters the Clean Water Rule would help protect. The rule as finalized in 2015 should be implemented.

Another recent finalized regulation that EPA has (indefinitely stayed) is the affluent guidelines for stream electric power generating source category. The rule is projected to reduce the amount of toxic metals, nutrients and other pollutants that are allowed to be discharged by stream, electric power plants by 1.4 billion pounds and reduce water withdrawal by 57 billion gallon.

The estimated compliance cost for the final rule is $408 million and the benefits are on (top), $451 million to $566 million. We feel this rule should be implemented immediately because in our region at least there are plans that are polluting our streams and rivers in Tennessee. I'll just give you one example before closing. The Cumberland Fossil Plant is ranked as the largest mercury polluter among coal plants reporting to the toxic release inventory in 2015.

So for those and other reasons, (I'll feel) that EPA should continue to enforce regulations on the book and strengthen those as necessary. Thanks for your time.

Operator: Your next comment comes from the line of Kaity Friedman from Charles River Watershed Association.

Kaity Friedman: Hello, my name is Kaity Friedman and I'm calling from the Charles River Watershed Association in Greater Boston, Massachusetts. The Charles River has made a tremendous turnaround since the 1990s and is today considered the cleanest urban river in the United States. The Charles River Watershed Association worked very closely with EPA Region 1 on the Charles River cleanup, and we think the staff and programs here in New England are outstanding.

The EPA played a monumental role in the complete revitalization of the Charles River in Boston Harbor by setting high standards for stronger

pollution control requirements such as the national pollutant discharge elimination system. The Clean Water Act section 303(d) has been pivotal in creating pollution plans that have lead to the revitalization of many urban watersheds in Massachusetts, helping to address nitrogen and phosphorus pollution which have negative impacts on the tourism economy and public health.

Environmental regulations need to be maintained and in fact strengthened rather than repealed. We have proven firsthand that investments in clean water, our economic drivers for the larger economy. All of the investments in cleaning up Boston Harbor and the Charles River which are considered a tremendous burden at that time have had a fantastic return on investment, our region is booming. Programs should be revamped to make it easier to get money out to the states and partner groups.

Regional EPA offices should be staffed up so that they can do their necessary work in a thorough and timely way. Finally, I would like to thank the EPA Office of Water for inviting me to speak as I feel our experience here in the Charles River can help other rivers and water resource professionals around the country. Thank you.

Operator: Your next comment comes from the line of Victoria Sullivan from the American Coalition for Clean Coal Electricity.

Victoria Sullivan: Thank you. I am with the American Coalition for Clean Coal Electricity which is a national trade organization, its mission is to advocate on behalf of coal-based electricity generation. ACCCE support's EPA's efforts to evaluate existing regulations for repeal, replacement or modification. At the same time we expect the EPA's effort to continue protecting our precious water (quality). Among EPA's regulations the steam electric effluent limitation guideline rule is a particular concern to ACCCE and its members.

Fortunately EPA has announced it will reconsider the ELG rule and has implanted a (stay) of its compliance state, pending reconsideration judicial review. ACCCE wholeheartedly supports EPA's reconsideration of the ELG rule. This rule is already having a severe impact on the existing (play) of coal-

fired power plants. The ELG rule along with its companion coal commotion residual rule are imposing hundreds of millions of dollars in cost that are being sighted by power plant owners as primary reason for announced coal plant retirements.

For example, southern company forecast the cost of a CCR and ELG rules to be 1.8 billion, in (northern India), a public service company projected the total cost for the ELG and CCR rules to these as much as 830 million and to be a major driver in the retirement for coal-fired electric generating (end). In contrast to the cost and plant closure burden of the ELG rule, even the previous EPA's cost benefit analysis of the rules shows that its cost exceeds its water quality benefit. Therefore we commend EPA for reconsidering steam electrical and look forward to working with EPA and other stakeholders of the agency reconsider the Effluent Limitations Guidelines rule. Thank you.

Operator: And your next comment comes from the line of Cara Cook from the Alliance of Nurses for Healthy Environments.

Cara Cook: Hi, thank you. This is Cara Cook. I'm a registered nurse and speaking on behalf of the Alliance of Nurses for Healthy Environments. Our organization strongly supports public health regulations such as the Clean Water Act, as the health benefit of these regulations far outweigh the cost. These regulations should be strongly enforced not weaken. As nurses we recognize clean water as essential component of human health while the Clean Water Act has made grate strides to ensure all of our citizens have access to clean drinkable water. There are many families who still do not have access to clean water.

As highlighted by the recent crisis in Flint, Michigan many communities need the EPA to strongly enforce current regulations so children and families are not unknowingly being exposed to toxic metals such as lead and other toxic chemicals. Many of those impacted by unsafe drinking water are low-income families or communities of color as we saw in Flint and Charleston, West Virginia. These families had to resort for bottled water for cooking and bathing or had to drive long distances for clean water. And families in Flint are still struggling.

These are expenses these families cannot afford and these communities should not be forced access clean water in this way. Water contamination also creates concerns for hospitals and health care facilities. Their patients are already some of the most vulnerable and not having access to clean water creates a significant burden on these facilities.

Following the chemical spill in Charleston, West Virginia hospitals are scrambling to find enough clean for routine but necessary operations such as hand washing for staff and visitors, laundry, sanitation even newborn's first bath. Due to the central public health protections afforded by clean water the Alliance of Nurses for Healthy Environments supports strong enforcement of clean water regulation. Thank you.

Operator: Your next comment comes from the line of (Eric Ulson) representing himself.

(Eric Ulson): Thank you. Compliance cost for regulations are too often seen as simply a profit eroding drag on the bottom-line, and this appears to be the premise of today's hearing, reducing regulations to improve the economy. This simplistic view is really consistent with President Trump's campaign rhetoric and the slogan of "Make American Great Again". But United States is already great when it comes to a 21st century economy that supports jobs while protecting the environment.

U.S. is a global leader in developing innovative technology that businesses require to cost-effectively protect and enhance our water resources, everything ranging from water filtration systems to advance manufacturing methods. Access to clean water is a growing global issue. And the United States can either be the economic leader in developing and deploying innovations to provide clean and save water to billions of people, or we could do what this proposal suggests, new regulation as a zero-sum game that pits jobs against clean water.

Now is not the time to back away from such innovation and regress to a more polluter-friendly nation. The Clean Water Act or much of what the EPA works to accomplish is premised on the idea that common-pool resources like

rivers and lakes can no longer be treated as free garbage dumps by profit-seeking industries. There are real cost to water pollution. The Deepwater Horizon explosion and spill lead to a $20 billion settlement. The cost to fishing in Louisiana was pegged at $2.5 billion. A much smaller chemical spill in Oak River in West Virginia cost the local economy $19 million per day, roughly 24 percent of the economic output of the region.

The clean water industry on the other hand provides jobs and economic development throughout the country. A 2014 analysis by the clean – by the Water Research Foundation concluded that water, waste water and strong water utilities contribute $52 billion annually and support almost 300,000 permanent jobs in the next decade. We need to basically keep moving forward and not be rolling back at regulations. There's really too much to lose by going backwards. Thank you.

Operator: Your next comment comes from the line of (Kalah Pendetwinn), Natural Resources Defense Council.

(Valerie Berrin): This is (Valeri Berrin) speaking on behalf of my colleague (Kalah). On behalf of NRDC, more than 2 million members and supporters did stop this misguided attack on public protections. The Office of Water provides vital drinking water protection for the American people, gaps and critical safeguards that only this office can fill remain and are endangering the American public and future generations.

The Safe Drinking Water Act, one of our bedrock environmental laws established the role of government in providing safe, clean drinking water. To protect drinking water, the Safe Drinking Water Act direct EPA to develop federal regulations. Under the Safe Drinking Water Act, the EPA is required to identify dangerous drinking water contaminants from arsenic to xylene and develop rules that either set maximum permissible levels for them or establish protocols to treat them.

NRDC today published a report showing that nearly 77 million people, roughly a quarter of the United States population spread across all 50 states were served by water systems reporting violation of the Safe Drinking Water

Act in 2015.

We also found that systems serving very small communities such as rural areas have significantly higher rates of violation of the health standards and a higher percentage of total violation compared with larger systems. Systems serving less than 500 people accounted for nearly 70 percent of all violations and a little over half of all health-based violations. One in every 12 Americans were served by a drinking water system with the health-based violations.

Health-based violations of the rules are most frequently cause cancer causing family of chemicals called disinfected byproducts, coliform bacteria, the failure to properly treat surface and ground water, remove dangerous pathogens, nitrates or nitrites that can cause Blue Baby Syndrome and lead and copper.

President Trump and the (administrator) who had appeared want to roll back these vital protections which protect the public health based on the process of (basically) seeking complaints about existing federal safeguard. But it's clear that we need more safeguards and our job isn't done.

EPA has not set a single new standard for drinking water under the Safe Drinking Water Act since 1996. And in those 20 years, EPA has decided that only one new contaminant should be regulated (inaudible) on the safeguards that we need and focus the agency's time and expertise on fixing depressing pollution problems facing our country.

Operator: Your next comment comes from the line of Jennifer Chavez from Earthjustice.

Jennifer Chavez: Hello. The federal government has a fundamental interest and duty to protect waters that play an important role in interstate commerce. Any burdens associated with these regulatory protections are temporary and monetary in nature. While the harm caused by water pollution and lost of wetlands is difficult, it's not impossible to reverse and very expensive at that.

It's entirely appropriate that businesses that exist to generate profit should pay

for the cost of preventing their industrial operations from harming waters. And those costs should not be shifted to overburden taxpayers.

If EPA is looking to reduce regulatory burdens and we have two suggestions for regulations that are creating unnecessary burdens and are not helping EPA fulfill its statutory duties to protect water.

Number one, EPA should repeal its regulations that allow states to adopt water quality standards variances. Variances served no useful purpose that isn't already served by compliant schedules, which are established in the ordinary course of permitting and only need to – five years when a permittee is required to go through a renewal process anyway. Variances create confusion, unnecessary process and serve no interest other than delay. They have to be submitted to EPA and revisited every three years, creating uncertainty and more work for everyone including the regulated community.

Number two, EPA should repeal its recently adopted regulation that (our) regional administrators and regional water quality division head from making the finding under Clean Water Act Section 303(c) that revise our new water quality standard is necessary to achieve the goals and requirements of the Clean Water Act.

This regulation removed a crucial tool from EPA's regional offices and local staff who are sometimes in the best position to judge the local needs of water protection. Forcing this process to go through to the few staff at EPA headquarters served no useful purpose other than to burden and delay the much needed process of updating water quality standards.

Operator: Your next comment comes from the line of (Steve Jackson) from SCAP.

(Steve Jackson): Thank you for the opportunity to speak today. This is (Steve Jackson) Executive Direction for the Southern California Alliance of Publicly Owned Treatment Works, SCAP.

We represent over 80 public agencies providing essential waste water service for 20 million people in seven counties of Southern California. Our issue of

greatest concern is an unpromulgated water toxicity test method being required by EPA and NPDES permits. The Test of Significant Toxicity or TST statistical endpoint has not been adopted into title authority of the Code of Federal Regulations Part 136, and therefore, should not be incorporated into NPDES permits.

The TST guidance was not promulgated through notice-and-comment rulemaking, and includes an explicit disclaimer confirming that the document is not a permit or regulation itself. Yet, the EPA has been incorporating the use of unpromulgated TST into NPDES permits.

Furthermore, the State of California working with EPA is in the process of adopting a statewide action that would require NPDES permittees to incorporate the TST. Through these actions, the EPA is exceeding its authority by using an unpromulgated statistical procedure. The false positive error rate, which is the frequency of incorrectly identifying a nontoxic sample as toxic of the TST is between 15 percent and 50 percent. This false positive error rate has and will continue to result an increased rate payer rate costs with no environmental benefit.

California has approximately 230 waste water treatment plants based on the range of false positive error rates. This regulation would result in an economic impact to the public, conservatively estimated a $20 million per year in California.

We are asking the EPA to issue a clarification that the TST is not promulgated under 40 CFR Part 136, and as such, should not be used to assess toxicity under the NPDES permitting program. This clarification should direct states to formally resend any previous violations, assess using the non-promulgated TST statistical endpoint. Thank you.

Operator: Your next comment comes from the line of Ward Wilson from Kentucky Waterways Alliance.

Ward Wilson: Greetings from the home of the Kentucky Derby and the Bourbon capital of the world. Thank you for the opportunity to comment.

Kentucky Waterways Alliance works to protect, restore and celebrate the waterways of our great commonwealth. We look to USEPA to set a floor of standards that we apply locally. Water regulations do impose some cost and time and money, but their benefits are even greater.

All along the Ohio River, our state's northern boarder. Cities use the river for drinking water, recreation and economic development. All of which are possible because the river is now much cleaner than it was before 1972. Let's work together in a meaningful inclusive process to make regulations work better to achieve their objectives, not lose the games that we already have won through hard work and expense. And this Saturday, when you're watching the Derby, remember those (inaudible) looks are made from clean water. Thank you.

Operator: Your next comment comes from the line of (Nancy Turek) from – representing self.

(Nancy Turek): Thank you for this opportunity.

Non-Hodgkin lymphoma, ovarian gastric and bladder cancers, methemoglobinemia, and birth defects are diseases that results in many burdens including human suffering and enormous cost for treatment, health care, and missed work. These are diseases that, in some cases, could be avoided if drinking water was not polluted with nitrates.

I would talk – like to talk about the burdens placed on people from unhealthy drinking water. Many people aren't familiar with the Flint, Michigan water contamination problem, which has yet to be fully addressed. Currently, much of the burden is on the families, the consumers.

But we live in Wisconsin, and unlike a city, our water comes from private wells. It has been known for many decades that over 20 percent of the wells in areas which makes agriculture exceed drinking water standards that were intended to protect human health. Treatment costs are shouldered by the consumer not the polluter, yet little is being done to enforce those health standards, which again bare cost for water treatment disease and health

insurance.

Pollutants like nitrates, pesticides and herbicides have been increasing in Wisconsin ground water. Treatment and replacement cost for individual and municipal well caused families millions of dollars annually. That's three times more to remove a pound of nitrogen from drinking water than it does to purchase the pound of fertilizer.

We cannot continue to place the burdens of water treatment and disease on individuals. We need to reform how this is handled. We need the EPA and the states to enforce the standards that are in place and substandards for the thousands of additional chemicals found in ground water that currently lack standards. Thank you.

Operator: And your next comment comes from the line of Marvin Wright Jr. from Pyramid Lake.

Marvin Wright Jr.: And thank you. I'm with the Pyramid Lake Paiute Tribe in Nevada. And I just wanted to acknowledge the work of the environmental protection agency with it in charge across the country.

Water is fishable and swimmable are the foundation of – for water quality. (Manageble) waterway, you know, certainly has to have the water, you know, to be (manageable). Those that know the hard work and struggled to achieve water quality systems know the danger of those and authority that do not know what hard work earns, you know, in earning our place in the quality ecosystem.

Reducing the regulatory burden should provide the proper designated authority to continue with the enforcement of water quality standards. And of course, controlling water quality standards are the only means to assure acceptable water quality for any water system that have no control, or reducing the regulatory enforcement can move pollution controlled backward instead of forward, or moving as sustaining water quality will not destroy any quality ecosystems.

Clean water is important to any reasonable person. The dependency upon limited water supplies create a natural response to protecting that supply legally and by managing it to exercise the right for entitlement or the purpose to use. The management of water supply is for purposes designated throughout a season of use and through the water here established the meaningful effort to restore and maintain aquatic ecosystems.

Human life has it's place in the life cycle. That lifecycle must – and the water management is important attribute to the balance of lifecycle with water use. Internal watershed is not like any other waters that flow into the ocean. This makes a great basin, important to sustain quality standards amenable to support life as we know it. The supply must balance with demand, all demands.

So, I just wanted to acknowledge just in closing that, you know, our tributaries falling into Pyramid Lake, you know, is really important that the regulations that allow the management, you know, continue and that things are not going to be turned back, you know, by the political forces and the political, you know, influences out there, you know, that ignore, you know, the importance of water quality. Thank you.

Operator: Your next comment comes from the line of (Jeff Dailey) representing himself.

(Jeff Dailey): Good morning. My name is (Jeff Dailey) I am from the State of New Hampshire. And I would like to address the fact that President Trump and Secretary Pruitt, if they roll back the EPA work to clean water sources, this will increase the health cost due to the contaminated water sources being consumed.

EPA and other agencies need to continue its research on emerging contaminants such as 1,4 Dioxane, PFOA, PFOS, PFCs, and the other recently recognized chemicals. Nothing has been done with the water act since 1996. Here in New Hampshire also the (inaudible) New York, we have serious water source problems with no real federal support to resolve the previously mentioned chemicals, including lead, arsenic and chrome 5 and 6.

Do not allow lobbyists or industry lawyers or industry to be involved with the (blue writing) or determination of future EPA rules on clean water. Clean water is life. You cannot survive without it. I thank you very much for this opportunity of making my comment. Thank you.

Operator: And you do have a comment that just came in from the line of Cheryl Nenn from Milwaukee Riverkeeper.

Cheryl Nenn: Hi. I thought I was on hold to make a comment. So, I'm not sure what happened. But thanks for the opportunity.

We are really concerned, as others have mentioned at this effort, to reduce, replace and modify regulations, target safeguards without fully considering the benefits they bring to average Americans like clean water and healthy communities. It's EPA's duty to enforce these safeguards like the Clean Water Act and not to make things easier for industry. Plus, the idea that environmental regulations are hurting business is an alternative fact.

In reality, there's ample evidence that environmental regulations greatly improve our economy, our health and our quality of life. And weakening safeguards like the Clean Water Act and common sense protections like the clean water rule would diminish water quality and lead to more erosion and runoff that would threaten the 3 billion lakeshore tourism economy that we have in Wisconsin, our 9.4 billion recreational boating industry, and movement of 7 billion in cargo through our ports.

In addition, hundreds and millions of people depend on clean water for drinking water, livelihoods and recreation, and we've benefited immensely from regulations reducing water pollution and would be very harmed by proposed removal of these regulations. Approximately, 83 percent of the citizens in the Great Lakes depend on public drinking water systems that rely in intermittent, ephemeral, and headwater streams. And those water supplies would be harmed if the clean water rule, for example, is revoked.

In addition, increases in polluted runoff to the Great Lakes from removal of regulations would threaten the drinking water supply of 40 million Americans

and Canadians. And we really can't afford another drinking water crisis like what happened in Toledo, Ohio in 2014, when as we know, phosphorous included runoffs for harmful algae blooms that shut down water supplies.

We've had similar close calls with harmful algae in Wisconsin, in both Green Bay and Lake Winnebago. And we need to be making sure that our water regulations are stronger and not weaker. In addition, the only entities that benefits from revoking or weakling regulations are polluters, and then the American public essentially has to pay for the financial and health cost of cleaning that up.

In Wisconsin, (inaudible) has just finished up cleaning a large portion of the Milwaukee River. And we removed over 180,000 cubic yards of contaminated sediments to the cost of 50 million. So, contamination always has a cost, so we must …

Operator: Your next comment comes from the line of Doug Krapas from Inland Empire Paper Company.

Dough Krapas: Good morning. I assume you can hear me.

We're located on the Spokane River in Washington State, that is a 303 (d) listed water body for PCBs. In lieu of the conventional TMDL process, our community has implemented a direct implementation plan referred to as the Spokane River Regional Toxic Taskforce to address PCB water quality concerns in the Spokane River.

The taskforce is represented by municipal and industrial permit dischargers, conservation and environmental interest in the state and federal regulatory agencies. It's evidenced from our analysis that significant contributions of PCBs to the Spokane River watershed originate from sources currently allowable under EPA's Toxic Substance Control Act regulations.

Studies by the taskforce show that allowable concentrations of PCBs and consumer products represent an ongoing source of PCB loading to the small Spokane River that through normal use, contributes to exceedances of the applicable water quality standards.

The taskforce has then identified numerous consumer products that contains significant concentrations of PCBs that pose a potential threat to human health and the environment, with pathways including storm water, industrial and municipal waste treatment plant discharges, and ambient contributions.

On November 28th, 2016, the EPA published revised Water Quality Standards for Washington State that lowers the PCB criterion, from 170 parts per quadrillion to 7 parts per quadrillion. The new water quality criterion is over 7 billion times lower than the 50 parts per million currently allowable for inadvertently generated PCBs under the Toxic Substance Control Act.

With this new rule, potentially every water body in the State of Washington will fail to meet water quality standards for PCBs. And this situation is not unique to the State of Washington.

The taskforce request that EPA evaluate and correct the discrepancies that exist between the Toxic Substance Control Act and the water quality criteria for PCBs based on the merits of the executive order in EPAs reference stockists. Thank you.

Operator: And your next comment comes from the line of Philip Cernera from the Coeur D'Alene Tribe.

Philip Cernera: Thank you. I am the Director of the tribes Lake Management Department, the Coeur D'Alene Tribe or those people that were found here, that create or put them on Lake Coeur D'Alene to protect this body of water.

Protecting human health and the environment is our paramount concern. The tribe has been at the forefront in this effort of protecting our natural resources in our homeland. In Idaho, polluters, with the support of the State of Idaho have called the shots and have trashed our homeland, and therefore, we are one of the largest super funds sites, a $3 billion cleanup effort that is spearheaded by EPA.

Clean Water Act regulations also are critical in this effort to clean up our basin. EPA is currently our biggest ally and its safeguards are critical.

Without EPA's regulation, we go back to the dark ages of unfettered pollution.

Our water system and Lake CDA, Coeur D'Alene is the economic strongholds of our regions. Without a healthy lake, all is lost for a healthy future, both economically and environmentally. Thank you.

Operator: Your next comment comes from the line of Danielle Cioce from Harris County Engineering Department.

Danielle Cioce: Good afternoon. Harris County Engineering Department has years of experience in water quality, as well as a member of the regulated community, and as a regulator. Harris County is our nation's thirds largest county in population and home to more than 4 million residence with over 1700 square miles.

In order to properly serve and protect our community and the environment, Harris County must comply with numerous regulations, including the CWA and state water quality protection counterpart, the Texas Water Code.

We submit the comments that follow for consideration. Number one, support the continued use of best management practices rather than numeric limits in stormwater quality MS4 permits. This has been a recent effort by the EPA to move towards an excellent limit standard for MS4 permits. However, the Federal Clean Water Act does not require MS4s to strictly comply with Chapter 33 U.S. Code Section 1311 B1C. Instead, Congress required MS4 discharges to "reduce the discharge of pollutants to the maximum extent practicable, including best management practices, control techniques and systems, design and engineering methods, and other such provisions as the administrator determines appropriate for the control of such pollutants."

Chapter 33 U.S. Code Section 1342P3B. Best management practices have been shown to be an effective way to improve water quality in our community. Numeric excellent limits for stormwater are burdensome for the regulated entity of the taxpayers.

Number two, support the incorporation of nutrient data with regards to

bacteria total maximum daily load. The relationships between that nutrient and bacteria is not explored in current TMBL (detector). It is challenging to address waters that are impaired for bacteria without all the science to understand the complex interactions that may make meeting the bacterial limit impossible. Regulations should be based on complete science for the benefit of the taxpayer. Thank you.

Operator: Your next comment comes from the line of Ian Lyle from the National Water Resources Association.

Ian Lyle: Thank you all very much. Appreciate the opportunity to comment today. And thank you for your work on Clean Water Act.

I offer these comments on behalf of the National Water Resources Association and the 20 plus million, our members to supply water too.

Our members are responsible, members of the regulated community, however, we feel that the Clean Water Act needs to be applied appropriately. We recommend clarifying that isolated non-navigable interstate waters should not be jurisdictional. Clarify that manmade irrigation canals, ditches and drains are not navigable waters and are not waters of the U.S. are non-tributaries and should not be subject to Clean Water Act jurisdiction.

Further, we believe that a clarified and expanded processes to preserve agricultural conservation practices and their exemption from Clean Water Act are continued. We also believe that a clarification is needed to make sure that jurisdictional impoundments do not include manmade off stream facilities that are lawfully appropriate and remove water from the environment, such as a drinking water system, offstream storage pond, a intake canal or a forebay at a hydroelectric plant. We also believe that we need to clarify jurisdictional tributaries are not limited to waters that contribute – are limited to waters that contribute direct flow towards additional navigable water.

We will file additional comments in the docket. And thank you again for the opportunity to comment today.

Operator: And your next comment comes from the line of Mitchell Reid from the Alabama River Alliance.

Mitchell Reid: Hello and thank you for taking my call and for giving me the opportunity to call in.

Alabama has over 132,000 miles of rivers and streams, and unfortunately, the current regulations do not go far enough to protect these waters. Some examples of these include routine failure to adequately regulate stormwater discharges, which is waiting to impairment, for instance, the Cahaba River near Birmingham, Alabama. And the failure to require permits be updated for what is often decades. And we're seeing this with administratively continued (colash) permits that have well over 10 years of expired time.

The last thing I would say is in response to the waters of the U.S. rule and previous comments, that if there is a connection to navigable waters or waters where people will be in contact with those waters, that water should absolutely be regulated, whether that is a tributary stream or where that that is a manmade conveyance that would carry water into a tributary stream or navigable water. There is, in my opinion, no safe place to dump pollution if that pollution is going to end up in the waters of the U.S.

Thank you very much and we look forward to participating further in the comment session.

Operator: Your next comment comes from the line of Emily McKee representing herself.

Emily McKee: Given comments from the top of the executive branch lately, I'm very concerned that reducing regulatory burden may mean actually review – removing environmental protections, as I know a lot of the other callers from this line have expressed. Removing protections may enhance short term benefits for some companies but it would extent. I actually enjoyed breathing clean air and drinking clean water and I would find it quite burdensome not be able to do so.

These regulations that we have to protect our air and water were developed to meet a need, namely this deep temporal discounting that we humans tend to employ. As an environmental anthropologist, I have seen how we tend to undervalue the future. We weigh down the short term end side of the scale when thinking about long and short term benefits.

This means that I'd favor the ease of dumping my own factory that's flowing in the streams today over filtering and processing it even if that affluent may raise my kid's risk of cancer. And the problem is that I can't necessarily know these long-term risks myself as an individual.

It takes some collective reminder that the long term effects of our actions to keep that scale balanced, and this isn't simply hypothetical. History has shown how necessary environmental regulations are. I don't want to return to the days when the Cuyahoga River was so slick with oil that it caught fire. And that's not ancient history. The river was burning in 1969 when my – the year my dad graduated from college.

So, thanks a large part to the EPA's regulatory work, the river is now home to dozens of species of fish, where 50 years ago there were none. And human nature hasn't changed in those 50 years. There are still both altruistic and more focused folks among us.

Just as importance, economic incentives through global competition for cheap products pushed companies to cut corners more now than ever. Cutting corners often means externalizing environmental cost. But if a business owner is not required to take class in terms of pollution controls, recycling, et cetera, there's others who will shoulder those costs. And it is usually those marginalized and disadvantaged among us, low income people and people of color who have to do so. Cancer Alley in Louisiana is a shameful example of how poorly companies may "regulate themselves in environmental matters."

The harmful effects of pollutants do not go away simply because we ignore them. Would like us to remember how burdensome a more polluted environment …

Operator: Your next comment comes from the line of (Gene Lumis) representing themselves.

(Gene Lumis): Hello. I'm speaking just as a private citizen with concerns about my country, my family and my friends.

I believe that America deserves to have clean water and clean air for its citizens now and in the future, and that we owe it to ourselves and the global environment to be good stewards of the earth.

The regulations are necessary to ensure clean air and water and I'm opposed to any actions that limit the ability of the EPA to ensure strong regulations to protect public health. Business and industry will profit – will be profit driven and they won't self-regulate.

Regulations won't kill jobs. Regulations will ensure that our water is drinkable and our air is breathable, so our public health is at risk. We can't put the profits of business owners over the lives of citizens. And I urge the EPA and the Trump administration to support strong regulations.

We can afford to turn back all the gains we've made, clean up the environments that we know are toxic. We can afford the increased cost of hospitalization that will come for citizens affected by the poisons we know that are present in our water and in the air. So again, I urge the EPA and the Trump administration to make our regulations stronger not weaker. And I thank you for the opportunity to comment.

Operator: And your next comment comes from the line of Valerie Nelson from Water Alliance.

Valerie Nelson: Thank you very much. The Water Alliance have worked with multiple stakeholder groups. The development of integrated water resource management approaches, one water where you bring water, waste water, storm water issues all together in one framework. And we've also trying to focus on non-point surface of pollution that are – were not typically part of the original Clean Water Act areas of concern. And we're also very interested in green and natural systems approaches to mitigating problems.

Our comment would be that the regulations developed sometime in the past do not necessarily match either the problems or the best solutions going forward. They don't typically allow for relatively non-conventional approaches such as natural oyster reef or wetland protection that nature can do as well as any kind of waste water treatment plant, for example.

So, I'd like to encourage EPA to continue its work in development of innovative consent decrease, where allowing for pilot projects and for non-point solutions, green and natural solutions have happened in some cities and I think that's a tremendous kind of flexibility and support for the optimal identification of the problems and the best solutions as they can evolve with demonstration and pilot projects. Thank you.

Operator: And your next comment comes from the line of Madeline Foote from the League of Conservation Voter.

Madeline Foote: Great. Thank you so much. My name is Madeline Foote and I am testifying on behalf of the League of Conservation Voters over a million members nationwide.

The EPA's mission is to ensure that all people in this country are protected from significant risk to human health in the environment where they live, learn and work. We haven't even come close to accomplishing this goal yet. Too many communities, often low income or communities of color, still lack access to clean air and healthy water. EPA needs to step up its game, not eliminate protections that ensure that all of us, no matter where we live, work or learn are protected from risks and have access to clean water. We can't afford for the EPA to pull back on its mission.

Often, communities with the least power bear the brunt of pollution and impaired public health after decades of policies located polluting facilities and other industrial activities near their homes and schools. These communities need a strong and robust EPA to stand with them to create a floor through common sense, guidelines to ensure their cities and states don't sell their health to the highest bidder.

The last thing we need right now is for EPA to consider weakening the safeguards that protect these communities and all of us from polluter's efforts to jeopardize our water and damage our public health.

We've seen one happens when access to safe and clean water is interrupted as it was in Flint, Michigan. Life is interrupted, business and schools are shattered, families have to spend money on bottled water for cooking and bathing or drive miles and miles to find access to clean water. In some cases, low income families and those who aren't Native English speakers haven't even been aware that their drinking water was compromised. The social and economic toll of dirty and unusable water is massive.

Instead of eliminating regulations, we urge the EPA to spend its time and resources on exploring how to protect clean water for all communities across the country. Thank you.

Operator: Your next question comes from the line of Stephanie Madsen from At Sea Processing Association.

Stephanie Madsen: Yes, good morning. I hope that everyone can hear me. This is a little bit awkward. I'm calling in from Alaska.

I understand people's concern about drinking water for sure, but I'm a little disappointed that EPA doesn't (been) some of the regulatory programs for people to specifically comment on their program. We certainly don't want to roll back clean water regulations, but there are burdensome regulations for my industry which is a fishing industry that doesn't go towards protecting your clean water but increases the cost of operations, particularly in compliance not in regulating clean water.

So, I think this would be a much better process if we look at the different programs and you've been them according to the regulated industries' concerns. I certainly appreciate and respect people's concerns about drinking water in other parts of the country. I think if the regulations were working, we wouldn't have those problems. So I'm not sure it's the lack of regulations that are causing the problems.

So I would appreciate EPA being a little more strategic in their request for regulatory burden comments versus just opening it up why, because I think a lot of things are being confused here. And I certainly don't want my comments to be interpreted as relaxing drinking water regulations, but the regulatory burden to some industries is quite high. Thank you.

Operator: And your next comment comes from the line of Julia O'Neal from MCSC.

Julia O'Neal: The Mississippi Chapter of the Sierra Club. I live on the Gulf Coast, and for seven years and counting, we've been coping with the (B.P.) oil spill. It killed many animals and it corrupted the sound waters of the Mississippi sound and the entire Gulf Coast in many other states.

So, I'm speaking just as a observer that if we want to have water that we can drink and swim in and cook with, then it's going to be much more expensive for taxpayers to revoke the Clean Water Act. They will have to figure out locally how to clean up water that industry has happily and cheaply polluted.

If industry has no responsibility, then why do we have government? I know that the current number 45 and (through it) want to get rid of government and this will certainly do that and excellent way to do it. Welcome back to the dark ages as one of the earlier speakers said. It's going to increase all of our cost health wise. If we leave our water polluted and drink it and eat it, but we're going to have to clean it up and it's going to be local that we're going to pay for. Thank you.

Operator: And your next comment comes from the line of (James Hui) from University of New Hampshire.

(James Houle): Hello. Yes, my name is (James Houle). I work at the University of New Hampshire. And specifically with the stormwater center, we've been researching stormwater issues for over a decade and a half. And I just wanted to bring to like two things that I haven't heard discussed. So we value clean water as well and it's in our mission. We're dedicated to it. But I wanted to talk about three particular things.

One, originally, we were funded by the National Oceanographic and Atmospheric Administration, NOAA, and we simply became aware of the division and ambiguity that exists between the two federal mandates between EPA and NOAA. And so, we'd really like a scientists, we'd really like to – for EPA to understand that land work issues quickly affect and contribute to coastal issues and more effort. I know some effort has been done, but more effort to really integrate, these land work and coastal issues should be addressed.

Another term that is of concern regarding policy on water infrastructure is particularly with respect to stormwater management. It's a fact that much of our existing infrastructure especially in the eastern seaboard is half a century old or older. And if we're going to invest in infrastructure upgrades, either (planned) or social response to catastrophic failures like hurricanes, then we need to make sure that the latest and greatest science and best management practices are being implemented. To be clear, business as usual, likely represent practices that are over a half a century old.

(And note), much of the testimony offered today presents a duality, either for or against, or for clean water or against over burden some regulation. And in fact, I want to present an alternative that scientific technology with respect to non-point source control especially with respect to stormwater management is evolving and has changed and is rapidly developing.

New innovations from implementation are coming out that clean water better and are cheaper to implement, and that also has to be considered as well. So regulations need to be flexible in order to incorporate these innovations that are adopting over time. Thank you very much.

Operator: And your next comment comes from the line of a (Bob Hoffman) representing himself.

(Bob Hoffman): Yes. Hi, can you hear me? My comment is in how this entire conference is being framed as reducing burdensome regulations. Regulations are not burdensome. They are protections for consumers so that we can have clean water. Regulations are necessary component in our society. Without

regulations, then for profit entities will simply (collude) at will without any sort of repercussions, our health, the health of our children and our grandchildren is at stake.

I beg the EPA to stop deregulating existing system and, in fact, add more regulations because all of our water is polluted. We are being poisoned. And I can point to any number of ways we're being poisoned everything from nuclear ways to extractive industry pollutants from fracking that use chemicals that are known carcinogens, waste from a public systems that are poorly managed, that are dated, not the list of which is laid in our water.

I fail to see how deregulation does anything except poison more people, as well by maintaining regulations and putting (bar) into play. We are actually creating jobs by importing – there you go. OK. What can I say?

Operator: And your next comment comes from the line of William Hannemann from Aqualete Industries.

William Hannemann: Hello, and thank you for taking my call. He'd never cease to amaze me as I've been in construction for the last 45 years, the amount of advancements in technology on the job site. The masons get out of their car, they bring the tools, they bring the lasers, they can build a concrete wall accurate within a quarter inch of a half a mile. Everybody is walking around the job site with cellphones talking to their relatives in Europe. The technology use to check the airflow on the buildings. But what do we bring on the job site to protect the most precious natural resource water, bales of hay and (platter) bags.

I think that it's time that we step up our technology. And when the – we start to deal with the regulations, we make sure that we are not deregulating the law set there in effect regarding storm order and job site runoff. For sediment and hydrocarbons that are washed down the street and into our water ways. It is essential that we keep these in place and – but we can also streamline the regulatory process and we can streamline the inspections.

Most of the soil conservation districts are overwhelmed and do the best job they can, but they are very, very overwhelmed. I think it might be possible to

incorporate the township plumbing inspectors into these regulatory bodies into their on-the-job site any way, and pumping order and plumbing as part of their expertise. I think it would be excellent if we could use that. So I think that if we could incorporate – I think it would save some money to incorporate the plumbing inspectors along with the other regulatories to do some cursory inspections and we can truly work on what you're trying to accomplish here which is to – it avoid multiple inspections and multiply layering of regulations that's really causing us money. And that's my comments.

I just want to clarify that the company I was -- (really the) comments here, representing the Aqualete, A-Q-U-A-L-E-T-E Industries, we're in New Jersey. And I hope everybody got my comments before. If anybody didn't, if you'd like me to repeat them, it's basically says that the technologies that we've made in so many other areas of the – of construction industry has been excellent. But the advancements that have been made in the water treatment industry are still back in the dark ages.

We're still using (platter) bags and bales of hay to process the water that's discharged from job sites foundations and so forth that should be – and the law had clearly states EPA that was passed. And I believe in May 8th, 2015 or '14 clearly states that that order must be treated before it's discharged. These laws are not being enforced by any stretch. I think everybody would agree with that.

And that we really need to step up our inspections on that. But one of the ways that we could do that was how to over burdening the regulatory body is to possibly incorporate that into the plumbing inspections of the houses. If we can incorporate that into the national code enforcement division, that would allow the plumbing inspectors who are already inspecting the pipes and the boarder and so forth and already have expertise in this field, they're on the job site anyway. And that will be part of their inspection and that would relieve the regulatory bodies not to have to stop by at every job site and every building under construction and they can then concentrate their efforts unto other areas.

And I think it would be a great relief both for regulations, not that we relieve the regulations but – one of the problems we have is the soil conservation districts are overburdened with what they have to inspect. And this would take the old construction industry and free up all those inspectors to inspect other areas more effectively.

Operator: And your next comment comes from the line of Rob Moir from Ocean River Institute.

Rob Moir: Hello. I'm Rob Moir from the Ocean River Institute up in Cambridge, Massachusetts. And I would urge, you know, given the state of our water ways, the EPA should be fully funded. When Congress fail to pass a bill to give funds to municipalities to test for the drinking water for harm for chemicals, you know, the EPA was all that was left to help us out with testing for that.

We just had a study of drinking water in the thousand schools in the Boston area of Massachusetts and majority of them had led in the water. But we wouldn't know unless funds a spent to test this. So it's very important.

Time and time again, we see the EPA working with businesses to help them find ways to reduce their pollution. Please, fully fund the EPA.

Operator: You're next comment comes from the line of (Karen Melubam) from Environment Now.

(Karen Melubam): Hi there, this is (Karen Melubam) from Environment Now, calling from the city of Los Angeles, California. We are the largest city and the second largest county in the country, 4.5 million people lives in the city of Los Angeles, 9 million lives in the country. And as many as you know we've experience the historic drought here in California over the past five years, only recently experiencing some relief.

But I'll tell you a story about how we've change our dependency on water supply during drought years when we cannot import water to Southern California because of drought which happens cyclically and more often here in California in recent years. We depend more and more on ground water.

And when we look to our groundwater basins in Southern California and Los Angeles, we find decades upon decades of pollutants in our groundwater basin. Industrial pollutant and in the (peripheria) of Los Angeles out into the agricultural area, we find legacy pollutants from the agricultural sector.

The reason that pollutants are there was because regulation failed us for decades. This means that we have to spend more and more money, (rate) care money on cleaning up those groundwater aquifers, have the regulations been enforce to begin with than we would have had clean water available to us.

These expenses hold disproportionately on poor people throughout the basin. And we need the help of the EPA to not only enforce regulation but to work equitably with rate payers to clean up and protect their groundwater resources moving forward. I not only support the continued issuance and enforcement of regulation. I believe the EPA's office needs to be better funded and the state agency that carries out a lot of their regulations must be better funded as well.

I know that here in Los Angeles Country, we have 3,000 permitted industrial facilities. We have between 6,000 and 8,000 un-permitted facilities that contribute to the pollution.

Operator: Your next comment comes from the line of (Ann Hatwain) representing herself.

(Ann Hatwain): Hi, yes. I just wanted to say that I agree with everything that the previous speaker said about we don't – we need to maintain all the regulations from the EPA and support with budget items in the budget, both at the federal and state and local level. And we don't need to repeal any of the regulations. What we need to do is strengthen them and make sure that this country has clean water for everyone, both in the city and in the country and in all the states.

So again, I'm just supporting the EPA and all of its regulations. So please make note of that. Thank you so much.

Operator: Your next comment comes from the line of Scott Yager from the National

Cattlemen's Association.

Scott Yager: This is Scott Yager from the National Cattlemen's Beef Association. Our organization represents the whole cattle value change and cattle expertise goes all the way to the retail side. We represent mostly (cattle) producers, feedlot operators, stockers, and these are folks who are (raving) down those on the ground. And we've been through a lot of (inaudible) issues on their behalf.

Cattle producers biomark one (on March), want an healthy environment and then personally invested in (inaudible) and water clean for their kids and grandkids. Conservation programs are especially useful to them and provide them a flexibility they need to make smart conservation decisions.

I think the conservation we're having here today is a really good one to start to ask. And it's not just about rolling back the regulations. I think that's part of it but it's looking at current programs to figure out how do we streamline and how we make them easier and better for the regulative entities to comply with them and for them to execute programs and packages on their operations that will help not only through environment but only group to the bottom line, which is really vital that culture industry and you have futures who are really living year by year on the margins.

So with that I want to say, therefore they are working together with the EPA and I would urge the agencies to listen to the voice of producers and to hear what they're saying, and to really try to work together collaboratively with them to figure out way to solve some major issues. Thank you.

Operator: Your next comment comes from the line of (Bob Weaver) representing himself.

(Bob Weaver): Thank you. I urge the administration to continue funding support for the National Pollutant Discharge Elimination System Permit Program. And to rely on that for both short term and long term requirements and to dispense with the use of civil consent decrees for implementing or, yes, for implementing long terms schedules for publically owned treatment works.

The use of long term – the use of consent decree, so a consent decree has been misused by many prior administrations, Republican and Democrat, and both the administration and the Congress must spend more funding into the NPDES Permit Program as administered by many or even most of the states. Thank you very much.

Operator: Your next comment comes from the line of John Hill from the Board of Church and Society.

John Hill: Good afternoon. Thank you for holding this listening session of the chance to make comments. My name is John Hill. I serve as the Director of Economic and Environmental Justice for the United Methodist Church's Board of Church and Society. Our church has around 7.5 million members across the United States and another 4.5 million who was outside of the U.S.

When our church gathers every four years to take official statements, we have a number that express our belief in water as a sacred gift from God, and our responsibility is stewards our God's creation for protecting and rightly sharing that gift of water. Our policy is clear and opposing effort to privatize or monopolize water and it clearly calls on government at all levels to make transparent in community-centered decisions around water use.

A lot of our members are front line responders in times of disaster, both natural disasters but also human-created disasters like those of Flint, Michigan and Charles West Virginia, for people particularly those with least resources have been expose to dangerous toxins. And who's lives have been abandoned because of the failure of government to properly regulate and properly fund clean water systems.

We have worked with EPA in the past and we are hopeful to do so going forward in support of strong regulation to protect God's people and God's planet. In addition, we support full funding for EPA to carry out its vital mission. We know how critical water is for the help and well-being of our communities and all the creation. So thank you again for the change to make these comments and look forward to strong efforts by EPA to protect God's gift of water, thank you.

Operator: And your next comment comes from the line of (Mary Neggy) from – representing herself.

(Mary Neggy): Hello. My name is (Mary Neggy). I'm a graduate student in public health, going to U of M. I have learned a lot in the last year about what the EPA does and their mission, and how successful the Clean Water Act is in for example. And I've also learned a lot about what happens when companies regulate themselves and it's frankly terrifying, and I think that the EPA has a very important mission and I don't think that air regulatory policy be diminished in many way. If anything, I think it should strengthen and that is what I have to say.

Please keep doing the good work, EPA. That's all.

Operator: Your next comment comes from the line of (Arianna Suttengrare) representing herself.

(Arianna Suttengrare): Hi, thank you very much. I am (inaudible) Ecologist and an Ecosystem Ecologist. And one of the things I wanted to say particularly about the Clean Water Act is that, this is one of the strongest piece of legislation we have that actually protect wetland in the United States. And we lands provided tremendous amount of value to the American public, (someone in) ecosystem assessment gave wetlands a value of $15 trillion that was back in 1997. So obviously, those – that value would probably even greater today, actually hard to put an actual estimate on these things.

But in terms of reducing things like the severity of hurricanes, et cetera, there's another $22.2 billion per year that U.S, wetlands provide to the United States. And so, because of the Clean Water Act is such an important part of the way this country protects our wetlands, I am very much against any changes in the Clean Water Act without very careful assessments of what kinds of impact that would mean for both the Clean Water Service which we haven't even spoken about, but also all the other benefits that wetlands provide to the American people.

And so, I am very strongly oppose to changes in the Clean Water Act which is one of the federal pieces of legislation we have in this country and quite honestly has been the model from any other countries as well.

My experience with the Clean Air Act is a little bit less related to my own profession, but I also very interested in the protection of the Clean Water Act – sorry, the Clean Air Act. And in particular, the more recent advances in terms of thinking about regulating carbon dioxide through the Clean Air Act. Carbon Dioxide in excess is a pollutant and it should be regulated like any other pollutants and it is causing tremendous harm already to the planet. Mostly in the United States, we are seeing that in terms of changes in precipitation patterns. We're seeing increase drought and we're seeing more severe precipitation in many cases.

And we are then also seeing obviously raise or sea level rise that are increasing and beginning to affect many, many communities that previously did not ever experience flooding. We're having flooding not just from major storm events from also nuisance flooding. So you're getting regular blue skies, beautiful day flooding of coastal communities and all of that is related the building greenhouse gases in the atmosphere.

So again, EPA, you've been doing a great job on implementing this very (inaudible) amount of legislation in the country. I don't want to see it weakened in any way. And we need to be very careful as we make any changes in the regulations that EPA enforces because all of them have been put together based on very sound science by most community science. And so, it's very important that we not weaken this key legislation. Thank you.

Operator: Your next comment comes from the line of (Cynthia Hagre) representing herself.

(Cynthia Hagre): This is (Cynthia Hagre), I'm an Aquatic Ecologist. And I've worked for many years in areas related to wetlands, surface waters, et cetera. I don't support any kind of weakening of any regulations with EPA. Currently work – has in place and in fact believe that we should be strengthening regulations and working harder at some mandatory controls for nonpoint source solutions

including from agriculture. Thank you.

Operator: Ladies and gentlemen, as a reminder if you would like to make a comment, please press star then the number one on your telephone keypad. That is star one to make a comment.

Your next comment comes from the line of (Mike Swarovski) representing himself.

(Mike Swarovski): Hi, this is (Mike Swarovski). I'm representing myself having dealt with the EPA for a long time. I would very much hope that we could take the regulation and if it's something that's required every six months, make it a year if it's something that's year, maybe make it 18 months, to try to reduce the reporting burden that is just choking America. If we could just not demanded in such a frequency, I guess that would be – that's the word. If it's something that has to be, you know, we're got to do all the tests and everything but if we could still push back so we could have a 50 percent or something less frequency, it would be such a help to America.

Again, nothing would change the quality of the water, wouldn't change. It's just the burden that the EPA just annihilates people with. If they could just, you know, help us with that, instead of every six months a year, instead of every year, every 18 months, it would be a great help. Thank you very much.

Operator: And your next comment comes from the line of (Robert Wayland), also representing himself.

(Robert Wayland): Good afternoon. I'm quite concern about reducing regulatory burden and at the same time reducing environmental protection. I think EPA's regulation is generally have been well thought out. I had been subject to extensive public comment in many cases. They've been litigated. Usually with both sides that is – those from industry and those from the environmental community represented. And we still have a lot of work to do to have our nation's water meet the statutory objectives of the Clean Water Act.

I have been off and on for the last seven years working as a volunteer member

of the Virginia Water Control Board, and the Chesapeake Bay executive committee advisory committee. And I know we have a lot of additional work to do to allow Americans to enjoy the many services that are provided by surface water and by wetlands. And I thin that there should be a very careful look at proposals to reduce burden, to ensure that they don't have the same time reduce the protections that all American deserve and most Americans want. Thank you.

Operator: Your next comment comes from the line of Kathy Phillips from Waterkeeper Alliance.

Kathy Phillips: Thank you. I'm a coast keeper with Waterkeeper Alliance. I'm from the Eastern Shore of Maryland. I do not support any weakening of EPA regulation and in fact I would like to see better controls of non-point sources through EPA, particularly as it relates to agriculture. That is the number one source of pollution to my water shed and to the Chesapeake Bay watershed.

There are too many exemptions given to ag compared to other polluting industries. I think that we need all the current Clean Water Act protections that we have right now. This is important in my watershed especially protections of water, of wetlands, for this low coastal community of mine, on the eastern shore of Maryland is our last line defense against sea level rise. We'd not want to see any regulation rolled back on protecting our wetlands.

Back to agriculture again, the Clean Air Act, ammonia disposition is also one of the largest contributors of nitrogen to My coastal water shed as well as the Chesapeake Bay watershed. I think there's – encourage by recent legal decisions to have EPA monitor and regulate ammonia emissions from combined animal feeding operations.

And I would just like to end by saying that sea level rise is a major concern, salt water intrusion into our drinking water is a major concern and coastal resiliency is the best way to protect the economies of these coastal regions. I think that the EPA has been doing a fantastic job so far, the men and women who've work within the EPA have always been very helpful to me when I've had to contact them on issues. And I just want to say thank you EPA and to

our current administration and to those listening in on this call, I support protecting the EPA, the Clean Water Act and the Clean Air Act. Thank you very much.

Operator: Your next comment comes from the line of (Jennifer Coffey) from ANJEC.

Jennifer M. Coffey: OK, thank you. This is (Jennifer Coffey) from ANJEC, the Association of New Jersey Environmental Commissions. I would like to say that we oppose any roll back to the Clean Water Act or any EPA regulation. This phrase reduce regulatory burden as a euphemism. And it comes from Governor Chris Christie here in New Jersey. We have seen it before. And what it has translated into is roll back and protection for drinking water, for clean air, for soil erosion.

It is not acceptable to happen at the federal level. We need if anything stronger rules and regulations to protect the water we drink, the air we breathe and the food that we eat. I want to echo the comments of several people before me and say that the clean water act is essential and could even be enhanced in terms of its implementation for agriculture in nutrient management, manure management, paying more attention to sea level rise that is happening as for climate change. We are seeing it happen in our coastal community such as New Jersey, the South Jersey bayshore, the Atlantic coast.

We are our lands eroding. We are doing work to try to fortify out wetlands. We are seeing our community wells being infiltrated with ocean water because it's coming in further and faster than we've ever seen before. We have drinking water issues in New Jersey. Some of our lead levels are higher than they were in Flint, Michigan.

So to have a conversation that implies anything, that indicates any kind of a roll back in monitoring measurement, public access to data, information. Where standard is completely unacceptable to us and those that we represent. And so thank you for the opportunity to speak and again, also echoing the comments of others.

I'd worked with EPA for a long time and there are staffs at the EPA New York

Headquarters in D.C. and I know in other places that do a fantastic job in providing resources, expertise, counsel …

Operator: Your next comment comes from the line of (Rebecca Rotor) from – representing herself.

(Rebecca Rotor): Yes, thank you for the opportunity to speak. I have not prepared my comments. I am very concerns that there's no weakening of any environmental regulations, especially pertaining to water and air in my case. I'm a Pennsylvania shale gas refugee. I live in a rural country, South (Rohana) County

I had organic chemicals in my well water. I had documented impacts (inaudible) in science from flaring at Wellpass that happened 1,800 feet from my house, from using (inaudible) PM 2.5 spec monitor that documented very high levels of PM 2.5 which I think most likely came from one of the natural gas compresses, processing in this extraction field gas.

I feel that EPA does a wonderful job. At the end of the day, that's all I had, to reach out to protect my health, my air and my water because rural communities fall through the crack. And I am against any additional consideration being given to industry to roll back regulation, because that's going to translate into people getting sick like myself, because the environment, protecting the environment is protecting public health. Thank you.

Operator: Your next comment comes from the line of Susan Masten representing herself.

Susan Masten: Hello. This is Susan Masten I'm an Environmental Engineer, has been working in the field for over, almost 40 years now, which is frightening. Live outside of New York City, can remember the smog and the asthma attacks that I had because of the smog.

I want to, (of course), offer my thanks, gratitude (inaudible) with EPA for all of the regulation for their own place that have improved public, improve the

environment and I want to request that no additional weakening of regulations being made. EPA is there to protect public health, to remember what life was like before the EPA. So even now, it's clear that there are significant numbers of death still due to poor air quality.

There still issues with our water quality. We need to protect our air. In terms of CO2, CO2 is clearly a pollutant, correlation to CO2 level. And I mean, sea level rise, have a T-value of less than 0.0001, correlation to explain CO2, and already excited to also have a T-value of less than 0.0001.

So we're on almost unbelievable correlation between sea level rise and C02. We know the reasons for this. We understand the science. It's time we at, thank you.

Operator: Your next comment comes from the line of Ryan Sinclair representing himself.

Ryan Sinclair: I'm a Environmental Microbiologist that work as an Assistant Professor and Loma Linda University. And right now I have a project out in some of the tribal lands around. And I wanted to say that I'm against reducing any regulatory or even any attention to the Safe Drinking Act. I go out to this, tribal areas and I measure drinking water and, you know, the EPA regulations are great.

But I mean, if this people can't meet these regulations now and they don't have safe drinking water, what it the regulations and requirements were, you know, somehow ease up. And we wouldn't even have leg to stand on when we're approaching the environmental justice issues for these tribal communities.

So, yes, I'm against – against any repeal or revisions and if anything, there needs to be research but effective indicators, microbial indicators to this, to monitor drinking water. Thank you.

Operator: Your next comment comes from the line of (Kathryn Thomas) representing herself.

(Kathryn Thomas): Hi, I'm an Aquatic Scientist with an environment law background. And

over my 40 year career, I have worked for a variety for entities including watershed, a major water supply, utility for East Coast city, state and federal river conservation programs.

Like some of the others on this call, I'm often asked to remember the world Free Clean Water Act and free most of our other environment laws. I spent my childhood and teen years living in world without these laws. I object to characterization of this inquiry on it's phase, that the term regulatory burden implies that there some sort of unequal attention being placed on private industry that is not fair. And I think we have to stop (commoditizing) air, clear air and water. And we have to in capitals, capitalistic system, expect that any business that uses public trust resources such as air, water and land if required to internalize the externalities they place on those resources.

That means they do not get to keep all the process while expecting the public to bear all of the burdens of anything that they do to these resources, so thank you.

Operator: Your next comment comes from the line of (Emily Summer) representing herself.

(Emily Summer): Hello. I'm (Emily Summer). I'm an instructor for the Alabama Real Estate Commission and have been practicing real estate (inaudible) since '81. I'm also on the advisory council for local clear water organization called Dog River Clearwater Revival.

We do not need to throw back any of the regulations where you have scene that benefits of clear water and clear air here in Mobile.

The problem is that the children are being educated K through 12 about environmental issues with there as I said lack among adults. I teach them in the (will to) continuing education classes and then this news to them about clean water and clean air. So we need to put a bigger push on educating a general public but we did not roll back any regulations. Thank you.

Operator: Your next comment comes from the line Faith Zerbe with the Delaware Riverkeeper Network.

Faith Zerbe: Hi. Yes, I'm biologist with Delaware Riverkeeper Network, I've been doing this work for about 20 years. Before that I did private consulting for about four years related oil soil response in national research damages assessments. And clearly this is far as this idea regulatory burden to protect our air and our water, which again we cannot have a state economy, a healthy environment if we do not have a clean air and clean water.

Here in Pennsylvania where I have lived pretty much my whole life, we look to the APA to really help us to enforce the rules that are available to us. And where soft of few like extraction has clearly left, abandoned mine drainage in rural communities and people who are very sick in rural communities of Pennsylvania, who look to the EPA to often step in and to be that voice from a community perspective also with NEPA and other rules by having the ability to work with various agencies as the community. We have the ability to look at things like pipeline, the fracking pipelines that are coming across Pennsylvania and the more south chill region right now, really big issue.

The methane emissions with GPA had been regulating and now there is a step back, another really big issue. So certainly we need to be strengthen to these rules and any point that these rules are burdensome. Again, it's a policy and it's not true because of anything we need think. So thank you for the time.

Operator: Your next comment come the line of David Loveday from WQA.

David Loveday: I'm Director of Government Affairs for the Water Quality Association. We represent the water treatment industry for residential, commercial and industrial. We also represent dealers and install water treatment.

As more contaminant are found and more emergency contaminants are become regulated, we think that our products have been brought in as to create and remediate these contaminants. We run the ground on Flint, Michigan. We have products in the ground now and Petersburg, Milwaukee and other communities.

So we would like to see this as continue use our product as short term, in

some cases maybe a long term solution in rural and this advance communities. So please keep this type of treatment in mind as you – as we find the contaminant to the emerge contaminant. Thank you.

Operator: Your next comment comes from the line of (Mark Selinger) from the Slump School. (Mark), your line is open.

(Mark Selinger): My name is (Mark), I'm at the Slump School. One thing I'd like to offer up is, one way to reduce regulatory back log with Clean Water Act with reestablished the Army Corps of Engineers, (certified with the) linear program that was around in the 1990s. The idea was a test program was to basically -- to attempt to privatize the wetland delineation process. And the press idea behind this was enable highly trained certified professionals to undertake the rule which is currently filled by Army Corps of Engineers.

And this new idea would basically be for the cordial to kind of take a back seat to this delineation process and basically simply administer certification programming get out of the jurisdiction, a real process entirely. Private sector developers currently enjoy the benefit that the U.S. tax payer covers all the expenses related to these establishments but what with boundary by the core. By transferring this rule to private professionals developer can cover the course associated with this effort rather than the taxpayer.

As they are benefiting from one of the project profit regenerate, it seems reasonable to expect as they could cover this expense. And so now that we save the tax payer money, it will also generate jobs and also with this (inaudible) will be subject to income tax, and that effect is a government revenue with the lot. One other benefit is that the private sectors that are able to handle the work volume and the turn around time with jurisdiction determinations can play with the increase.

And one of the biggest complaints is the construction relates as results of U.S. on credentials back logs as one of the biggest challenges facing in the developments. Thank you.

Operator: Your next comment comes from the line of (James Cleghorn) representing

himself.

(James Cleghorn): Hi. This is (James Cleghorn) living in Maryland now formerly at Western Pennsylvania in the fracking fields. I did submit written comments.

The first thing I want to say is that I just heard about this conference call here today 20 minutes ago then I would encourage GPA to do this again. You need to hear from the voices of people who are affected by regulations that are right now good but not good enough. There is no – there is no validity to the premise that this regulations are burdensome if they don't need to be made less burdensome. If anything else, they need to be improved upon and tighten but the industry has been at the table every single time or DPA regulation has been formed as we can do to the best of their ability.

And now they want to weaken that more with this red hearing that there are burdensome regulations that are affecting them. So my point here in addition to what I've submitted in written testimony is that, this listening session needs to continue. What I've heard here is just about everybody is say that it is not burdensome that we need to in fact preserve the regulations that protect our environment. Thank you.

Operator: And your next comment comes from the line of Jenifer Collins from Earthjustice.

Jenifer Collins: Hello. My name is (Jennifer Collins) and I'm an associate legislator representative for Earthjustice. I appreciate the opportunity to speak today, I grew up in Florida and my childhood was been spent on the water.

From the time as I was graduated from college, I lived within walking distance of lake or river. But even as I appreciated the beauty of my local water ways, I saw signs of environmental problems. From water quality advisory posting to the smell of algal blooms and fish kill.

Unfortunately that reality is not uncommon, with some 46 percent at our country streams in rivers and 32 percent of wet lands and poor condition unfit for swimming, drinking or fishing. The EPA was created and went to laws

like the Free Water Act were pass because unchecked pollution was impacting the lives of families, businesses and communities like mine.

But I still want to do, we made great strive and cleaning up our water in promoting public health for growing the economy and strengthening small businesses.

Common sense that all safe guards to help space and municipalities control and reduce the pollution of our rivers, lakes and bays as vital to the health of these communities.

The conversation we need and should be having now is how to strengthen landmark safe guard like the Clean Water Act and common sense protection like Clean Water Rule. More than 117 million people get their drinking water from store that (inaudible) streams that are protected by the Clean Water Rule. Yet, instead of insuring that these sources of drinking water are clean and safe, our elected officials are doing everything they can to make it harder to protect free water and public health.

We know that it is not the – in the interest of polluters to police themselves, strong safe guards from EPA and other agencies ensure that polluters can't simply process to poor people and when they do, there are consequences. Communities need strong and robust EPA to stand with them and create common sense safeguard, not with move protected regulation. Thank you.

Operator: The next comments come from the line of Ben Alexandro from the Legion Association.

Ben Alexandro: Hi. This is Ben Alexandro from the Maryland League of Conservation Voters actually. And basically we're more worried about drinking water than we have been for year.

So when looking at the disasters in Flint, Toledo, Charleston and many others, it's clear that we really need to be discussing how to strengthen our protection not weaken them. Because often it's communities with the least power that really bear the branch of the pollution, the effects of entire public health and

water pollution. So we really need to be talking to how we can strengthen landmark safeguards like the Clean Water Act and the Clean Water Rule, et cetera.

And from perspective here in Maryland we've had a huge effort to restore the local rivers and streams in Chesapeake Bay. And these efforts are working, you know, the bay started to come back with the (head stone) starting to shrink, bay grasses are starting to re-grow, bull crab is starting to come back, et cetera. And this bay is the huge economic engine of the state and the whole, you know, Mid-Atlantic Region.

But this recovery is fragile and it's not a long way to go. So, it really mean in enforcing existing regulations is incredibly important as most cost effective way to reduce pollution. And the economic benefits that we get far that way at any sort of that cost burdens with them. So, we really need strong regulations to protect the health and welfare of all Americans and I hope that we can have that conversation soon. Thank you very much.

Operator: The next comment comes from the line of Diana Mahmud representing herself.

Diana Mahmud: Yes, good morning, at least it's morning here in Los Angeles. I am speaking for myself although I am an elected council member for the city of South Pasadena. I'm chair of the San Gabriel Valley Council of Government Water Committee. Our council of governments represents 31 cities and in our region, the cost then as four compliance is $6 billion. The estimated cost within the 88 cities of L.A. County is $20 billion.

In one of my region smallest cities, within my council of governments, the cost is estimate at $1 million per resident. Part of the region the cost is still high is that 33 (PMDLs) had been identified in our (MS4) permits based upon dubious science.

The cost is absurd in Los Angeles County because we are essentially being required by our local water quality control board to capture and infiltrate storm water within our respective jurisdictions. This in turn revolts in cities

being required to do such things as digging up parks, building a substructure within the parks and then replacing the lawn. I should mention that to estimate the cost that I have cited are capital cost only, they do not include operation and maintenance.

We are prohibited from using existing flood channels which are concrete line structures because they are considered (wodust). We have little control over the pollutants in our storm water. We need to strengthen regulations to require more robust science in establishing water quality objective. In a workshop scheduled later on this week, a (303D listing) is based upon a single water sampling. We need to codify in regulations, EPA Financial Capability Assessment Guidance for (MS4) system to make consideration of the guidance mandatory, where an existing water way has been dramatically altered here in Los Angeles County over the decades by concrete lining. We need to …… from the definition of (wodust). Thank you very much.

Operator: The next comment comes from the line of (Jenny Neumann) representing herself. (Jenny), your line is open.

(Jenny Neumann): Thank you. My name is (Jenny Neumann) from Los Angeles, California. I'm not – replaced or modify the existing environmental regulation. They are critical to protect or share natural resources. The benefits of these regulations are at way a new burden of complying with them. Yes, they cost money but as a tax payer and a consumer to whom the cost will be passed.

I'm willing to pay of little extra to ensure that we have clean water, clean air and healthy forest because I believe our economy, our national identity and our national security depends on it. Thanks.

Christine Ruf (EPA): I think this speaks the last of the commenters, it's 2:00. We need to close the session. But thank you to everybody on the phone and also online for hanging in there for three hours, we only have a few folk to drop off the webinar. So, thank you so much, we appreciate your inputs, we will be transcribing your written and verbal comments. I just put a – we just put a link online to folks about sending us an e-mail. I thought we would have your e-mail addresses through the webinar, but I was advised otherwise.

So, the e-mail address to send in a request for the transcript is online, but it's owregulatoryreform@epa.gov. All the folks that were on the phone, we do have your e-mail so we can send you to that information as well.

A reminder that EPA docket on this issue across all the program will close on May 15th. So if you want to send an additional comment, please do so by the 15th.

So, thank you for joining us. (Joe), any last – anything you want to say?

THE COMMENTS BELOW WERE SUBMITTED AS WRITTEN COMMENTS VIA THE WEBINAR, IN ADDITION TO THE VERBAL COMMENTS ABOVE

Mateland Mayes: I'm from Warren County, NC. WE fought against having a PCB dump forced on our community in 1982. After of decades it was discovered that the landfill was not sealed and that the liner was breeched. The EPA and the state were forced to clean and decontaminate the landfill. Water safety is very important and without proper regulations, poorer communities can once again be tareted to become waste towns. I think that the EPA should be strengthened NOT weakened.

Andy Kimmel: EPA rules were prepared through lengthy and thorough rule-making processes. This rushed process does not properly provide enough opportunity to properly evaluate the value of current protections. It also presupposes that protections need to be removed. Each rule should be reviewed through a full process with ample opportunity for public comment.

Christina: Agree with Andy

Jesse Iliff: one wonders whether rolling back regulations that protect our health and environment makes sense, when it seems unlikely that EPA can effectively enforce the regulations we currently have, considering they can't organize a conference call.

Shirley Clark:Under the federal Multisector General Permit, certain industrial dischargers are required to meet specific stormwater discharge limits (numeric limits). The regulations should require that municipalities, specifically new development and large-scale redevelopment, should be on a timeline to move into that direction.

Curt McCormick: I will also submit in writing : 1. 40 CFR Part 403: EPA needs to adopt administrative extension for IU permits that mirror the criteria used in the NPDES regulations (40 CFR Part 122.6).2. 40 CFR Part 403: EPA needs to put out a policy that makes it clear to EPA regions and States that POTWs must keep their local limits, legal authority and program up-to-date even where a NPDES permit is expired. An expired (administratively extended NPDES permit) cannot be modified by EPA/states to incorporate a pretreatment program approval as a minor modification of the NPDES permit. EPA must allow POTWs to adopt updates at the local level (with an appropriate newspaper notice) where the POTW is operating on an administratively extended permit. The modifications should be reviewed by the Approval Authority to assure they are approvable. Then, when the NPDES permit is reissued, EPA/states can incorporate the minor modifications. Curt McCormick, POTW.com

Brady, City of: There seems to be no "reality check" by the USEPA on mandating rules and regulations and how it impacts different type of "customers". For instance: a small rural community is not "equal" to say, a large metro-plex. A regulatory mandate on a rural city is a big deal. Most times small communities or towns are so "cash strapped" that a regulatory mandate places a real economic hardship on it's residents. Many times the rule cannot be met simply because there is no money. The point here is there needs to be improved regulatory implementation methodologies that takes into account the reality of the diverse communities and urban landscapes of America

Shirley Clark: The Chesapeake Bay model runs primarily on percent removals. However, the science has moved well beyond that limitation and we can do a better job investing in the actual science in the model. The International Stormwater

BMP Database, funded initially by the US EPA, provides information on the expected performance of stormwater control measures. We are able to begin to develop numeric criteria and to use numeric calculations to predict water quality benefits.

Robert Adams: I have lived near Philadelphia all my life, as did my mother and earlier ancestors, back to the 1850's. When my mother was young, you couild smell the Schuylkill River a mile away. When I was little, we swam in it, but probably shouldn't have. It was always muddy. I was by the River earlier this year, and realized to my surprise that the water was clear! Please do not do anything that would jeopardize the significant progress we have made since the Clean Water Act was passed.

Ward Wilson: Kentucky Waterways Alliance works to protect, restore, and celebrate the waterways of our great Commonwealth. We look to USEPA to set a "floor" of standards that we apply locally. Water regulations do impose some costs in time and money, but their bentefits are even greater. All along the Ohio River, our state's northern border, citites use the river for drinking water, recreation, and economic development - all of which are possible because the river is now much cleaner than it was before 1972. Let's work together in a meaningful, inclusive proces to make regulations work better to acheive their objectives, not lose the gains we already have won through hard work and expense.

Shirley Clark: As a proposed reform, stormwater and TMDL needs to be integrated. In the Chesapeake Bay basin, the urban runoff component is not shrinking and is a source of impairment to many waterways. MS4 plans must address the TMDL requirements in their areas.

Ward Wilson: typos corrected in this version: Kentucky Waterways Alliance works to protect, restore, and celebrate the waterways of our great Commonwealth. We look to USEPA to set a "floor" of standards that we apply locally. Water regulations do impose some costs in time and money, but their benefits are even greater. All along the Ohio River, our state's northern border, cities use the river for drinking water, recreation, and economic development - all of which are

possible because the river is now much cleaner than it was before 1972. Let's work together in a meaningful, inclusive process to make regulations work better to achieve their objectives, not lose the gains we already have won through hard work and expense.

Shirley Clark: ASCE-EWRI has developed a document that is in publication that will address costs documented by MS4s in implementing their low impact development/green infrastructure. I will attach that document to my docket comments.

Jesse Iliff: In the Chesapeake we use millions of federal dollars to install clean water best management practices, in the industrial waste water secotr, agricultural sector and to address urban and suburban stormwater loadings.

Julia Anastasio (ACWA): ACWA submits the following high level principles to guide OW's work as you undertake this process: 1) jointly prioritize regulatory reform actions with state quality programs and ACWA can serve as the conduit; 2) preserve or enhance flexibility for states to implement the CWA; 3) streamline processes and eliminate duplicative requirements; 4)rely on sound science to guide these decisions; 5) no backsliding -- preserve the gains we have made; and 6) limit unfunded mandates

Jay Sauber: EPA policy of listing 303d waters using a standard exceedance frequency of no more than one occurance in three years for metals regardless of wheter or not there are 2 observation or 500 observations is clearly not scientific. This policy practice needs to change. And at a minimum should include biological confirmation prior to overloading the 303d list when clearly unnecessary.

concerned_citizen: Jesse Iliff - we do now, but when the 97% cut to the Ches Bay Program takes effect, we may not. :(

mitch reid: Making the system more efficient is always a good thing but there must be a protection for water quality. This will require a baseline and making sure that we do not have backsliding.

Shirley Clark: Jesse Iliff - yes, millions are going in throughout the Chesapeake Bay region;

however, in PA, the planning is poor and the science has moved on past most of the regulatory guidance. EPA should be updating their guidance to states frequently.

Janice Beecher: Speaker is making a very valid point about building capacity for complaince as a means of reducing "burdens" without sacrificing vital protections.

Robert Adams: In Pennsylvania, the DEP has been cut and cut and cut again, to the point that our state enforcers can no longer do their jobs effectively.. Please add federal funding to help state agencies to do their jobs.

Ward Wilson: Regulations have costs, but also benefits. Clean Water Rule, 40 C.F.R. § 230.3 - the agencies' analysis indicated that under all scenarios, the change in benefits of Clean Water Act programs because of the rule exceeded the costs. Benefits were projected to range from $338.9 to $572.3 million/year, compared to an estimated range of $158.4 to $465 million/year in costs. U.S. EPA & U.S. Dep't of the Army, Economic Analysis of the EPA-Army Clean Water Rule (May 2015), https://www.epa.gov/sites/production/files/2015-05/documents/final_clean_water_rule_economic_analysis_5-15_2.pdf).

Bijaya Shrestha: EPA's mission is to protect human health and the environment. We don't do that by getting rid of laws and guidelines that protect our waterways and public health from industrial pollution. EPA should be asking the American people which laws and regulations they want to strengthen and make more robust.

mitch reid: It seems like most of the inefficiencies that folks are highlighting can be chalked up to an agency that is understaffed and underfunded.

Shirley Clark: In the Chesapeake Bay basin, our streams are impacted by the discharge from coal-fired power plants. Air pollution regulations should be cognizant of that fact and continue to reduce mercury discharges.

Jesse Iliff: @Juan, in large measure, EPA provides funding to enable states and municipalities to protect their own resources. In Maryland, many millions of federal dollars are used by our state department of environment for improving and monitoring

water quality.

Janice Beecher: Re devolving to states, water and air do not respect state boundaries and children do not choose where they are born. There are equal protection considerations here.

Jason Flickner 2: EPA Office of Water should provide a minimum 30-day comment period on "Reducing Regulatory Burden" from the date the transcript of this call/webinar is made available to the public.

Linda - Red Cliff Band: I echo what Mr. Jason Flicker 2 has stated: EPA Office of Water should provide a minimum 30-day comment period on "Reducing Regulatory Burden" from the date the transcript of this call/webinar is made available to the public.

Shradha Upadhayay: PA Office of Water should provide a minimum 30-day comment period on "Reducing Regulatory Burden" from the date the transcript of this call/webinar is made available to the public.

Jason Longbine: Juan Garrido, air and water pollution do not respect state boundaries. States with relaxed environmental regulations would burden their neighbors who have higher standards. States' rights doesn't work with regards to air and water quality.

mitch reid: The term unfunded mandate keeps getting batted around. It sounds like this is an backdoor request to be able to pollute without oversight. The cost of reducing pollution must be shared by the states. Alabama is last in the nation in funding environmental protection. We do no need less regulation from EPA. We need more participation from the states and local entities. They must do their part and in Alabama they are not.

Amanda Loeper: The new EPA DMR requirements for those facilities with a State Water Authority are being asked to input data twice. This regulatory burden is not benefiting water quality in any way, it is only increasing administration work. California has more stringent regulations than EPA and facilities located in states with a strong water authority should not be required to also input data to

the EPA. If the EPA wants the data, they should go through the State to gather the information, not burden facilities with additional admin work. Our resources are better spent implementing BMPs for better water quality, because improving water quality is what we all support and want to achieve.

Janice Beecher: Coordination and harmonization of reporting requirements to improve regulatory efficiency and transparency is a good idea.

concerned_citizen: mitch reid - couldn't agree more! i could live the rest of my life w/o hearing the term "unfunded mandate."

Ward Wilson: What would Phoenix pay to have a Hudson River in their city?

Katie Friedman: Hello my name is Katie Friedman and I am calling in from the Charles River Watershed Association (CRWA) in Greater Boston, Massachusetts.The Charles River has made a tremendous turnaround since the 1990s and is today considered the cleanest urban river in the United States.CRWA worked very closely with EPA Region 1 on the Charles River cleanup and we think the staff and programs here in New England are outstanding.The EPA played a monumental role in the complete revitalization of the Charles River and Boston Harbor, by setting high standards for stronger pollution control requirements such as the National Pollutant Discharge Elimination System. The Clean Water Act section 303(d) has been pivotal in creating pollution plans that have led to the revitalization of many urban watersheds in Massachusetts, helping to address nitrogen and phosphorous pollution which have negative impacts on the tourism economy and public health.Environmental regulations need to be maintained and in fact strengthened rather than rep

Katie Friedman: rather than repealed. We have proven firsthand that investments in clean water are economic drivers for the larger economy. All of the investments in cleaning up Boston Harbor and the Charles River, which were considered a tremendous burden at the time, have had a fantastic return on our investment. Our region is booming.Programs should be revamped to make it easier to get money out to the states and partner groups. Regional EPA offices should be

staffed up so they can do their necessary work in a thorough and timely way.Finally I would like to thank the EPA Office of Water for inviting me to speak as I feel our experience here on the Charles River can help other rivers and water resource professionals around the country.

Curt McCormick:EPA pulled back the signed Dental Rule (40 CFR Part 441) . This final Rule was worked on for years and balanced comments from municipalities, states and industry. This Rule was as lenient as possible while requiring basic BMPs to be institued to reduct mercury. EPA should issue this final rule.

mitch reid: Frankly this whole thing feels likes a Kangaroo court to allow Admin Pruitt to enact changes that he has already decided on. Considering that state agencies are already talking about EPA "intention to rescind" certain rules why has EPA not put out a draft list. Very few regulated entities are participating on this webinar but I fear they will get the overwhelming attention when the rule comes out.

Bill Hurd: I recieved an EPA Audit of the Approved Pretreatment Program that I manage on September 24, 2015. EPA has failed to report its finding!! EPA should be required to release inspection reports within 30 days of conducting inspections. 2 years is too long!

evelyn Wendel: WeTap is on line. We need to improve public drinking fountains and safe public drinking water access for healthy communities.

Eric Olson: The Brookings Institution recently found that a quarter of “clean economy” jobs are manufacturing jobs, with higher pay and greater export potential than other sectors of the U.S. economy.

Madeleine Foote: We're all impacted by water regulations. Cities and municipalities represent and work for their citizens, citizens who care about clean water and don't want water protections rolled back.

Dean: for us regulated cities, I very much appreciate the Clean Water Act, but please if the state is mandated to carry out, then the EPA

Ward Wilson: Good point on regulation limiting ability to implement new WQ standards.

Dean: should not be allowed to audit MS4 cities

Dean: that is the state's job now

Amanda Loeper: Dean, I agree. The EPA should go after States who are failing or lack state and local authorities.

Dean: amen

Dean: we in the MS4 world who

Scott Caldwell: The Dental Rule (40 CFR Parts 403 and 441) would cost programs nationwide an expected $69-71 Million dollars at and create a reduction of 992 pounds of mercury being discharged annually. The problem lies with the 50 POTW study and data that is not likely to be accurate. Saying this measure being implemented nationwide is balanced and fair may be disingenuous. Many POTWs have no issues with mercury loadings or meeting discharge limitations.

Dean: are trying are always are in fear of the EPA coming in and the state refusing to give ample guidance

Shirley Clark: We also need to continue to increase how many areas are subject to MS4 regulations.

Dean: yes, even though we are only 8% of the problem and ag continues to be voluntary. ridiculous

anon: Ag will continue to be voluntary. And you will continue to have food on your plate, clothes on your bqck, and a roof over your head.

Jason Longbine: Dean, I agree with that. I was told by an EPA representative that even if EPA

had delegated NPDES authority to my state, and they approved the state NPDES program, and my MS4 was in full compliance with the state program, EPA still reserved the right to determine that we were in violation and take enforcement action.

Bill Hurd: EPA must always reserve its right to oversight enforcement

Dean: yes, oversight to the regulating state, not to the permit holders

mitch reid: Alabama Rivers Alliance has just filed an appeal with circuit court to overturn an arbitrary decision by the EPA to not hold EPA accountable. In an effort to protect Alabama, EPA failed to follow its own regulations. The regulatory burden here is on the people of Alabama who are suffering from polluted water. Oversight should be strengthened not rolled back. http://alabamarivers.org/alabama-conservation-groups-appeal-to-court-to-hold-epa-accountable-to-clean-water-act/

Patricia Schuba: I am from a community impacted by coal-fired power plant pollution - air, water, soil. The Ameren Power Plant in Labadie MO is the largest in the state and 14-15th largest in the nation and does not have scrubbers, discharges coal ash pond waste water into the Missouri River, etc. We formed a nonprofit to fight the siting of a new coal ash dump in the water table of the Missouri Rive as teh EPA finalized the CCR Rule in 2015. Communitites, like mine, are engaged and want a robust EPA regulatory framework to protect us and the natural resources we all depend on (drinking water, surface water, productive communities for people and businesses to inhabit). Our experience has been that the federal EPA plays a crucial role in setting regulation based on facts and science and that they could be doing even more but industry stakeholders and politics always gets in the way of agencies doing their best. This is not the time to tie EPA's hands. Our community advocated for 7 years to get keep toxic ash out of our water

Eric Olson: The long term cost of lead poisoning in Flint, MI is estimated at $400 million. If anything, we need more regulations going forward, not less.

Patricia Schuba: Our floodplains clean drinking water for free... how can "reducing regulatory burden" be in the service of the American public or our economy?

mitch reid: In Alabama the two greatest burdens to the people of the state that rely on clean water are the failure of the EPA to protect streams from hydrologic alteration and the virtually non-existant regulation of Non-point sources

Scott 3: We only need to protect water that can float a boat!?!? That makes a LOT of sense

Shirley Clark: @Scott 3, that is how the Interstate Commerce Act has been interpreted in many states. However, some states put recreation in as interstate commerce because the recreation attracts people from across state lines. Small kayaks.

Nancy Hammett: Inspired by the many tributes to the benefits of the Clean Water Act. I hope this Reg Reform process will require those requesting reg roll backs to demonstrate that water quality benefits will not be lost or are not worth the costs, rather than requiring EPA staff to demonstrate again what has already been shown in past cost-benefit analyses.

Scott 3: INtegrated planning addressing all water issues in a watershed is a good way to go. Prioritize our efforts, there is not enough $$$ to do everything right away.

anon: Regulated entities need the flexibility to innovate. the conventional regulatory approach falls short and boxes in without allowing a common sense approach.

Nancy Hammett: Agree, Scott 3. Some hard challenges given multiple jurisdictions, source types and pollutants, to ensure benefits aren't lost, but this is a fruitful approach to pursue.

BARRY BLUNDIN: Amen !!! sensible regs and pro growth are not mutually exclusive

KK 3: complexity leads to midnight contractors and non-compliance. Streamlining the entire process to focus on stie work as opposed to paperwork would likely be quite beneficial

BARRY BLUNDIN: "burdensome" = a good regulation that is being inefficiently enforced or executed resulting in unwarranted cost to the regulated stakeholder -- this an be one definition

William R. hannemann: To be clear, the name is Aqualete Industries from New Jersey, we are manufacturers and distributors of patented technology that reduces pollutants in groundwater and stormwater. Our # is 732-695-6336.

mitch reid: cow producers work really hard to roll back the regulations that protect the water they say they care about.

Tom Sanders: Thank you EPA. I support the majority of what you do to keep us all safe. I hope you survive the current administration.

mitch reid:"reducing regulatory burden" is a euphemism. Great comment.

Elizabeth Herron: Elizabeth Herron - private citizen and water resource professional. Thank you EPA for helping restore our water over the past several decades. More needs to be done, particularly in light of changing climate and increasing populaiton. Water is an essential resource - it must be protected now and into the future. While I am certain some paperwork regulations can be reduced, the overall framework is essential. Regulations must be science based, effectively and faitly enforced.

BARRY BLUNDIN: fun fact -- The Clean Air Act is 234 pages in length

mitch reid: Its not even close -overwhelming majority of participants reject rolling back regulatory protections of clean water. Most want EPA to go further.

Josh: People, Try to view this positively, like reducing the paperwork that Mike mentioned a while back. Think about ways to make the PROCESS more efficient

Ina L. Nez Perce: Extend comment period to 30-Days from posting of comments from this session. I agree we need to preserve the gains we have made since the days before EPA was in existence. We need to rely on sound science to protect our

water for our future generations.

Ed Wheeler: Everyone wants clean water and clean air but if you work with these regulations and regulators daya in and day out you will know that there is a lot of waste in the regulations and how they are enforced.

Adam: well mitch thats because these are all climate change crazies. EPA should be abolished and athority given to the states to regulate. The answer is not more government intervention

Josh: How come the standard in place for testing water allowed the LOOPHOLES for pollution in drinking water from the tap?

MLP: agree with Josh. look for effiecency improvements.

Ed Wheeler: They don't its how they are /are not implemented

MLP: oops efficiency

Shona Ganguly: The Nature Conservancy supports EPA water quality regulations to protect people and nature. Communities are adversely affected when water regulations are not in place. Also, ecosystems are already threatened and need restoration, which can't happen without these regulations.

Janice Beecher: Thanks to the EPA staff for all that you do to protect public health and the environment.

Josh: Look to manufacturing efficiencies- Such as manufacturing acceleration in production, Initially there are many problems but within a few months the loopholes are closed and the process for revalidating quality becomes less frequent because things are done efficiently the first time

Daniel Marx: representing the Minnesota Environmental Science and Economic Review Board (MESERB). MESERB is municipal organization of 45 National Pollutant Discharge Elimination System ("NPDES") permits and we have worked since

1997 to ensure that water quality regulations affecting municipal wastewater are reasonable and based on sound science.MESERB supports both responsible regulatory reform and clean water regulations. To suggest that being pro-regulatory reform is anti-regulation is a false narrative. As rural communities we face an economic crisis related to aging infrastructure and increasing regulatory burdens. Practical environmentalism requires removing unnecessary regulatory burdens so that the limited local, state and federal resources available to deal with clean water problems can be used most effectively and efficiently to clean and protect waterThe focus of EO 13377 is "to alleviate unnecessary regulatory burdens placed on the American people." In our perspective an unnecessary regulation is one t

Jennifer Gadzala: I have heard stories from elders stating that women's nylons would melt during the day while at work in our industrial areas along Lake Michigan. We have come such a long way from then, working hard to protect our air , the lake and it's tributaries. We have seen a positive shift of industry working directly with regulators and environmentalists in northwest Indiana. There is a tremendously dedicated group of individuals and organizations who would support streamlining EPA regulation procedures but would not support rolling regulations back.

Shirley Clark: Unfortunately, this has presented as a rollback and not a streamlining. Streamlining is important.

theo whitehurst: i would like to apologize to the next generation for giving them polluted water

Matt Johnston: After 16 years of getting permits from the Corps for County projects the biggest issue I've seen is in the timeliness of permitting, particularly with regards to NOAA and USFWS consultation. The Service in particular was cut back so severely that they cannot do site visits. Trying to drown it in a basthtub is working to make permitting unreasonable.

mitch reid: Thank you EPA! #DefendRivers!

Ed Wheeler: Oddly most comments didn't stick to the topic of existing regulations that could be

repealed, replaced or modified to make them less burdensome."

theo whitehurst: no dapl no fracking

Jason Flickner: Please extend the comment period to more than 7-days after the transcript of this webinar is available!!!!

Cathy McDade: Thanks for fighting the good fight!

Tom Black: The definition of "Waters of the United States" needs to be reduced to navigable streams and not included in every spring head and small stream

Justin 2: the Clean Water Act and Clean Waters Rule are not the same thing

Scott 3: Just need to protect water for people in boats!?!?

Justin 2: Tom Black is actually on topic

James Houle: second that Shirley, thank you for your comments, they reflect what we are learning up here in the northeast as well

Josh: I agree Tom is on topic, trying to understand the point of not protecting small streams and springs?

Justin 2: No one in the WH is threating the CWA, but scrutinizing the Clean Water Rule

Janie Jones: Have you sent anyone to St. Joseph Louisiana to address their water crisis and lead levels?

Nathan Boon: Comment: As a citizen and tax payer in Jenkintown PA, I am more than willing to pay any additional cost associated with current regulations and new regulations designed to protect clean water for healthy ecosytems and human communities, including the Clean Streams Rule addressing mine waste and the Waters of the United States a.k.a. Clean Water Rule. In the watershed where I live, the Delaware River Basin, 15 million people drink the surface water and almost 40% of the stream miles across the basin are ephemeral headwaters and source water areas that would receive imporant recognition

and protection under the Clean Water Rule. Thank you. - Nathan Boon

Tom Black: Protecting the small streams from what activity? It is unreasonable to require a Corp Permit for a pond on private property.

Cynthia Babich: WATER IS LIFE! That said, no weakening of regulations. Need strong protections, thank you.

Scott 3: Protect small stream from pollutants. We figured out the small streams become big streams, etc.

Josh: I agree Less big government as it processes much slower, however, do you trust that all individuals will abide by the morality to not destroy ground water sources which will be affected by personal property?

Tom Black: I don't think a Corp Permit would stop an evil person from dumping Nuclear waste. The issue is and always has been the private property rights. The regulation is to control rights of the citizens and not just to provide for a common purpose.

Josh: Well then I guess the issue is with our culture then right? If regulations have become implemented to "control righs of citizens" and not to provide common purpose, then something triggered that action.

Patricia Schuba: and that this public meeting was in response to Pres Trump's EO directing the EPA and Corps to review, revise and potentially rescind the Clean Water Act - - just want to be certain what types of comments your are accepting under this docket. Thank you.

Patricia Schuba: ...excuse me - I meant to say EPA and Assistant Secretary of the Army for Civil Works - not Corps. Thank you.

Janie Jones: Our Disaster Relief and Reserch Team would like to work with you and help host a series of listening session for communities affected by water quality issues.

Ashley Hogshead: I hold two BSBAs, Real Estate and Finance, and have become an agricultural

developer over the last half decade. EPA Regulations are too heavily reliant on fining businesses and individuals, collecting revenue rather than finding plausibile solutions to complicated situations. I have three solutions to our water issues. First, if your'e truly looking to solve an issue regarding nature, then you have to look to Nature to find those solutions.... For instance, I work with a natural enzyme solution (think Exxon Valdez Oil Spill Clean Up, unprecedented natural remediation in a matter of weeks!) that can inexpensively, quickly, and safely remove petroleum based products (everything from crude oil to jet fuel to gas station tank leaks to Exxon Valdez to fertilizers and pesticides, which are mostly ALL oil based as well, poop too!) in the ground waters, surface waters, and soil. Current regulations require expensive excavation and processing of the soil, which does not get it out of the ground water, and costs anywhe

Ashley Hogshead: anywhere from $300k to $600 per 1/4 acre.... My second solution regards agriculture. I have developed a system that uses 97% less water than traditional irrigation practices, has no runoff issues of soil nor water, and creates no pollution, and doubles organic food or foliage production without electricity or greenhouses. The system is easily implementable for residential use or all the way to industrial agriculture. Third, we are literally strangling our waterways. The practices of lochs and levies are eliminating the earth's natural need to breathe, literally, it's breathing with the water flowing in and out, which allows a natural elimination process that is being cut off because people don't like having to build another dock when the water levels change. To that I say, build floating docks that can be moved, and property values around water aren't that great when no one wants to swim in these disgusting algae blooms -- all of which would be naturally taken care of if we as a species would just act like we

Patricia Schuba: and that this public meeting was in response to Pres Trump's EO directing the EPA and Corps to review, revise and potentially rescind the Clean Water Act - - just want to be certain what types of comments your are accepting under this docket. Thank you.

Patricia Schuba: ...excuse me - I meant to say EPA and Assistant Secretary of the Army for Civil

Works - not Corps. Thank you.

Janie Jones: Our Disaster Relief and Reserch Team would like to work with you and help host a series of listening session for communities affected by water quality issues.

END OF ONLINE WRITTEN COMMENTS

EO 13777 Outreach and Meeting Summaries
Office of Land and Emergency Management
May 9, 2017

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I. Outreach

The Office of Land and Emergency Management (OLEM) has seven offices that have responsibility to implement programs under a number of environmental statutes including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), RCRA Subtitle I (Underground Storage Tanks), Clean Water Act section 311, and Clean Air Act section 112 (Risk Management Program). As such, OLEM has a large number of diverse stakeholders.

OLEM distributed information on Executive Order (EO) 13777, the OLEM public meeting, and instructions on how to submit recommendations to the docket to approximately 50,000 stakeholders:

OLEM/Office of Resource Conservation and Recovery (ORCR)

- Sent to distribution lists compiled from various ORCR efforts over the past several years/decades. The types of stakeholders include industry, NGOs (trade associations, environmental groups, state organizations, etc.), academia, consultants, and state and federal officials. (2,361 contacts)

OLEM/Office of Superfund Remediation and Technology Innovation (OSRTI)

- Regional Community Involvement leads for them to distribute to their stakeholders as appropriate
- The Contaminated Site Clean-up Information (Clu-in) TechDirect listserv – this program provides information about innovative treatment and site characterization technologies while acting as a forum for all waste remediation stakeholders. (38,000+ contacts)

OLEM/Office of Emergency Management (OEM)

- Office of Emergency Management Call Center - the listserv membership consists of industry (Exxon, Pfizer, Westinghouse, etc.), trade associations, government / military – including state and local governments, press (BNA, etc.), universities, and environmental groups. (3,626 contacts)

- OEM Listserv - similar types of contacts as the 'Call Center' list above. (3,899 contacts)
- State Emergency Response Commission (SERC) / Tribal Emergency Response Commission (TERC) - subscriptions are by request only from SERC, TERC, and our federal partners who work on chemical safety and security issues. (239 contacts)
- 40 CFR Part 300 Subpart J National Contingency Plan (NCP) Product Schedule Manufacturer List. (118 contacts)
- NISTM conference - presented information on the EO and public meeting at the April 17-20 National Institute for Storage Tank Management (NISTM) 19th Annual International Aboveground Storage Tank Conference & Trade Show.

OLEM/Office of Underground Storage Tanks (OUST)

- State underground storage tanks (USTs), leaking underground storage tanks (LUSTs) fund managers and contacts (240 contacts)
- UST industry associations and owners and operators (90+ contacts)
- Tribal UST contacts (245 contacts)
- State, local, redevelopment, and environmental associations and organizations involved with USTs (75+ contacts)

OLEM/Office of Brownfields and Land Revitalization (OBLR)

- Brownfield Network – public and private sector representatives that have participated in OBLR outreach efforts in the past, including a round of stakeholder sessions and a public meeting held in 2015 (131 contacts)

OLEM/Office of Communications, Partnerships and Analysis (OCPA)

- EPA's tribal partnership group (1000+ contacts)
- Tribal Waste and Response Assistance Program (TWRAP) Steering Committee members (10 contacts)

OLEM/Federal Facilities Restoration and Reuse Office (FFRRO)

- Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Federal Facility Subcommittee
- Center for Public Environmental Oversight (CPEO) - a nonprofit group that promotes and facilitates public participation in the oversight of environmental activities, including but not limited to the remediation of federal facilities.

We also reached out to the EPA Regional Division Directors for all of OLEM's programs to solicit suggestions / recommendations.

II. Schedule of Meetings Attended by OLEM

April 19th **ASTSWMO Conference Call.** OLEM/Policy Analysis and Regulatory Management Staff (PARMS) and OLEM/OCPA provided information on the Reg Reform effort.

April 24th **OITA Conference Call with Tribes.** OLEM/PARMS and OLEM/OCPA attended.

April 25th **Small Business Public Meeting.** OLEM Acting DAA sat on the panel with other agency managers. OLEM/PARMS and OLEM/ORCR attended.

April 26th **OCIR is conducted a Quarterly Outreach Meeting with National Associations**.

OLEM/PARMS attended.

April 27th **Environmental Technology Council Meeting.** OLEM/ORCR attended.

May 9th **OLEM Public Meeting:** 9 am – 5pm. PY, 1st Floor Conference Center.

April 10th **OITA Conference Call (2nd call).** OLEM/Policy Analysis and Regulatory Management Staff (PARMS) and OLEM/OCPA attended.

III. Meeting Notes

The meeting notes captured only reflect comments received on OLEM regulations.

ASTSWMO Meeting - April 19th

OLEM held a conference call with Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to walk them through EO 13777 and the regulatory reform effort. We asked for specific recommendations to be sent to the docket.

- ASTSWMO members asked what types of recommendations they should submit (e.g. statutory regulatory, guidance). We instructed them to submit anything and everything they would like changed to the docket, and we would sort through all the recommendations.
- ASTSWMO members stressed the importance of their involvement in reviewing recommendations prior to taking action.
- Per ASTSWMO request, we provided a list of recent OLEM final rules and a list of all OLEM regulations (which we provided – see below). We also provided information on EO 13783 (Promoting Energy Independence and Economic Growth).

OITA Meeting - April 24th

This meeting was coordinated by EPA's Office of International and Tribal Affairs (OITA), and setup as a listening session to hear recommendations pertaining to EO 13777.

- The only OLEM specific comment came from the Alaskan Native Corporations, which asked if EPA would be changing course on 108(b). We responded by stating that we won't know until the public comments are evaluated.

Small Business Meeting - April 25th

This meeting was coordinated by EPA's Office of Disadvantaged Business Utilization (ODSBU), and setup as a listening session to hear recommendations pertaining to EO 13777.

- Steve Smith (Hoosier Energy)
  - Coal Combustion Residuals (CCR) Rule– one size fits all under CCR rule doesn't work. Need state-permitted programs to identify risks and implement. Sounded like he wants new regs to delegate to the states. Acknowledged CCR Remand Rule and he wants EPA to implement the WINN Act.
- Jennifer Gibson (NACD)
  - Risk Management Program (RMP) Rule – previous rule was already robust enough. The new rule is a classic example of federal overreach, and the new rule does not improve safety. Commends EPA for reconsidering the rule.
  - General Duty Clause 112(r)(1) - extremely haz substances has never been defined, which leads to inconsistent penalties and creates uncertainty for compliance.
- Cheney Conrad (SOCMA)
  - Hazardous Waste (HW) Generator Final Rule – Cited the current litigation issue.
- IPC – Association Connecting Electronics Industries

        - HW Generator Final Rule – Cited the current litigation issue.
    - Paul Schlegel (American Farm Bureau Federation)
        - SPCC Farms. Regarding the aboveground storage threshold, he didn't appreciate the Department of Agriculture study and stated there is no evidence that farms have been a problem. He asked for farms not to be regulated.
    - Specialty Graphic Imaging Association (SGIA)
        - SPCC – definition of oil under 40 CFR 112 – The commenter doesn't like that the definition of oil, which includes vegetable oil and products containing oil. The commenter also stated that companies that manage more viscous oils shouldn't have to do anything under SPCC, because the spill doesn't go anywhere.
    - Independent Lubricant Manufacturers Association
        - SPCC – expanding to include hazardous substances. The commenter didn't think EPA could meet the schedule under the consent decree and recommended that EPA go back to the court (although, it was unclear if the commenter was referring to the schedule or doing the rule at all). The commenter didn't think expanding to hazardous substances was a good idea. He thought the estimated annual costs should exceed $100M. We could improve SPCC's periodic reviews of tank integrity (something about lack of consistency – certain PE reviews aren't accepted by EPA Enforcement).

OCIR Meeting - April 26th

This meeting was coordinated by EPA's Office of Congressional and Intergovernmental Relations (OCIR), and setup as a listening session to hear recommendations pertaining to EO 13777. Invitees included Associations representing State and Local elected officials, as well as other associations. Washington, DC staff from the various offices, including National Governors Association (NGA), United States Conference of Mayors (USCM), National League of Cities (NLC), National Conference of State Legislatures (NCSL), Environmental Council of the States (ECOS), National Association of Clean Water Agencies (NACWA), and others are regular participants.

- One OLEM rule came up, RMP. The National League of Cities and US Conference of Mayors were aligned in their comment that they were not consulted early in the development of the rule and, as such, were not able to provide meaningful, timely input. They also thought the rule cost analysis was deficient in so much as it didn't take into account or address the unique circumstances of local government.

ETC Meeting - April 27th

This meeting was coordinated by the Environmental Technology Council (ETC), and setup as a listening session to hear recommendations pertaining to EO 13777. ETC is a trade association of commercial environmental firms that recycle, treat and dispose of industrial and hazardous wastes, and firms involved in cleanup of contaminated sites.

- RCRA- Repeal 40 CFR 264 and 265 Subparts AA, BB, and CC
- RCRA- Import Export Proposed Rule
    - Do not go final with internet posting piece
- OEM Risk Management Plan (RMP) Rule
    - Do not agree with publishing on website, would coordinate with emergency response folks before accident
    - Department of Homeland Security guidance is in opposition to RMP rule on disclosure
    - Should allow in-house audits; 3rd party audits do not work, huge learning curve and

there is not enough talent out there
- Overlaps with OSHA- COSA, so this is duplicative and the OSHA's Process Safety Management Program standards are nationally implemented

OLEM Public Meeting - May 9th

This meeting was coordinated by OLEM and setup as a listening session to hear recommendations pertaining to EO 13777.

- RCRA- Repeal 40 CFR 264 and 265 Subparts AA, BB, and CC
- Concerns with the Hazardous Waste Generator Final Rule
- Definition of Solid Waste regulations – possible exemption for secondary material from electroplating
- Concerns with the Pharmaceuticals Proposed Rule. Commenters requested to exempt low-concentration nicotine products (LCNP) from being considered acute hazardous waste
- Issues with the CCR final rule
- Request to characterize aerosol cans as universal waste

At the OLEM public meeting, 11 of the 20 speakers gave comments supporting EPA's regulatory programs and cautioned against any deregulation (repeal, replace, or modify).

OITA Meeting - May 10th

This meeting was coordinated by EPA's Office of International and Tribal Affairs (OITA) as a follow up to OITA's April 24th meeting. No comments were made regarding OLEM regulations or programs.

IV. OLEM Website and Outreach Email

The OLEM website on the EO 13777 effort is https://www.epa.gov/rcra/office-land-and-emergency-management-seeking-feedback-reducing-regulatory-burden.

Below is the email distributed to OLEM's 50,000+ contacts:

OPEN PUBLIC COMMENT PERIOD until May 15, 2017

EPA is Soliciting Recommendations on Regulations that could be Repealed, Replaced or Modified to make them Less Burdensome

Dear Interested Parties –

On February 24, 2017, President Donald Trump issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda. The order establishes the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people. Among other things, it requires each agency to create a Regulatory Reform Task Force to evaluate existing regulations and to identify regulations that could be repealed, replaced or modified to make them less burdensome.

As part of implementing the order, EPA is soliciting public comments and engaging in additional outreach to identify such regulations. **We will be accepting comments through May 15, 2017 at docket** EPA-HQ-OA-2017-0190. Go to https://www.epa.gov/laws-regulations/regulatory-reform to learn more about this effort.

In addition, EPA's Office of Land and Emergency Management (OLEM), will host a public meeting to obtain

additional stakeholder feedback on **Tuesday, May 9, 2017, from 9:00am to 5:00pm EDT** in Arlington, Virginia. The intent of the meeting is to provide an opportunity for interested parties to present recommendations specific to OLEM's regulations. Please see https://www.epa.gov/rcra/office-land-and-emergency-management-seeking-feedback-reducing-regulatory-burden on how you can submit comments and participate in or listen to the OLEM public meeting. For more information on OLEM programs, please see https://www.epa.gov/aboutepa/about-office-land-and-emergency-management.

In our attempt to maximize public outreach, you may be receiving this email multiple times.

Thank you in advance for your interest. We look forward to your participation in this important effort.

Please direct questions to EPA.OLEM.RegulatoryReform@epa.gov.

V. Other

Per ASTSWMO request, we provided a list of recent OLEM final rules and a list of all OLEM regulations. We also put the list of OLEM Regulations with CFR Citations on our EO 13777 website:

OLEM Final Rules Published in 2015-201

OLEM regulation summary and CFR Cit

Additionally, attached is the final registration list, speaker list, and attendee list for the May 9th OLEM Public Meeting.

Attendee List May 9 OLEM Public Meeting.

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Lewis, Josh[Lewis.Josh@epa.gov]; Page, Steve[Page.Steve@epa.gov]; Grundler, Christopher[grundler.christopher@epa.gov]; Edwards, Jonathan[Edwards.Jonathan@epa.gov]; Harvey, Reid[Harvey.Reid@epa.gov]
From: Dunham, Sarah
Sent: Tue 5/16/2017 12:55:30 AM
Subject: OAR submission to EPA's Regulatory Reform Task Force per EO 13777
Transcript of EPA Office of Air and Radiation Stakeholder Conference Call (held 4.24.2017).pdf
ATT00001.htm
OAR Memo Executive Order 13777 FINAL_5_15_17.pdf
ATT00002.htm

Please see attached OAR's EO 13777 submission for consideration by EPA's Regulatory Reform Task Force. Also attached is the transcript of the public stakeholder meeting held on April 24.

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Beck, Nancy
Sent: Mon 5/15/2017 11:28:28 PM
Subject: FW: Regulatory Reform Candidates in OCSPP
RegulatoryReformOptions-OCSPP_2070-05-15.pdf

FYI—now you also have OCSPP ☺

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

P: 202-564-1273

M: 202-731-9910

beck.nancy@epa.gov

From: Hofmann, Angela
Sent: Monday, May 15, 2017 4:36 PM
To: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Jutras, Nathaniel <Jutras.Nathaniel@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Cleland-Hamnett, Wendy <Cleland-Hamnett.Wendy@epa.gov>; Wise, Louise <Wise.Louise@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Cunningham-HQ, Barbara <Cunningham-HQ.Barbara@epa.gov>; Mottley, Tanya <Mottley.Tanya@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Layne, Arnold <Layne.Arnold@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Chun, Melissa <Chun.Melissa@epa.gov>; Mosby, Jackie <Mosby.Jackie@epa.gov>; Pierce, Alison <Pierce.Alison@epa.gov>; Symmes, Brian <Symmes.Brian@epa.gov>
Subject: Regulatory Reform Candidates in OCSPP

Nicole et al –

Attached please find the OCSPP initial recommendations for consideration by the Regulatory Reform Task Force. This list reflects our consideration of verbal comments received from stakeholders. Let me know if you have any questions. You can contact me, or Melissa Chun and

Peter Smith on my staff. Thanks.

- Angela

Angela Hofmann

Director of Regulatory Coordination for the Office of Chemical Safety and Pollution Prevention

U.S. Environmental Protection Agency (EPA)

Mailcode 7101M - 1200 Pennsylvania Ave., N.W., Washington, DC 20460

NEW Office Location effective 6/15/16: William Jefferson Clinton Building, East Room 3139L

Deliveries to RCS go to Room 3159

Phone: 202-564-0258; Email: hofmann.angela@epa.gov

http://www.epa.gov/ocspp

To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]; Palich, Christian[palich.christian@epa.gov]
From: Horner, Elizabeth (EPW)
Sent: Mon 5/15/2017 10:08:27 PM
Subject: Regulatory Reform Letter from Senate EPW Members
2017.05.15 Letter to Samantha Dravis from Eight Senators.pdf

Associate Administrator Dravis,

Attached is a courtesy electronic copy of a letter sent to you today by eight members of the U.S. Senate Committee on Environment and Public Works. The letter has also been submitted to regulations.gov under Docket No. EPA-HQ-OA-2017-1790.

Elizabeth L. Horner

Majority Counsel

Senate Committee on Environment and Public Works

Elizabeth_Horner@epw.senate.gov

(202) 224-7841

To: Dravis, Samantha[dravis.samantha@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Lousberg, Macara[Lousberg.Macara@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; OW Office Directors[OWOfficeDirectors@epa.gov]
From: Shapiro, Mike
Sent: Mon 5/15/2017 10:09:24 PM
Subject: OW's EO 13777 Initial Report
OW response May 15 EO 13777.docx
OW email to stakeholders on May 2 session.docx
EPA-HQ-OW-5-2-2017UPDATED_for_docket_May_15.docx

I am pleased to provide the Office of Water's initial report on the work we undertook to solicit public comment on potential regulations to rescind, replace or revise as directed by the Administrator in his March 24th memo on E.O. 13777: Enforcing the Regulatory Reform Agenda. In addition to the attached report, I have included the comments we received at our May 2nd public listening session, which are being uploaded to the docket, and the information we shared with our stakeholder groups and on the agency web page to advertise our listening session. If you have any questions please let me know.

Mike

Michael Shapiro

Acting Assistant Administrator, Office of Water

US EPA, 4101M

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-5700

To: Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
Cc: sean.alteri@ky.gov[sean.alteri@ky.gov]
From: Clint Woods
Sent: Mon 5/15/2017 8:26:12 PM
Subject: AAPCA Comments on EPA Regulatory Reform Under EO 13777

Members of the U.S. EPA Regulatory Reform Task Force,

Thank you for the opportunity to provide input to the Task Force on regulations that may be appropriate for repeal, replacement, or modification under Executive Order 13777, "Enforcing the Regulatory Reform Agenda." You can find a copy of comments from the Association of Air Pollution Control Agencies (AAPCA) here, and these comments were also electronically transmitted to Regulations.gov for Docket ID: EPA-HQ-OA-2017-0190; *Evaluation of Existing Regulations*. While many state and local air agency members of AAPCA will be providing detailed comments to help inform the process, this letter identifies some key areas of concern from the Association's consensus comments, compilations of air agency feedback on recent U.S. EPA regulatory actions, and a member-generated list of more than 30 regulations and policies that may be appropriate for repeal, replacement, or modification pursuant to Executive Order 13777.

AAPCA and its members look forward to working with U.S. EPA and the Regulatory Reform Task Force as it evaluates existing regulations and makes recommendations to the Administrator regarding those that can be repealed, replaced, or modified to make them less burdensome. Please let us know if there is any additional information that would be helpful.

Clint Woods

Executive Director

Association of Air Pollution Control Agencies

1776 Avenue of the States

Lexington, KY 40511

859.244.8040 – office

cwoods@csg.org

http://www.cleanairact.org

AAPCA ASSOCIATION OF AIR POLLUTION CONTROL AGENCIES

2017 FALL BUSINESS MEETING

September 20–22 | Doubletree by Hilton | Raleigh, North Carolina

To: Rees, Sarah[rees.sarah@epa.gov]; Laws-Regs[Laws-Regs@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Brown, Byron[brown.byron@epa.gov]; Shea, Quin[QShea@eei.org]; Fisher, Emily[EFisher@eei.org]; Steckelberg, Kathy[KSteckelberg@eei.org]; Chuck Barlow - Entergy Corporation (cbarlow@entergy.com)[cbarlow@entergy.com]
From: Bond, Alex
Sent: Mon 5/15/2017 7:57:47 PM
Subject: Comments of the Edison Electric Institute
EEIComment_DocketID_EPAHQOA20170190.pdf

Dear Ms. Rees:

The Edison Electric Institute appreciates the opportunity to provide input on the Environmental Protection Agency's notice—in accordance with Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda—seeking comments on regulations that may be appropriate for repeal, replacement or modification. Our comments are attached here, and have also been submitted to the docket. Thank you!

--

Alex Bond

Associate General Counsel, Energy & Environment
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
202-508-5523
www.eei.org

Follow EEI on Twitter, Facebook, and YouTube.

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To: Dravis, Samantha[dravis.samantha@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Rostker, David J.
Sent: Mon 5/15/2017 7:35:03 PM
Subject: FW: The Office of Advocacy Seeks Input from Small Businesses at Regional Roundtable Events
Reg Reform Roundtable Announcement - LA.PDF

Good afternoon.

I wanted to send you all information about the Office of Advocacy's upcoming Regional Roundtables in Louisiana, in support of the Administration's efforts under EOs 13771 and 13777. These roundtables are open to the public. This will be the first of, we hope, many around the country over the next year.

Advocacy welcomes agency participation in these events. We hope that you or other EPA representatives might be able to join us to hear what small businesses around the country are looking for in regulatory reform.

Let me know if I can provide more details and who from EPA would be able to attend. Thanks.

David Rostker

Assistant Chief Counsel for Environment and Regulatory Reform

SBA // Office of Advocacy

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U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

From: Rostker, David J.
Sent: Friday, May 12, 2017 11:16 AM
To: 'Rostker, David J.'
Cc: Bromberg, Kevin L.; 'Waqar, Tayyaba (tayyaba.waqar@sba.gov)'; Maresca, Charles A.
Subject: The Office of Advocacy Seeks Input from Small Businesses at Regional Roundtable Events

TO: All interested Small Businesses and small business representatives

The SBA Office of Advocacy is hosting Regional Regulatory Reform Roundtables across the country in an effort to hear directly from small businesses about what regulations concern them the most. The first of the roundtables will be in Baton Rouge and New Orleans on June 7 and 8. The Baton Rouge roundtable will take place at the LABI Conference Center on June 7. On June 8, we will host a roundtable at the New Orleans Marriot on Canal Street.

The purpose of Advocacy's Regional Regulatory Roundtables is to:

1. Identify regional small business regulatory issues in order to assist agencies with regulatory reform and reduction in compliance with Executive Orders 13771 & 13777;

2. Compile crucial information for Advocacy's new report on existing small business

regulatory burdens across the nation, identifying specific recommendations for regulatory changes based upon first-hand accounts from small businesses across the country; and

3. Inform and educate the small business public as to how Advocacy and SBA can assist them with their small business.

The Baton Rouge Regional Regulatory Roundtable will be held at the Louisiana Association of Business and Industry Conference Center and will be all day event (8-5). The Eventbrite link to RSVP for the Baton Rouge RRR is https://www.eventbrite.com/e/sba-office-of-advocacy-regional-regulatory-roundtable-baton-rouge-la-tickets-34252094938

The New Orleans RRR will be held at the Marriot on Canal Street and will be a morning (8-1) session. The Eventbrite link to RSVP for the New Orleans RRR is https://www.eventbrite.com/e/sba-office-of-advocacy-regional-regulatory-roundtable-new-orleans-la-tickets-34437502497

In addition, small businesses that are not able to attend these RRRs may inform the Office of Advocacy about other regulatory issues through the webform at https://www.sba.gov/advocacy/regulatory-reform-input

This invitation is public and may be distributed to your colleagues, clients and members. Future RRRs in other parts of the country will be announced as they are scheduled.

You have received this email because you are currently on our distribution for information about Advocacy's Small Business Environmental Roundtables. Please reply to David.Rostker@sba.gov if you no longer wish to receive these emails. Please email David.Rostker@sba.gov to be added to this list.

Thank you for your support of the Office of Advocacy

David Rostker

Assistant Chief Counsel for Environment and Regulatory Reform

SBA // Office of Advocacy

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To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]
From: Paul Schlegel
Sent: Mon 5/15/2017 6:24:46 PM
Subject: RE: Agriculture submission to EPA
EPA-Final17.0515.pdf

Samantha and Brittany –

As I mentioned last week, a broad spectrum of agricultural organizations have compiled comments for EPA's docket on regulations. I am attaching a copy of the comment letter, which was filed a short while ago.

The comments raise a number of very important issues for producers. If your schedules permit, we would welcome the chance to meet with you to reinforce their importance to our members.

Thanks very much for your willingness to look these over.

Cordially,

Paul

Paul Schlegel

Director, Energy and Environment Team

Direct: (202) 406-3687

Cell: (202) 459-8831

Email: pauls@fb.org

From: Dravis, Samantha [mailto:dravis.samantha@epa.gov]
Sent: Thursday, May 11, 2017 2:58 PM
To: Paul Schlegel
Cc: Bolen, Brittany
Subject: RE: Agriculture submission to EPA

Thank you, Paul. Look forward to seeing the comments.

From: Paul Schlegel [mailto:pauls@fb.org]
Sent: Thursday, May 11, 2017 2:41 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Agriculture submission to EPA

Samantha –

On Monday, a large number of agricultural organizations will make a joint submission to the EPA docket EPA-HQ- OA-2017-0190. American Farm Bureau is coordinating this effort. I've included below a list of the groups currently signing onto the submission.

Once the submission is final, I would like to send you a copy. Additionally, I know we would appreciate the chance to meet with you to underscore the importance of these issues to agriculture generally. We'd be happy to work around your schedule if that is something that would be worthwhile for you.

Thanks very much, and let me know if I can answer any questions.

Paul

Paul Schlegel

Director, Energy and Environment Team

Direct: (202) 406-3687

Cell: (202) 459-8831

Email: pauls@fb.org

Groups signing onto Agriculture Regulatory Reform Submission:

-

Agri-Mark Dairy Cooperative, Inc.

American Dairy Coalition

American Farm Bureau Federation

AmericanHort

American Soybean Association

American Sugar Cane League

California Specialty Crops Council

Dairy Farmers of America

Dairy Producers of New Mexico

Dairy Producers of Utah

Exotic Wildlife Association

Federal Forest Resource Coalition

Idaho Dairymen's Association

Missouri Dairy Association

National Association of Wheat Growers

National Corn Growers Association

National Cotton Council

National Council of Agricultural Employers

National Council of Farmer Cooperatives

National Pork Producers Council

National Milk Producers Federation

National Sorghum Producers

Northeast Dairy Farmers Cooperatives

Panhandle Peanut Growers Association

Professional Dairy Managers of Pennsylvania

South East Dairy Farmers Association

Southwest Council of Agribusiness

St. Albans Cooperative Creamery

Upstate Niagara Cooperative, Inc.

US Apple Association

USA Rice

Western Peanut Growers Association

Western United Dairymen

Office of Water EO 13777 Outreach and Summary
May 15, 2017

I. Outreach

In response to Executive Order 13777 (Enforcing the Regulatory Reform Agenda), on May 2, 2017 EPA's Office of Water held a three hour listening session by telephone and web conference to get public input on existing water regulations that could be rescinded, replaced or revised to make them less burdensome. More than 850 people joined in with about 200 participants contributing verbal or written comments (see attached).

II. Broad Themes

Several broad themes emerged from OW's public listening session. These themes are overarching and offer guidance on framing suggestions for implementing recommendations under the EO 13777 process:

- When considering regulations to rescind, replace or revise, do not rush the process. Regulations are complex and interwoven with other federal and state statutes. Considering changes to them should be done in a thoughtful way, using sound science and obtaining robust public comment, in order to avoid unintended consequences.

- Carefully consider the federal/state roles and relationship in the regulatory process. Some comments suggested that the role of the federal government is important in order to ensure consistency and certainty, and prohibit a race to the bottom among states. Other comments emphasized the importance of working in full partnership with states early in planning and regulatory development processes.

- Identify opportunities to streamline regulations, provide flexibilities, increase efficiency and effectiveness, and encourage innovation. When developing regulations, consider how to make them easier to implement.

- It's important to consider the impacts of regulations on small, rural, and disadvantaged communities. Look for efficiencies and flexibilities that will help these groups implement regulations in a less burdensome way while providing clean water.

- Maintain the existing protections under the Clean Water Act and Safe Drinking Water Act. Do not "jeopardize" the gains the country has made by rolling back regulations. Sub-themes in this area include comments that adequate staff and funding are needed to maintain protections, and that clean water is good for the economy.

III. Preliminary Ideas

OW quickly examined about 100 comments from our public listening session that provided some detail on water regulations, or parts of regulations, that could be rescinded, replaced, revised or retained. Some commenters remarked on two OW rules that we are already moving forward on: Waters of the US/Clean Water Rule; and Steam Electric Rule (Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category).

Based on the limited information provided in the public listening session comments (especially from the regulated community) and short review time, we have identified several initial areas to consider:

A. Reduce burden of reporting and notification requirements (e.g. move from paper to electronic format for portions of CWA NPDES permits, SDWA data reporting and public notifications).

B. Look for incremental actions to improve timing and implementation of CWA water permits and water quality standards.

C. Identify and eliminate rules that are redundant (e.g. federal water quality standards no longer needed because state standards are now in place).

D. Increase opportunities for states' role in program implementation (e.g. CWA 404(g) wetland permitting responsibility).

We recognize that there will be much more input to consider in depth once the docket closes and we have received all of the detailed written comments relating to water actions.

IV. Office of Water WEBSITE AND MEETINGS

A. The OW website on the EO 13777 effort is: https://www.epa.gov/aboutepa/office-water-feedback-reducing-regulatory-burden

B. OW held several routine Association meetings between April 18, 2017 and May 11, 2017 where EO 13777 was one of several agenda items discussed. We provided detailed information about the EPA-wide regulatory reform effort, OW's May 2, 2017 Listening Session, and the process for submitting comments to the EPA docket. We did not solicit input from the Associations, and only answered questions about the process. We encouraged all meeting participants to provide written comments through the EPA docket. These meetings include:

- April 18, 2017: National Association of Clean Water Agencies (NACWA) Meeting
- April 24, 2017: Brown Bag w/ Environmental Stakeholders
- April 26, 2017: OW Quarterly State Association Meeting (Association of Clean Water Administrators, Association of State Drinking Water Administrators, Environmental Council of the States, Groundwater Protection Council)
- May 3, 2017: Coffee with Agricultural Stakeholders
- May 9, 2017: Utility Group Brown Bag

In addition, the Office of Water attended EO 13777 public meetings held by other EPA offices, including:

- April 24, 2017: OITA National Tribal Outreach Call
- April 25, 2017: SDBU Outreach Meeting
- April 26, 2017: OCIR Quarterly Intergovernmental Association Outreach Meeting
- May 10, 2017: OITA follow up Tribal Outreach Call

C. OW sent an email to 64,000 contacts (via our Office of Water Newsletter), representing diverse and numerous public and private groups, NGOs and private citizens about the May 2 Listening Session to obtain feedback on reducing regulatory burden (see attachment). We also provided an OW email for people to submit questions about the process: owregulatoryreform@epa.gov.

Attachments

1. Content of OW email to 64,000 Stakeholders on EO 13777 and May 2, 2017 Listening Session

2. May 2, 2017 Transcript of Verbal and Written Comments (edited to remove extraneous remarks such as operator instructions and participant comments about sound quality) from the Office of Water Listening Session on Reducing Regulatory Burden (sent to docket)

EPA

Moderator: Andrea Drinkard
April 24, 2017
11:00 a .m. ET

Operator: This is conference # 8535873.

Good morning. My name is (LaShonda), and I will be your conference operator today.

At this time, I would like to welcome everyone to the Executive Order 13777 on Enforcing the Regulatory Agenda.

All lines have been placed on mute to prevent any background noise. After the speakers' remarks, there will be a question-and-answer session. If you would like to ask a question during this time, simply press star then the number 1 on your telephone keypad. If you would like to withdraw your question, press the pound key.

Thank you. I would now turn today's call over to Andrea Drinkard to begin. Please go ahead.

Andrea Drinkard: Thank you, (LaShonda), and thank you everyone for joining us today. I am Andrea Drinkard, deputy communications director for the Office of Air and Radiation.

Let me start by providing an overview of the structure of today's call. First, we will hear a few minutes of opening remarks from Sarah Dunham, acting assistant administrator for the Office of Air and Radiation.

Following Sarah's remarks, I will provide a summary of the logistics for today's call, and then we'll turn it over to you, our stakeholders. Let's get started.

Sarah Dunham: Thank you, Andrea. Good morning, and thank you for joining us. My name is Sarah Dunham, and I'm the acting administrator for the Office of Air and Radiation at EPA.

On February 24, 2017, President Trump issued Executive Order 13777 on Enforcing the Regulatory Agenda. The Executive Order, among other things, requires each agency to create a Regulatory Reform Task Force to evaluate existing regulations and identify any that should be repealed, replaced or modified.

To inform these recommendations, EPA is holding today's public meeting so we can hear from those directly impacted by our regulations, including federal, state, local and tribal governments, small businesses, nongovernmental organizations and trade associations.

We invite you to take this opportunity to share your views here today. We also invite you to submit your comments to EPA's Regulatory Reform Docket, EPA-HQ-OA-2017-0190. The docket, which is accessible through www.regulations.gov, will remain open through May 15, 2017.

We will give equal consideration to input provided through the docket or through this teleconference. Your input as well as that received through other meetings and written comments will inform EPA's Regulatory Reform efforts and help fulfill the EPA's commitment to complying with Executive Order 13777.

Today's teleconference is not the only meeting EPA is holding on Regulatory Reform. The administrator has also directed the other EPA offices to provide recommendations and consult with their stakeholders and doing so. A list of EPA's planned meetings can be found on our regulatory reform website, www.epa.gov/laws-regulations/regulatory-reform.

Under the Executive Order, the Regulatory Reform Task Force is asked to provide a report to the administrator detailing the agency's progress by May 26th.

Once again, thank you for joining us today. I'm going to turn it back over to Andrea for some logistics for today's call.

Andrea Drinkard: Thank you, Sarah.

And as we said, today's call is an operator-assisted teleconference. As the operator has said, if you wish to speak at any time, you may nominate yourself to speak by hitting star-1 on your phone. Your name will be added to a queue. Speakers will be asked to deliver up to three minutes of remarks. You will hear a chime when you have 30 seconds remaining. When you hear that sound, please start wrapping up.

In order to hear from as many stakeholders as possible, we will be adhering strictly the three-minute time limit. If you continue to be on three minutes, we may interrupt you so that we may -- we can move on to the next speaker.

We will be hearing until 2 p.m., and we will do our best to hear from everyone who wishes to speak. As a reminder, this is EPA's opportunity to hear from you, our stakeholders. We will be in listening mode and will not be answering questions about specific rules or actions.

If you do not have an opportunity to speak on the call or you have additional remarks to go beyond the three-minute time limit, please submit your input to the EPA docket as Sarah said. EPA will be giving equal consideration to input provided through either of these methods.

And with that, we'll turn it over to the operator who will compile the list of questions.

(LaShonda)?

Operator: At this time, if you would like to ask an audio question, please press star-1 on your telephone keypad. We'll pause for just a moment to compile the Q&A roster.

OK. And our first question comes from the line of Cindy Folkers with Beyond Nuclear.

Cindy Folkers: Hi, can you hear me? Hello?

Andrea Drinkard: Yes, we can hear you.

Cindy Folkers: Hi. Yes, I actually had a comment so we can give those now?

Andrea Drinkard: Yes.

Cindy Folkers: OK. I'm Cindy Folkers from Beyond Nuclear. Thank you for the opportunity to comment today.

Executive Order 13777 is asking to, quote, "alleviate unnecessary regulatory burden placed on the American people," unquote. For Americans, radioactivity from the 19th and 20th century energy sources we've been using remains a health burden, and current regulations are not protective enough for women, children and pregnancy.

Adult males are more resistant to radiation than adult females who are less sensitive than male children who are, in turn, less sensitive than their female counterparts. That means that -- that means that for the same dose of radiation, women and children suffer more cancers than men. But more troubling the dataset on which this health information is based does not account for constant contamination of air and water that results from nuclear and coal technologies or exposures resulting from inhalation or ingestion. These data also represent just cancer and do not include non-cancer impacts.

Pregnancy, a uniquely vulnerable life stage, is not fully represented in this data and not fully protected by our current radiation standards. If EPA wants to streamline their regulation, they should modify them to protect the most

vulnerable life stages, which are pregnancy and childhood and get rid of more complicated less protective exposure standards. EPA should assume that pregnancy is a constant state in the population and set any radiation standards to protect it.

Do EPA radiation protection standards place an undue burden on the American people? For women, children and pregnancy, the answer is yes, because the exposure standards fail to protect them adequately.

Just as important, we are at the -- we are at the precipice of energy decisions, which will change our environment and civilization as we know it. EPA needs to encourage efforts that inform the public of this increased scientifically validated health burden on women and early life stages. That way the public and politicians can factor this information into decisions for our energy future and understand that continuing use of coal energy or using nuclear power to combat climate change means asking already overburdened women and children to continue to pay a higher health price.

Thank you for the opportunity to comment, and I will be submitting formal written comments by the May 15th deadline.

Andrea Drinkard: Excellent. Thank you very much for your input.

Operator, would you please open the next line?

Operator: Our next question comes from the line of Anne Gobin with Connecticut Department of Environment.

Anne Gobin: Good morning. Anne Gobin, I'm the director of Connecticut Air Program. Like EPA, our mission is to protect the health and wellbeing of all people and the environment. Although we've made great progress, our air is not clean and we continue working hard to reduce our carbon footprint by burning less fossil fuel.

EPA needs to continue on this positive path to achieve clean air standards and address climate change. No regulation should be struck without a replacement

that achieves as much, if not more protection of public health and the environment. Connecticut's population is exposed to an unacceptable risk from air pollution. More needs to be done.

EPA should be addressing additional rules -- should be adopting additional rules to address air pollution problems and fulfill its obligations under the Clean Air Act. The Good Neighbor Provision has not been fully implemented as required. Interstate transport has not been effectively regulated.

Both EPA and state and local air programs need to be adequately funded to fulfill the obligations we have. The proposed cuts, if implemented, would devastate our efforts. We're already inadequately funded to carry out our obligations to protect public health and the environment under the Clean Air Act.

Funding increases are needed. Cuts will prevent us from fulfilling our obligations.

Thank you for the opportunity to comment.

Andrea Drinkard: Thank you, Anne.

Operator, would you open the next line please?

Operator: Certainly. Our next comment comes from the line of Scott Lewit with Structural Composites.

Scott Lewit: Hi, good morning. Thank you for taking my call. Scott Lewit, president of Structural Composites and Compsys, Inc. We're located down here in Melbourne, Florida; a small business with about 70 employees.

We've been impacted by the SNAP rule. This is concerning for us. Basically, what's happened is they take ozone regulations and now apply them to greenhouse gases.

We use urethane foam in our process that requires 134A as a blowing agent. And, you know, we've had to change blowing agents in the past under EPA rules like from R22 to the less harmful 134A. And in that transition and the prior ones, we had an alternative.

The difference this time is we do not have an alternative, and EPA has forced us to commit to a date with no alternative. With that, we had no alternative but to sue the EPA, and we currently have a lawsuit with the EPA.

As we've gone in with the National Marine Manufacturers Association, our industry trade group, numerous meetings with the EPA, basically we've run into a hard wall where the past administration has refused to look at any logic whatsoever. The EPA has an inability to distinguish between recurring and non-recurring pollution. This technology that we're generating funded by the Small Business Administration, SBI, our program for the Navy, has resulted in weight savings in transportation for semi-trailers up to 20 percent and installation qualities up to 40 percent higher.

We can show that we can offset the greenhouse gases in as little as two years to fuel savings. However, the EPA will not look at this.

So what we're asking is three things. We think the SNAP should not be applied to ozone -- you know, should not -- greenhouse gases should be segregated from ozone regulation, and SNAP should not be applied to regulation of 134A.

Subject to that notwithstanding, we would request a narrow use limitation to allow us to continue to make our product, which again we can demonstrate has profound impact on greenhouse gas, not to mention light weighting, reduced wear and tear on roads and longevity.

We also ask that the methods be evaluated so that the EPA and Department of Energy can work together and look at recurring and non-recurring pollution so that we can make smart decisions. If we make a windmill, it takes some time to make it. We're going to have some environmental impact. And with that,

we can offset that environmental impact with electricity generation. We got to make those tradeoffs. That's what's happening here in Transportation.

We're lighter, more efficient, longer lasting. We can show the benefit, but the EPA really put blinders on and will not look at these tradeoffs.

Thank you for taking my comment.

Andrea Drinkard: Thank you very much, Scott.

Operator, would you open the next line?

Operator: Our next comment comes from the line of Laura Bender with American Lung Association.

Laura Bender: Thank you. My name is Laura Kate Bender. I'm the director of Advocacy for the Healthcare Campaign with the American Lung Association. We're the nation's oldest voluntary health organization, and our mission is to save lives by improving lung health and preventing lung disease.

EPA is to be seeking input today on existing regulations that could be made less burdensome. I'm speaking today to represent the more than 125 million Americans who live in places with unhealthy air. These Americans are currently shouldering the burden of air pollution. They rely on EPA standards to monitor and adjust to air quality in their communities. On their behalf, the Lung Association asks EPA not to block, weaken or delay existing protections under the Clean Air Act.

To encourage citizen participation in this process, we also request that EPA expand opportunities for public comments.

The timing and format of today's hearing made it challenging for many stakeholders to join, so I'm going to share two of their stories.

(Laura Paul) and her son (Tyler) live in Clarendon, Texas, and rely on EPA's current Clear Air Standards. Here are some comments from (Laura).

I quote, "My son (Tyler) was healthy when he was born, but around one year of age he began getting sick all the time. He was later diagnosed with asthma and over the years, he has been hospitalized more times than I can count. Fortunately, now that (Tyler) is 14, his condition has stabilized, but we still have to be vigilant. When your child has asthma, you never stop worrying. Every time your child goes to school, into a friend's house, you're aware that poor air quality or some other unexpected situation could put him or her in danger, and you might not be there to help.

Scientists and doctors tell us it's risky for children with asthma to inhale pollutants. (Tyler)'s lungs are already sensitive. When he breathes in a powerful irritant like ozone, his lung tissue swells further, making it harder for him to breathe. He coughs and (leads into) struggles. And we know how quickly a severe asthma attack can become a life-threatening emergency.

As a mother, I'm deeply saddened and if there's even a possibility that EPA would weaken air pollution standards, rolling back limits in ozone and other danger pollution would put our children in harm's way. On behalf of mothers everywhere, I urge EPA to do its job by maintaining strong air pollution limits and continuing to enforce life-saving measures to clean it up," end quote.

Now I'd like to share a few comments from (Tyler Paul), (Laura)'s son. I quote, "If you never had asthma, you can't imagine what it feels like to not be able to breathe. Picture being under water and something is preventing you from getting to the surface.

I've had asthma since I was a very little kid. Now that I'm 14, I'm happy that my asthma is under control, but I know that it can change at any time. I can't pretend I don't have it because my asthma will never go away.

I want to testify on behalf of all kids with asthma. Air pollution makes it harder for kids like me to breathe. I may only be 14, but I know that I have a right to clean air. That's why I'm speaking up today. I hope that what I've had to say will make a difference," end quote.

On behalf of the American Lung Association and the people in communities we serve, including families like (Tyler)'s, we strongly urge EPA to defend and enforce life-saving protections under the Clean Air Act. We will also submit detailed written comments for the record.

Finally, to request that EPA offer expanded opportunities to submit comments. Thank you.

Andrea Drinkard: Thank you, Laura.

Operator, next line?

Operator: Our next comment comes from the line of David Doniger with NRDC.

David Doniger: Thank you very much. On behalf of NRDC's three million members and supporters, I want to register a strong opposition to the Trump administration's destructive and unpopular agenda of rolling back public health and environmental safeguards.

We have a shared moral obligation to provide clean air and a safe and healthy climate for future generations, but I don't rest my case there. The Clean Air Act is the finest public investment with the best rate of return for the American people. It has prevented more than 160,000 deaths and 1.7 million asthma attacks each year.

Over its 50-year history, the Clean Air Act has saved literally millions of lives and averted tens of millions of serious illnesses. The Clean Air Act has prevented environmental catastrophes ranging from the loss of lakes and forests to acid rain, massive ozone-induced crop and forest damage and destruction of the ozone layer.

Taking the lead out of gasoline has protected millions of kids from brain damage, and it's copied all around the world.

In purely economic terms, it's air pollution that is a job killer. Without the Clean Air Act, American workers would lose 13 million more work days to illness every year. Tens of millions of work days lost for adults and tens of millions of school days lost for children have been avoided over the last five decades by the Clean Air Act.

The -- more than 2.5 million people in America already work in clean energy. That's triple the number in the coal, oil and gas industries. And the Clean Air Act delivers up to $90 in public health benefits for every dollar invested in curbing pollution.

The job isn't done. We specifically object to the plans to roll back the Clear Power Plan, the Clean Car and Truck Standards, the Mercury and Air Toxic Standards, EPA's Methane Standards. Unfortunately, I could go on.

Americans did not vote to roll back clean air, clean energy and climate safeguards. The polls show that strong majorities -- including majorities of Trump voters -- want to keep or strengthen clean air and climate safeguards, energy efficiency measures, water pollution safeguards and my statement will summarize that polling.

I call on you to stop this sham. You're cramming public input on clean air into a three-hour teleconference run out of Washington.

By contrast, EPA held literally hundreds of stakeholder meetings and public hearings in multiple cities, over the course of three years to get all sides' input into just one regulation, the Clean Power Plan.

Abandon this roll back process and get back to doing your job.

The Back2Basics course that Administrator Pruitt has charted…

Andrea Drinkard: (Excuse me), David, your…

David Doniger: …is a Back2Pollution detour.

Andrea Drinkard: David, your time is up.

David Doniger: Thank you.

Andrea Drinkard: Thank you very much.

Operator, would you open the next line?

Operator: Our next comment comes from the line of Timothy Hunt with the American Wood Council.

Timothy Hunt: Yes, my name is Tim Hunt. I'm the senior director of Air Quality Programs at the American Wood Council. AWC is the voice of North Americans 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 makes products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon.

We believe EPA should address the rapidly developing air permitting gridlock under the Clean Air Act by adopting more flexible policies and use of more realistic commissions data and modeling tools that will protect the environment and public health.

Every five years we must -- EPA must decide whether the National Ambient Air Quality Standards are sufficiently protective of public health. Recently, EPA has systematically tightened the NAAQS for several standards. Traditionally, the focus of the program has been on states developing plans to improve air quality in non-attainment areas, usually cities to meet the NAAQS.

However, since the NAAQS are effective immediately in rural areas where we operate, mills contemplating expansions or modifications that trigger a permitting review must demonstrate that emissions from the mill when combined with background air quality do not exceed the applicable NAAQS standard in order to obtain a permit. This results in a permit stalemate.

When the NAAQS levels, having dropped closer to background levels, is becoming more difficult to, quote, "pass the test and get an approved permit." To prevent further ratcheting, EPA should not lower standards further until current standards are fully implemented and met. During this time, air quality will continue to improve under current programs.

The inability to permit a project hurts the competitiveness of the mill, harms product development, prevents meeting customer needs and hampers innovation, and it thwarts environmentally beneficial projects which can lower emissions. Local communities will miss out on new job and economic growth while industry faces the risk of becoming uncompetitive in the global marketplace of wood products. The decline of permit submittals to states is a strong indication of this growing problem. Adapting new permitting policies by EPA could help alleviate the problem.

The challenges with the (ever-tightening) NAAQS are exacerbated by a lack of or inappropriate emission measurement methods, poor estimates of emissions, use of unrealistic air dispersion models and several rigid permitting policies.

AWC has provided EPA several suggestions in the recent past and will do so again including lower and fugitive P.M. emission estimates, acknowledging limited emissions from intermittent sources and using more realistic receptor locations. EPA's own recognitions of the advantages of probabilistic tools in its ORD report from 2014 should be incorporated into the permitting guidance to replace older deterministic approaches and avoid overestimates.

Finally, EPA should reestablish its partnership with states and give them more latitude to advance new approaches…

Andrea Drinkard: Thank you, Tim. Your…

Timothy Hunt: …and models.

Andrea Drinkard: …time is up.

Timothy Hunt: Thank you.

(Off-mic)

Andrea Drinkard: If you have more comments, you can submit them to the Docket. Thank you.

Operator, would you open the next line?

Operator: Certainly. As a reminder, to make a comment, please press star-1 on your telephone keypad.

Our next comment comes from the line of Albert Donnay with Donnay (Toxicology).

Albert Donnay: Thank you. My name is Albert Donnay. I'm a consulting toxicologist testifying today on my own behalf.

A regulation that I'm asking EPA to repeal or modify the Clean Air Act's National Ambient Air Quality Standards for carbon monoxide. The next lower reliable C.O. exposure from 100 parts per million to just 9 parts per million average over eight hours and 35 ppm over one hour. EPA has cited these standards since 1975 as the basis for requiring catalytic converters on vehicles to convert C.O. to CO2.

This regulation has caused American car buyers over $80 billion in the last 40 years, but the C.O. NAAQS has never been based on any studies showing that outdoor C.O. levels ever posed any health hazards to anyone nor on any studies showing that C.O. exposures below the NAAQS limits are safe.

In our latest review published in 2011, EPA said only six human exposure studies published in the 80's and 90's, five of them commissioned or conducted by EPA where sufficient quality to be cited as the basis of the C.O. NAAQS, but none tested any eight-hour C.O. exposures and their one-hour exposures were all above the EPA's one hour 35 ppm limit.

In the largest study (inaudible) with heart disease, C.O. exposures varied from 42 to 357 parts per million, while smaller studies exposed 96, five men and five women total to C.O. from 50 to 200 ppm. But since they are reported finding adverse effects in people with heart disease at these levels, none provided any assurance that EPA's lower limits are low enough to prevent such outcomes.

Over 200 air pollution epidemiology studies that included C.O. in their analysis suggest otherwise. They almost all report finding significant health effects associated with small increases in C.O. far below the NAAQS limits and within the range of 1 to 2 ppm that now prevail in most cities. But Administrator Jackson excluded these and all other types of C.O. studies from being cited as the basis for the NAAQS in the last review.

More than 15,000 studies in all even at the six studies she cited had tested relevant C.O. levels at or below the NAAQS limits instead of above them. Other aspects of the design undermining the result and (test out) on their fitness for policymaking. None preserved their data. Five used their quality control lab that could not reliably produce its results for a critical carboxyhemoglobin measurements, and all six of them mistook the subjects being as carboxyhemoglobin as an independent measure of C.O. uptake when it's actually a measure of C.O. excretion and dependent on their actual arterial COHb, which they didn't measure.

For all these reasons, I ask EPA to revoke or at least suspend the C.O. NAAQS until a new C.O. Clean Air Scientific Advisory Committee can be appointed to consider all the peer-reviewed articles published on C.O….

(Crosstalk)

Albert Donnay: …for last review. Thank you. And (inaudible) some new limits if needed based on studies whose data are available for independent review. Thank you.

Andrea Drinkard: Should we -- operator, (move) over the next line?

Thank you, Albert.

Operator: Our next comment comes from the line of Scott Evans with Clean Air Engineering.

Scott Evans: Hi, this is Scott Evans from Clean Air. I'd like comment on the EPA's use of guidance documents to implement rulemaking.

On EPA's Emission Measurement Center website, there are a series of EMC guideline documents that have been collected by EPA since 1988. They're currently numbered now one through 53 with a few gaps in them, and these are guidance on a variety of monitoring and emission measurement issues.

My problem is that many of these currently are technically obsolete. There appears to be no mechanism for ongoing review for relevance or obsolescence. For example, one particular guidance document that is causing me particular problem is GD33, which has to do with Test Methods 25 and 25A. I believe that it is an obsolete document.

The unfortunate part is that these guidance documents turn into the rule of law even though they are called "guidance documents" because they appear, they are relied on by states, for example, and state permits. They are relied on when doing other rulemakings in terms of SPS or MACT rules. And so these guidance document are taken at face value and not periodically reviewed apparently.

But more importantly, they seem to be contrary to the Administrative Procedures Act. I'll read one sentence on the website that contains these documents. The last sentence in the introductory paragraph says, "Some of the guidance may result in changes to the methods or performance specification." This is the part that I believe is contrary to the Administrative Procedures Act, which requires notice and comment rulemaking for all changes to methods and performance specification.

I would propose that EPA rescind all of these guideline documents unless EPA can come up with a compelling reason why they cannot submit them to

the notice and comment rulemaking procedure. And thank you very much for the opportunity to provide these comments.

Andrea Drinkard: Thank you very much, Scott.

Operator, next line please?

Operator: Our next comment comes from the line of Andrea Field with UARG.

Andrea Field: My name is Andrea Field. I'm making this statement on behalf of the Utility Air Regulatory Group, UARG.

UARG is a not-for-profit association of individual electric generating companies and national trade associations. Since 1977, UARG has participated in many Clean Air Act administrative proceedings focused on electric generating companies and in the litigation arising from those proceedings.

Because electric generating companies have so often been targets of EPA rules, UARG members have substantial experience with the unnecessary burden and excessive cost associated with regulatory compliance. UARG therefore endorses the idea of EPA's modifying, replacing and repealing agencies' programs that are outdated or unnecessarily costly, complex or burdensome or impose costs that exceed program benefits.

UARG believes such changes can be made consistent with the requirements and goals of the Clean Air Act. UARG will be filing comprehensive comments by May 15th. Today though, we offered just a few comments on some of the regulatory programs that we believe EPA can and should address as it's about complying with Executive Order 13777.

First, UARG believes the Clean Power Plan and Carbon Dioxide New Source Performance Standards for new and modified and constructed -- reconstructed electric generating units are unlawful. UARG, therefore, supports EPA's already commenced review of these rules.

UARG believes that EPA's greenhouse gas reporting -- mandatory reporting program exceeds EPA's information gathering authority under the Clean Air Act. Facilities are now expending enormous resources, tracking, quality assuring and reporting vast amounts of information. EPA also continues to spend significant resources for both its own staff and agency contractors to implement the rule.

Since 2009, EPA has promulgated dozens of revisions to the GHG mandatory reporting program, although you are going to understand that many of these rule revisions have been directed at correcting errors or simplifying data collection and reporting the need with so many revisions underscores the already complicated nature of the program.

For the reasons pointed out in UARG's pending petition for partial reconsideration, EPA should reconsider and modify key aspects of the cross-state air pollution rule update for the 2008 Ozone Ambient Standards. That rule's serious flaws result in a new regulatory program that imposes cost in excess of any reasonable measure or projected benefits and it threatens jobs in the energy sector.

We also have suggestions for changing EPA's visibility program and the unnecessary cost and burdens of pre-construction permitting. We also recognize that members who spent billions of dollars complying with other Clean Air Act programs, and although most of this cost of compliance come from the purchase and installation and operation of controls, they also come from periodic performance testing, continuous emission monitoring, record keeping and reporting that are also costly.

We believe this can be avoided.

Andrea Drinkard: Thanks very much, Andrea. Your time is up.

Andrea Field: Thank you.

Andrea Drinkard: Operator, open the next line. Thank you.

Operator: Our next comment comes from the line of Charlie Jiang with the (Environment for) Defense Fund.

Charlie Jiang: Hi. My name is Charlie Jiang with Environmental Defense Fund. I am speaking on behalf of myself today.

As a young person, I will be (harmed) by the regulations EPA is attempting to roll back. EPA -- critical regulations that protect millions of Americans including (inaudible) health from the dangerous effects of air pollution.

I was lucky enough to grow up in a neighborhood that benefit from 45 years of EPA's common sense clean air protection. I was able to go to school every day to spend time outside with my friends and to receive an education and upbringing that enables me to be a productive American. But many of my peers across the country are having a different experience. They suffer from asthma, missed school because the air is too dirty for them to leave their house or have lost family members due to toxic air pollution.

It is crucial that we preserve and strengthen EPA's climate and clean air safeguards to ensure all Americans, regardless of race, geography, age or income can enjoy the benefits of a healthy, breathable atmosphere.

Any attempt to undo these so-called "burdensome regulations" are dangerous and that will only start to benefit wealthy executives while putting my life and those of millions of my fellow Americans in harm's way. I urge EPA to uphold and strengthen its critical clean air environment protection and listen to the large majority of Americans who support strong regulations that clean up the air we all breathe.

Thank you for the opportunity to comment today.

Andrea Drinkard: Thank you, Charlie.

Operator, would you open the next line please?

Operator: Our next comment comes from the line of Mandy Warner with Environmental Defense Fund.

Mandy Warner: Thank you. My name is Mandy Warner, and I am with Environmental Defense Fund. Today, however, I am speaking on behalf of myself and my family.

I have two daughters, ages four years and 11 months. I'm gravely concerned with actions EPA may take that would result in more pollution that can harm my children and millions of other children across the country.

I asked my four-year-old the other night why she thought clean air was important, and she said very simply, "So you can breathe." She's right, and that's what this stakeholder meeting should be all about -- ensuring clean air so kids can breathe.

We know from four and a half decades of environmental protection that the narrative of burdensome regulations is simply false. It's a narrative repeatedly disproven by industry's own actions to comply on time and more cheaply with standards reducing pollution for millions of Americans in the process.

There is an endless pool of worry parents have to contend with already. We worry about how much fish is safe for our children to eat every week to (inaudible) pollution, what days we need to be careful about letting our children play outside due to smoggy air, and what serious challenges our children will face from runaway climate change. And we rely upon EPA to set common sense safeguards to protect us from things we cannot protect our children from alone.

Please don't add to our worries by rolling back critical life-saving protections that can help ensure a healthier future for my children and children across America. Thank you.

Andrea Drinkard: Thank you, Mandy.

Operator, next line please?

Operator: And as a reminder, if you would like to make a comment, please press star-1 on your telephone keypad.

Our next comment comes from the line of Howard Feldman with American Petroleum Institute.

Howard Feldman: Good morning. Thank you, Sarah and Andrea.

API is the only national trade association representing all facets of the oil and natural gas industry, which supports 9.8 million U.S. jobs and 8 percent of the U.S. economy.

Record U.S. production refining is happening alongside greater environmental progress. CO2 emissions from power generation (advancing) near 30-year lows, thanks in large part to greater use of natural gas. Also cleaner burning transportation fuels and industry investments have reduced emissions of criteria pollutants. The oil and gas industry has succeeded despite the unprecedented level of federal regulatory actions targeting our industry.

Consistent with President Trump's stated objectives of American energy independence and economic growth, EPA and other federal agencies should embrace smart, cost-effective regulations while continuing to promote public health, safety and the environment.

API is preparing detailed written comments that I'd like to highlight three key air regulations. First, the 2016 oil and natural gas NSPS final rule, API submitted a detailed petition for administrative reconsideration of the final rule to Administrator McCarthy on August 2016. The previous 2012 standards developed in collaboration with industry along with industries incented to capture more of what we sell are already effectively reducing emissions.

We are encouraged by EPA's recent announcement to review the 2016 standards, and API supports a revision of those standards. Additionally, we urge EPA to act quickly to extend rapidly approaching compliance deadlines.

Secondly, there are a number of problems with the outdated RFS program. API recommends EPA should utilize its waiver authority to reduce the renewable fuel obligations to ensure the mandate does not exceed the E10 Blend Wall. In order to maintain a market for ethanol-free gasoline, EPA should not send an RFS mandate that would cause the average ethanol content to exceed 9.7 percent. EPA should reject cause to move the RFS point of obligation, and EPA should work with Congress to reform and ultimately end this unworkable program.

Moving to the Ozone NAAQS, API has commented previously that the more restrictive ozone standards imposed by EPA in late 2015 were unnecessary because ambient ozone levels were already declining under the 2008 standards, and the public health is already protected with an adequate margin of safety. Ozone levels will keep falling as the country works to fully implement the older standards and other federal regulations. Unfortunately, EPA's new standards create tremendous burden on states and risk significant impacts on job growth.

API supports EPA's reconsideration of the 2015 Ozone NAAQS based on the issues that API identified in its comments and corp briefs and is encouraged by EPA's motion to continue oral arguments on the 2015 Ozone NAAQS. It is difficult for states to harmonize activities towards the implementation of both -- the 2008 and 2015 NAAQS. Therefore, we'd encourage EPA to expeditiously complete its review.

In conclusion, we look forward to working with Administrator Pruitt, EPA leadership and staff on these and other rules. Regulatory action should be rooted in sound science and data with the consideration of the cost and benefits while protecting public health and the environment.

Andrea Drinkard: Thank you, Howard.

Operator, would you open the next line please?

Operator: Our next comment comes from the line of (Jerry Steffi) with Harley Davidson Motors.

(Jerry Steffi): Thank you very much. We appreciate the opportunity from EPA to comment on Executive Order 13777.

Our company has worked since the late 1970's closely with EPA on the development of motorcycle regulatory content, and we appreciate those relationships and dialogues.

Our comments today are more related to the processes and requirements related to on highway motorcycle certification, and that's foremost found in 40 CFR Part 86 sub Parts E and F around highway motorcycles.

We do believe that there are items that can be improved, modified or changed to reduce the burden on motor cycle manufacturers. In the first category, one item that Harley Davidson truly believes needs to be modified is that EPA gives consideration for the consolidation of the requirements and regulations that are presently found in multiple sources and therefore, causes undue burden on manufacturers.

Content with respect to motorcycle certification and requirements is found not only 40 CFR Part 86 but in many outdated advisories and guidances that are found at epa.gov and also in separate references found at EPA's website. This information by not being consolidated leads to excessive burden and extra time. In effect, we have heard from new manufacturers about how difficult it is to find information at particular times.

We also believe that there is a redundancy in EPA's informational requirements related to motorcycle certifications. When we consider the submittal processes on annual basis through EPA's CDX verify system, we find that we are giving the same information not only within EPA's database but in a separate section known as the upload compliance document section. An example of this specifically is the Tailpipe Emissions Data, which we requested to place in two different areas of the system. This redundancy is overly burdensome and leads to additional time that is not needed.

Also, we think EPA should consider removing the requirements for separate sets of Freedom of Information Act motorcycle submittals and files. We believe that they should be treated on a case by case basis and should not be created as a separate set of certification information on an annual basis. This leads to an undue burden in terms of the amount of time that's spent preparing regulatory documentation. This could be consolidated.

(Off-mic)

Andrea Drinkard: Your three minutes are up now. If you have…

(Jerry Steffi): OK.

Andrea Drinkard: …additional comments, remember you can submit them to the docket.

Operator, would you open the next line?

Operator: And your next question or next comment comes from Jeff Cooper with RFA.

Jeff Cooper: Well, good morning. My name is Jeff Cooper, and I am representing the Renewable Fuels Association, which is the (USF) and oil industry's trade association.

I first wanted to thank EPA for hosting this call. We agree that there are a number of EPA regulations that today offer little or no consumer protection or environmental benefit and are unnecessarily burdensome and costly for both producers and consumers of renewable fuels like ethanol. Specifically, we believe several of the fuel regulations under the purview of EPA's Office of Transportation and Air Quality are right for major reform and streamlining. We will be submitting detailed comments to the docket on specific regulatory provisions that warrant significant modification.

Today, however, I wanted to focus on perhaps the most egregious example of a burdensome and unnecessary fuel regulation that offers no environmental benefit and is actually increasing the cost of fuel for U.S. consumers.

I'm referring to EPA fuel rules that effectively prohibit the sale of gasoline containing 15 percent ethanol known as E15 in the summertime in most of the country. In essence, EPA has refused to apply the same volatility or RVP standard to E15 that it applies to today's marketplace gasoline, which is E10. And this is even though E15 is slightly less volatile than E10 and therefore results in fewer volatile emissions. EPA requires E15 to meet a volatility standard in the summertime that is 11 percent more restrictive than the standard apply to today's gasoline.

Due to this prohibition on selling E15, during the summer months, most retail gas stations have chosen not to offer the fuel even though it is cheaper and a cleaner alternative with a higher octane rating. We believe this EPA-imposed market dysfunction can be corrected with simple administrative action. We believe EPA should level the playing field for E15 and today's E10 gasoline with respect to fuel volatility.

EPA could accomplish this by immediately extending the current E10 volatility standard to all ethanol blends including E15 or it could immediately lower the volatility limits for gasoline blend stock such that all finished ethanol blends would meet current gasoline volatility standards. While the E15 RVP barrier is our industry's most important regulatory barrier in the near-term, it is symptomatic of larger problems with our current fuel regulatory framework, and we look forward to submitting more detailed comments on some of those other provisions.

Lastly, I want to voice our strong support for the renewable fuel standard. I want to respond to the comment from API that we have an issue with the so-called "blend wall." In fact, ethanol content of gasoline last year already surpassed 10 percent well above the 9.7 percent safeguard that API is promoting. So I just wanted to make sure that it gets in the record that the blend wall is a fiction and should not be a consideration for EPA's rulemaking process on the RFS.

Thank you.

Andrea Drinkard: Yes. Thank you very much, Jeff.

Operator, next line please?

Operator: And your next comment comes from (Andrew Wilson).

(Andrew Wilson): Hi. My name is (Andrew Wilson). I am speaking on behalf of myself and about the EPA regulatory process.

In July of 2015, I went to Atlanta, Georgia, and testified on behalf of -- in favor of the Clean Power Plan. I was incredibly in favor of it then and saw the robust public process firsthand that happened over two conference rooms full all day long, people all day speaking on behalf of the EPA taking action on climate change responsibly. And out of that process came a very robust and very responsible regulation, and now we're being asked to roll it back.

In January of 2015, here in Austin where I live, I attended an EPA public hearing on the ozone -- or on the regional haze standard and there testified on behalf of myself and my children who go out and enjoyed Big Bend National Park that the regional haze problem is something that EPA needs to step in on and have more robust regulation of. And now we're being asked to roll that back. No, absolutely not.

And just two weeks later, in Arlington, I testified again on the Ozone Standard. And again all day long, people were testifying saying, "This is important. This is my air that we breathe. These are my children. Our air quality is negatively impacted, and EPA needs to act on that."

And I will repeat what I testified there then that I lost a friend. His name was (Jess). And (Jess) died of a massive asthma attack. And he lived in Salt Lake City, Utah. And on the day when he died, the ozone level in the air was at about 70 parts per million. We need to go further because every time we talk about rolling back the regulation, these are people's lives. These are my children's lives. This is our future on the planet, and we cannot move backwards on that, and we need to have a strong, robust process at least as robust as what we had in the past.

Thank you for your time.

Andrea Drinkard: Thank you, Andrew.

Operator, next comment.

Operator: Your next comment comes from the line of Ben Klein with Uranium Producers.

Ben Klein: Hi, thank you. I appreciate the opportunity to speak. On behalf of the Uranium Producers of America, I wanted to speak today for a few minutes about a rule that was initially proposed in January 2015, the Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings.

Basically, the rule would require in situ uranium mine operators to conduct long-term monitoring among a number of other new requirements. And at the time the rule was initially proposed, EPA provided no justification for the rule, we felt they felt account for the cost. They didn't consider the small business impact. They also didn't follow a number of recommendations from their Science Advisory Board.

The EPA is acknowledged on a number of occasions. They're not aware of a single example of an ISR uranium project contaminating groundwater at an adjacent non-exempt aquifer. And the EPA has also acknowledged that they really didn't consult with the industry or state regulators, including Texas Commission on Environmental Quality who's been regulating the industry for more than three decades.

TCQ offered to work with the EPA. They offered to provide additional groundwater data. They offered to even conduct additional sampling if EPA had concerns about groundwater quality around current or historic uranium projects.

EPA has proposed a rule well beyond the agency's authority. This is a concern that was raised by the Nuclear Regulatory Commission who's really the primary regulator in this space.

We were pleased that EPA decided to withdraw the proposed rule on December 2016. However, the agency issued a new version of the proposed rule that is nearly identical on January 19th, so the last day of the last administration.

The new rule equally troubling, again there's no evidence to justify it in the docket. Nothing -- EPA doesn't consider any of the peer reviewed science that's out there. And essentially if the rule is finalized, it would make ISR uranium mining completely unattractive from a cost standpoint, and we'd see most of the ISR uranium projects.

And in the U.S., in a time when we're importing 94 percent of the uranium needed for our nuclear reactors, which provides 20 percent of our electricity, it seems the administration should be working with the industry to strengthen our domestic uranium mining rather than -- rather than pursuing the regulation that would eventually put the industry out of business. And so we know this is just a proposed rule, but it's up and it's generating considerable uncertainty. It's making it harder for companies to go out and raise capital. And so we're asking EPA to immediately withdraw the proposed rule and work with the industry as we go forward.

Thank you for your time.

Andrea Drinkard: Thank you, Ben.

Sorry, operator, could you open the next line?

Operator: And your next comment comes from the line of Joseph Stanko with the NAAQS Implementation Coalition.

Joseph Stanko: Thank you. I am counsel to the NAAQS Implementation Coalition, which includes trade associations, companies and other entities who confront

challenges in permitting and operating facilities under increasingly stringent National Ambient Air Quality Standards.

Our diverse membership reflects the impact that NAAQS implementation challenges have across the American economy. That is why addressing these challenges to create a reasonable path towards project development is critical to fostering economic expansion that creates well paying jobs and generates needed tax revenue to local communities throughout the country.

The Clean Air Act requires that those seeking to build or expand major facilities in attainment areas first provide prevention of significant deterioration PSD permits from EPA that demonstrate the permit project will not excessively degrade air quality. PSD permit applications make such demonstrations to remodeling using EPA approved tools and policies. However, the multiple layers of conservatism that EPA has historically built into these tools and policies have long been known to significantly overpredict the impacts.

Prior to recent changes to the NAAQS for NO2, SO2, PM2.5 and Ozone, there were sufficient headroom between NAAQS and facility emissions plus the ambient background that impacts from other sources such as this conservatism was not generally problematic.

With those margins, shrinking or disappearing is more stringent NAAQS approach background levels, our members are finding that overprediction resulting from these conservative tools and policies can be a significant even determining factor in project permitting demonstrations.

We believe EPA can implement a number of measures to improve NAAQS implementation tools and policies. This include updating preferred model performance of low wind speeds, eliminating overly burdensome photochemical grid modeling requirements for single sources and updating emission factors. Such improvements fit squarely within the regulatory review called for by E.O. 13777.

For example, under the category of eliminating jobs or inhibit job creation, overpredictions from NAAQS implementation tools and policies result in modeled air quality impacts that do not exist. These modeling glitches can effectively prevent a needed permit for closing projects.

In the category of outdated, unnecessary or ineffective, NAAQS implementation tools and policies, some of which have been overtaken by the agency's increasingly more stringent standards, EPA should update its outdated tools and policies to confront new NAAQS implementation challenges. Impose cost that exceed benefits, NAAQS implementation challenges are even inhibiting projects that would reduce emissions and then the category of inconsistent with regulatory reform initiatives, NAAQS implementation challenges have been identified in the Department of Commerce's manufacturing burden and request implementation.

We will be submitting comments for the record and appreciate the opportunity to address EPA. Thank you.

Andrea Drinkard: Thank you, Joe.

Operator, next comment please?

Operator: And your next comment comes from Rhett Cash with American Coatings.

Rhett Cash: My name is Rhett Cash, and I work for the American Coatings Association. ACA is a voluntary nonprofit trade association working as an advocate, an ally to advance the needs of the pain and coatings industry and the professionals who work in it.

ACA has flagged the following EPA regulations that could be repealed, replaced or modified to make them less burdensome without impacting the level of protection to the environment or the health and safety of our citizens.

First, ACA requests that EPA update its aerosol coatings regulations found in 40 CFR Part 59 sub Part E. Specifically, ACA requests that EPA update its reactivity values, adjusted default value, modify its regulatory language to

allow for changing the value of existing compounds and add new compounds to its tables. Our member companies are especially burdened by EPA's current aerosol coatings regulations because they are no longer consistent with the regulation found throughout the country especially California, which is the leader in aerosol and coatings regulations and who updated its rules in 2010.

EPA's current regulations mirror California's old regulation and need to be updated. Our proposed updates would promote uniformity in aerosol and coatings regulations throughout the country and reflect the most recent scientific research available.

Second, ACA requests that EPA eliminate its tri-annual reporting requirements for aerosol coatings. These requirements are not only burdensome and costly for industry, but also provide little, if any, useful value or information to EPA. If there are compliance issues, this information can be requested by the agency, and manufacturers would then be required to provide it. Clearly, the burden outweighs the benefit.

Third, ACA urges EPA to revert to the 2008 National Ozone Standard of 0.75 parts per million. In 2015, EPA lowered the National Ozone Standard from 0.75 ppm to 0.70 ppm. The lowering of the standard now require states to identify whether they are in attainment or non-attainment. If they are non-attainment, then those states must revise their state implementation plans and develop even stricter VOC emissions regulations. This change will be very costly on the coatings industry because it will limit business expansion and impair the ability of U.S. companies to create new jobs.

The high cost of this change outweigh the commensurate benefits to public health in the environment. Thus, ACA urges EPA to revert to the 2008 Ozone Standard and fully implement the standard so that the forward progress already achieved under it can be extended without unnecessarily burdening of the coatings industry.

Lastly , ACA requests that EPA amend the Clean Air Act regulations so that they extend the time for review of the Ozone Standard to every 10 years

instead of every five years to allow for more stability in the marketplace for formulators also protecting human health and the environment.

Thank you for the opportunity to discuss these regulations with u. We look forward to discussing and working with you and your regulatory reform efforts in the future. Thanks.

Andrea Drinkard: Thank you very much, Rhett.

Operator, would you open the next line please?

Operator: Certainly. As a reminder, to ask -- to make a comment, please press star-1 on your telephone keypad.

Our next comment comes from the line of Ben Henneke with Clean Air Action Corporation.

Ben Henneke: Good morning. This is Ben Henneke. I am president of Clean Air Action Corporation, a company that has been involved with reducing regulatory cost for over 25 years. I was appointed by President George H.W. Bush as a charter member of the Clean Air Act Advisory Committee and was appointed by each president then after. I served on that Advisory Committee until 2009. For over a decade, I was the co-chair of the Economic Incentives and Regulatory Innovation Subcommittee.

There are many existing EPA air and radiation regulations that put the burden of unnecessary cost and delays on the American people. Those delays and unnecessary cost harm America. Pollution also harms America through unnecessary sicknesses, medical cost, loss of productivity, decreased soil and water quality, and reduced land productivity.

The challenge for EPA is to reduce burdens from regulations and also reduce cost and burdens from the pollutants. If EPA air and radiation is able to accomplish this challenge, it will set a good example for other federal agencies and other EPA programs. To reduce both cost and pollution is not

actually difficult. I will outline three simple levels of increasing complexity and administrations effort that will accomplish this dual challenge.

At the simplest level, the EPA can provide state, tribal and local enforcement flexibility on a case by case basis. The requirements for a source or a manufacturer of pollution creating products to request the enforcement flexibility would be showing that using the alternative compliance approach would increase pollution reductions, accomplish them sooner than regulatory compliance would and, of course, reduce cost.

The source using that alternative would also provide public report to their emissions and the results of their alternative compliance.

The next level of complexity would be for the EPA to publish guidance to the states, tribal and local permitting and compliance agencies of formal trading mechanisms that would allow any source to use reductions beyond regulatory requirements that are made in the geographically (inaudible) areas. That type of mechanism will encourage early reduction solution, provide sources with a broad range of emission reductions that they can use to meet requirements.

The guidance would deal directly with local effects as well as assuring transparency on the creation (of) emissions reductions. Development of guidance should allow local flexibility to create improve approaches that are then included in regular new guidance. The guidance should require that the implementing agency would show the pollution reduction, existing regulations that the reductions would occur more rapidly and that both cost and delays would be reduced.

The greatest level of complexity but also the greatest benefits the environment and jobs throughout the nation, EPA would review existing regulations and any future regulations to determine what alternative methods pollution reductions for compliance exist or can be reasonably expected to become available within the next three years. This approach would allow sources, both stationary and mobile, to focus on the pollution reductions needed and be able to plan…

Andrea Drinkard: Thank you, Ben, for your comments. Your time is up. If you have additional comments, you can, of course, submit them to the docket.

Ben Henneke: Thank you.

Andrea Drinkard: Operator, would you open the next -- would you open the next line please?

Operator: Our next comment comes from the line of (Norbert Rigby).

(Norbert Rigby): Good morning. I am a non-governmental organization of one. I am going to address a radiation regulatory reform, and I would like the EPA to consider carefully a 2015 petition before the NRC Docket ID NRC2015-0057.

My comments on this are as follows. Discard and disavow the no-threshold hypothesis because it is not based on evidence, but has been a fraud from the start as Edward Calabrese documented at least in 2011, '13 and '15.

Discard and disavow the ALARA principle. It makes no sense in light of the huge temporal and spatial variability of background to those on planet Earth without any evidence of harm or risk resulting from the high end of that range.

Discard and disavow the concept of collective dose. It never made sense and no evidence exists to support its application.

Declare below regulatory concern, any chronic exposures below at least 250 millisievert or 25 REM per year. This is approximately the largely agreed upon chronic dose to some inhabitants of Ramsar in Iran, which is the highest currently known background location on planet Earth. Without any evidence of harm or risk caused by that dose, this limit may need to be erased as additional reliable information is obtained. They often suggest that limit of 100 millisievert or 10 REM is an arbitrary number plucked more or less from thin air. In summation, EPA must base regulations on observable evidence not on unsupported assumptions, projections and models.

Thank you for taking my comment.

Andrea Drinkard: Thank you very much, (Norbert).

Operator, next comment please?

Operator: Our next comment comes from the line of Tim Hogan with American Fuel.

Tim Hogan: I'm Tim Hogan, director, Motor Fuels at the American Fuel and Petrochemical Manufacturers. AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity.

I will briefly cover three regulations we believe are the most burdensome for our member companies. The first is RFS. AFPM opposes government-mandated biofuel blending which distorts the free markets' efficient allocation of transportation fuels and disadvantages consumers.

The statute contains an aggressive schedule for renewable fuel blending. Declining gasoline demand and higher ethanol mandates threaten our nation's fuel supply. EPA must use realistic projections and continue to exercise this waiver authority to reduce some noble fuel obligations in recognition of the E10 blend wall. Just moving beyond the blend wall is not feasible for the existing fleet of motor vehicles, small engines and the field distribution infrastructure.

To ensure a playing field between refiners and large-exempt blenders, EPA must move the point of obligation to the position holder at the rack. The new Ozone Standard of 70 ppb increases the (inaudible) non-attainment areas due to background ozone levels, making it increasingly difficult to permit new facilities or modify existing facilities in these areas. In this regard, the current five-year review cycle for NAAQS does not provide enough opportunity for full implementation of preexisting NAAQS.

The administration can ease the burden by seeking to realign non-attainment designations for the 2015 Ozone NAAQS to 2025 to allow for full implementation of the 2008 Ozone NAAQS and other federal and state rules that will continue to reduce ozone information. Neither the 2008 review nor

the more recent ozone studies justify lowering the standard based on the health effects of exposure, therefore, EPA -- therefore, the administration should take steps to increase the quality of data EPA replace upon for NAAQS rulemakings.

Finally, AFPM has concerns about EPA's refinery executive rule, which poses significant cost to industry and the economy with little or no health or environmental benefits.

AFPM supports EPA's process to evaluate the residual risk remaining after full implementation of refinery MACT rules. However, we do not support EPA's implementation of standards applicable to periods of startup (strapped down) and malfunction, the plain provisions of the rule or the new fenceline monitoring regulations, all of which impose significant compliance cost despite EPA is now showing very low levels of risk.

We urge EPA to act on pending petition for reconsideration and to reject petition for reconsideration filed by various environmental groups challenging the work practice standards for pressure relief devices and emergency flaring.

Thank you for this opportunity.

Andrea Drinkard: Thank you very much, Tim.

Operator, if you could open the next line please.

Operator: Our next comment comes from the line of Paul Noe with the American Forest and Paper Association.

Paul Noe: Thank you and good afternoon. I am the vice president for Public Policy at AF&PA. AF&PA serves to advance the sustainable U.S. pulp, paper packaging, tissue and wood products manufacturing industry through a fact-based public policy and marketplace advocacy.

The forest products industry accounts for about 4 percent of U.S. manufacturing GDP, manufactures over $200 billion in products annually and

employs about 900,000 hardworking men and women often in small rural communities.

Today I want to call your attention to a very long-standing rulemaking that's been 25 years in the making -- EPA's Boiler MACT Rules. This rulemaking was about completed by the last administration, but unfortunately faced the court, remand in July of 2016. The court vacated certain limits in the rule. And now EPA has to complete the job and get this rule put to bed.

We would ask that the agency get a proposed Boiler MACT Rule out within six months to recalculate the few remaining limits that need to be done pursuant to the court. And that this is important for regulatory certainty and to finally close the chapter on this rulemaking, which is I said has been over 25 years in the making.

Thank you.

Andrea Drinkard: Thank you, Paul.

Operator, could you open the next line please?

Operator: Our next comment comes from the line of Leila Ghaznavi with Carnegie Hall.

Leila Ghaznavi: Hello. I am writing to strongly or calling to strongly endorse the EPA's current regulations. I grew up at Pittsburgh, Pennsylvania, a state that has been the heart of the steel industry.

Before the EPA, the -- is completely unlivable. People had to wear one set of clothes to work and carry their work clothes work with them in a bag because the soot that was in the air would coat their clothes before they ever made it to their desk.

Asthma and other breathing-related issues were a significant health issue for the entire city. Even today, the enactment of the EPA major clean efforts for the city, you can still see the building staying black from the soot of those factories. And while that soot is a (marker pride) of our industrial roots, it is

also a visible reminder of the importance and the impact that the EPA has had on the health and wellbeing of the city.

Pittsburgh is now considered one of the most livable cities in the nation, a far cry from its poor regard in the 60's and 70's. This evolution would not have happened without the EPA.

And for those who would say that Pittsburgh has suffered from the change and evolution of the steel industry, I will counter that EPA did not damage the steel industry by requiring factories to reduce their emissions. It was the investment of technology in Japanese steel. Our lack of investment in U.S. technology combined with the reliance on import taxes to (dull) competition for American steel in the U.S. that ultimately hobbled Pittsburgh steel industry.

Today, Pittsburgh is a thriving city with a sound economic base and technology and a center for healthcare innovation. I am thankful to the EPA that the fact that my niece and nephew will grow up in Pittsburgh never seeing a city sunrise and can go to school in the same clothes that they left their homes in.

The EPA has had a profound and an important impact on the health and wellbeing of Americans. I strongly oppose any effort to reduce minimize or negate the effectiveness of its important work. Thank you very much.

Andrea Drinkard: Thank you, Leila.

Operator, if you can open the next line please?

Operator: Our next comment comes from the line of Christine Pratt with Seattle City Light.

(Off-mic)

Kate Engel: Hello. This is actually Kate Engel with Seattle City Light. Can you hear me?

Andrea Drinkard: Yes, we can hear you. Go ahead. Kate?

Kate Engel: Oops. Seattle City Light provides electricity to Seattle's residential, commercial and industrial customers by generating 90 percent of energy through hydroelectric operations.

The impacts of climate change on mountain snowpack and glaciers that supply much of the water for our projects poses a threat to Seattle and the region's ability to continue to prosper in the coming years.

The effects of climate change have already been felt. In a warning climate, extreme events like storms, floods, droughts, wildfires, landslides and longer, more intense heat waves are likely to become more frequent. These changes threaten the snowpack and river flows that we depend on as well as on Seattle City Light's infrastructure and operations.

We have supported EPA's work on climate change and written an oral comments including the support of the endangerment findings, the greenhouse gas, tailoring rule, the Clean Power Plan and other proposed regulations for new and existing electric power plants. We maintain our position and believe that addressing climate change through regulating emissions of greenhouse gases is an urgent and vitally important action.

The city of Seattle and Seattle City Light have been long time advocates for federal action on climate change. We believe the EPA should continue the work of addressing climate change through the Office of Air and Radiation given the compelling scientific findings and evidence of climate change already occurring.

Thank you.

Andrea Drinkard: Thank you, Kate.

Operator, could you open the next line please?

Operator: Our next comment comes from the line of James Enstrom.

James Enstrom: Hello. My name is Dr. James E. Enstrom. I have a doctoral level training in both physics and the epidemiology, and for the past 44 years I have conducted high-quality peer-reviewed epidemiologic research at UCLA. I am asking EPA to reassess and modify the National Ambient Air Quality Standard for fine particulate matter.

On March 28th, I published a major peer-reviewed article showing that PM2.5 is not related to total mortality or premature deaths in the United States. This null relationship, which is on based on my analysis of the large 1982 American Cancer Society Cancer Prevention Study cohort, contradicts the positive relationship in the same cohort that was published in 1995 by Pope. And that was the primary justification for the establishment of the PM2.5 NOX by EPA in 1997.

The difference in findings occurred because the 1995 Pope analysis used inferior PM2.5 measurements and used only a selected portion of the available ACS data. My findings are also supported by the null findings in a 2016 article that analyzed the large National NIH AARP cohort.

My independent analysis of the otherwise still secret ACS data demonstrates the importance of basing EPA regulations on transparent and reproducible science as required by the HONEST Act. H.R. 1340 has been approved by the House of Representatives and is awaiting action in the Senate.

Since March 10th, I have requested that Pope, Krewski and the Health Effects Institute confirm my null findings, and they have provided no evidence that my findings are incorrect. Thus, EPA must immediately reassess the validity of the PM2.5 NOX and all regulations such as the Clean Power Plan that are justified by alleged PM2.5-related premature deaths.

The initial focus must be on my new findings on the apparently incorrect findings of Pope, Krewski and HEI and on the extensive evidence that healthy levels of PM2.5 have already been achieved in America. EPA must not approve any further (inaudible) waivers, state implementation plans or air quality management plans until this PM2.5 NOX reassessment has been made.

Thank you very much for your consideration. I will be submitting written comments to supplement these verbal comments.

Andrea Drinkard: Thank you very much, James.

Operator, would you open the next line please?

Operator: Our next comment comes from the line of Giedrius Ambrozaitis with Alliance of Auto Manufacturers.

Giedrius Ambrozaitis: Yes, hello. My name is Giedrius Ambrozaitis. I am speaking on behalf of the Alliance of Automobile Manufacturers. The Auto Alliance is a trade association that represents the interest of the 12 largest automobile manufacturers in the United States, representing 70 percent of all car and light truck sales in the United States. Thank you for the opportunity to speak today.

On this call, we would like to state that the alliance appreciates further opportunity to provide input on President Trump's Executive Order 13777 and how the Office of Air and Radiation can review, repeal, replace and modify regulations to make them less burdensome.

We are looking forward to submitting our written comments to the docket. Thank you very much.

Andrea Drinkard: Thank you, Giedrius.

Operator, if you could open the next line please?

Operator: Our next comment comes from the line of Aminah Zaghab with Environment America.

Aminah Zaghab: Hello. Thank you for this opportunity. My name is Aminah Zaghab, and I am with Environment America, a federation of 29 state-based environmental organizations working for clean air, clean water and open space.

On that note, we are very concerned with potential rollbacks to our EPA protections, climate safeguards, protect our health, conserve our resources and save lives with benefits that far exceed the cost of compliance year after year.

The Clean Air Act alone prevents more than 160,000 premature deaths and 1.7 million asthma attacks every year, delivering up to $90 in public benefits for every dollar invested in clean air. In particular, we're very concerned with the tax to the Clear Power Plan and the Clean Car Standards.

The EPA's Clean Power Plan represents the most significant steps the U.S. has taken to address the urgent threat of climate change. And the EPA's Clean Cars and Trucks Standards are essential for protecting public health and the environment. In fact, the Clean Car and Fuel Economy Standards currently in place are second to none in terms of policies that reduce transportation carbon pollution, our current top emitter, and reduce our dependence on costly oil.

In fact, the EPA reports that the Car Greenhouse Gas Standards in place through just 2012 have already avoided 160 metric tons of carbon pollution while at the same time saving consumers over $35 billion at the gas pump. This is the progress that we need to continue rather than weaken.

Thank you very much for this opportunity. And we hope to see these standards protected.

Andrea Drinkard: Thank you, Aminah.

Operator, would you open the next line please?

Operator: Certainly. Our next comment comes from the line of Henry Frey with North Carolina State.

Henry Frey: Thank you. I'm speaking as a private citizen. EPA is required under the Clean Air Act to develop and implement standards and cannot simply repeal them. The setting of emission standards where there's New Source Performance Standards, National Emissions Standards for Hazardous Air

Pollutants, Mobile Source Standards, et cetera, entails usually a lengthy rulemaking process with technical support documents, public comment, EPA response to comment and, in many cases, also a regulatory impact analysis that assesses benefits and cost.

So these are deliberative processes. They are generally not arbitrary and capricious.

With regard to the Clean Power Plan, EPA is obligated to act as a result of an endangerment finding some years ago that's based on scientific evidence of adverse effects of greenhouse gas emissions. EPA cannot simply disregard that endangerment finding and is obligated to take action under the Clean Air Act. The existing standards having been promulgated with regard to a lawful process cannot simply be set aside, and to do so arbitrarily and capriciously would invite tremendous number of lawsuits.

I'll also comment on the National Ambient Air Quality Standards that several commenters have talked about. EPA is required to set health protective standards, but the language in the Clean Air Act is they must protect public health with an adequate margin of safety and that the standards must be science-based and reviewed every five years.

According to a 2001 Supreme Court case, it is simply illegal for EPA to consider cost and technical feasibility of attaining a NAAQS when setting the NAAQS. So the NAAQS are really the only standard in the U.S. that is purely based on public health.

EPA is required to have an external body of experts, review the scientific basis of the NAAQS and so the NAAQS process is explicitly science-based. And in contrast to some of the comments we've heard, those rulemakings do not rely on a single study. They rely on the overall weight of evidence of the body of scientific literature, not a single study. For example, the revised Ozone Act, which some people are calling for setting aside, cannot simply be undone without a science-based rulemaking process. And for two revision cycles of the Ozone standard, the Clean Air Scientific Advisory Committee

has advised the administrator that the standard is not protective of public health unless set at levels in the 60 to 70 ppb range.

So furthermore, the effectiveness of existing emission regulations, which some commenters had pointed out, means it will become easier to attain the Ozone NAAQS.

And very briefly, I just want to emphasize that environmental regulations do not kill jobs. They may redistribute benefits and cost, but they don't lead to a net reduction in employment. And as others have pointed out, we've had tremendous economic growth since 1970 when the EPA was formed.

Andrea Drinkard: Operator, would you…

(Crosstalk)

Andrea Drinkard: …line please?

Henry Frey: …the benefits of the Clean Air…

Operator: Our next comment comes from the line of Ron Sober with RFS Consulting Inc.

Ron Sober: My name is Ron Sober. I'm a licensed environmental engineer and president of RFS Consulting, Inc. We're a small independent environmental engineering and consulting company, which assists sort of the industries and permitting compliance, recordkeeping reporting regarding the environmental rules and have over the past 40 years.

In this effort, I'm immersed in rules and regulations, some of which makes sense and some of which do not. As such, I'd like to offer the following comments on a handful of regulations or policies, which deserve reconsideration or modification.

40 CFR Part 98, pertaining to greenhouse gas emission reporting, no underlying rule or standard or limit governing reported emissions. We're

talking about non-criteria pollutants, non-regulated pollutants not required by the Clean Air Act of 1990 with no clear purpose for data being generated. This imposes a significant cost of regulated community for which there is no tangible benefit while not overly cumbersome to some industry sectors or equipment.

Sub Part W specifically pointed to the oil and gas industry imposes significant burden, which this industry type has multiple pieces of equipment, which must be tracked, monitored, data compiled just to determine if reporting threshold is triggered. This effort results in a significant financial burden whether reporting is required or not.

Second point is related to 40 CFR Part 63 MACT Standard in the "Once in, always in" policy. This policy by itself undermines any incentive to reduce emissions of hazardous air pollutants to below a trigger point and creates an unnecessary burden on continued compliance. There's no incentive to accept restrictions or modify operations to become a synthetic miner source. And the policy itself creates a burden on those desiring to reduce hazardous air pollutants since there is no benefit in doing so. The burden of reporting continues indefinitely with the cost being reported, generated and submitted to the regulatory agency only in, always in policy.

I have other comments. My time is up. I will be submitting written comments in the docket. Thank you.

Andrea Drinkard: Thank you very much, Ron.

Operator, would you open the next line please?

Operator: Our next -- our next comment comes from the line of (Don Giardinni) with Equipment Company and (Cardinal Manufacturer).

(Don Giardinni): Thank you very much. My name is (Don Giardinni). I'm one of the designated EPA Compliance team members with (Cardinal Manufacturing). It's an engineering with (higher equipment) company (inaudible) engine distribution.

My comment is regarding 40 CFR Part 1060.1 through 1060.825, control of evaporative emissions from new and end-use non-road and stationary equipment specifically with category engines defined in 40 CFR Part 1054, control of emissions from new small non-road spark ignition engines and equipment, which specifically designates the N.S. in our S.I. category as the spark ignited engines with a maximum engine power at or below 19 kilowatts.

I asked the Task Force to consider these evaporative emissions regulations as (ineffective) and take appropriate actions directed by this Executive Order. The logic is the permeation standards for fuel tanks and fuel lines, as dictated, represent a very, very small amount of vapor escaping into the environment through the walls of the fuel tank and fuel lines. This specify them out of 1.5 grams per square meter per day is so small, in fact, specialized equipment is needed to measure.

When this small amount of vapor that permeate through the walls of these components is considered versus the amount of vapor that escapes into the atmosphere, every time the fuel cap is removed to check how much gas is in the small equipment's tank or the cap is removed to fill up the tank, a realistic perspective appears. Several thousand days' worth of this limit is released into the environment each and every time the fuel cap is removed from the tank. Hence, the environment has been protected from nothing. This extremely small amount of vapor has simply been saved in the tank to be released when the fuel cap is removed.

Because the equipment covered here is largely small water pumps, generators, lawn mowers and all the typical small engine powered machines of the world with typically small fuel tanks, I believe if the Task Force considers how they are used in the field and how many times the gas cap is removed, (that then) evaporative emissions is attained by these regulations. This is capable logic, cannot be denied. Therefore, making these evaporative emissions are attractive.

So the burden of the manufacturer to obtain the certificate of compliance, pay the fees, pay the fines when the record keeping is correct and increase the products price in the market to absorb the expense is especially great whether one considers no net gain for the environment is actually attained.

Thank you very much for the opportunity to comment.

Andrea Drinkard: Thank you very much, (Don).

Operator, next line please?

Operator: Our next comment comes from the line of Jerry Hiatt with Nuclear Energy Institute.

Susan Mathiascheck: Hello, this is Susan Mathiascheck. I'm speaking on behalf of NEI, the Nuclear Energy Institute.

Nuclear energy provides by far the largest share of emissions-free electricity in the U.S. today. On behalf of the Nuclear Energy and our other members, NEI appreciates the opportunity to comment on EPA's regulatory review under the Executive Order and supports the agency's effort to examine its regulations and to maintain protection of human health and the environment going forward.

To that end, NEI will be submitting more detailed comments for the docket by May 15th. Thank you.

Andrea Drinkard: Thank you.

Operator, next line please?

Operator: Our next comment comes from the line of Nathaniel Burden with Fidelity.

Female: One second.

Operator: Fidelity Inspections.

Andrea Drinkard: Nathaniel, your line is open. We can -- we -- do you have a comment?

(Off-mic)

Andrea Drinkard: You may be on mute. We can't -- we can't hear you.

All right. Operator, if you'd open the next line please?

Operator: Our next comment comes from the line of Don Hancock with Southwest Research.

Don Hancock: Hello. Southwest Research and Information Center is a private nonprofit organization primarily involved with ARIA's work regarding the Atomic Energy Act and the WIPP Land Withdrawal Act. We also recognize the essential public health and economic benefits of ARIA's regulations related to clean air. We're also very much involved and concerned about public participation and information in the rulemaking process.

Executive Order 13777 that we're discussing today is the result of and a progeny of Executive Order 13777. That Executive Order Section 3A states that each agency's best approximation of the total cost or savings associated with each new regulation or repealed regulation is required.

Our concerns are that the cost calculations should include quantifying the health effects on existing populations of new and modified or repealed regulations. The cost calculation should include the cost and benefits to President Trump and his family's businesses and other related costs.

The Regulatory Reform Task Force that EPA has should also be identifying regulations that haven't been issued or not enforced that are required by existing law, not just new or existing regulations.

Furthermore, in terms of public transparency, the cost of the regulatory task force should be publicly disclosed and all of the reports of the regulatory task force should be publicly available on the EPA and ARIA's websites. Thank you.

Andrea Drinkard: Thank you, Don.

Operator, would you open the next line please?

Operator: Our next comment comes from the line of Nadia Steinzor with Earthworks.

Nadia Steinzor: Yes, hello. I am speaking on behalf of Earthworks, a nonprofit organization that focuses on oil and gas issues and protecting communities from the negative impacts of those industries.

I speak today both as someone with asthma and as a researcher who has documented the air pollution and health impacts caused by the oil and gas industry and how communities pay the price with their health, quality of life and property values.

A growing body of scientific evidence demonstrates these facts, including through 100s of peer reviewed studies. Nothing should be done to roll back the new federal rules to control oil and gas air pollution finalized under President Obama.

The U.S. uses over $1 billion worth of natural gas every year through methane leaks and intentional releases throughout the oil and gas system. This is enough natural gas to meet the heating and cooking needs of over 5 million American homes. These common sense regulations that have been put in place after painstaking and lengthy public review and comment would solve this problem.

Methane pollution is a grave threat to global climate and to air quality and health. Methane emissions caused pollution hitchhikers as well, stemming leaks and releases of methane with lower emissions of pollutions like nitrogen oxides which form ozone and smog and harm health.

Data clearly show that its oil and gas operations have expanded so to have the pollution it caused. Several years into the shale gas and oil boom, the Obama administration realized that it was high time for change.

Any attempted rollbacks by the Trump administration would fly in the face of this extensive public and scientifically based process and would be nothing less than payoff to oil and gas corporations for their financial support during the election, and (the vast) upfront to the public. Thank you very much, and we will submit written comments as well.

Andrea Drinkard: Thank you very much, Nadia. Operator, would you open the next line, please?

Operator: Yes. Our next comment comes from the line of Vince Brisini with Olympus Power.

Vince Brisini: Thank you. It's very important for EPA to reconsider repetitive regulatory obligations and onerous and excessive testing monitoring and reporting requirements that only serve to add unnecessary cost.

Also, in establishing regulatory obligation, EPA needs to use the most current and the best available information rather than relying upon outdated emissions inventories that result in inflated representations of impacts and benefits.

And benefits should not be double counted between regulations by considering them independently. EPA and other regulators cannot rely upon conjecture when representing environmental impacts. It appears to be occurring in a recent draft regional haze report for the Northeast.

So, the important facts to consider are, for example, the 43 of the 50 ozone monitors in Pennsylvania have already measured attainment of the 2015 standard using the 2014 through 2016 data.

And this is occurring prior to Pennsylvania, Reasonably Available Control Technology 2, the national mobile source NOx reductions from the implementation of tier 3 gasoline and implementation of the ozone season nitrogen oxide Cross-State Air Pollution Rule update, all of which became effective in 2017.

Nationally, some of the electric generating unit emissions reductions that have occurred between 2002 and 2016 are an 85.4 percent reduction in sulfur dioxide, 72.8 percent reduction in annual nitrogen oxide emissions, a 70.2 percent in ozone season nitrogen oxide emissions and a 74.7 percent reduction in non-ozone season emissions. Thank you for the opportunity to make this statement.

Andrea Drinkard: Thank you very much, Vince. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Gloria Linnertz with Citizen For Radioactive Radon Reduction

Gloria Linnertz: Hello. My name is Gloria, and I am President and Founder of Citizens for Radioactive Radon Reduction. The drastic act of removing the funding for the State Indoor Radon Grant and cutting the EPA radon program would take the lives of American people.

A few people know about the invisible killer that maybe in their home schools or workplaces but the discontinuance of the outreach efforts of the state radon programs no one will know. And that elevated levels of radioactive radon gas have been found in every state and in our nation including yours.

There is no federal or state law that requires radon testing at the time of the home that's purchased therefore many people were never aware that they've been living with this silent killer in their schools and homes and work places until they are diagnosed with lung cancer.

How can our government be so insensitive and humane to eliminate the efforts to educate their citizens about the leading environmental calls of cancer mortality? Eleven years ago when my -- when the oncologist told my husband, and he got lung cancer, it would take his life, we had no idea that we have been living with this invisible killer radon for 18 years because our society is so ignorant of the danger of this gas that cannot be seen, smelled or tasted. No one seems to care about those of us who have been robbed of our loved ones and our lives.

We have a government to protection for us, not just on the battlefields but in our indoor environment as well. The cause of lung cancer treatments amounts to 100s of 1,000s of dollars per patient.

And there is only a 15 percent to 17 percent five-year survival rate. In contrast, the typical home can be (at a) mitigation system installed $4,000 or $1,500 if they are aware of the danger.

State and federal staffing and program grants are essential for the government's moral, duty, legal obligation and of risk reduction to our American public.

I urge the members of Congress to ensure the continued existence of a fully funded radon program in EPA to protect our citizens against this leading environment cause of cancer mortality, this radioactive killer. They have the power and opportunity to save these lives 21,000 a year. You can make a difference.

The federal law, the Indoor Radon Abatement Act was passed in 1988, which it stated the government would protect the citizens from radon gas with state radon programs providing education and awareness. Please don't go back on your word, your actions, to support this critical live-saving program is vital. Thank you very much.

Andrea Drinkard: Thank you very much, Gloria. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Jeff Arnold.

Jeff Arnold: Hi. I am…

(Off-Mic)

Jeff Arnold: … representation of a new organization. I came to this process today. That has been extremely enlightening in how the new administration is completely

curtailing in cunning out public comments by reducing this to a three-hour conference call on a Monday in which no working person would be able to attend reasonably without being an activist in the space or a representative of a major corporate interest. This is not only unfair. It should really be (outright)…

(Off-Mic)

Jeff Arnold: My concern is that the repeal of the Clean Air and Water Act will essentially have huge implications disproportionately affecting people based on cost and rates because those who have least ability to afford moving will be most impacted by environmental concerns nearby them.

Externalities are not well accounted for in the free market and there is no effective means of combating that without regulation in our current marketplace. Acknowledging that, in tandem with acknowledging the fact that there is a massive subsidization of the entire fuel industry when you account for tax write-offs for exploration and processing, we literally have put trillions of dollars of subsidization into these industries that have distorted the free market value of what they provide and have ignored the health costs that are rampant surrounding this work.

If we truly had equal terms, sustainable and low impact energy, we'd be way ahead and it already is in terms of job production. I am merely an individual with a background in economics contributing this information. I am horrified, absolutely horrified at the generate level of contribution you have seen from reps from industry who have seemingly no concern about the massive sweeping of deleterious effects that are about to be suffered nationwide should this repeal happen in the way it is about to happen. Thank you for your time.

Andrea Drinkard: Thank you very much, Jeff. Operator, would you open the next line, please?

Operator: Certainly. And as a reminder, if you would like to make a comment, please star-1 on your telephone keypad. Our next comment comes from the line of (Jim Spitz).

(Jim Spitz): Hello. I would like to question the calculus being used by the EPA here in this Executive Order in assessing costs and benefits particularly in regard to climate change and the rules most directly relevant here are the Clean Power Plan and methane abatement rule and the fuel efficiency standards.

We need to be absolutely clear that if scientists are anything close to correct than the regulatory burden of failure to bring in climate change under control will be far beyond anything in the experience of human civilization.

The burden of having an atmosphere that consists of 410 parts per million carbon dioxide, the number that is rapidly increasing will vastly exceed anything that any industry representative could possibly complain about.

I live in Gatlinburg, Tennessee where we were just burdened with a wildfire last November which was a result of the driest autumn in memory. That would not happen in the normal climate. That is a burden imposed on us by the EPA's failure to regulate greenhouse gases.

I think we must also call attention to the elephants in the room here that we have an EPA administrator who has publicly and with impunity contradicted the basic scientific understanding of climate change. This is unacceptable. The EPA cannot make policy based on fiction.

In the future, the American Southwest will be burdened by a permanent drought. Anyone living within three feet of the ocean will be burdened by a sea level rise. This can't be ignored by EPA. It must move ahead with the Clean Power Plan and the methane abatement rule and the fuel efficiency standards.

I ask EPA to please disregard the objections of industry that are absolutely inconsequential and insignificant by comparison. Thank you.

Andrea Drinkard: Thank you very much, (Jim). Operator, next line, please?

Operator: Our next comment comes from the line of Sarah Fields with Uranium Watch.

Sarah Fields: Hello. I am concerned that the current administration of EPA are more concerned about the burdens of regulations on profit-making industries rather than the health and social burdens on their citizens particularly those at risk.

I also need to respond to a comment about how nuclear power is an emissions-free industry, it certainly is not. The nuclear industry relies on fossil fuel at every stage of the nuclear fuel's chain from the point of exploration for uranium, uranium mining and milling, manufacturing of nuclear fuel, construction and operation of reactors and the handling and disposal of nuclear wastes. Of course, we still do not have a final solution to the disposition of high-level nuclear wastes, so the EPA doesn't have a basis for evaluating those impacts.

The nuclear industry also includes emission of radioactive and hazardous materials. The EPA is a regulatory agency. Regulatory agencies must have a document control system that ensures the permitting documents are made readily available to the public electronically and in a timely manner.

The Nuclear Regulatory Commission does that with their ADAMS electronic reading room, which is a good example of how public documents should be made available in a timely manner.

I am concerned about the lack of current health research related to radioactive emissions and impacts on community. I also would like the EPA to increase its oversight over state programs that implement the Clean Air Act.

The EPA should conduct timely regulatory reviews of state programs at least every two or three years and provide public input in those reviews. I shouldn't have to go to the EPA to get the EPA to tell the state of Utah that they -- what to do.

(Crosstalk)

Andrea Drinkard: Your line is still up.

(Off-Mic)

Sarah Fields: Does that signal that I am done?

Andrea Drinkard: You have about 15 seconds left.

Sarah Fields: Oh. OK. I'm very concerned too about the EPA Subpart W rulemaking for radon emissions from uranium mills. And the indifference and lack of concern for the public that live in the vicinity of uranium recovery facilities does not bode well for further decisions by the Office of Air and Radiation.

Andrea Drinkard: Thank you, Sarah. Your time is up. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Sarita Hudson with Partners for a Healthier Community.

Sarita Hudson: Hi, this is Sarita Hudson. I am the Director of Programs and Development for Partners for a Healthier Community, the public health institute of Western Massachusetts. And I convene the Pioneer Valley Asthma Coalition.

In Springfield, Massachusetts, fully 1/5 of our students have asthma. It's even higher in Holyoke, Massachusetts where 30 percent of kids have asthma. Asthma has been directly linked to air pollution, and in particular, to clean -- to power, the particulate matter that comes from power plants and to traffic-based air pollution.

It is critical that we maintain regulations that as we look at regulations that we also look at what is the burden on health and the economic and social impact of health problems related to air quality, whether it's radon, whether it is -- it is from power plants or -- and in particular, we would also consider the air -- indoor air impacts that come from having lead-based paint and other regulations that deal with hazardous substances, radon, lead, asbestos.

It's really critical that in looking at any of these in considering what is burdensome that they -- that there is also a consideration of what are the health impacts on children and what that means in terms of their education

and their productivity as adults and their ability to work and have fulfilled lives.

So, as we look at where the EPA regulations and in particular, those that will drive climate change which again will have serious health impacts and is already starting to show health impacts that we consider that all considerations around those -- any regulations that would have a health impact that that is considered fully as well as any burdens that are on industry -- industries or companies to implement those regulations.

In particular, we would also look at the focus on water quality as we found in Flint, Michigan that the need for regulation of water -- lead and water is critical. So, if anything, there should be even more regulations put into place to avoid the situation like Flint. Thank you very much for this opportunity, and we will be submitting written testimony.

Andrea Drinkard: Thank you very much, Sarita. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Joseph Pendola with National Steering.

Tony Pendola: Hi, my name is Tony Pendola, I'm the Small Business Ombudsman for the state of North Carolina. But today, I'm here in my role as the Chair of the National Steering Committee for Small Business Environmental Assistance Programs or SBEAPs.

The Clean Air Act requires that each state and territory have someone that can provide free technical assistance and advocacy for small businesses. We work with OAQPS and other EPA groups. We greatly appreciate this opportunity and we'll follow up with written comments.

We have been providing comments to EPA for many years and we'll repeat a few today that has not gained any traction. I would be remised if I didn't mention our strong desire for greater interaction with the Office of Air Quality

Planning and Standards as we have significant state-specific expertise and regulatory reform.

We would like to see EPA rescind the "once in, always in" guidance policy since it discourages emission reductions and assist states with large biogenic sources of VOCs in efficiently determining at the summertime gasoline RVP standard can be rescinded as it has been in North Carolina, Florida, Alabama and Pennsylvania. And this could result in saving billions of dollars for drivers and reducing refinery emissions.

One of the rules I'd like to talk about today is the auto body NESHAP or 6H. After the rule became effective, all of the major paint manufacturers reformulated their traditional automotive paints to all but eliminate those containing the heavy metals targeted by the rule.

Unfortunately, this is perhaps the only rule of its kind that assumes an entire sector consisting of 10s of 1,000s of auto body shops uses products containing these heavy metals. If the regulation were modified to treat auto body shops like all other facilities subject to this regulation and then the shops would no longer be automatically covered. In fact, hardly any of them use those materials any more. They would only be covered if they use them that contain the target heavy metals as laid out in the applicability section.

Another rule we'd like to discuss is the NSPS for petroleum dry cleaners. Comments were previously submitted and noted how this rule should not apply to newer dry to dry technologies. An applicability determination was issued on November 17th of 2015 by Region 4 stating that for the first time that newer dry to dry machines are not covered by the definition of petroleum dry cleaner.

Very few of the 10s of 1,000s of owners of these machines are aware of this dramatic change in interpretation. This significant of a change needs to be codified in the regulation itself and can be done by simply changing a definition. Thank you for the opportunity.

Andrea Drinkard: Thank you, Tony. Operator, would you open the next line, please.

Operator: Our next comment comes from the line of Angela Tin with American Lung Association. Angela, your line is open.

Angela Tin: Hello, my name is Angela Tin, and I am Vice President of the -- of Environmental Health for the American Lung Association of the Upper Midwest. Thank you for allowing us to speak today. I will also be providing written comments.

Radon is a colorless, odorless and tasteless gas that comes from the breakdown of naturally occurring uranium in the soil. The location of greatest exposure to radon is in the home. Radon can enter homes through cracks and other pathways in the foundation.

Any home can have radon regardless of new or old construction. Radon is a known human carcinogen that can cause lung cancer, is a leading cause of lung cancer among nonsmokers and is responsible for 21,000 lung cancer deaths each year. About 3,000 of these deaths occur from people that have never smoked.

The U.S. Surgeon General says that breathing radon over prolonged periods can prevent -- present a significant health risk to families all over the country. EPA estimates that 13 percent of lung cancer deaths are radon-related and that one in every 15 homes have a high level of radon above the recommended action levels.

We urge EPA to continue to maintain the existing radon program. Radon is a serious problem with a simple solution. The American Lung Association and all of our radon partners are working together to remove radon in our homes, workplaces and community with your support. Thank you for listening to me and your time.

Andrea Drinkard: Thank you, Angela. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Nathaniel Burden with Fidelity Inspections.

Nathaniel Burden: Yes. Hi. This is Nathaniel Burden from Fidelity Inspection and Consulting Services, also representing the Pennsylvania Board of the American radon scientists and technologists, and following up on the radon issue since radon is a classic carcinogen that caused us 21,000 lung cancer deaths a year.

And as said before that it's the primary cause of lung cancer for nonsmokers, we strongly recommend that the Radon Action Program and the State Indoor Radon Grant program be preserved for risk communication to low income and minority communities.

Also, with the effort of reducing 21,000 lung cancer deaths to by 50 percent would cause a tremendous savings to the overall medical community and impact to the medical community on preventing lung cancer deaths.

So, my final statement is that we need to preserve the Radon Action Program and the SIRG grant in an effort to make sure that especially low income and minority communities are provided the proper information which they have not been. Thank you.

Andrea Drinkard: Thank you, Nathaniel. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Gail Payne with Sierra Club.

Gail Payne: Hi, my name is Gail Payne and I'm the Nuclear Issues Chair of Sierra Club Long Island group. I am an unpaid volunteer, unlike most of the callers who want regulations weakened.

A recent caller that nuclear energy provides emission-free energy, this is untrue. Nuclear reactors release many types of radioactive emissions through day-to-day operations. If the caller was referring to carbon emissions, construction, maintenance, decommissioning and the processing of fuel and waste all have carbon emissions that exceed any renewable source.

Now, for my comment, the EPA was created for the purpose of protecting human health and the environment by writing and enforcing regulations based

on laws passed by Congress. I'd like to comment on a subject of repealing or modifying radiation standards to make them less burdensome.

I assume this means less burdensome to business, but do you know what is really burdensome to millions of Americans, cancer, asthma and birth defects. I am all for modifying the radiation standards to make them less of a health burden to you as citizens.

Permitted levels for radiation exposure were raised a few years ago, probably in response to the massive amount of radiation released by Fukushima. The incidence of cancer continues to rise worldwide in tandem with rising levels of manmade background radiation.

Background radiation has risen 600 percent since the start of the atomic age. The U.S. ranks sixth highest out of 50 countries in cancer incidents. Our allowable limits of radiation have been based on an arbitrary risk to an adult male.

However, women and children are much more sensitive than men to radiation. This means women like me and children like mine will be unduly burdened. There is no safe dose of radiation. All the reports of the National Academy of Science affirmed the no safe dose findings.

EPA, please, do not relax standards to either radiation or air pollution, when they should, in fact, be improved. That's it, thank you.

Andrea Drinkard: Thank you very much, Gail. Operator, next line, please?

Operator: Our next comment comes from the line of (Carrie Hugo).

(Carrie Hugo): Hello. Thank you for this opportunity to comment on implementation of Executive Order 13777. Firstly, I would like to thank the civil servants working for the EPA to help protect public health and our environment. Your work is often unrecognized, and sadly, it has become a habit for the hard work of civil servants to be a target for frustrations of those who would rather not

be burdened with the regulatory requirements that safeguard our air, water and food.

I have reviewed our nation's air status report for 2015 on the EPA website. This report indicates that despite a growing population, many of the harmful pollutants that affect our air, our climate, our health and our ecosystems are decreasing in much of the United States.

And while there's always room for improvement, we (are comforting) to see that the current regulations are clearly having a positive impact on our air quality and decreasing our exposure to pollutants.

Air pollutants in some categories have decreased by as much as 99 percent. It is very difficult to argue with the effectiveness of these results. Thus, I would question the reasoning behind reducing or eliminating these protections.

Finding efficiencies within an organization makes sense under any business scenario by reducing resources and changing regulations to the point that the EPA can no longer implement its own mission makes no sense.

The mission of the EPA is not to stimulate the economy or to reduce the regulatory burden on industry or special interest. The mission of the EPA is, "to protect human health and the environment."

I urge the EPA to temper the desire to stimulate the economy by relaxing the regulations that have helped the agency achieve the positive results that can be measured so far and the future results that will further protect their air quality even as our population grows.

Currently, renewable energy jobs outnumbered those in the fossil fuel industry and the trend for renewable energy sector is increasing while jobs provided by the fossil fuel industry are decreasing, which is the trajectory that needs to continue in order to reduce the impacts of climate change and protect public health.

The Clean Air Act, the Clean Power Plan and other regulations that impact air quality actually stimulate the economy and to grow in a way that will bring our country closer to sustainable and energy independence, sustainability and better health.

A dirty economy that causes us to move backwards and air quality and increases the presence of pollutants in our environment cannot help those who are suffering from the health effects caused by pollutants including asthma, various cancers and respiratory illness.

Any reduction or elimination in regulations, a reduction in staff to implement and enforce them that is based on cost savings down to implementation of Executive Order 13777 should include an in-depth economic analysis of how those potential savings to industry may actually result in higher cost to the consumer through higher healthcare cost, lost of quality of quality of life and cost associated with mitigating the negative impact of decreased air quality and increased toxic pollutants.

Any reduction or appeal of regulations that can…

Andrea Drinkard: Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Edward Smith with General Aviation. OK,
Edward, your line is open. You may be on mute. We're still not hearing you, Edward. Your line is open.

Edward Smith: Can you hear me? Can you hear me?

Andrea Drinkard: Yes, yes , we can hear you.

Edward Smith: All right. On March 6th of this year, the Council of the International Civil Aviation Organization, ICAO, adopted a new carbon dioxide emission standard for aircraft, the first of such design certification standard among world industry sectors, approved by the 36 emission councils codifies recommendations made by a committee of experts in February 2016.

The standard applies to new aircraft type designs as of 2020 into designs already in production as of 2023. Aircraft that are already in production must meet the standard by 2028 or be sufficiently modified.

This landmark standard was the product of six years of long and arduous work and reflects the cooperation and collaboration among the aviation industry including the general aviation industry, national regulatory authorities and other stakeholders including environmental groups.

The new standard is the product of input from our manufacturers and has our industry support. The new CO2 standard is one important component of the global aviation manufacturing industry's commitment to do its part to improve its efficiency and mitigate its effect on climate change.

The next step in the process is for national authorities, in the case of the U.S., this means that EPA in cooperation with the FAA to issue regulations implementing the new global standard. The General Aviation Manufacturers Association representing the U.S. and global aviation manufacturing industry urges the U.S. government in the strongest possible terms to develop the appropriate implementing regulations in a timely manner to ensure that U.S. manufacturers are not disadvantaged in the global marketplace.

Failure to implement the new CO2 standard for U.S. manufacturers would harm their ability to get aircraft certified for operation and sale into markets around the world. This has the potential to seriously harm the competitiveness of one of our nation's most competitive industries and one that provides many 1,000s of well-paying high-tech jobs.

The general aviation industry by itself supports $219 billion of total economic output and 1.1 million jobs in the United States. Thank you very much.

Andrea Drinkard: Thank you, Edward. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Lauren Pagel of Earthworks,

Lauren Pagel: Yes, hello. My name is Lauren Pagel. I'm the Policy Director of Earthworks, an organization that protects communities and the environments and the adverse impacts of mineral and energy development.

I'd like to comment on the New Source Performance Standards for methane emissions from the oil and gas industry and urge the EPA to not only keep these important standards in place but rigorously enforce them. These safeguards are more important to protect public -- are important to protect public health and the climate from air pollution that impacts millions of people across the country.

Over 12 million who live within a half mile with an active oil and gas facility and bear the brunt of the health impacting this industry including some 150,000 asthma attacks caused by oil and gas air pollution alone.

In addition to the immediate health impacts of volatile organic compounds like benzene, methane is especially quoted climate pollutant, warming our planet 80 times faster than carbon dioxide over a 20-year time period.

One quarter of the climate disruption we are experiencing today comes from methane pollution. The EPA should be about protecting public health in the environment, not catering to energy companies' desire to pollute more. No clean air regulation should be rescinded or weakened at the behalf of the industry creating the pollution. Thank you.

Andrea Drinkard: Thank you very much, Lauren. Operator, next line, please?

Operator: Our next comment comes from the line of Heidi McAuliffe, American Coatings Association.

Heidi McAuliffe: Thank you. My name is Heidi McAuliffe. I'm with the American Coatings Association. And I want to say thank you, first of all, to EPA for holding these listening sessions. I think it's very good idea to get these kind of comments from a broad spectrum of your audience. We will also submit comments in writing as well.

I'd really like to just address one issue today, and that is the "once in, always in" policy under the NESHAP for source categories. This actually is not even a regulation, it is a policy memorandum that was issued on May 16, 1995 by EPA. It's called the Potential to Emit for MACT Standards -- Guidance on. Timing Issues from John Seitz, Director of the Office of Air Quality Planning and Standards, OAQPS. And it was issued to the regional division directors.

Pretty much, everybody refers to this policy as the "once in, always in" policy. And I know that it's been referenced at least one or twice already by other commenters. Anyway, the -- under the MACT standards, a major source is defined as a source that has the potential to emit hazardous air pollutants of up to 10 tons per year of any single HAP or 25 tons per year of any combination of HAP.

Sources below this threshold are considered area sources, but under the "once in, always in" policy, a major source may become an area source by limiting its potential to emit these HAPs to below the major source thresholds. But there was a compliance deadline issued under the maximum available control technology standards, which is also called the NESHAP.

If you neglect it or if you fail to achieve that area source standard by the very first compliance deadline then you remain subject to the MACT even if you subsequently reduce your HAPs admissions to below major source levels at any other point in time.

So, as I said, if you don't get your emissions below that particular threshold by the deadline, you're subject to the MACT no matter what efforts you take in the future to reduce your emissions.

The coatings industry has substantially reduced all use of HAPs significantly and we have many, many companies that have or way under this threshold that are not able to get underneath that requirement in the "once in, always in" policy.

We would really appreciate if EPA would reconsider this policy and withdraw or rescind it. It really does not encourage manufacturers to reduce emissions because of this policy. So, we will be submitting comments on this as well and look forward to doing so. Thank you.

Andrea Drinkard: Thank you very much, Heidi. Operator, next line, please?

Operator: Our next comment comes from the line of Melinda Ronca-Battista, Native American Tribe.

Melinda Ronca-Battista: Hi. Thanks for hosting this session. It's really great that the EPA allows public comments on significant changes that may be happening.

I have just a quick comment in a way that could reduce burden and actually increase environmental measurements which is to reduce the burden and requirement for quality assurance project plans for projects that don't even involve gathering data.

This is a great burden for the many small agencies such as tribal agencies. In the past, EPA has required quality assurance project plans for using EPA's own data to draw a conclusion as well as things that obviously don't need a QAP such as literature searches.

So, that's my only comment. I'm hoping to be practical and productive and thank you, EPA, it's the best federal agency we've worked with many. And we appreciate this time to comment, reduce the burden of craps. Thank you.

Andrea Drinkard: Thank you, Melinda. Operator, next line, please?

Operator: Our next comment comes from the line of Christian Peña with Appion Inc.

Christian Peña: Yes, thank you. I'm Christian Peña, Executive Manager of Appion Inc. in Denver, Colorado. Our company manufactures tools and equipment used to recover and capture refrigerants specifically substances known to harm the ozone and equipment and contribute to global climate change.

I'm speaking on my own behalf on the basis of my direct experience with this industry working successfully under EPA regulations for decades. I've been closely involved with the work required to capture, track and manage these substances, procedures that are sometimes associated with added time and cost.

While it would be easier to irresponsibly vent these substances, the impact of such carelessness has been well documented. The smoking gun of manmade substances destroying stratospheric ozone cannot be ignored.

I have heard and read other commenters essentially asking the EPA to rollback regulations because of the concern that it's hard or expensive to protect the environment. They have also been requests to the level of the playing field by finding the lowest common denominator in regulation.

Electrical generation oil and gas industry representatives even here today have acknowledged how incredibly successful they have been even with the continued regulatory oversight of the EPA and therefore show that EPA's actions have not been unnecessary burdens.

If EPA is going to seriously pursue the modification of regulation then it is critically important that decades of work on protecting the environment not be ignored. For each area of regulation that the EPA has enacted on behalf of the American people and our health by way of clean water and clean air, it is necessarily that extensive review occur that meets or exceeds the amount of review that occurred when initially enacting each and every rule.

Public health must remain the first priority above any industry profits. For industries that cannot succeed without harming the environment, the cost to allow them to proceed is simply too high.

Clean water and clean air are the legacy that we must all work towards providing our future generations. While it is certainly possible and reasonable to review and update regulations, it must be done responsibly. Your responsibility is to protect our air and water.

For every rule withdrawn and regulation rolled back without significant irresponsible review to ensure that public health remains a priority, EPA and the current administration will have failed the American people and the world for generations to come. Thank you.

Andrea Drinkard: Thank you, Christian. Operator, next line, please?

Operator: Our next comment comes from the line of (Riley Meyer).

(Riley Meyer): Hello. Can you, guys, hear me?

Andrea Drinkard: Yes, we can hear you.

(Riley Meyer): Wonderful. I'm here to speak about (Vital Point) then. Although it may not be sexy in any particular way, it's something that goes and talked about in many of these issues.

(Vital Point) on the low ANGA estimate of 50 percent of our air. As water temperature rises, they are dying, and with that goes more than 50 percent of the entire world air as well -- as well as the principal food supply of most fish and other -- and the food supply of most of our planets.

We cannot afford to have a lacking EPA, whether you are corporate or if you are -- or if you are a private citizen, it goes about saying that we need (Vital Point) and we need to have the information provided by each corporation to provide EPA regulatory information, otherwise, the EPA cannot react to the pollution of each corporation.

I find over and over again throughout this teleconference that it's much tough that the corporate -- some corporate representation, the economic burdens on them would resolve only in the economic burdens of the American people. That's an incredible over simplification of the issue and it is in the corporation's self interest to persist this (inaudible) that their burdens are synonymous with the American people.

Please look to places like Dish, Texas, promise with jobs (including) industries. They instead receive chemical infused water that cost virtually every citizen millions of dollars in medical bills and plummeting costs of their housing which is the principal form of capital.

None of these are provided in the corporate estimates of projection submitted to these forums. The American people are not considered in these projections because it's not in the corporates' best interest to include them.

This isn't a new story. Dish has existed in many other places from Flint, Michigan to Hinkley California and the ever-burning coal mine of Centralia, Pennsylvania. They're not here necessarily to make jobs. They're here to get as much money as they can in the short term. And I can't fault them for that, but it's up to the EPA to see what they're doing, understand what they're doing and working nimbly to fight against them.

Thank you very much for hearing my words. I hope that you can find something that will -- I hope that you will not repeal the plea, EPA, it is so important. And we've seen 70 percent -- we've seen 69 percent better quality air since the 1970s of the Clean Air Act. It clearly does something and it's something that we valuably need. Thank you.

Andrea Drinkard: Thank you, operator -- thank you, (Riley). Operator, next line, please?

Operator: Certainly. As a reminder, to ask -- to make a comment, please press star-1 on your telephone keypad. Our next comment comes from the line of Ashley Soltysiak with HEAL Utah.

Ashley Soltysiak: Hi, this is Ashley with HEAL Utah. I'm HEAL Policy Director. HEAL Utah is a nonprofit with campaigns focused on clean air, clean energy, nuclear wastes and power policies.

I just like to make a statement today on behalf of my organization and our 15,000 members across the state of Utah. We're based in Salt Lake City, one of the areas in the country with the worse air quality during both the winter for particulate matter -- P.M. 2.5 and ozone in the summer.

This causes some of the highest incidences of asthma, cancer, stroke and exacerbated cardiovascular and respiratory problems and increases mortality rates in our area. It hurts our environment and public health and our capacity for economic growth in the future.

Frankly, the vast majority of improvements to air quality that we've seen in our state have been because of federal air quality standards like tier 2 fuels for vehicles. We need a strong federal oversight, not repeal and replace policy that's focused on short-term business gains at the expense of our families and our environment.

Therefore, we urge the EPA to strengthen the National Ambient Air Quality Standards under the Clean Air Act rather than weaken these critical health standards. In particular, we urge the agency to maintain the current ozone standards and make them even more robust rather than weaken them.

We also urge the continued reinforcement of the Regional Haze Rules which are critical to maintaining the air quality in our five beautiful national parks that are bordered by coal-fired power plants and extensive extractive industries.

Frankly, those of us here in Salt Lake City cannot breathe during our wintertime inversions and our lungs are being burned by excess ozone pollution in the summer. We also have a strong nuclear legacy in the state of Utah and urge the agency to maintain radioactive safeguards.

Ultimately, we believe that this means improving and enforcing EPA's air quality standards which are imperative to maintaining our industries, our diversified economy, improving our public health and working towards healthy and sustainable futures for generations to come. Thank you.

Andrea Drinkard: Thank you, Ashley. Operator, next line, please?

Operator: Our next comment comes from the line of Barry Andrews with Air Quality Services.

Barry Andrews: Thank you. My name is Barry Andrews. I am an air quality consultant with more than 35 years experience in the profession. Ten associates were working for regulatory agencies with multitude of duties including rulemaking activities.

Some of those rulemaking activities include working in tandem with EPA to develop regulations for air emission sources which we knew at the time were inadequately controlled. An example of this was the development of New Source Performance Standards for municipal waste combustors.

Following my experience working with the regulator, I have spent the last 25 years providing consulting to multiple industries including oil and gas companies whose operations are at the upstream, midstream and downstream levels.

During this time, I've seen EPA developed programs that have benefitted both industry and the environment and represent a good example of the things that EPA should pursue. An example of this is the Natural Gas STAR Program.

On the other hand, in recent years, I have seen three examples which I would clearly identify as being overly burdensome to industry. An example of this is the Greenhouse Gas Reporting Program per 40 CFR Part 98 Subpart W.

For the last six years, greenhouse gasses emissions data has been submitted for numerous activities. It is clear from looking at the data year after year that there are just a few activities that represent the vast majority of total greenhouse gas emissions.

Yet, year after year, the industry is required to report for the same activities that were part of the initial rulemaking activity. Following this procedure results much time and effort to account for greenhouse gas emissions that account for a very small percentage of total.

I would encourage EPA to return to their efforts back to what I would describe as a common sense to regulatory activities and seek to identify and focus on

what measures would result in massive environment benefit and at the same time, not overburden industry. Thank you for the opportunity to share my comments.

Andrea Drinkard: Thank you, Barry. Operator, next line, please?

Operator: Our next comment comes from the line of Gary Garrahan with STIHL Incorporated

Gary Garrahan: Thank you. Hello and thank you. STIHL Incorporated is a manufacturer of handheld outdoor power equipments such as chainsaws and leaf blowers. We ask EPA to consider reducing the regulatory burden in situations where one set of regulatory requirements exists for the air emissions resulting from the operation of products while another set of regulations apply to air emissions resulting from the manufacturers; testing of these products.

Specifically, as a manufacturer of gasoline-powered outdoor equipment, we are required to meet the EPA requirements for small non-road engines while at the same time, as a facility, we're required to have a federal air permit due to our potential to emit resulting from the testing of these engines.

Now, bear in mind, we run each engine in our facility for at most a few minutes in order to ensure that it meets emissions requirements while the end-user, the customer, will run that same engine for years to come.

Meeting the small non-road engine requirements ensures that the engines will have low emissions, so maintaining a facility air permit is really unnecessary for both the regulator and the regulated community.

The small non-road engine regulations are focused on reducing emissions, the facility air permit is not. It is really a little more than a database. If EPA can make allowance for situations where as long as manufacturers meet the emission requirements for their products then they would have a reduced burden with regard to air permitting requirements for the facilities in which they produce these products. Thank you.

Andrea Drinkard: Thank you, Gary. Operator, next line, please?

Operator: Our next comment comes from the line of Oscar Paulson with Kennecott Uranium

Oscar Paulson: Thank you, ma'am. My name is Oscar Paulson. I'm a Facility Supervisor at Kennecott Uranium Company, Sweetwater Uranium Project, which is a licenses conventional uranium recovery facility located in Sweetwater Country, Wyoming.

I would like to propose the following two items for repeal under this Executive Order which are as follows. The first is the proposed rule, Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings, Federal Register Volume 82 Number 12, Thursday, January 19, 2017 on the proposed rules.

It is the belief of industry that this proposed rule directed primarily against in-situ uranium recovery operations is not justified by the risks post by these operations specifically because these operations conduct their activities with an exempted portions of…

(Off-Mic)

Oscar Paulson: The second item that I would like to propose for repeal would be the final rule Revisions to National Emission Standards for Radon Emissions from Operating Mill Tailings. This is listed under Federal Register Volume 82 Number 10, Tuesday, January 17, 2017 under rules and regulations.

It is the belief of industry that this final rule is again, not justified by the very minimal risks post by the types of operations it regulates or attempts to regulate specifically uranium mill tailings impoundments, evaporation ponds at licensed uranium recovery facilities and uranium heap leach pads because this type of facilities are as a general rule located in very, very remote areas, and as such, don't post great risks or hazards to general public.

We also intend to submit written comments as well by the deadline. And thank you for allowing me this opportunity to comment.

Andrea Drinkard: Thank you very much, Oscar. Operator, next line, please?

Operator: Our next comment comes from the line of Paul Balserak with American Iron and Steel.

Paul Balserak: Hi, my name is Paul Balserak and I work for the American Iron and Steel Institute. AISI serves as the voice of the North American steelmakers, are 19-member companies and 125 associate members, represent real men and women across America who work in the job of steel production and manufacturing.

The steel industry has been hit by significant cost of job losses over the past years. We care deeply about our environment, and as an industry, have worked very hard to significant reduce our emissions and energy use over the past decades.

We also care deeply though about the work of men and women in the steel industry who have families they most care for. Their lives are generally harmed by the routine and significant cost and delays in projects at their plans from the federal air permitting regulations.

We are very encouraged by this opportunity for evaluation of current regulations. We want to maintain a clean environment around our plants but often find the way air rules are implemented results in real challenges to U.S. production of steel and the competitive world market.

We hope in particular that there will be a focus on streamlining the new source review programs such as allowing routine maintenance at plants to be completed more quickly and easily without unnecessary delays.

We also hope that EPA could make improved modeling tools a higher priority. While we appreciate the recent Appendix W Air Dispersion Final Rule, we would hope that the rule could be changed in -- to enhance particular

areas would receive widespread comment during EPA;s work on this recent final rule.

When the timing of air permit decisions by the federal government, not the actual air standards themselves at the facility but the timing of getting a permanent modification itself to process becomes a key deciding factor in major financial decisions on whether to expand the given plant.

There's something wrong with the way the air rules are being implemented. We appreciate this opportunity and look forward to work closely with the agency in public news and common process as we continue to enhance our environment and the way the air permit rules work. Thank you very much.

Andrea Drinkard: Thank you, Paul. Operator, next line, please?

Operator: Our next comment comes from the line of Nancy Kirner wit Health Physics Society

Nancy Kirner: Hello. My name is Nancy Kirner and I'm past President of the Health Physics Society and Chair of its Scientific and Public Issues Committee. HPS is the professional organization of specialists and radiation safety and we thank you for this opportunity to express our concerns.

First, the HPS appreciates the efforts of the EPA in protecting public health and the environment. We've had an exemplary working relationship with EPA and we hope that we'll continue well into the future.

Today, our primary regulatory concern is EPA's apparent reliance on the linear non-threshold hypothesis, LNT, especially at low doses and low-dose rates without consideration for the uncertainty of estimated health effects at low doses.

This reliance tends to foment the public's irrational fear of all types of radiation. This adherence to LNT goes against the International Commission on Radiation Protections Report Number 103, which states in part, corrected effective dose is not intended as a tool for epidemiological risk assessment

and it's inappropriate to use it in risk projections. In particular, the calculation of the number of cancer deaths based on collective effective doses from trivial individual doses should be avoided.

The HPS has a similar position statement called radiation risk perspective available at www.hps.org. it recommends against estimating health risks when exposes to ionizing radiation are near or less than natural background levels especially when doses are less than 100 millisievert from all no-background sources.

The following EPA documents could be improved to better address these uncertainties, the EPA assessment of risks from radon in homes especially.

Federal Guidance Reports Number 11, 12 and 13, EPA radiogenic cancer risk models and projection for the U.S. population also known as the Blue Book and…

(Off-Mic)

Nancy Kirner: …radionuclide tables, radionuclide, carcinogenicity slope factors.

And, of course, all of this gets embodied into 10 CFR 190 and 40 -- excuse me, that was 40 CFR 190 and 40 CFR 192. These could be reduced with additional epidemiological research to better quantify potential effects of low level radiation exposures.

We look forward to working with our colleagues at EPA to improve the existing regulations and seek additional epidemiological research on low levels of radiation. We'll also be submitting written comments. Thank you very much for the opportunity to speak.

Andrea Drinkard: Thank you, Nancy. Operator, next line, please?

Operator: Our next comment comes from the line of Ulla Reeves with National Parks Conservation Association.

Ulla Reeves; Hi, good afternoon, my name is Ulla Reeves and I'm with the National Parks Conservation Association speaking on behalf of our 1.2 million members and supporters who include a wide range and diverse group of baby boomers and millennials, liberals and conservatives, history (busts) and outdoor enthusiasts. They all share commitment to preserve America's past and protect our future, a concept that is at the heart of America's national parks.

We advocate for the health of national park ecosystems and the billions of people who cherish them and visit every year. In fact, just last year, our national parks generated nearly $35 billion for the U.S. economy, supporting 320,000 jobs across the country.

We are deeply concerned about the EPA's process and motivation for repealing, replacing or modifying regulations that we believe are critical to the future of our treasured national parks. EPA plays a fundamental role in safeguarding our iconic public lands and their air, water, wildlife and the people who visit them through the environmental regulations that exist today.

Because most resource threats exist beyond park boundaries, they are ultimately under EPA's regulatory jurisdiction, it is EPA's duty to ensure that state implementation and enforcement of the environmental regulations comfort with bedrock laws like the Clean Air Act and Americans depend on EPA to work with federal land managers including the national park service industries, states and the public to safeguard our pristine wild places and mitigate existing or potential threats.

We often press for more stringent safeguards because their quality problems are very much still in existence but we recognize that EPA has typically served its park protection duties in earnest.

The Office of Air and Radiation has delivered enormous benefits to the public in upholding the Clean Air Act visibility protection mandate as well as its good neighbor and acid rain programs.

Over the last 15 years, the advancements of these and other critical clean air policies have restored an average of 20 miles of visibility in the East and places like Shenandoah National Park and Okefenokee National Wildlife Refuge. And in the West, these programs have returned 30 miles on average of clear views to places such as Arches National Park and John Muir Wilderness.

These same policies make it safer for children to breathe and support longer park stays thus even further bolstering local economies.

We respectfully request that instead of pursuing repeal or weakening of regulations named in the executive orders, the EPA ought to continue to implement and enforce the sound regulations already on the books.

EPA ought to be asking how to better and more efficiently carry out its mission of protecting public health in the environment, not how to retreat from it by minimizing safeguards. We ask that EPA amend its current process by holding public hearings across the country to fully consider citizen and stakeholder input on regulatory reform and we urge EPA to make this process more thorough and balanced. Thank you for your time and consideration.

Andrea Drinkard: Thanks, Ulla. Operator, next line, please?

Operator: Our next comment comes from the line of Richard Wells Fargo with Offshore Marine Services.

Richard Wells: Good afternoon, everyone. I wish to address an unintended negative impact on U.S. shipyards by the recently implemented North American Emissions Control Area or ECA. The International Maritime Organization or IMO through the International

International Maritime Organization or IMO through the International MARPOL Convention Annex VI designated the coastal waters of the United States as an ECA. Under MARPOL Annex VI and the related U.S. EPA rules and the act to prevent pollution from shifts, no vessel built on or after January

1, 2016 with an IMO tier 2 engine can operate that engine within the North American ECA.

A U.S. shipyard building a vessel with an IMO tier 2 engine for use outside the North American ECA is prevented from testing and delivering the vessel without violating the MARPOL and EPA rules.

Also, any ship built outside the United States in 2016 or later with an IMO tier 2 engine is prohibited from entering the ECA to transit to any U.S. shipyard for repairs or dry docking. Further, a dual fuel ship both LNG and diesel fuel that was specifically built to exceed the IMO tier 3 standards will during a voyage to s shipyard for maintenance and repair of the ship or repair of the dual fuel engine is temporarily prohibited from using or carrying gas fuel and therefore would not comply with the IMO and EPA ECA requirements.

So, we urge the EPA to modify the act to prevent pollution from ships to match recent changes to IMO Annex VI which were proposed by the U.S. delegation to the IMO to address this situation.

This exemption would allow a ship with tier 2 engines constructed after the effective date of our ECA to operate in our ECA when related to original construction, conversion, maintenance and repair of the ship or maintenance or repair of a dual fuel engine while it is prohibited from using or carrying gas fuel due to repair facility safety requirements.

To minimize potential adverse environmental impacts of this exemption, the exemption could be subject to some additional conditions such as the exemption is temporary only long enough to allow the ship to proceed to and from the shipyard.

The engines onboard must meet IMO tier 2 NOx limits, the ship may not load or unload cargo while operating in the ECA and the ship sails directly to and from the shipyard, or in the case of a dual fuel vessel, directly to the nearest gas fuel bunkering facility located in the ECA.

Andrea Drinkard: Thank you, Richard. Your time is up.

Richard Wells: Thank you for this consideration of this -- a fix for this unintended impact to the U.S. shipyard industry.

Andrea Drinkard: Thank you, Richard. Operator, next line?

Operator: OK. Our next comment comes from the line of John Young. John, your line is open. We're not hearing you. John Young, your line is open.

Andrea Drinkard: Thanks, operator. I think we'll go to the -- to the next caller.

Operator: Our next question comes from the line -- our next comment, sorry, comes from the line of Terri McCartney with, Hopland Band of Pomo Indians.

Terri McCartney: Hello? Hello?

Andrea Drinkard: Yes, we can -- yes, we can hear you?

Terri McCartney: OK. Hi, I'm Terri McCartney with the Hopland Band of Pomo Indians in Northern California. And I'd like to remind everybody that air move, it is not restricted within boundary -- state boundary, travel boundary, reservations.

And it's critical to have a strong EPA with oversight of the air quality because having states take on jurisdiction and of regulations can have unintended consequences of the air quality throughout the region.

This is very important for EPA to consider when looking into repealing regulations that can impact tribes to try to -- this report -- this reporting an amount of asthma and respiratory conditions caused by poor air quality which is -- also has been impacted by inferior workmanship in housing with high levels of formaldehyde and (black mole) and other building materials.

So, we respectfully request that EPA consider all of the options when looking into changing regulations that could impact the (disadvantaged) communities. Thank you.

Andrea Drinkard: Thank you, Terri. Operator, next line, please?

Operator: Our next comment comes from the line of (Delena Triono) with Citizens.

(Delena Triono): Hi. Can you hear me?

Andrea Drinkard: Yes, we can hear you.

(Delena Triono): OK, great. My name is (Delena Triono). I'm a citizen of the United States and I'm not affiliated with any organization. I'm calling to strongly oppose dismantling any regulations provided and enforced in the Clean Air Act by the EPA.

These rules which have -- which were stated here are even decades ago already…

(Off-Mic)

(Delena Triono): …protect citizens and the environment. But they are all we have. However, it would be enormously detrimental to dismantle the laws that are in place.

I live in New York City and in New Jersey most of my life, and even with the existing rules, it is not uncommon to get air quality alerts, warning people to limit their time outdoors.

While living in New Jersey, we even have warnings from the city alerting us not to open our windows as there were airborne toxins being released into the air due to unearthing of toxic wastes nearby. This was -- it was so bad that our children in our local schools could not go outside and play during recess. We have -- they have to be kept indoors the whole day.

For weeks, the entire household, our entire household suffered from constant and severe headaches, vertigos, dizziness and general ill-feelings that lasted for months. We got to the point where our house has to be inspected for carbon monoxide poisoning and gas leakage.

Fortunately, everything in our home are safe, but it proves that the suffering was from the industrial activity that was going on in our city which caused

them to unearth those toxic wastes. We had to be moved out of the -- out of the city and into the countryside just so that our family could breathe without feeling ill.

While these are just my personal experience, they are not isolated incidents. In fact, there's a multitude of other and intimately more outrageous practices which while they are legal have devastating impact on the people and -- on the people that live in those areas.

The core access pipeline, the water practice in Flint, Michigan and the Exxon gas well exposure in Pennsylvania which killed one person and then the town people were later rewarded with pizza gift cards for their trouble.

These are all examples of widespread regulations that are while are protecting are just not doing enough to really do what the institution is supposed to do. All these -- all these actions were legal under current regulations, but these actions negatively impacted 1,000s of people in different areas of the country.

And in my personal experience, it made everyone in our city including all of the children in our school sick for weeks and months. Many of the people in the energy companies looking to rules and regulations for the sake of profits nor any of their family members will ever, ever have to (inaudible) through the negative impacts of the damage they are causing. They are biased by process.

Andrea Drinkard: Thank you, (Delena). Your time is up.

(Delena Triono): And this is what they are in favor of…

(Off-Mic)

(Delena Triono): Hello?

Andrea Drinkard: Yes, your time is up. Operator, would you, please, open the next one?

(Delena Triono): OK, sorry.

Operator: Our next comment comes from the line of Andy Bessler with National Tribal Air Association.

Andy Bessler: Thank you. Hello. My name is Andy Bessler, Project Director for the National Tribal Air Association. NTAA's mission is to advance air quality management policies and programs consistent with the needs, interests and unique legal status of American Indian tribes and Alaska natives.

NTAA has 120 member tribes and serve all 567 federally recognized tribes. Tribes are honored to serve as important partners of federal state and local agencies to protect ambient air quality, indoor air quality and mitigate climate change.

NTAA will be providing written comments to EPA on Executive Order 13777 enforcing the regulatory reform agenda by May 15th. While NTAA appreciates the opportunity to provide comments within the short timeframe allotted for this process, NTAA can only offer these general comments at this time.

Since 1984, EPA's policy of working with tribes has been based on close coordination in respect for travel self-determination and sovereignty consistent with EPA's policy for the administration of environmental programs on Indian reservation signed in 1984 by President Reagan and reaffirmed by every administrations since that time.

This policy directs EPA to work in close coordination with the tribes and respect travel determination and sovereignty. Therefore, in the spirit of EPA's existing policies, NTAA requests a government to government consultation with tribes so the EPA can hear from tribes directly on their perspectives related to E.O. 13777.

We encourage EPA to demonstrate this continued commitment to developing and enforcing strong air quality regulations based on sounds science as well as support sovereignty and self-determination of states, local governments and tribes to the appropriate and adequate allocation of funding for state, local and travel air programs.

In relation to air quality regulations, I offer this perspective from EPA's own data. Since EPA's creation in 1970 during the Nixon administration, the Clean Air Act has successfully reduced air pollution that impacts public health significantly.

Since 1980, aggregate emissions of criteria pollutants and air toxics have decreased by nearly 70 percent whole gross domestic product has grown by 153 percent, vehicle miles traveled have increased by 106 percent and our population has grown by 41 percent, all since 1980. Thank you for the opportunity to comment.

Andrea Drinkard: Thank you, Andy. Operator, next line, please?

Operator: Our next comment comes from the line of Katie Huffling with Alliance of Nurses.

Katie Huffling: Hi, thank you, good afternoon. My name is Katie Huffling and I'm the Executive Director of the Alliance of Nurses for Healthy Environments. We're the only national nursing organization focusing solely on the environment and health.

We would like to express our strong support for ensuring that healthy protective regulations which is the Clean Air Act are kept in place. Evidence has shown that the Clean Air Act and accompanying regulations have contributed to reductions in air pollution resulting in prevention of over 160,000 premature deaths yearly as well as other adverse health outcomes such as heart attacks, asthma attacks and hospital admissions.

Repealing or modifying regulations showed to improve health and save lives, will contribute to undue harm to the public especially to our most vulnerable populations such as pregnant women and children.

As a nurse and midwife, my goal is to help women and families have the healthiest pregnancies possible. Fortunately, air pollution and ground level

ozone can present a challenge for women and children who are especially sensitive to the negative impacts of these pollutants.

I've seen firsthand how poor air quality days can have a significant effect on the health of pregnant women. Many times, my asthmatic patients would come into my office wheezing or report increased use of their inhalers on poor air quality days.

Having good control of asthma is an essential part of a healthy pregnancy as the mother's breasts are the baby's only source of oxygen.

We caution pregnant women to stay inside in poor air quality days as exposure to air pollution has been linked to poor pregnancy outcomes, exacerbation of asthma and lung irritation. Exposure to particulate matter during pregnancy is linked to pre-term birth, low birth weight and small for gestational age infants.

These adverse birth outcomes are serious conditions that can lead to a variety of short and long-term health impacts for the baby, and greater risk of chronic disease as an adult such as diabetes, high blood pressure and obesity.

We are also seeing long-term changes in the lungs of children whose mothers were exposed to higher levels of air pollution while pregnant. These changes can lead to an increased risk of asthma and decreased lung function in these children.

The financial implications of treating adverse birth outcomes and chronic illness across the lifespan, their (cause) are worsened by air pollution, should be accounted for when determining the cost effectiveness, the necessity of implementing regulations.

The total annual cost of treating asthma alone is estimated at more than $56 billion. The direct benefits of implementing clean air programs has vastly exceeded cost of implementation assuming health outcomes and contributing

to a stronger economy by preventing millions of lost workdays and increasing work productivity.

Regulations that ensure clean air for all Americans are essentially to save lives and protect health. That's why the Alliance of Nurses for Healthy Environments supports ensuring strong clean air regulations are continued. Thank you for this opportunity to comment today and I urge the EPA to continue to safeguard these health protective regulations.

Andrea Drinkard: Thank you, Katie. We're getting very close to the end of our call. I think we'll probably have time for about two to three more speakers. Operator, would you open the next line, please?

Operator: Our next comment comes from the line of Theodora Birdbear with Fort Berthold POWER.

Theodora Birdbear: Hello. My name is Theodora Birdbear. I'm a member of Fort Berthold POWER which stands for Protectors of Water & Earth Rights. I'm a tribal member living on the Fort Berthold Indian Reservation in Western North Dakota in the Bakken oilfields.

We, tribal members, are directly affected by the EPA's air and radiation regulations for the industry. And I object to any weakening of EPA;s air and radiation rules. I live in Mandaree which is targeted for the unconventional oil and gas drilling, fracking and flaring.

For the last nine years, these flaring and leaky wells have been placed by -- within 500 feet or less to tribal homes including near very young children who live in those homes. This is a public health issue.

There are more than 1,000 flaring wells within Fort Berthold boundaries and another 1,500 wells are planned or expected right now. And for the last nine years, tons of extracted natural gas which includes the greenhouse gas methane has been dumped directly into the air that we breathe on Fort Berthold Indian Reservation.

The EPA's air quality rules are critically important to the public health and safety of tribal members on the Fort Berthold Indian Reservation and must be strengthened, not weakened, air quality enforcement must also be strengthened anywhere in Indian country including on Fort Berthold.

So, EPA, I'm asking you to don't cater to the oil and gas industry by weakening your air quality regulations, protect the public health of all including we, trial members, on the Fort Berthold Indian Reservation. I will be submitting written comments also. Thank you.

Andrea Drinkard: Thank you, Theodora. Operator, next -- why don't you open the next line, please?

Operator: Our next comment comes from the line of (Joanna Malk) with (Newmant Mini). (Joanna), your line is open. You may be on mute. (Joanna), your line is open. You may be on mute.

Andrea Drinkard: Operator, we can go to the next line, please.

Operator: Our next comment comes from the line of (Mark Kragel) with Vanguard Natural Resources.

(Mark Kragel): Yes, this is (Mark Kragel) with Vanguard Natural Resources, an oil and gas acquisition company, and I would like to encourage the EPA to relax the bureau of land management's methane standards which is putting a very undue burden on very small wells -- oil and gas wells where the cost to recover the methane would be far more than cost to sell the oil and gas. So, that's my comment, thank you.

Andrea Drinkard: Thank you very much, (Mark). Operator, next line, please?

Operator: Our next comment comes from the line of Theodora Scarato, Environmental Health.

Theodora Scarato: Hi. The Environmental Health Trust is a scientific organization conducting research -- can you hear me.

Female: I lost signal.

Theodora Scarato: Hello?

Andrea Drinkard: Yes, we can hear you.

Theodora Scarato: Hello?

Andrea Drinkard: We can hear you. We can hear you.

Theodora Scarato: OK. The Environmental Health Trust is a scientific organization conducting research on environmental health risks and prevention. We ask the EPA to update their public recommendations on non-ionizing electromagnetic radiation to fully inform the public about the current best available science and how to fully reduce exposure from the technology devices we use every day.

Since the World Health Organization's international agency with the research on cancer classified radiofrequency, radiation is a class 2B carcinogen (and 211) and evidence has significantly increased, showing the long-term radiofrequency radiation could cause cancer.

A recent animal study performed by the National Toxicology Program in the United States found an increased incidence of cancer and increased DNA damage in rats with prolonged exposure to radiofrequency fields.

They were said to mimic a lifetime of wireless exposure. Importantly, these adverse effects occurred at levels below those that caused thermal injury. Therefore, FCC regulations which are only based on thermal effects do not provide adequate protection for the public as stated by the California Medical Association in their wireless resolution in 2014.

Peer reviewed research has demonstrated adverse biological effects of wireless EMF including single and double stranded DNA breaks, creation of reactive oxygen species, immune dysfunction, cognitive processing effects, stress protein synthesis in the brain, altered brain development, sleep and

memory disturbances, ADHD, abnormal behavior, sperm dysfunction, and brain tumors.

The EPA needs to inform the public that cell phones and wireless devices were never premarket tested for long-term safety. Substantial peer reviewed research indicates not only cancer but also adverse effects to the brain and reproductive system from wireless radiation.

Over a dozen governments such as France, Belgium and Israel have online public resource specifically recommending that children's exposure be minimized. And their governments provide very details resources detailing how you can reduce exposure with everything from cell phones to baby monitors to laptops. We don't have that in the EPA. There were only three lines of texts on this.

The American Academy of Pediatrics now recommends that children's exposure to cell phones be reduced and specifies steps parents can take to reduce exposure such as make only short or essential calls on the cell phones, avoid carrying the phone against your body like in a pocket, sock or bra because cell phone manufacturers can't guarantee that the amount of radiation you're absorbing will be at the safe level.

In fact, people are likely absorbing radiation levels higher than government standards because before phones and wireless devices came in the market, their radiation tested at distances away from the body, not against the body.

So, for example, many cells phones are tested in about half an inch or less.

Andrea Drinkard: Thanks, Theodora. Your time is up. Operator, would you, please, open the last line. We'll have one more commenter today. Thank you.

Operator: And our final comment comes from the line of (Ernest Erlemond) with Earthjustice.

(Ernest Erlemond): Thank you. Please wake up, I know it's been a long day. Houses in cities are being photographed in gulf and wood smoke. While the (DHHS)

and everyone else proclaims that there is no safe level of any kind of smoke because…

(Off-Mic)

(Ernest Erlemond): …such as asthma attacks, heart attacks, cancer and so on.

Obviously, the Clean Air Act is not protecting…

(Off-Mic)

(Ernest Erlemond): And safety as required by the law. So, please revise it. Every revision so far has been much better than the original, which itself was good.

And excuse me for getting technical here, but average P.M. 2.5 from visibility maps converted to P.M. 2.5 maps is about 15 micrograms per cubic meter in most places. And the toxic equivalent is 150 micrograms per cubic meter because 50 percent of it is wood smoke.

So, please prevent the hotspot pollution in houses and you will prevent most regional air pollution problems like the problems in Fairbanks. Please ban all fireplaces and stoves from burning (core wood) in neighborhoods like London banned coal burning in fireplaces unless it can be proved safe. Thank you for allowing me to speak.

Andrea Drinkard: Thank you, (Ernest). And thank you, everyone, for joining us today. We appreciate all of your inputs. Again, if you did not have the opportunity to speak on today's call or if you had additional comments that you'd like to provide, please submit your input to the EPA (Why) docket. Again, that number is EPA-HQ-OA-2017-0190. Thank you again and have a great day.

Operator: This concludes today's conference call. You may now disconnect your lines.

END

MJB & A

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May 15, 2017

Sarah Rees
U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Avenue, N.W.
Mail Code 1803A
Washington, D.C. 20460
(submitted via regulations.gov)

Re: Regulatory Reform Docket in response to Executive Order 13777 (Input on regulations that may be appropriate for repeal, replacement, or modification)

Dear Ms. Rees:

The MJB&A Permitting and Infrastructure Coalition appreciates the opportunity to comment on the regulatory reform process initiated by Executive Order 13777, seeking input on regulations that may be appropriate for repeal, replacement, or modification. MJB&A Permitting and Infrastructure Coalition member companies [1] collectively engage the Administration and agencies on potential permitting modernization as well as regulatory and legislative opportunities to ensure energy infrastructure projects can proceed in a timely andcost-effective manner.

Consistent with Executive Order 13778 and the Notice of Intention published by EPA, we agree that EPA should review the Clean Water Rule, which defined 'Waters of the United States'[2]. We support EPA's process to develop a new rule that can be implemented consistently for all regions of the U.S. and that is legally durable. The electric sector, including our member companies, have long advocated for EPA to issue a rule that provides clear direction on which waters are jurisdictional and which waters are not. The current regulations, guidance, and case law have led to different interpretations in different regions of the U.S.

Given the opinions in *Rapanos v. United States*, 547 U.S. 715 (2006), we urge EPA to take comment on how best to define a physical surface connection between a wetland and a traditional navigable water and explore if

[1] The MJB&A Permitting and Infrastructure Coalition member companies include: Dominion Energy, Entergy Corporation, NextEra Energy, and PG&E Corporation. While we focus primarily on the Waters of the United States rule in these comments, the member companies are submitting comments on other regulations that may be appropriate for repeal, replacement, or modification through individual letters and through additional organizations.

[2] Clean Water Rule: Definition of ``Waters of the United States"; Final Rule, 80 FR 37,054 (June 29, 2015).

there are ways to clearly define Waters of the U.S. that reflects the federal and state partnership. To supplement this letter, we have developed a white paper that frames the key areas we think a final rule should address and that proposes key definitions for consideration.[3] While we think navigable waters, tributaries, and adjacent wetlands are Waters of the U.S., the final definitions for these terms and others are critical to make that clear.

Recognizing the existing case law and that some areas will need case-by-case evaluations, we propose the following key principles that could guide jurisdictional determinations:

- Any Waters of the U.S. must have a physical surface connection that has a predictable flow to a navigable water in order to demonstrate a significant nexus based on Justice Scalia's opinion and Justice Kennedy's opinion.
- By contrast, ephemeral streams, tributaries, and washes with low volume, infrequent, and short flow duration periods on an annual basis are not significantly connected to a navigable water. Such streams and tributaries that are absent of hydric soils, hydrophytic vegetation, or lifecycle dependent aquatic species are not significantly connected to a navigable water. Wetlands that are solely dependent on groundwater or precipitation for inundation are not jurisdictional.

As part of a new rule, there are a number of terms that we would encourage EPA to propose definitions for comment. For example, the definition of Waters of the U.S. must make clear that waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act, are not Waters of the U.S. One of our key concerns with the prior rule was that the regulatory text failed to make clear that these systems are not Waters of the U.S.

It is also important for the definition of tributary to make clear what is not jurisdictional. As an example, the definition might say:

> the water must be physically characterized by the presence of a bed and banks and ordinary high water mark, which contributes frequent and consistent duration of flow, either directly or through another water, to jurisdictional waters provided that hydric soils, hydrophytic vegetation, or lifecycle dependent aquatic species are present. Man-made structures with engineered bed, banks, and top of banks that are not created from jurisdictional waters or whose construction pre-dates the Clean Water Act should not be considered a jurisdictional tributary.

If significant revisions are not accomplished through the rulemaking process and the expanded jurisdiction created under the final rule remains relatively unchanged to the rule finalized in 2015, we would continue to urge EPA and the Army Corps of Engineers to review the current nationwide permits to increase higher acreage thresholds for permanent discharges to jurisdictional waters.

In addition to these comments on the Waters of the U.S., we look forward to continued engagement with the Administration on other issues that affect the permitting process for energy projects. We continue to have concerns with the time it takes for permitting decisions to be made for energy infrastructure projects. These delays can significantly impact the economics of a project. While we recognize that not all of our concerns can be addressed through EPA's authority, EPA's engagement in the Administration's process to identify opportunities for streamlining permitting will be important.

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[3] The MJB&A Permitting and Infrastructure White Paper on Principles for a Revised Waters of the U.S. Rulemaking is available for download from the MJB&A website at: http://www.mjbradley.com/sites/default/files/MJBAPermittingInfrastructure_WOTUSPrinciples_WhitePaper.pdf

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If you have any questions about these comments, please do not hesitate to contact me at cjenks@mjbradley.com.

Sincerely,

Carrie Jenks

MJB&A Permitting and Infrastructure Coalition

cc:
Samantha Dravis, EPA
Brittany Bolen, EPA
Sarah Greenwalt, EPA
Mandy Gunasekara, EPA

SELCvEPA_3:17-cv-00061_W.D.Va ED_001485A_00001912

May 15, 2017

Sarah Rees
Director, Office of Regulatory Policy and Management, Office of Policy
1200 Pennsylvania Avenue NW
Mail Code 1803A
Washington, DC 20460

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

To: Ms. Rees

The Association of Global Automakers, Inc.[1] (Global Automakers) appreciates the opportunity to submit comments in response to the U.S. Environmental Protection Agency's (EPA) Federal Register Notice, "Evaluation of Existing Regulations" [82 FR 17793, April 13, 2017]. Global Automakers is approaching this effort as an opportunity to identify ways to assess smarter, more efficient ways to implement existing regulations through streamlining and reduced regulatory costs. More importantly, Global Automakers is offering a list of items that will reduce resources associated with existing regulations **without compromising environmental benefits**.

Global Automakers and our members have consistently supported the long-term goals of environmental improvements and development of advanced, innovative technology. Regulatory certainty and fair competition are needed to support these goals.

Global Automakers has evaluated the breadth of EPA regulations that impact the automobile sector, looking for opportunities that significantly reduce costs to industry – estimated to have the potential to save $150-200 million annually across the industry – while at the same time preserving environmental benefits.

[1] The Association of Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Global Automakers' companies have invested $47 billion in U.S.-based production facilities, have a combined domestic production capacity of 4.5 million vehicles, and directly employ more than 92,000 Americans. Global Automakers works with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policies that improve motor vehicle safety, encourage technological innovation and addresses environmental needs. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit www.globalautomakers.org.

GlobalAutomakers

Thank you for the consideration of our comments. Global Automakers would be pleased to discuss these comments further at any time.

Sincerely,

Julia M. Rege
Director of Environment & Energy
(202) 650-5555
jrege@globalautomakers.org

CC: Chris Grundler, EPA-OTAQ
Bill Charmley, EPA-OTAQ
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Maria Doa, EPA-OCSPP
Jim Tamm, NHTSA
Mary Nichols, California Air Resources Board
Alberto Ayala, California Air Resources Board

GlobalAutomakers

COMMENTS SUBMITTED BY
THE ASSOCIATION OF GLOBAL AUTOMAKERS, INC.
ON THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S
"EVALUATION OF EXISTING REGULATIONS"

DOCKET NO. EPA-HQ-OA-2017-0190

The Association of Global Automakers, Inc. (Global Automakers) hereby submits these comments in response to the U.S. Environmental Protection Agency's (EPA) Federal Register Notice, "Evaluation of Existing Regulations." [82 FR 17793, April 13, 2017]. EPA issued this request in acknowledgment of Presidential Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," released on January 30, 2017 and Presidential Executive Order 13777, "Enforcing the Regulatory Reform Agenda," released February 24, 2017 .

In the spirit of the Federal Register notice, Global Automakers is presenting opportunities that will streamline regulatory requirements impacting the automotive sector while at the same time maintaining the environmental benefits the Agency seeks to preserve. More generally, we support efforts that will reduce duplicative requirements, provide certainty for industry, and maximize flexibility and harmonization. Having a stable regulatory environment with prudent and sensible rules is crucial to good business practice and will help ensure consumer choice and affordability. In a rapidly changing technology landscape, increased innovation can render old regulations obsolete, counterproductive, or inefficient.

At the same time, it is imperative that the idea of smarter regulations not be conflated with the idea of an agency operating with fewer resources. The agency's ability to provide oversight, and to ensure that all companies are adhering to the same set of rules, is paramount to fair competition. It is important that we maintain a fair and competitive market in which all participants can maximize investments in the research and development of innovative technologies, create jobs, and continue their efforts to protect the environment.

The items we identify below will reduce costs and burden on industry—and in some cases on EPA as well—without impacting environmental protection, vehicle safety, or a competitive marketplace. Global Automakers notes, however, that many of these cost savings cannot be fully realized without incorporation by the California Air Resources Board (ARB) as well. There may be even more opportunity for streamlining and cost reduction if EPA and ARB were to work together to adopt best practices and reduce duplication and inconsistencies in regulatory requirements and test procedures. Finally, while we have carefully considered our recommendations, Global Automakers believes these comments are only a starting point to a larger process and discussion. Further discussion between

industry and the agency will help ensure a consistent and correlated approach is necessary – many of these programs are interrelated and rely on information from each other.

Based on estimates provided by our member companies, Global Automakers approximates that the measures identified below could save on the order of $150-200 million annually for the industry as a whole; these estimated savings may vary, and Global Automakers provides costs per measure below where information was available. Our comments do not include the midterm review of greenhouse emissions standards for light-duty vehicles or the petition for greater harmonization between the greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) programs. For both issues, we are engaged with the agency on a parallel pathway.

Global Automakers' comments on streamlining existing regulations, reducing regulatory costs, and promoting innovation and investment in a competitive and strong automotive sector are provided in three categories: light-duty vehicle certification and test procedures, fuel economy labeling, and other EPA regulations. These comments, as follow, are applicable to the Office of Air and Radiation, Office of Chemical Safety and Pollution Prevention, Office of Atmospheric Programs, and Small Business Administration.

1. Light-Duty Vehicle Certification and Test Procedures

The resources spent on vehicle certification and compliance testing are a major source of cost to both the automotive industry and EPA. The cost of the facilities to test vehicles and the time spent administering tests adds complexity to an already cumbersome regulatory process. Global Automakers and its members recommend several measures as candidates for streamlining and simplification but whose overall modification would not reduce environmental benefit. These measures include:

- Air Conditioner Efficiency Credits via AC17 Tests
- Cold Temperature Testing
- Elimination of Manufacturer's Confirmatory Test
- Reduce the Need for Routine Particulate Matter Testing
- Reduce or Eliminate N_2O Testing Procedures
- Simplification of Evaporative Emissions Testing
- In-Use Verification Program Streamlining
- Eliminate Fuel Change Requirement in the IUVP Test Vehicle Before and After the Preconditioning Drive
- Relaxation of Test Facility Requirement
- The Verify System Reporting
- No Longer Require Full Applications for Certification for Carryover or Minor Changes to Vehicles
- Optional Relaxation of the Grouping Requirement

- Other Areas for Consideration in Certification and Test Procedures

Additionally, Global Automakers believes that a strong agency laboratory equipped with sufficient certification-testing resources is fundamental to maintaining a level playing field upon which automakers can equitably compete. It is important for EPA to provide oversight, and to ensure that all companies are adhering to the same set of rules.

Air Conditioner Efficiency Credits via AC17 Tests

EPA currently requires manufacturers to perform a time and resource-intensive test, called the AC17, to substantiate emissions improvements associated with more efficient motor vehicle air conditioner (A/C) systems. The AC17, overall, continues to be problematic, because it is lengthy to perform and requires a special test chamber to conduct. Further, this test is unduly burdensome for many manufacturers that lack the facilities and resources to conduct testing, in particular for small-volume manufacturers, which are therefore at a disadvantage compared to larger companies to earn A/C-related efficiency credits.

Since its inception, automakers have raised concerns about the AC17 test and have worked with EPA, and with the SAE, for many years to develop and implement the test. Yet, the agency has persisted in supporting use of AC17 to earn air conditioner efficiency credits. Global Automakers believes this entire test sequence would benefit from a thorough evaluation to see if there are alternative methods available that would achieve the same goal – to substantiate credit values – in a far less burdensome and costly manner. Global Automakers and its members would like an opportunity to work with the agency to consider ways to reduce burden associated with this test. While we have some ideas – such as going back to a table-type menu, minimizing the number of test vehicles, or reducing the number of tests – there may be better alternatives to make this test easier to perform that should be collaboratively explored.

Nonetheless, if this larger undertaking is not possible, Global Automakers believes that several smaller but still significant improvements can be made to the AC17 test, including streamlining the test procedure and providing clear guidance in the off-cycle credit program for requesting A/C technology-related credits.

For example, one helpful modification to the AC17 test procedure would be an allowance for a longer time between the A/C on and A/C off portions of the test. AC17 testing currently requires the test to be repeated (A/C off conditions) within 10 to 15 minutes after emissions sampling has concluded for A/C on conditions. This creates significant burden, as a single test takes over four hours to complete (in comparison, it takes only about one hour to perform general emissions and fuel economy testing on the FTP and highway test cycles) and must be run in a specialized environmental testing chamber. Since both sections of the test require a pre-conditioning UDDS test cycle and a soak period, results are expected to be the same regardless of the time between the two portions of the test. In other words, the pre-test requirements simulate the same types of conditions the agency would otherwise hope to

achieve by having a short time period in-between tests. This provision provides no additional benefit and no notable impact on the test results, yet creates a significant burden on test facilities and staffing resources. Global Automakers recommends that EPA amend the test procedure and allow up to one day (or even longer) to pass between the A/C on and A/C off portions of the AC17 test.

An even more significant reduction in testing costs and resources could be achieved by changing the criteria for test-to-test variability. The regulations allow up to 5.0 and 7.2 g/mile for passenger cars and light trucks, respectively, but capturing a 0.1 g/mile difference between tests is not realistic given test-to-test variation. More consideration should be given on how to discern small differences between tests (test variability). It is very unlikely that a true comparison of a more efficient to less efficient A/C system can take place that adequately quantifies A/C system differences due to test-to-test variation. Further, identifying a vehicle which does not incorporate the credit-generating technologies for comparison to a more efficient A/C system is not realistic, due to the additive effects of other powertrain technologies also adopted on the comparison vehicles.

Finally, Global Automakers requests that EPA create a clear process for A/C efficiency technologies, including consideration in the off-cycle credit program. This clarification will help automakers consider additional technological improvements and provide a clear pathway to ensure those improvements are accounted for. Having a clear process that encourages automakers to install innovative fuel-efficient technologies will result in greater real world emissions improvements. Further, as noted below with respect to the off-cycle credit process in general, once technologies are approved for off-cycle credits, these accepted technologies and/or methodologies should be added to a menu for future use by any manufacturer.

Cold Temperature Testing

Cold temperature testing is required to demonstrate compliance with cold temperature carbon monoxide (CO) standards as well as the standards for cold temperature non-methane hydrocarbons (NMHC). It requires a special facility and equipment that can produce, maintain, and be durable in cold temperatures.

There is no longer much of an ambient cold temperature CO attainment issue, and the cold CO standards have not been updated commensurate with the pace of technology. Hence, the standards are relatively easy to meet, and it seems the cost of cold testing may not be warranted for every single test group. In contrast, the cold NMHC requirement was added more recently as an air toxics provision, and likely raises more of a compliance issue than cold CO. This may require that cold FTP testing be performed regardless. Thus, while total elimination of cold testing may not be justified, some degree of streamlining should be possible.

As discussed under the 5-cycle labeling issue, cold test data is needed for the 5-cycle computation. If it is not run for actual cold CO or NMHC compliance purposes, then it would

be needed for input to the fuel economy label process. But under our recommendation for streamlining of the fuel economy label program (below), cold testing could be greatly reduced. Our recommendation includes dropping the litmus test which would require cold testing of all emissions data vehicles (EDVs), but we do recommend that EPA continue to acquire some level of full 5-cycle results to allow for periodic updating of the derived 5-cycle equation.

Thus, we recommend that cold testing be minimized via a similar requirement that was adopted in the Tier 3 standards for particulate matter (PM) testing. For PM testing, only 25% of all "durability" groups are required to be tested each year. A similar reduction approach could be applied for cold temperature testing along with liberal carryover criteria that could be applied to certain technologies that have been demonstrated to be reliably compliant with cold temperature standards.

Elimination of Manufacturer's Confirmatory Test

The benefits associated with manufacturer-performed confirmatory testing have greatly diminished over the years. Automakers' confirmatory testing is essentially a double check of certification tests already performed by the automakers. The value of this testing is negligible.

Global Automakers recommends that EPA eliminate manufacturer confirmatory testing. Elimination of manufacturer's confirmatory test **represents almost $1.5 million per year in testing in savings.**

Reduce the Need for Routine Particulate Matter Testing

Historically gasoline engines were exempted from particulate matter (PM) testing, because their PM emissions were inherently lower than the standards, which were based on diesel engines. While gasoline engines were still held accountable for meeting PM standards, EPA provided an option to provide a statement of compliance, based on good engineering judgement, that gasoline vehicles would meet the PM standards for the full useful life of the vehicle.

With the development of EPA's Tier 3 regulations (and California's corresponding LEVIII regulations), EPA tightened the PM standard and added additional requirements to test gasoline engines for PM. The test procedure for PM, however, is cumbersome and lengthy and is subject to a high level of testing variability. As a result, this testing is costly to perform and often has to be repeated.

EPA has recognized PM testing burdens to some degree, and it had adopted a provision to reduce it somewhat. The Tier 3 regulations only require PM testing in certification for only about 25% of "durability groups." See 86.1829-15(d)(1). However, even with this reduction, additional reductions are warranted given the expense and difficulty associated with PM testing.

Therefore, Global Automakers recommends that EPA develop criteria to eliminate PM testing on certain technologies, like low-emitting non-GDI gasoline engines, that have been determined to be continually below the PM standards. The exempted test groups meeting such criteria

would be certified upon receiving a compliance certification based on a good engineering judgement and manufacturer development testing. This amendment would greatly streamline the certification process, reduce testing burden, and therefore reduce associated testing costs as well.

To be clear, Global Automakers is not proposing that the agency delete the PM compliance requirement from the regulation. PM emissions have recognized associated health impacts, and Global Automakers agrees that compliance with the PM standards should continue to be checked through surveillance testing, In-Use Verification Program, and/or other audit processes. This would ensure that environmental objectives are maintained, while reducing automakers' testing burden. By reducing the certification requirements to test PM emissions for certain technologies, Global Automakers estimates that more than **$2 million per year per manufacturer could be saved**; these savings also include estimates for reduced laboratory equipment requirements, as addressed below.

It is also important to note that PM emissions is another area where California has related test requirements. As a result, it is critical that EPA and California align to reduce this test burden; otherwise, any action EPA takes will not result in a real cost or test burden reduction.

Reduce or Eliminate N_2O Testing Procedures

Although EPA has included nitrous oxide (N_2O) standards as part of the overall GHG light-duty vehicle program, the reality is that the main reductions in GHG-related emissions from mobile sources will be from reductions in carbon dioxide (CO_2). These reductions will come from the mandated improvements in vehicle fuel economy associated with the NHTSA CAFE program and the EPA GHG emissions reduction program. Mobile source emissions of N_2O and CH_4, are inherently low, with N_2O emissions largely being a byproduct of nitrogen oxides (NO_x) emission controls.

Over the years, manufacturers have worked with EPA to address concerns with available technology to test for N_2O. Manufacturers have also raised concerns with test-to-test variability and the cost of such technologies. At one point in time, EPA did agree to delay the test requirements as a result. These concerns, however, have not been addressed, and testing remains a significant burden with little to no benefit to the environment or impact on meeting the GHG standards.

Therefore, Global Automakers strongly recommends reducing the need for N_2O testing, or eliminating these test requirements in their entirety. It should be sufficient to allow manufacturers to attest to compliance with the N_2O capped standards based upon good engineering judgement, development testing, and correlation to NOx emissions. EPA could, however, maintain the option to request testing to be performed for new technologies, only, which could have unknown impacts on N_2O emissions.

The **elimination or significant reduction of these testing requirements for N_2O may exceed $600,000 per year in savings per manufacturer**.

Simplification of Evaporative Emissions Testing

Testing for evaporative emissions is conducted through several different time-consuming and costly test procedures, including two different types of diurnal testing, onboard refueling, bleed emissions, etc. In 2005, EPA recognized the significant hardships associated with evaporative emission test and finalized a rule to allow several important streamlining aspects. See 70 FR 72917, December 8, 2005. In this rule, EPA noted:

> The enhanced evaporative test procedure is important for measuring evaporative emissions from vehicles under numerous drive and park conditions, and the ORVR test is impo rtant for measuring refueling emissions from vehicles. In some cases, similar parameters are tested by these test procedures. The two -diurnal and three-diurnal test sequences both test canister capacity, permeation control, and canister purge capacity. The three-diurnal test sequence also tests hot drive vapor generation (running loss) and high temperature vapor generation. The ORVR test procedure tests canister capacity and canister purge capacity, in addition to refueling vapor generation and fill pipe losses…performing all four test procedures requires a minimum of 12 days…EPA believes it is appropriate to streamline the evaporative test procedure to reduce testing burden and to reduce overlapping procedures without affecting the level of stringency.

These provisions did what was intended, and helped to reduce duplication and testing burden, but since this 2005 streamlining effort, the regulations have been revised by the Tier 3 rulemaking (and California's LEVIII rule), and additional tests have been added.

Taken as a whole, it is not clear that all of these tests continue to provide individual value. They would likely benefit from a more complete review of opportunities to streamline the testing. The result of a new, revised, and more streamlined set of evaporative emissions tests would benefit both the agency and manufacturers. Thus, Global Automakers recommends that EPA, along with ARB and industry, work together to develop a robust and holistic evaporative emission test procedure.

For instance, both the 3-day test and 2-day diurnal breathing loss test are required for evaporative emission testing. It has been allowed, however, that either one of them is generally sufficient to show compliance, with the default test case being the 3-day test with running loss. The 3-day test is the longer, more resource-intensive test to perform, and does not necessarily have an added benefit over that of the 2-day test, particularly at the super low standards adopted in EPA's Tier 3 regulations (as well as California's LEVIII regulations). Therefore, Global Automakers requests that EPA work with industry, and ARB, to develop a single test that is less

burdensome, reduces unnecessary testing (like running loss), and ensures control of evaporative emissions.[1]

Further, the bleed emissions test, originally developed by ARB and later adopted by EPA, may no longer provide any incremental benefit. This test replaced another evaporative emission test, the rig test, and EPA agreed to harmonize with ARB's procedure. The purpose of the rig test is to assure control of vapor "bleeds" from the canister. While it may be appropriate to consider eliminating this test, it should be part of the broader evaluation of the suite of evaporative emissions-related tests and thus considered as part of a simplified, holistic and streamlined evaporative emission test procedure. In the interim, allowing the bleed emission test to be replaced by a manufacturer statement of compliance based on good engineering judgment should be sufficient and would provide significant relief. Further harmonization with California will be necessary if a statement of compliance is allowed.

Streamlining this process represents a **potential savings of $160,000 per model year per manufacturer.** This estimate includes potential savings associated with the elimination of the evaporation bleed emissions requirements noted below.

Finally, the onboard refueling vapor recovery (ORVR) standard requires the vehicle to be designed to prevent excessive displacement of vapor from a vehicle tank to escape to the atmosphere as the tank is being filled during refueling. The ORVR test procedure simulates the refueling operation in a sealed chamber (or SHED) designed to capture and measure any vapor that might escape during the fill operation. That escaped vapor may not exceed the number of grams allowed over a controlled fill of a specified amount of new fuel pumped into a tank having a specified starting fuel level. Given that manufacturers have been running the full test for 15 or more years, existing testing has resulted in substantial demonstration of the system designs. Hence, it should be possible for manufacturers to base future demonstrations on use of prior data on combinations of previously-proven filler interfaces and canister/tank size relationships.

In addition, the ORVR test requires a special test facility that is not common among manufacturer test facilities. As a result, in addition to paying for the test, additional costs are incurred through transportation fees to and from the facility. Furthermore, while the ORVR test sequence is similar to the evaporative emissions test sequence, EPA requires that both sequences be performed separately.

Having a single testing procedure would help streamline a cumbersome, duplicative process, while reducing test burden. If necessary, automakers could provide a statement of compliance in place of the EPA certification test. The requirement to run the full test procedure could be retained for cases where totally new, and hence unproven, changes have been made that fall

[1] It is also important to note that California has long been the proponent of a 3-day evaporative emission test with running loss. As a result, it is necessary that EPA and California align to reduce this test burden, otherwise, any action EPA takes will not result in a real cost or test burden reduction.

outside the range of what has been previously proven. In any case, manufacturers would still be subject to complying with the standard under the full test procedure should EPA perform confirmatory testing either during certification or on in-use vehicles.

Benefits of the elimination of this test would be contingent on ARB's elimination of its testing requirements. Elimination of this test could represent **a savings of $1.2 million per model year.**

Coordination with the California Air Resources Board on this topic is highly recommended to ensure the full benefits of an elimination could be achieved.

In-Use Verification Program Streamlining

In a rulemaking finalized in the 1999-2000 timeframe (referred to as CAP2000), EPA streamlined how emission deterioration should be projected for vehicles when operated over their useful lives. Previously the procedures involved driving a prototype "whole vehicle" on a track or on a mileage-accumulation dynamometer over the full number of useful-life miles (i.e. 100,000 miles and up to 150,000 miles under the latest Tier 3 standards). Given this had to be accomplished before the start of production, compromises had to be built into the procedure to allow accumulation of 100,000 or more miles on an accelerated basis. The procedure was costly and yet failed to exercise the vehicle under realistic on-road conditions. EPA replaced this "whole vehicle" driving procedure with a procedure that allowed a manufacturer a fair degree of flexibility to develop its own durability testing procedure based on component "bench aging" techniques. In exchange for this flexibility, manufacturers were required to perform testing on consumer-owned vehicles to verify the credibility of their bench testing procedures. This program was called the in-use verification program (IUVP). Consumer-owned vehicles had to be tested for every certified test group at two points in their useful lives. The first set of tests was required at low mileage (nominally at one year after the end of production) and then again at high mileage (nominally after the four-year point).

While at the beginning, every test group had to be tested every year – even for "carryover" years where the product had not been changed – the regulations authorized EPA to consider reducing test burdens over time as manufacturer durability procedures were demonstrated to be effective and when good in-use performance had been demonstrated.

IUVP testing has been ongoing for about 15 years, and nearly all manufacturers have demonstrated good durability performance. This presents an opportunity for significant streamlining or elimination from the program in order to reduce testing requirements and volumes. This effort has actually been the subject of discussion with EPA for many years, but previous efforts with EPA to identify and implement streamlining measures have not resulted in any notable reductions to the testing requirements and volumes, despite strong support and justification for doing so.

There are a variety of aspects of IUVP that EPA should address, all of which have good reasons to be streamlined and will have little overall impact on the data collected by EPA. These

suggested amendments will have little to no impact on real world emissions. They will, however, have a significant impact on reducing unnecessary cost and burden. The aspects of IUVP that should be streamlined include:

1. Eliminating high altitude testing. High altitude testing is extremely costly, because it requires special test facilities, which are limited in availability and must be shared by all automakers for both certification testing and IUVP. The limited facilities available to conduct this testing often leads to delays and increased testing prices. Further, for smaller automakers that build much of their fleet abroad, they are limited to two testing sites in Europe, which creates additional competitive disadvantages for these smaller automakers. Even with certain "work arounds" that allow testing in facilities that can simulate high altitude conditions, the facilities are limited, overbooked, and costly to use. High altitude testing for IUVP also provides little to no environmental benefit at this time. Finally, high altitude IUVP testing has an extremely high pass rate for testing, which helps to justify the elimination of this test requirement.
2. Reducing testing requirements and volumes. An overall reduction in test requirements and volumes would result in a significant reduction in costs. The current IUVP requirements specify percentages of vehicles that must be procured for testing (which could be greatly reduced), as well as requirements for testing on several test cycles, including FTP, Highway, and US06 testing requirements.
3. Eliminating or significantly reducing low-mileage testing and reducing high-mileage testing by not testing carryover groups.
4. Redefine the high-mileage testing requirements for years and mileage. The current requirements for high-mileage testing require vehicles to meet the criteria of four years and 50,000 miles. These two criteria taken together make it very difficult for manufacturers to identify and procure vehicles for this category of testing. While EPA does provide additional flexibility to expand procurement areas and occasionally procure vehicles slightly outside the mileage requirements, manufacturers must seek advance EPA approval. EPA should evaluate the number of requests they receive regarding procuring high-mileage vehicles and consider changing the criteria if it appears manufacturers have to frequently request additional flexibility.
5. Consider shortening the record retention period. EPA currently requires that manufacturers retain records for eight-years. Record retention requires secure facilities and adequate storage space for the eight years. Therefore, Global Automakers suggests that the agency should consider a shorter retention time should be used.

The cost savings resulting from implementing these four items could produce per-manufacturer cost reductions of **$120,000 per model per year to up to more than $1.2 million per year for larger manufacturers**. It is important to note that the California Air Resources Board also has requirements for IUVP that are similar to EPA's. So even if EPA implements

these more streamlined testing procedures, if California does not fully align with the federal modifications, the reductions in testing and costs will not be fully achieved. Under EPA Tier 3 and California LEVIII regulations, it is expected that most test groups will be certified as 50-state tests groups (i.e. meeting both EPA and California requirements), and therefore would be subject to the test requirements of both EPA and California testing, in this case IUVP. Therefore, Global Automakers recommends that EPA and ARB work together to streamline IUVP requirements.

Eliminate Fuel Change Requirement in the IUVP Test Vehicle After the Preconditioning Drive Cycle

The emission test sequence begins with a prep test being run on the same cycle that will then undergo official testing. This allows the vehicle to adapt to the laboratory conditions of the official test to be run. The fuel is then drained and replaced with fresh fuel filled to the specified fill level of the test. Then the vehicle is parked for six to 36 hours in a controlled temperature environment to allow the vehicle and fuel to all reach a stable condition. This is all done to ensure that the official test is done under an exact highly controlled and repeatable test condition. Global Automakers requests that this step – to change the fuel after the preparation drive cycle - be eliminated for the IUVP tailpipe emissions test sequence. The fuel change requirement adds an additional set of steps to the test procedure that requires additional labor burdens in the testing procedure. The resulting test results do not merit the use of this additional fuel change and should be eliminated. To be clear, Global Automakers is only requesting this change for IUVP and suggests it be maintained for "official" certification and recall tests (whether run by EPA of the manufacturers).

Relaxation of Test Facility Requirement

EPA's Tier 3 regulations added new test procedure requirements, including dramatically increasing testing accuracy. Part 1066.245 forces automakers to update most of the testing facilities. As a result, older dynamometers do not comply with the new test procedures, and these old dynamometers must be replaced. The replacement cost of new equipment can be extremely high, and in some cases may be entirely unnecessary. It also takes a significant amount of time to procure new equipment and install it.

There are some test facility requirements newly introduced at the timing of Tier 3 regulations in 40 CFR Part 86.1065 and Part 1066 that avoid carry-over of current test facility specification (e.g. 1066.245: Response time verification (for chassis dynamometer). These should be eliminated, or at a minimum, EPA should extend the required deadline for incorporation of these elements.

A one-time upgrade of one automakers' facilities requires **more than $7 Million**.

The Verify System Reporting

Certification burdens were decreased with the CAP2000 program, but much of the savings came from giving manufacturers more control over routine decision making, reducing the number of emissions data vehicles required, and allowing revised durability procedures based upon bench testing. While manufacturers were given more autonomy as it relates to certification testing, the revised approach did not radically decrease what is required to be reported to the Verify System. A significant amount of data is required to be submitted to EPA to certify vehicles. Thus, there is an opportunity to reduce another area of certification burden by streamlining and lessening reporting requirements.

For instance, the Excel report of CAFE/GHG is no longer necessary, except for credit information, because the Verify System can calculate CAFE and carbon related exhaust emissions (CREE) values. Therefore, except for the credit information, EPA is duplicating reporting requirements by requiring this Excel report, with no added benefit. Further, Global Automakers supports integration of the calculation and values of credits, such as those earned under the CAFE and GHG programs for off-cycle technologies, into the Verify System. By adding this data submission into Verify, the system can then automatically compute the end data. This incorporation would reduce the potential for human-related errors from transcribing Excel reports into the Verify System and simplify the EPA's work in computing compliance with the CAFE and GHG standards.

Further, the contents of ARB E-Cert system are almost identical to those of the Verify System, so manufacturers' burdens could be further decreased by combining the two systems – California's E-Cert and EPA's Verify System – into a single, shared, and harmonized database that both ARB and EPA use.

These suggested streamlining efforts would reduce unnecessary duplication of efforts.

No Longer Require Full Applications for Certification for Carryover or Minor Changes to Vehicles

Global Automakers recommends that EPA no longer require a new full application for certification each model year when the vehicle is carryover and/or only has minor changes. Even if there are minor changes that require new test data for the carryover model, such changes could be reported through an update notification as opposed to a full application. In other words, the emission certification system can be streamlined to adopt a "self-certification"-like system for carryover models.

The current requirements for vehicles include a minimum of three tests for model-year exhaust emission compliance: a regular model-year exhaust emission certification application, an in-use emission test submitted by a manufacturer, and a surveillance test conducted by EPA. For purposes of carryover models, Global Automakers recommends a self-certification-like system (such as the one NHTSA allows for vehicle safety certification) that would not require a regular

model-year exhaust emission certification application. For example, NHTSA accepts manufacturers' self-certification and verifies its performance through a compliance test after sales. Since emission performance will still be inspected through IUVP and EPA surveillance testing, there is adequate assurances to check the performance of carryover models and hold manufacturers accountable for the vehicle's performance.

Optional Relaxation of the Grouping Requirement

Global Automakers recommends that EPA consider additional flexibility for the current emission data vehicle (EDV) grouping requirement. This flexibility would allow manufacturers to reduce the number of EDV groups (tailpipe and evaporation), should they choose. An example would be to eliminate the specified limits for canisters. Under the current system, identical evaporation systems with only a difference in canisters result in different EDV groups. This is unnecessarily restrictive and does not provide any environmental benefit. Test groups should be separated based on performance, not on specification difference**. Savings could exceed $2 million per year.**

Other Areas for Consideration in Certification and Test Procedures

These items are based on Global Automakers' initial review of opportunities to streamline existing certification and test procedure burdens, but they may not represent the full possibilities available to EPA and the automotive industry. Additional discussion between EPA and the industry could help identify other areas that would benefit from further clarification, guidance, or streamlining that could result in greater reductions in cost and burden. For example, while EPA allows for automakers to use a simulation for road load values, in some instances, EPA has not approved use of the simulation. It is possible that manufacturers could use additional guidance to help clarify EPA's criteria and decision-making process to help ensure manufacturers will be able to use this intended cost-saving flexibility. Global Automakers recommends that EPA and industry work together to further identify streamlining opportunities.

2. Fuel Economy Labeling

There are two topics covered in this section:

- Simplification of the Fuel Economy Labeling Program
- Expanded Use of Analytically Derived Fuel Economy (ADFE)

Simplification of the Fuel Economy Labeling Program

It has long been recognized that the original city test (i.e., FTP) and highway test significantly overstate fuel economy compared to real world driving. While the original FTP and highway

test results are locked into the Corporate Average Fuel Economy (CAFE) program by statute, EPA has the authority to provide adjusted fuel economy results for fuel economy labeling purposes to try to better estimate real world fuel economy that the "average" driver might expect to experience. EPA has been using "adjusted" fuel economy results for labeling since the mid-1980's.

EPA adopted new label adjustment procedures that became fully effective with MY 2011. It involves a two-step process. A complex equation was developed that utilizes fuel economy data inputs from five different driving cycles. These five cycles have been in place for several years for emission certification purposes, but were not previously used for estimating fuel economy. These are resource-intensive laboratory vehicle testing cycles. They include the Federal Test Procedure (FTP), highway, US06, SC03 and cold FTP test cycles. The fuel economy computed using the data collected by these five test is referred to as "5-cycle" fuel economy. The first step in the process involves computing this 5-cycle fuel economy based upon testing that is generally done on an emission data vehicle (EDV) for emissions compliance purposes. Additional fuel economy data vehicles (FEDVs) must be tested to obtain the minimum required data needed to generate a fuel economy label. It would be extremely burdensome if every one of these FEDVs needed to also be tested on all five cycles. EPA provided a second step in the process to minimize such extra testing.

A second simpler regression equation was developed that only needed input from just the FTP and highway test. These tests would be run regardless of the labeling program for CAFE compliance purposes. This equation, referred to as the "derived 5-cycle equation," attempts to predict the same results as the more cumbersome true 5-cycle computations. Due to its simplicity, it represents a cruder approximation of the data but works well on average. The derived 5-cycle results are then compared to the full 5-cycle results. This comparison process is referred to as the "litmus test." If the "derived" results compare within an established acceptable limit boundary to the full 5-cycle results for the EDV (within 4% for FTP and within 5% for highway) the litmus test is considered "passed." If passed, all remaining FEDVs from the same test group as the EDV may then use the simpler derived 5-cycle equation. This means all fuel economy values used for labeling purposes from that test group could be computed only from the FTP and highway test inputs, significantly saving time and resources associated with 5-cycle testing.

If the litmus test is "failed," all FEDVs from that test group must undergo testing on all five cycles to fulfill the minimum data requirement to support a label computation, and the full 5-cycle fuel economy is then used to generate labels.

The availability of the option to use the simpler derived 5-cycle fuel economy greatly reduces the amount of testing that that is needed for labeling. In EPA's rulemaking, it predicted that on the order of 75% of all test groups would be expected to pass the litmus test. Actual experience has shown that even a higher pass rate has occurred. It appears that somewhere in

the range of as low as 5% to perhaps a high of 15% of test groups (this can vary with model year, vehicle technology, and manufacturer) fail the litmus test and hence are subject to increased testing.

Despite of the burden reductions built into this ability to use only the "derived 5-cycle" equation, additional benefits can be achieved via further simplification of this program.

EPA has a goal of presenting "label values [that] are the best 'real world' estimates for consumers," and EPA should continue to strive for values as close as possible to real world fuel economy.[2] This goal can be achieved, however, through other means that reduce reliance on large amounts of laboratory tests of light-duty vehicles.

Global Automakers requests that EPA simplify the fuel economy label test procedures to rely even more on the "derived 5-cycle equation." A potential method to make this changeover would be reducing FEDVs and increasing the cap on analytically derived fuel economy (ADFEs) above the current 20% threshold.

Based on EPA's and industry's extensive vehicle testing, the derived 5-cycle equation should be periodically updated to maintain the correlation between the historical 5-cycle data and current vehicles. While no additional 5-cycle testing would be performed on FEDVs, full 5-cycle data would continue to be generated from emissions certification testing of the EDV on all 5-cycles. This amendment would allow for elimination of the litmus test and reduce testing burdens associated with all 5-cycles tested FEDVs. There are several reasons to consider this item as a candidate for streamlining, including:

- A high percentage of test groups routinely qualify for use of the derived 5-cycle equation anyway.
- If the empirical equation is subject to periodic updates, it should provide a reasonable "fit" for all vehicles.
- Cost savings would be incurred from both reductions in record reporting requirements and extra testing needed to complete the litmus test. Note that while in theory the only 5-cycle data needed for the litmus test would come from emission certification testing of the EDV, there are circumstances where additional testing becomes necessary. Even greater cost savings could be incurred by eliminating the full 5-cycle test on those FEDVs needed to satisfy minimum data needs for labels from test groups that fail the litmus test.
- Competitive inequities would be removed. Under current policy, a vehicle that just passes the allowable litmus tolerance (4% for city and 5% for highway) can continue to use "average results" from the derived 5-cycle equation. On the other hand, a similar

[2] EPA, Office of Transportation and Air Quality. *Questions and Answers: Fuel Economy Labeling*. EPA-420-F-14-015 at p. 1. (April 2014).

vehicle that just barely falls outside the tolerance must base its label on full 5-cycle testing. While the two example vehicles might only differ from each other in 5-cycle fuel economy by a very small percentage, the one that just passes the litmus test gets to use the nearly 4% higher derived 5-cycle result while the one that just fails must use the full 5-cycle result that could be four or more percent lower.

- Testing on the 5-cycle tests requires special and expensive facilities (especially for the SC03 and cold temperature tests on FEDVs), which could be reduced. Instead, this testing would only occur on vehicles needed for certification. For vehicle manufacturers that are smaller or newer to the market with fewer resources, these 5-cycle tests present a real economic hurdle to bringing new and innovative vehicles to market, and initially such vehicle could fall within the failed litmus realm.

Expanded Use of Analytically Derived Fuel Economy (ADFE)

The provisions of 40 CFR 600.006-89(e) allow EPA to accept analytical expressions to generate fuel economy data. EPA has historically implemented the use of such ADFE computations via guidance letter. Prior guidance limited use of ADFE results to a maximum of 10% of the number of sub-configurations required for a manufacturer's CAFE value. In 2004, EPA raised the maximum allowance to 20% via guidance letter.[3]

EPA historically has been concerned about excessive use of ADFE values as this could unduly increase computed CAFE levels. One reason was because manufacturers could pick and choose what works best for them. If a computed ADFE value produces a favorable value, a manufacturer could use it, but if the ADFE value is undesirably low, the manufacturer could then choose to go through the expense of actually testing the vehicle to achieve a better result. Additionally, EPA was concerned that manufacturers would maximize the use of ADFE computations when they could be based upon what EPA called a "sweet" test result (i.e., a test that by luck of the draw in test variability came out high). The impact of this value could be magnified if this vehicle then served as the basis for computing ADFE results for other vehicles. Hence, EPA applied the limit on maximum use of ADFE values.

But EPA's guidance letters applied other protections to minimize such a high bias from potential "sweet" fuel economy tests. Such measures should be sufficient to maintain credible fuel economy computations without limiting ADFE use to only 20%.

By streamlining the procedure and implementing an increase in maximum allowed ADFEs, there is potential to **reduce costs between $500,000 and $2.5M per model**. Variation in these estimates depends on the number of FEDVs that would need to be tested. High volume models, for example, might have between two and eight FEDVs, while low volume models might have between one and three FEDVs. Consequently, reducing the number of fuel economy test

[3] US Environmental Protection Agency. *Updated Analytically Derived Fuel Economy (ADFE) Policy for 2005 MY and Later (CCD-04-06 LDV/LDT).* March 11, 2004.

vehicles would allow for an immediate reduction in fixed costs to the automotive industry, as well as the agency.

3. Additional Regulations for Streamlining Consideration

There are four topics covered in this section:

- Important Considerations for Small-Volume Manufacturers
- Stakeholder Engagement in Chemicals Regulations
- GHG Reporting Requirements for Subpart QQ
- Improve Off-Cycle Credit Program Process

Important Considerations for Small-Volume Manufacturers

Global Automakers represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Of our member companies, twelve are automobile manufacturers ranging in size, resources, investment, and sales, including some small, specialized brands. As we noted above, Global Automakers supports a fair and competitive market that encourages innovation and green technology. Some smaller companies, therefore, may need additional consideration in the regulatory process to ensure they can continue to compete against larger companies with more resources, while also working toward the same environmental goals.

Global Automakers is recommending that as part of this effort to reduce regulatory burden, EPA should consider flexibilities for small-volume manufacturers (SVMs). These flexibilities will reduce costs, allowing these SVMs to instead invest in research and development to advanced cleaner and more efficient vehicles. The following are some concepts on how EPA can reduce regulatory burdens without compromising environmental improvements for SVMs:

- Additional Lead Time: In general, when implementing new emissions requirements, EPA should consider providing additional lead-time for SVMs, on a case-by-case basis. In some cases, a separate implementation date may be appropriate and in others, simply implementing effective dates for SVMs that start at the end of any large volume manufacturers' phase-in requirements. The reason for this is that SVMs have fewer models – sometimes only one or two engine families – and limited product offerings compared to large volume manufacturers. As a result, a percent phase-in for requirements inadvertently results in them having to meet the requirements faster and earlier than large-volume manufacturers. Global Automakers recommends that EPA issue additional lead-time for SVMs to help reduce costs and smooth the transition to new requirements.

- Certainty for Alternative Standards: In recent years, EPA has implemented alternative standards for SVMs in certain scenarios. This flexibility should help SVMs comply with the intent of regulations – to reduce emissions year-over-year – but account for the specific challenges that SVMs face, including, but not limited to, leaner resources and small, specialized product lines. SVMs must submit requests for alternative standards in a timely manner, with adequate lead time before the standards would be implemented.

  In concept, alternative standards should help SVMs as they plan for cleaner, greener technologies to meet the regulations and provide a clear and consistent path forward for technology investment. There have been, however, issues with the process for approving alternative standards, which have resulted in delays in approval. EPA needs to ensure adequate resources to make sure that all manufacturers' requests are dealt with in a timely and efficient manner. SVMs, as well as other companies, should not be unduly penalized by delays in agency decision-making. Any delay in approval reduces (or eliminates) necessary lead time. These unnecessary delays in the approval process create regulatory uncertainty, drive up costs, are overly restrictive, and most importantly divert resources from developing cleaner and more efficient technologies.

- Deterioration Factors: There are two areas where EPA could help support industry, and in particular SVMs, related to the generation and application of deterioration factors (DFs).

  First, EPA allows for the use of industry-assigned deterioration factors (ADFs) based on industry data. The last time ADFs were updated was approximately three years ago, and so the ADFs are likely outdated by now. It would be beneficial for EPA to consider a more regular process for updating the ADFs. This process will help keep ADFs updated and relevant, and assist manufacturers in determining if it is appropriate to apply ADFs.

  Second, as noted above, the evaporative emissions standards and associated test procedures would benefit from an EPA-industry process to review and revise the program to reduce duplication and costs. One area that was not addressed above was the evaporative emission durability program. This program was developed to provide additional flexibility to automakers in developing DFs for evaporative emission control systems, but this process remains overly costly and extremely difficult for SVMs. There is no clear industry DF available, and it would be helpful to provide general DFs, particularly for SVMs, whose systems may remain largely unchanged year after year. Global Automakers recommends that EPA evaluate options to reduce burden for SVMs in this area, but also ensures compliance, and provide clarity on what is required for SVMs.

- Streamlined Reporting Requirements: Similar to our comments to streamline and revise reporting requirements above, evaluating opportunities to simplify SVM reporting

requirements, as appropriate, would help to reduce time and resources necessary for reporting.

These recommendations can provide important flexibility to help SVMs to continue investment in greener technologies and remain competitive with larger manufacturers. They can help free up resource for the SVMs, but EPA as well. Just as importantly, these flexibilities will have a "de minimis" effect on environmental improvements; in some cases, they may result in a slight delay in environmental improvements, but ultimately ensure greater success for SVMs in ultimately meeting any requirements and therefore provide greater certainty that such environmental improvements will be made.

Stakeholder Engagement in Chemicals Regulations

EPA has begun work on regulating the first ten priority chemicals under the Frank R. Lautenberg Chemical Safety for the 21st Century Act of 2016, which amended the existing Toxic Substances Control Act (TSCA). The regulation of these chemicals will have significant impacts not only on those companies that manufacture the chemicals, but also (and sometimes more directly) on chemical users, including auto manufacturers, suppliers, and importers of articles that may contain the regulated chemical.

While consultation with stakeholders can be a cumbersome process that can add cost and time at the beginning of a rulemaking, it is critical to have all stakeholders engaged in the regulatory process to ensure fully-informed and fact-based regulations. Resources invested at the beginning and throughout the regulatory process will result in a valuable return on investment that will be reflected in smarter, more efficient and effective environmental regulation.

For example, chemical users are critical stakeholders that have not always been invited to participate in the process of evaluating candidate chemicals, their uses, and the availability of viable substitutes. Chemical users can have valuable information that should be considered at the outset of any regulatory process. Finding suitable substitutes once a chemical is marked for elimination adds additional cost to manufacturing of products that can then be passed to American consumers. To allow for the lead-time for users to change product plans and make updates to their manufacturing processes, it is important to engage with the entire supply chain as early in the rulemaking process as possible.

GHG Reporting Requirements for Subpart QQ

On November 9, 2010, EPA issued a rule for the mandatory reporting of greenhouse gases (GHGs) from large sources of fluorinated GHGs such as hydrofluorocarbons (HFCs), nitrogen trifluoride (NF3), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6). This rulemaking includes reporting for imports and exports of pre-charged equipment or closed-cell foams containing fluorinated GHGs (Subpart QQ). Global Automakers recommends that EPA eliminate reporting under Subpart QQ, since there is no environmental benefit incurred with this reporting.

Under this rule, EPA estimates the total cost of reporting for the private sector will be approximately $7.6 million for the 1st year and $7.2 million in subsequent years.[4] This is a significant cost for reporting. Global Automakers does not know what portion of these reporting costs are attributed to Subpart QQ, but nonetheless, any effort to reduce reporting such as Subpart QQ will help reduce these overall costs.

Improve Off-Cycle Credit Program Process

Our member companies remain committed to investing in technology that provides real environmental benefits while meeting consumers' needs, and we have consistently requested greater alignment in the One National Program for emissions and fuel economy to reduce unnecessary costs and regulatory burdens that provide no incremental environmental benefit. Global Automakers, with the Alliance of Automobile Manufacturers, submitted a petition for rulemaking to EPA and the National Highway Traffic Safety Administration on June 20, 2016.[5] This petition is incorporated by reference in these comments.

Global Automakers is, however, including additional discussion about a more general improvement to the GHG off-cycle credit program, which was included in our June 2016 petition. It is a critical component of the overall One National Program, and with the right implementation, this program can help launch innovative fuel-saving technologies.

Automakers and suppliers are bringing new and innovative technologies to the market year-over-year. These technologies have the potential to provide real-world environmental benefits that were not considered in previous rulemakings. In this rapidly changing technological landscape, it is important to continually evaluate innovations that provide real benefit and to give credit for these. Thus, Global Automakers recommends that EPA evaluate ways to encourage this innovation and avoid arbitrary barriers to real world fuel economy improvements.

First and foremost, Global Automakers requests that EPA, along with NHTSA, establish more guidance for the alternative method for GHG off-cycle credit generation. Providing clear and consistent running rules on tested technologies that provide real GHG reduction promotes the use of various methods to reduce pollutants at a reasonable cost. Greater guidance from the EPA about acceptable procedures, reputable data sets, how to capture driver behavior, etc. will incentivize automakers to use this channel, resulting in the application of more CO_2-reducing technologies coming to market sooner. This would allow for a lower cost of technology penetration and the potential for increased environmental benefits.

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[4] https://www.epa.gov/sites/production/files/2015-07/documents/qqfactsheet.pdf.

[5] Association of Global Automakers and The Alliance of Automobile Manufacturers.*Joint Petition for Direct Final Rule with Regard to Various Aspects of the Corporate Average Fuel Economy Program and the Greenhouse Gas Program.* https://www.epa.gov/sites/production/files/2016-09/documents/petition_to_epa_from_auto_alliance_and_global_automakers.pdf (June 20, 2016).

Guidance will help to create a more streamlined process to apply for and obtain off-cycle credits. Streamlining the process would reduce the current onerous test programs and, more importantly, address the low confidence among manufacturers of EPA acceptance of off-cycle credit applications. Taken together, these concerns have acted as barriers to manufacturers that wish to apply for off-cycle credits, and as a result, have directly slowed the rollout of innovative fuel-saving technologies. In contrast, improving the process will build confidence in the procedure for obtain credit approval, and thereby provide real environmental benefits and reduce costs associated with the implementation of newer technology.

In addition to providing guidance and streamlining the process, Global Automakers requests that EPA allow automakers to reference previously accepted applications especially in areas of:

- Defining off-cycle testing and procedures
- Demonstrating "real-world" ambient conditions, road type, geography, etc.
- List of accepted assumptions (i.e. city weighting)
- Capturing driver behavior / usage

EPA should seek to make improvements that support such innovative growth and should expedite this activity. This activity could lead to more cost-effective approaches to reducing emissions and at the same provide additional environmental benefits in the real world.

In summary, Global Automakers believes that Executive Orders 13771 and 13777 provide an important opportunity to reassess regulations to date and assess smarter, more efficient ways to implement such regulations. Global Automakers is evaluating the breadth of EPA regulations that impact the automobile sector and looking for opportunities that significantly reduce costs to industry – estimated to have the potential to save $150-200 million annually across the industry – while at the same time preserving environmental benefits.

Thank you for the consideration of our comments.

JOHN BARRASSO, WYOMING, *CHAIRMAN*

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
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RICHARD M. RUSSELL, *MAJORITY STAFF DIRECTOR*
GABRIELLE BATKIN, *MINORITY STAFF DIRECTOR*

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

May 15, 2017

The Honorable Samantha Dravis
Regulatory Reform Officer and Associate
Administrator for Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Associate Administrator Dravis,

In Executive Order 13777, President Trump has established a process for agencies to identify unnecessary regulatory burdens that warrant potential revision, repeal, or replacement. In Executive Order 13783, President Trump initiated a review process for identifying agency actions that burden the development or use of domestically produced energy resources. We write to support ongoing efforts of the Environmental Protection Agency (EPA) to implement these Executive Orders.

As you review regulations pursuant to these Executive Orders, we request that you give particular attention to regulations that relied on indefensible cost-benefit analyses as well as regulations that were developed through flawed procedures that evaded mandatory review processes. In particular, we request you review all EPA regulations that rely on either the "social cost of carbon" or "co-benefits" to justify the cost burden the regulations place on the American economy.

The Environment and Public Works Committee has highlighted the fact that the metrics used by the prior administration to quantify the "social cost of carbon" suffer from procedural flaws and troubling substantive assumptions.[1] We support the President's necessary rescission of those metrics through Executive Order 13783. We request that EPA re-evaluate any rules that relied on those metrics to justify regulatory impacts.

The Committee also has documented concerns regarding EPA's practice of relying heavily on "co-benefits" in Regulatory Impact Analyses (RIAs) for rules.[2] Purported benefits are labeled "co-benefits" when they address pollutants that are not the subject of the EPA rule at issue. Alleged "co-benefits" for criteria pollutants are based on further reductions below levels already

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[1] *E.g.*, Letter from 10 Senators to the Hon. Gina McCarthy, Adm'r, EPA (July 21, 2015), https://www.epw.senate.gov/public/_cache/files/3a4a1537-f483-4137-b9e5-1f18e23316fe/07.21.2915-dear-administrator-mccarthy-re-scc-doc-request.pdf.

[2] Oversight of Regulatory Impact Analyses for U.S. Environmental Protection Agency Regulations, Senate Comm. on Env't & Public Works Subcomm. on Superfund, Waste Management, and Regulatory Oversight (Oct. 21, 2015), https://www.epw.senate.gov/public/index.cfm/hearings?ID=D04CBC93-8FD7-461E-BCE1-C3B0D1F77126 (statements of William L. Kovacs, Sam Batkins and Diana Furchtgott-Roth).

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determined by EPA to protect public health and welfare under the Clean Air Act's National Ambient Air Quality Standards program.[3] One of the most glaring examples is the RIA for the Mercury and Air Toxics Standards (MATS) Rule,[4] a rule finalized in 2011 to address emissions of hazardous air pollutants from power plants. When EPA finalized the MATS Rule, it claimed health benefits of $37 to 90 billion.[5] EPA's direct quantified benefits of the rule – that is, those associated with reductions in hazardous air pollutants – totaled only $4 to 6 ***million***, compared to $9.6 ***billion*** in annual costs.[6] We request that you review any rules that rely on such purported benefits.

Finally, the Committee has documented failures with EPA's implementation of mandatory review processes intended to evaluate and curb the potential negative impacts of federal regulation.[7] These include those required by the Unfunded Mandates Reform Act (state, local, and tribal governments and private sector) and the Regulatory Flexibility Act (small businesses and other entities).[8] These generally applicable requirements must in some cases be supplemented by requirements specific to EPA, such as Clean Air Act Section 321(a),[9] which mandates evaluation of employment losses and shifts associated with administration and enforcement of Clean Air Act programs. It is essential that EPA carry out its statutory responsibilities in evaluating the effects of regulation. We request that you also review any rules that did not comply with these statutorily required review processes.

Thank you for your work in implementing President Trump's Executive Orders.

Sincerely,

John Barrasso

John Barrasso, M.D.
Chairman

Shelley Moore Capito

Shelley Moore Capito
U.S. Senator

Joni K Ernst

Joni K. Ernst
U.S. Senator

Roger Wicker

Roger Wicker
U.S. Senator

[3] Clean Air Act Section 109(b), 42 U.S.C. 7409(b).
[4] 77 Fed. Reg. 9304 (Feb. 16, 2012), https://www.gpo.gov/fdsys/pkg/FR-2012-02-16/pdf/2012-806.pdf.
[5] EPA, Fact Sheet, Benefits and Costs of Cleaning Up Toxic Air Emissions from Power Plants, *available at* https://www.epa.gov/sites/production/files/2015-11/documents/20111221matsimpactsfs.pdf.
[6] 77 Fed. Reg. at 9425, 9428.
[7] *E.g.*, Oversight of Regulatory Impact Analyses for U.S. Environmental Protection Agency Regulations, Senate Comm. on Env't & Public Works Subcomm. on Superfund, Waste Management, and Regulatory Oversight (Oct. 21, 2015), https://www.epw.senate.gov/public/index.cfm/hearings?ID=D04CBC93-8FD7-461E-BCE1-C3B0D1F77126 (statement of William L. Kovacs).
[8] 2 U.S.C. 1531-38; 5 U.S.C. 601-12.
[9] 42 U.S.C. 7621(a).

Deb Fischer
U.S. Senator

M. Michael Rounds
U.S. Senator

James M. Inhofe
U.S. Senator

John Boozman
U.S. Senator

OW email sent to 64,000 Stakeholders on EO13777 and May 2, 2017 Listening Session:

EPA Office of Water Seeking Feedback on Reducing Regulatory Burden

Dear Stakeholder,

Consistent with Executive Order 13777, EPA is seeking public input on existing regulations that could be repealed, replaced or modified to make them less burdensome.
As a part of this effort, we will be accepting written public comments through **May 15, 2017**, at docket EPA-HQ-OA-2017-0190. In addition, EPA's Office of Water (OW) will host a public listening session to obtain additional feedback on water regulatory actions on **Tuesday, May 2, 2017, from 11 a.m. to 2 p.m. EDT. Please visit:** www.epa.gov/aboutepa/office-water-feedback-reducing-regulatory-burden **or see below for details.**

Background

On February 24, 2017, President Donald Trump issued Executive Order (EO) 13777 on Enforcing the Regulatory Reform Agenda. The EO establishes the, "policy of the United States to alleviate unnecessary regulatory burdens placed on the American people". Among other things, it requires each agency to create a Regulatory Reform Task Force to evaluate existing regulations and to identify regulations that could be repealed, replaced or modified to make them less burdensome.
As part of implementing the EO, OW will hosting a public listening session to solicit proposals for OW regulations that could be repealed, replaced, or modified to make them less burdensome. The focus of this listening session will be on water actions only.

Public Listening Session by Telephone and Web Conference

Date: Tuesday, May 2, 2017
Time: 11:00 a.m. – 2:00 p.m. EDT
The session will start with brief remarks from EPA and the remainder of the session will be dedicated to listening to public comments. There are several ways to join the session:

- **To join the teleconference:** 150 telephone lines are set aside for people who want to speak for one to two minutes. These 150 telephone lines will be distributed randomly among those who pre-register. We expect our three hour conference will allow for about 70 to 80 persons to speak. You must pre-register in advance to be randomly selected for one of these telephone lines

at: https://reducing_regulatory_burden_epa_officeofwater.eventbrite.com. Registration closes **April 28, 2017 @ 12:00 pm EDT**. If selected, registrants from this list will receive information about how to participate, along with a call in number. The audio of the session will be transcribed and will be submitted to the docket.

- **To join the web conference:** http://epawebconferencing.acms.com/owregulatoryforums/. You may sign in 15 minutes before the web conference starts. The online meeting room can accommodate 1,000 participants. Slots will be allotted on a first come first serve basis. Participants in the web session will be able to listen to a broadcast of speakers from the teleconference line through their computers, and will be able to submit written comments. Transcripts of all written comments will be submitted to the docket. For questions about this process, please contact: owregulatoryreform@epa.gov
- If you miss the meeting, or do not have the opportunity to speak on the call, please submit your input to the EPA-wide docket (docket number: EPA-HQ-OA-2017-0190). OW will give equal consideration to input provided through any of the methods above.
- For more information on upcoming public engagement opportunities offered by other EPA offices please visit: https://www.epa.gov/laws-regulations/regulatory-reform.

Submitting Comments and/or Proposals to the Docket

The docket will be open for submitting recommendations until **May 15, 2017**. For those wishing to submit recommendations online, visit Docket ID No. EPA-HQ-OA-2017-0190 at Regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov.
To allow us to more effectively evaluate your suggestions, the Agency is requesting comments include:

- Supporting data or other information such as cost information
- Provide a Federal Register (FR) or Code of Federal Regulations (CFR) citation when referencing a specific regulation
- Provide specific suggestions regarding repeal, replacement, or modification.

The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all the points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (e.g., on the web, cloud,

or other file sharing system).
For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit the Commenting on EPA Dockets web page for more information.

Edison Electric
INSTITUTE

Quinlan J. Shea, III
Vice President, Environment

May 15, 2017

Sarah Rees
U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Avenue, N.W.
Mail Code 1803A
Washington, D.C. 20460

[Submitted Electronically]

RE: Docket ID No. EPA-HQ-OA-2017-0190; Evaluation of Existing Regulations

Dear Ms. Rees:

The Edison Electric Institute (EEI) appreciates the opportunity to provide input on the Environmental Protection Agency's (EPA's or Agency's) notice—in accordance with Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda—seeking comments on regulations that may be appropriate for repeal, replacement or modification. The identification of these regulations is likewise consistent with the requirements of E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, which stipulates that two regulations be identified for elimination or revision for every new regulation proposed and that the costs of regulations be managed and controlled via a budgeting process.

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, our industry supports more than 7 million American jobs. Safe, reliable, affordable and clean energy powers the economy and enhances the lives of all Americans.

Driven by customer demands, technology developments, and federal and state regulatory obligations, the electric sector is undergoing a transition of its generating fleet that will continue over the next decade and beyond. Concurrent with this transition, EEI member companies are investing significant amounts of capital to make the energy grid smarter, more dynamic, more flexible, and more secure in order to integrate and deliver a balanced mix of resources from both central and distributed energy resources to customers.

The power sector has significantly decreased its emissions. At the end of 2016, the sector's emissions of sulfur dioxide (SO_2) were down 53 percent since 2014 and 91 percent from 1990 levels; emissions of nitrogen oxides (NOx) were down by 28 percent and 82 percent, respectively over the same periods. Additionally, carbon dioxide (CO_2) emissions were nearly 25 percent below 2005 levels. This has all occurred while electricity demand has increased 36 percent since 1990.

To support the ongoing fleet transformation and facilitate the continued operation of electric generating units (EGUs), EEI supports cost-effective public policies and a streamlined approach to regulation. In particular, EEI continues to support efforts—administratively and legislatively—to reform the permitting and siting process for critical energy infrastructure projects. An efficient and expeditious permitting process will enable electric companies to invest in energy infrastructure projects that will benefit customers, achieve greater environmental benefits, create jobs, and stimulate the economy.

EPA efforts to evaluate existing and forthcoming regulations and to look for areas of potential improvement are a key step toward establishing a regulatory structure that can appropriately support and inform the types of long-term investments EEI's members make in both existing and new generation capacity, as well as electric transmission lines and natural gas infrastructure. Consistent with EPA's request and E.O. 13777, these comments focus on examples of EPA regulations and significant guidance documents that potentially could be revised in order to reduce administrative burdens, simplify and streamline the overall process, and enhance the ability of EEI's members to permit, site and operate generation, transmission and other infrastructure assets while maintaining environmental integrity.

Importantly, these comments specifically do not address wider regulatory initiatives already identified by the Administration—including, but not limited to, the Administration's stated intent to revise the Waters of the United States (WOTUS) rule; E.O. 13783, Promoting Energy Independence and Economic Growth, which requires a review and possible revision, rescission or replacement of the Clean Power Plan; the reconsideration of the effluent limitations guidelines and standards for the steam electric point source category; and, any changes to regional haze requirements. EEI and its members intend to participate in these initiatives as they are developed.

The Clean Air Act (CAA)

Many of EEI members' generation and other assets are subject to numerous requirements under the CAA and, in particular, are subject to requirements for individual source permitting. Briefly and non-exhaustively, EGUs often must obtain individual source permits as part of the State Implementation Plan (SIP) process to help attain and maintain the National Ambient Air Quality Standards (NAAQS) under CAA section 110, which includes permitting under the Prevention of Significant Deterioration (PSD) program contained across CAA sections 160-169. Further, fossil fuel-based EGUs are subject to New Source Performance Standards (NSPS) under CAA section 111, and have fully implemented standards to reduce emissions of hazardous air pollutants (HAPs) under CAA section 112. Fossil fuel-based EGUs also comply with requirements under Title

IV's Acid Rain Program, obtain operating permits consistent with Title V of the CAA, and address visibility concerns under CAA section 169A.

EEI's members aim to comply with this array of requirements in a coordinated and cost-effective fashion so that they can continue to provide safe, reliable and affordable electricity to customers.

Certain elements of these regulatory programs could be streamlined, improved or modified in order to reduce the administrative burdens these programs can impose, thereby reducing costs to customers while maintaining or exceeding current levels of environmental protection. Such changes would enhance the ability of EEI's members to permit, site and operate fossil fuel-based generation, transmission, and other infrastructure assets while also protecting the environment. To that end, EPA should:

- Modify the Greenhouse Gas Reporting Rule to incentivize the deployment of carbon capture and storage (CCS) technology by clarifying that CO_2 utilized for enhanced oil recovery (EOR) should not report under Subpart RR, but instead under Subpart UU. Such a change would help to incentivize, and make more cost effective, the deployment of CCS technologies by allowing the captured CO_2 to be utilized more widely for EOR;

- Evaluate stack testing and reporting requirements—which exist across multiple rules and programs—to streamline compliance requirements. Numerous programs under CAA sections 112 and 110, as well as requirements for compliance with CAA title IV and title V, require duplicative stack testing and emissions reporting. In addition, EPA should evaluate whether the frequency of testing that is currently required is necessary given the widespread use of Continuous Emissions Monitoring Systems (CEMS) by EGUs, and should evaluate whether the emissions reports required under current programs are duplicative of the reports contained within a unit's title V operating permit;

- Withdraw the "once in, always in" guidance that interprets certain CAA section 112 applicability requirements so that a major source will always be treated as major, even if it becomes an area source under EPA's regulation. Reinterpreting this guidance could encourage fossil fuel-based EGUs to make improvements that would reduce emissions if they would allow reclassification as a minor source, with the attendant reductions in reporting obligations;

- Reevaluate the final rule establishing operational and emission controls for units identified as commercial and industrial solid waste incineration (CISWI) units, which establishes standards on units that "combust[s] any solid waste."

Historically, however, several types of materials have been introduced into utility boilers, including boiler cleaning waste and refined coal, as a practical way to manage material without increasing emissions and to reduce the emissions of certain contaminants. These beneficial practices should not trigger CISWI regulation, within the boundaries established by court precedent. The evaporation of boiler cleaning waste in utility boilers is a practical, cost-effective method for managing materials that are mostly or entirely water-based and does not increase emissions beyond regulatory thresholds. Accordingly, EPA should clarify the CISWI rule to explain that these activities do not necessarily trigger regulation, and allow fossil fuel-based EGU operators to manage waste materials and emissions in a cost-effective manner, subject to environmental considerations.

The Resource Conservation and Recovery Act (RCRA)

Many of EEI's members also are regulated under RCRA through the provisions of EPA's Coal Combustion Residuals (CCR) rule. While the CCR rule provides significant health protections and requirements for appropriately managing CCRs, the Water Infrastructure Improvement for the Nation (WIIN) Act provides a mechanism for implementation of the CCR rule through state or federal permit programs and therefore the rule should be revised to allow regulatory agencies to tailor the rule's groundwater monitoring and corrective action programs based on site-specific conditions while maintaining the rule's important environmental protections. This would reduce both administrative and substantive economic burdens on fossil fuel-based EGU operators. EPA should:

- Extend compliance dates established in the CCR rule to provide time for implementation of permit programs given the WIIN Act's establishment of procedures for states and EPA to implement the CCR rule through permit programs. This will avoid unnecessary capital expenditures for elements of the rule that may be implemented differently by a state permit program than as contemplated by EPA's final CCR rule;

- Revise the CCR rule to include site-specific flexibility regarding groundwater monitoring and corrective action similar to that provided in the municipal solid waste regulations and applied under state risk-based cleanup programs;

- Modify the CCR rule so that inactive surface impoundments (*i.e.*, impoundments that did not receive CCR after the rule's effective date) are not subject to regulation. EPA and the states can address any risks from these units in a more cost-effective manner under pre-existing imminent hazard provisions.

The Clean Water Act (CWA)

EEI's members are subject to numerous requirements under the CWA because some of the activities undertaken by electric utilities result in a discharge of pollutants to—or a modification of—a WOTUS, therefore requiring a permit under the CWA. Specifically,

EEI's members often must comply with the requirements of section 402, the National Pollutant Discharge Elimination System (NPDES), and section 404, Permits for Dredged or Fill Material that include the streamlined Nationwide Permits (NWP) program. EGUs also are governed by a variety of other substantive CWA provisions that address water quality criteria and standards, including cooling water intake structures through CWA section 316(b) and effluent guidelines.

EEI's members strive to comply with this array of requirements in a coordinated and cost-effective fashion. However, certain parts of EPA's regulatory programs under the CWA could be streamlined, improved or modified to help reduce the administrative burdens these programs can impose, thereby reducing costs to customers while protecting the environment. To that end, EPA should:

- Withdraw the 2015 Water Quality Standard rule, which impinges on states' authority to set water quality standards while considering each state's priorities and greatly reduces state flexibility to consider other factors when establishing standards. The rule unnecessarily complicates the process and could hamper the ability of fossil fuel-based EGUs to obtain and comply with NPDES permits;

- Rescind EPA's 2016 human health criteria for Washington state and Maine and reinstate the prior practice of giving states discretion as to how they apply fish consumption and exposure criteria by allowing them to propose more applicable criteria. Allowing the states to propose their own criteria potentially save significant project implementation costs;

- Withdraw the proposed 2016 NPDES Application and Program Updates rule, which would make changes to the state-delegated NPDES program and establish federal veto authority, among other concerning programmatic changes. The proposed rule has the potential to create additional permit backlogs, and EEI looks forward to engaging in a constructive dialogue with the Agency to explore opportunities for achieving additional efficiencies in the NPDES program;

- Withdraw the final 2016 EPA-USGS report, "Protecting Aquatic Life from Effects of Hydrologic Alteration." The report addresses protections for aquatic life from the effects of flow alteration—in particular, for changes in historic flow patterns that can result from climate change. However, the final report did not address all the technical and policy concerns raised by commenters;

- Withdraw the proposed "Draft Field-based Methods for Developing Aquatic Life Criteria for Specific Conductivity" given the document's technical and scientific deficiencies that would generate overly conservative criteria, leading to unnecessarily costly implementation of water quality criteria.

Again, EEI appreciates the opportunity to provide input on the EPA's notice requesting comment in accordance with E.O. 13771. If you have any questions concerning EEI's input, please contact me (qshea@eei.org or 202-508-5027) or another member of the EEI team.

Sincerely,

Quinlan J. Shea, III

cc: Ryan Jackson
Samantha Dravis
Brittany Bolen
Byron Brown
Mandy Gunasekara
Emily Fisher
Kathy Steckelberg
Chuck Barlow

U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF ADVOCACY

REGULATION • RESEARCH • OUTREACH

REGULATORY REFORM ROUNDTABLE

The Office of Advocacy Seeks Input from Small Businesses at Regional Roundtable Events

The SBA Office of Advocacy is an independent office housed in the SBA that serves as an independent voice for small business within the federal government, the watchdog for the Regulatory Flexibility Act (RFA) and the source of small business statistics. Advocacy advances the views and concerns of small business before Congress, the White House, federal agencies, federal courts, and state policy makers.

President Donald J. Trump has made regulatory reform a center piece of his agenda and recently signed two executive orders addressing the regulatory burden faced by the private sector. Advocacy has a unique and important role to aid agency implementation of the Executive Orders. To assist in accomplishing the goals of the Executive Orders, we have developed a Regulatory Reform Action Plan.

As part of this plan, we are hosting Regional Regulatory Reform Roundtables across the country in an effort to hear directly from small businesses about what regulations concern them the most. The first of the roundtables will be in Baton Rouge and New Orleans on June 7 and 8. The Baton Rouge roundtable will take place at the LABI Conference Center on June 7. On June 8, we will host a roundtable at the New Orleans Marriot on Canal Street.

The purpose of Advocacy's Regional Regulatory Roundtables is to:

1. Identify regional small business regulatory issues in order to assist agencies with regulatory reform and reduction in compliance with Executive Orders 13771 & 13777;
2. Compile crucial information for Advocacy's new report on existing small business regulatory burdens across the nation, identifying specific recommendations for regulatory changes based upon first-hand accounts from small businesses across the country; and
3. Inform and educate the small business public as to how Advocacy and SBA can assist them with their small business goals.

In order for this Regulatory Reform effort to be successful, we need small business participation.

This will be an opportunity for small business leaders to educate Advocacy and federal agencies through first-hand accounts of how they are impacted by federal regulations. The information gathered at these roundtables will be utilized to inform agencies, Congress and the public on what specific regulations can be modified or removed to help small businesses.

For more information regarding Advocacy's efforts to help reduce the regulatory burden on small businesses and upcoming roundtable events, please visit: https://www.sba.gov/advocacy/regulatory-reform.

SBA

OFFICE OF ADVOCACY

www.sba.gov/advocacy

May 15, 2017

U.S. Environmental Protection Agency
Washington, D.C. 20004

RE: Docket EPA-HQ-OA-2017-0190

The undersigned organizations commend the Environmental Protection Agency [the agency] for opening this docket and are pleased to submit the attached comments in response to the agency's request.

Our organizations represent individuals engaged in agricultural production, both for crops and livestock. Requirements imposed by the agency through its regulations can have significant impacts on our members; many of these impacts can be felt in the areas outlined by the agency for review[1] In the attached comments, we have sought to meet the agency's request to be as specific as possible. In some instances, where information responsive to the agency's request for "supporting data or other information such as cost information" is not available, we have attempted to quantify the impact of the regulatory burden as concretely as possible and to "provide specific suggestions regarding repeal, replacement or modification." We welcome questions from your office or the Task Force if these comments need further amplification and will do our best to respond in as prompt and comprehensive a manner as possible. We greatly value this effort and hope the agency succeeds in alleviating unnecessary and costly regulatory burdens on the agriculture community.

In this context, we wish to make a brief preparatory remark. As of mid-May, the docket exceeded 17,000 comments, the overwhelming majority of them anonymous. These are presumably submitted from well-intentioned individuals but they preponderantly assume that the agency's initiative is to undo, weaken, rescind or otherwise impair the nation's environmental safeguards. We see nothing in the Federal Register notice that supports such an inference. We wish to state for the record that the undersigned organizations are not requesting that the agency engage in, nor would we expect the agency to pursue, an effort to impair, rescind, weaken or in any way retreat from health or environmental safeguards that have been authorized by Congress. Nothing in Executive Order 13777 would have the agency ignore its statutory obligations to administer the environmental laws Congress has passed. We are not asking the agency to weaken its commitment to health and the environment. We have identified regulatory obligations that can be modified or repealed consistent with the laws Congress has enacted and we strongly encourage the agency to consider these recommendations.

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[1] In its notice, EPA has specifically asked for recommendations that address regulations that, *inter alia,* "(i) eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard or reproducibility…"

We appreciate your consideration of these comments. If you have questions or wish to discuss any specific issue in this submission, please contact Paul Schlegel at the American Farm Bureau Federation at (202) 406-3687 or pauls@fb.org.

Sincerely,

Agri-Mark Dairy Cooperative, Inc.
American Dairy Coalition
American Farm Bureau Federation
AmericanHort
American Soybean Association
American Sugarbeet Growers Association
American Sugar Cane League
California Specialty Crops Council
Dairy Cares
Dairy Farmers of America
Dairy Producers of New Mexico
Dairy Producers of Utah
Exotic Wildlife Association
Federal Forest Resource Coalition
GROWMARK, Inc.
Idaho Dairymen's Association
Missouri Dairy Association
National All-Jersey
National Aquaculture Association
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association
National Cotton Council
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Peach Council
National Pork Producers Council
National Milk Producers Federation
National Sorghum Producers
National Turkey Federation
Northeast Dairy Farmers Cooperatives
Panhandle Peanut Growers Association
Professional Dairy Managers of Pennsylvania
Select Milk Producers, Inc.
Society of American Florists
South East Dairy Farmers Association
Southwest Council of Agribusiness
St. Albans Cooperative Creamery

Upstate Niagara Cooperative, Inc.
US Apple Association
USA Rice
US Cattlemen's Association
Washington State Dairy Federation
Western Peanut Growers Association
Western United Dairymen

I. 'Waters of the US' (WOTUS) Rule (80 Fed. Reg. 37054, June 29, 2015)

On February 28, President Trump signed Executive Order 13778 directing EPA to review the WOTUS rule and to publish a proposal rescinding or revising it. We strongly support the President's EO and urge EPA to pursue this effort aggressively.

Recommendation: We recommend that the agency:

(a) repeal the existing rule (80 Fed. Reg. 37054).

(b) in a separate rulemaking, propose a revised rule that more closely adheres to the language of the Clean Water Act and Supreme Court decisions in *Riverside Bayview*, *SWANCC* and *Rapanos*.

II. Spill Prevention Control and Countermeasures (SPCC) Rule (40 CFR 112)

While EPA attempted to address concerns of the agriculture community raised by the SPCC rule, the program presents nearly insurmountable difficulties for agricultural producers. That assessment is borne out by the agency's own Regulatory Impact Analysis (RIA). EPA examined the Clean Water Act violation data from 2001 to 2006. In over 10,000 violations in that time period, only 292 involved oil spills of any type, and only **one** of those involved a farm. Many other estimates in the RIA were incorrect as well. EPA estimated an approximate figure of 152,000 affected farms based on USDA numbers. Nowhere did EPA mention the USDA numbers presented in the 2005 round of proposals that numbered potentially affected farms closer to 400,000. Yet despite these facts, EPA moved to place a costly and burdensome rule on the agricultural industry with no data to show a risk justifying the cost. EPA included other incorrect assumptions to bolster the cost-savings analysis. They estimated a savings of $3.6 million due to exempting pesticide application equipment but that cost was only based on a report from one state. They estimated $2,000+ savings from not regulating home heating oil tanks but those tanks were exempted in the original 1973 rule and no one has ever applied SPCC to those tanks anyway. While Congress granted the agency flexibility to address any concerns on farms, the agency rejected this approach and imposed the strictest limit possible.

Recommendation: The SPCC for farms should be repealed.

III. CERCLA/EPCRA

(a) On April 11, 2017 the US Court of Appeals for the DC Circuit issued a ruling in long running litigation that struck down a 2008 rule providing an exemption from federal reporting of emissions from livestock farms and providing a partial exemption from state/local reporting of such emissions. As a result of the DC Circuit ruling, in late May or early June 2017 livestock farmers will be responsible for calculating the rate of various chemical emissions associated with the storage of manure for use as a fertilizer, and treat and report these emissions as "emergency releases" to state and local authorities under 42 U.S.C. § 11004 (EPCRA § 304) and to the Coast Guards National

Response Center under 42 U.S.C. § 9603 (CERCLA § 103). These reports provide little emergency planning/response benefit to regulators or the public, and in fact could have a detrimental impact on emergency response programs (and the public's reliance on them) because the receipt of hundreds of thousands of reports of livestock odor will overwhelm a system designed for responding to true emergencies. Failure to file the reports will subject livestock farmers to expensive citizen suit litigation filed by eco and animal rights activists.

(b) In recent years, efforts have been made to extend the liability provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 and the Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986 to livestock and poultry operations for emissions or discharges from manure produced in those operations. Animal agriculture operations are already regulated under the Clean Water Act, the Clean Air Act, and various state laws to protect the environment; these statutes provide for permitting, enforcement and, if needed, remediation. Manure is not a superfund waste and was not intended by Congress to be regulated as such.

Recommendation: EPA should promulgate regulations confirming that manure is not regulated under CERCLA or EPCRA.

IV. Worker Protection Standards (WPS) rule (40 CFR Part 170)

(a) Designated Representative. In the WPS rule promulgated November 2, 2015, EPA included a provision that permits anyone claiming to be a 'designated representative' (DR) to gain access to a farmer's proprietary records relating to pesticide use.[2] This provision provides farmers with no protection from fraudulent or counterfeit claims; does not assure that records released by the farmer will actually be shared with workers; and imposes no constraints on what DR's may do with documentation once it is obtained. EPA has never cited any data or facts that demonstrate that such a provision would improve worker safety. Thus, the regulation imposes an unnecessary regulatory burden and cost, while exposing farmers to legal liability, with no discernible benefit.

Recommendation: EPA should repeal 40 CFR § 170.311(b)(9) and related provisions.

(b) Application Exclusion Zone (AEZ). In the final WPS, EPA inserted a final articulation of the Application Exclusion Zone (AEZ) that unduly burdens state agencies and the regulated community.[3] As finalized, the AEZ goes beyond the Agency's stated intent

[2] The specific requirement is at 40 CFR 170.311(b)(9).

[3] WPS provision at 170.405(a)(1) establishes the applicable AEZ distances, and WPS provision 170.405(a)(2) establishes a requirement for the agricultural employer not to allow any worker or other person in the AEZ within the boundaries of the establishment until the application is complete. Provision at 170.505(b) establishes a requirement for the handler to suspend the application if any worker or other person is anywhere in the AEZ. Thus,

to create a one-hundred foot buffer surrounding the application equipment that, according to the regulations now in place, extends beyond the agricultural establishment, arguably jeopardizing a grower's ability to manage all his land and prohibiting appropriate pest mitigation activities if there is any kind of structure, permanent or otherwise, inhabited or vacant within one hundred feet of the agricultural establishment. Furthermore, any individual, structure, or a passing vehicle within one hundred feet of the property can effectively cease the grower's application activity. After the final rule was promulgated, EPA's Office of General Counsel (OGC) was working to issue interpretive guidance clarifying the Agency's intent under the final regulation; however, Agency guidance does not carry the weight and authority of a codified federal regulation and does not provide the necessary clarity to assist state regulatory agencies or the grower community with compliance and enforcement activities. In short, both EPA and the state regulatory agencies are still uncertain on how to enforce or deliver compliance assistance on the AEZ.

Recommendation: EPA should revoke the Application Exclusion Zone (AEZ), which goes beyond EPA's original intent and creates an unworkable and unenforceable provision that does not provide any additional regulatory protections beyond those already required under law.

V. Resource Conservation and Recovery Act

In 1979, EPA promulgated regulations that reflect Congress' intent that the agency not regulate manure or crop residue under the Solid Waste Disposal Act (42 U.S.C. § 6903(27)). Certain court decisions, however, have injected uncertainty in this area of the law. Legislation is now pending in Congress (the Farm Regulatory Certainty Act) to provide legal certainty for farmers.[4] The legislation would also amend Section 7002 of the Solid Waste Disposal Act (42 U.S.C. § 6972(b)(1)) to clarify that farmers are not to be targeted twice if they are engaged in legal action with a federal or state regulatory entity to address identified issues.

Recommendation: EPA should continue its policy of not regulating agricultural nutrients under RCRA. The EPA also should vigorously defend existing regulatory actions should a farming operation be targeted with a third-party lawsuit for an alleged violation that is already being addressed by a federal or state legal or administrative proceeding.

VI. "Normal farming" activities under § 404(f) of the Clean Water Act (33 CFR § 323.4)

Sec. 404(f)(1) of the Federal Water Pollution Control Act (33 U.S.C. § 1344(f)(1)) provides an exemption from 404 "dredge and fill" permitting for a wide range of normal farming,

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the AEZ goes beyond the boundaries of the establishment in question and applies to any area on or off the establishment within the AEZ while the application is ongoing.

[4] The Farm Regulatory Certainty Act would amend Section 1004(27) of the Solid Waste Disposal Act to codify EPA's existing regulations.

ranching and silviculture activities, including plowing, seeding, cultivating, harvesting for the production of food, fiber, and forest products as well as construction or maintenance of farm or stock ponds or irrigation ditches and for the maintenance of drainage ditches. Even though this broad language is written in the statute, the Corps' regulation (33 CFR § 323.4) and EPA's and the Corps' guidance and information interpretations have narrowed the scope of 'normal' farming, ranching and silviculture activity.[5] Thus, even some explicitly exempt activities (i.e., plowing) have come under enforcement action. Congress has included appropriations riders directing EPA and the Corps to eliminate funding for the so-called "recapture" provision at Sec. 404(f)(2), which the agencies use to sweep otherwise exempt activities back into the regulatory program, yet EPA and the Corps have ignored Congress' directives.

Recommendation: EPA and the Corps should undertake a rulemaking that supersedes the Corps' existing regulation as well as prior guidance from the agencies and codifies the normal farming, ranching and silviculture exemption under § 404(f)(1) of the Clean Water Act consistent with the text of the statute.

VII. Total Maximum Daily Loads (TMDLs) (40 CFR Part 130)

EPA has used guidance and informal interpretation of sparse statutory text (Clean Water Act Sec. 303(d)) and ambiguous decades-old regulations to create a regulatory mechanism that puts EPA bureaucrats and technocrats in the role of land use planners. This has blurred the lines of authority between the Federal and state governments and robbed state environmental agencies of the ability to devise and adapt their own plans to most effectively and efficiently achieve water quality standards. This EPA overreaching raises the cost of achieving water quality goals, inhibits adaptive management and unlawfully puts EPA in the role of regulating farming practices. EPA's existing rules also fail to ensure that established water quality goals are in fact *achievable* before burdensome or even economy-breaking implementation measures are imposed. This is of particular concern where water quality impairment results largely from naturally occurring "pollutants.".

Recommendations: EPA should revise its TMDL regulations to provide clarity and certainty to the regulated community and state and local governments by assuring that:

(a) States, not EPA, have the authority to set pollutant "allocations" for waters within their borders and incorporate the allocations into state implementation plans. This provides states and localities with the flexibility they need to change allocations when needed.
(b) EPA's TMDL authority is limited to approving or setting the *total* maximum load for a particular pollutant, as required by the statutory term "*total* maximum daily load."

[5] For example, while the Act itself does not restrict the exemption, the agency has seemingly used the recapture provision in 404(f)(2) to claim that the exemptions for normal activities only apply to 'established, ongoing' operations. It has further extended this interpretation to claim that changing an operation from one agricultural activity (e.g., grazing cattle) to another (e.g., planting, cultivating and harvesting crops) constitutes a 'change in use' and therefore negates the exemption provided in the law. See https://efotg.sc.egov.usda.gov/references/public/NM/CWA_404(f)_Ag._Exemptions.pdf

VIII. Prior Converted Cropland (33 CFR § 328.3(b))

In 1993, EPA and the Army Corps of Engineers promulgated a regulation that clarified that wetlands converted before 1985 into farmland were 'prior converted croplands' (PCC) and therefore, not "waters of the US." The preamble to the rule clearly provided that land remains as PCC regardless of the use to which the land is put. Yet, in 2005, the Army Corps of Engineers issued guidance eroding this exemption by proclaiming that land is no longer PCC if it is put to a non-agricultural use. A federal court found the guidance is unlawful because it conflicts with the 1993 rule,[6] but the Corps ignored the court's decision and continues to implement the guidance in order to re-regulate land.

Recommendation: EPA should undertake a rulemaking to clarify the 1993 rule that PCC lands are not subject to CWA regulation as jurisdictional wetlands regardless of the use to which the land is put.

IX. Army Corps of Engineers 1987 Wetlands Delineation Manual and Regional Supplements

In 1993, Congress prohibited the U.S. Army Corps of Engineers from using appropriated funds to delineate wetlands under the 1989 Wetlands Delineation Manual.[7] Congress further stated that no funds shall be used to implement *any subsequent manual adopted without the public notice and comment* procedures of the Administrative Procedure Act (APA). In the meantime, Congress authorized the Corps to use the 1987 Wetlands Delineation Manual, but only until the adoption of a final delineation manual.

Almost 25 years later, the Corps has failed to propose, much less adopt, a final wetlands delineation manual. Instead, the Corps continues to use the 1987 Manual, adding regional "supplements" to modify the very same delineation criteria Congress disallowed in 1993. Rather than placing the Manual and regional supplements through the rulemaking process, the Corps has used the supplements to avoid the Congressional directive to formally promulgate a final Manual.

Recommendation: We recommend that EPA clarify that no regional supplements should be used in making determinations of what constitutes "navigable waters" and/or initiate a joint

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[6] *New Hope Power Company and Okeelanta Corporation v. U.S. Army Corps of Engineers and Stockton* 2010 WL 3834991 (S.D. Fla. September 29, 2010)

[7] See Energy and Water Development Appropriations Act, Pub. L. No. 102-377, 106 Stat. 1315: "None of the funds in this Act shall be used to identify or delineate any land as a "water of the United States" under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 or any subsequent manual adopted without notice and public comment. Furthermore, the Corps of Engineers will continue to use the Corps of Engineers 1987 Manual, as it has since August 17, 1991, until a final wetlands delineation manual is adopted. PUBLIC LAW 102-377—OCT. 2, 1992 106 STAT. 1325 None of the funds in this Act shall be used to finalize or implement the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in Federal Register, Vol. 55, No. 197, Thursday, October 11, 1990."

rulemaking with the Corps that subjects the wetlands delineation manual through the rigors and transparency of the APA's public notice and comment process.

X. EPA's proposed revision regarding objection to administratively continued permits (40 CFR § 123.44) (Docket ID No. EPA-HQ-OW-2016-0145c)

EPA has proposed granting to itself the power to object to administratively continued permits by providing EPA Regional Administrators the discretion to change the status of an administratively continued permit to "proposed permit," an outcome that would trigger the robust federal review process outlined in 81 Fed. Reg. 31344, 31372 (May 18, 2016).

This proposed revision marginalizes a valuable tool afforded to states with authorized NPDES permit programs – the ability to administratively continue an existing NPDES permit in lieu of permit reissuance. This tool is important because it allows states to prioritize limited resources and limited personnel to ensure the most efficient management of their state NPDES program. This revision, if finalized, further erodes State authority to manage their own programs and will discourage unauthorized states from assuming NPDES authority.

Denial of an administratively continued permit, which this rule revision entails, would leave agricultural producers who hold NPDES permits without permit coverage and vulnerable to citizen lawsuits. It also raises a constitutional concern due to the lack of due process considerations given that there is no procedure to challenge the EPA's decision to change a permit's status to "proposed." The revision raises additional concern because it exceeds EPA's statutory authority. Clean Water Act § 402(d) grants EPA the authority to review proposed permits and to object to them, which if objected to prohibits the permit from issuing. The revision here would replicate this administrative power and apply it to administratively continued permits, a step that goes beyond the power Congress granted to EPA in the Clean Water Act.

Finally, this effort by EPA is not needed because EPA already manages a largely successful effort that resolves the underlying issue. The Priority Permit Measure provides an avenue for EPA to target state-issued NPDES permits to undergo the reissuance process by designating them as "priority permits".

Recommended: EPA withdraw its proposed revision regarding objection to administratively continued permits (40 CFR § 123.44) (Docket ID No. EPA-HQ-OW-2016-0145c)

XI. National Ambient Air Quality Standards (NAAQS) for Coarse Particulate Matter (PM_{10})

The NAAQS and definition for coarse particulate matter are overly broad and do not take into account naturally occurring sources like dust found on farms.

Recommendation: EPA should clarify its NAAQS regulations to ensure that agricultural producers are not found to be in violation of the Clean Air Act for conditions beyond their control when operating under general farming practices.

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]
From: Greenwalt, Sarah
Sent: Sat 7/22/2017 11:18:27 PM
Subject: FW: Sportsmen Letter Requesting Extension to Clean Water Rule Comment Period (EPA-HQ-OW-2017-0203)
Sportsmen Comment Period Extension Request.pdf

For your awareness. They request a 6-month extension and note that 30 days does not reach the threshold that EO12,866 indicates is appropriate. The following signed on:

- American Fisheries Society
- American Fly Fishing Trade Assoc
- Backcountry Hunters & Anglers
- BASS
- Fly Fishers International
- Izaak Walton League of America
- National Wildlife Federation
- Theodore Roosevelt Conservation Partnership
- Trout Unlimited

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Goodin, John
Sent: Friday, July 21, 2017 10:43 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Cindy Barger <cindy.s.barger.civ@mail.mil>; jennifer.a.moyer@usace.army.mil
Subject: FW: Sportsmen Letter Requesting Extension to Clean Water Rule Comment Period (EPA-HQ-OW-2017-0203)

Folks—passing this new one along for awareness.

John

From: Kim Jensen [mailto:kjensen@trcp.org]
Sent: Friday, July 21, 2017 10:15 AM
To: Goodin, John <Goodin.John@epa.gov>
Subject: Sportsmen Letter Requesting Extension to Clean Water Rule Comment Period (EPA-HQ-OW-2017-0203)

Good morning John-

I hope you are doing well. I wanted to pass along this letter signed by many of the sportsmen groups requesting an extension to the Clean Water Rule comment period. I know that the comment period hasn't opened up yet, but I thought you might be interested in having the letter.

Please let me know if you have any questions.

Thanks!

Kim

--

Kimberly Jensen

Water Resources Coordinator

Theodore Roosevelt Conservation Partnership

529 14th Street NW, Suite 500 | Wash., DC 20045

949-370-1426

www.trcp.org

July 13, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Office of Policy Regulatory Reform
Mail Code 1803A
1200 Pennsylvania Ave NW
Washington, DC 20460

The Honorable Douglas W. Lamont
Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works
Office of the Assistant Secretary of the Army for Civil Works
Department of the Army
104 Army Pentagon
Washington, DC 20310–0104

Dear Administrator Pruitt and Deputy Assistant Secretary Lamont:

On behalf of our millions of members and supporters, the undersigned hunting, fishing, scientific societies, and conservation groups strongly urge your agencies to extend the period during which you will accept citizen input on the proposed rule to rescind the 2015 Clean Water Rule (80 FR 37054) to allow for no fewer than six months to comment. This is approximately the same amount of time the agencies provided to comment on the 2015 Clean Water Rule.

Your planned 30-day comment period minimizes the input of the more than one million people who participated in the development of the 2015 rule and is an inadequate amount of time for stakeholders to engage meaningfully in this rulemaking process. Many of our members and supporters spend the summer months outdoors in pursuit of their outdoor passions. With a shortened comment period, this leaves them with little time to voice their opinions about a rulemaking that greatly affects their way of life. The planned period for comment lasts only half as long as Executive Order 12,866 indicates is minimally appropriate for any rulemaking. For a rule of this nature, the agencies must provide much longer time for the public to make their voices heard.

EPA and the Army Corps adopted the Clean Water Rule to clarify longstanding confusion over which water bodies were protected under the Clean Water Act. The rulemaking responded to the request of stakeholders ranging from states to regulated dischargers to sportsmen and conservation groups. It was developed based on clear science, legal reasoning, and meaningful engagement of stakeholders. The agencies held over 400 meetings with a variety of stakeholders, including small business owners, farmers, energy companies, states, counties, municipalities, other federal agencies, sportsmen and conservation groups, and environmental organizations.

Considering the critical functions that these water bodies serve, the far-reaching ramifications of repealing the Clean Water Rule would have on fish and wildlife habitat, and the extensive and extended comment period provided for the 2015 rule, we urge EPA and the Army Corps to extend the comment period so stakeholders have adequate time to meaningfully engage in the rulemaking process.

Sincerely,

American Fisheries Society
American Fly Fishing Trade Association
Backcountry Hunters & Anglers
B.A.S.S.
Fly Fishers International
Izaak Walton League of America
National Wildlife Federation
Theodore Roosevelt Conservation Partnership
Trout Unlimited

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Lacey, Pam
Sent: Tue 8/22/2017 5:24:42 PM
Subject: Invitation to speak to AGA environmental committee (by phone link) Sept. 27, 2017 - afternoon

Dear Ms. Bolen – I look forward to our AGA-NGVA meeting rescheduled for Sept. 12. In addition, would you be available to speak via phone link about the Administration's regulatory reform plans to the AGA environmental committee on Wed. Sept. 27th ? The committee includes environmental policy directors and vice presidents from utilities around the country. The fall committee meeting will be held in Colorado on September 27th, and it would be wonderful if you could call in to speak to our members. Perhaps 12:30 pm Eastern Time? The time is flexible. Please let me know if you are available that day.

Best regards,

Pamela A. Lacey | Chief Regulatory Counsel

American Gas Association

400 N. Capitol St., NW | Washington, DC | 20001

P: 202-824-7340 | M: 202-809-6565 | F: 202-824-9190 | placey@aga.org

The American Gas Association represents more than 200 local energy companies committed to the safe and reliable delivery of clean natural gas to more than 69 million customers throughout the nation.

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

April 19, 2017

THE ADMINISTRATOR

MEMORANDUM

RE: Executive Order 13783: Promoting Energy Independence and Economic Growth

FROM: E. Scott Pruitt

TO: Acting Deputy Administrator
Acting General Counsel
Acting Assistant Administrators
Inspector General
Acting Chief Financial Officer
Chief of Staff
Associate Administrators
Acting Regional Administrators
Director, Office of Small and Disadvantaged Business Utilization

On March 28, 2017, the President signed Executive Order 13783, "Promoting Energy Independence and Economic Growth." The EO established a national policy to promote the clean and safe development of our energy resources while reducing unnecessary regulatory burdens and directs federal agencies to undertake several actions to further this goal. EPA has already taken action toward implementing Sections 4 and 7 of the EO by issuing four *Federal Register* notices regarding rules specified in the EO. This memorandum serves to inform you of the next steps necessary to carry out additional requirements in the EO.

Section 2 of the EO directs the EPA to review existing regulations, orders, guidance documents and policies that potentially burden the development or use of domestically produced energy resources. The EO further requires the EPA to send a plan to carry out this review to the Director of the Office of Management and Budget by May 12, 2017, and submit a draft report with specific recommendations on deregulatory actions in the energy sector by July 26, 2017, followed by a final report due in September.

I have already communicated to all of you about the important work the agency's Regulatory Reform Task Force will be undertaking in response to EO 13777, "Enforcing the Regulatory Reform Agenda." That work includes making recommendations about regulations that could be repealed, replaced or modified to make them less burdensome. In light of the similarities between EO 13783 and EO 13777 on regulatory review, I have asked the Task Force to lead the agency's efforts to implement Section 2 of EO 13783. Accordingly, the Task Force will consider

regulations that might burden the development or use of domestically produced energy resources and prepare the required plan and report.

As your offices conduct your planned outreach to the public regarding regulatory reform initiatives per EO 13777, I request that you also look for input regarding regulatory burdens on domestically produced energy resources and identify relevant actions to the Task Force. Such information will greatly assist the Task Force and will bolster the draft report that is due in July.

Should it be needed, Samantha Dravis, Senior Counsel and Associate Administrator for Policy, who serves as the agency's Regulatory Reform Officer, will provide any additional information. Thank you for your help with our regulatory reform initiatives.

cc: Byron Brown
Brittany Bolen
Sarah Rees
Al McGartland

To: Kime, Robin[Kime.Robin@epa.gov]
From: Bolen, Brittany
Sent: Tue 5/9/2017 4:00:59 PM
Subject: FW: Tentative: Logistics TBD re: Portland Cement Association Regulatory Reform Panel

See

-----Original Message-----
From: Schon, Michael [mailto:mschon@cement.org]
Sent: Tuesday, May 9, 2017 11:29 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: Tentative: Logistics TBD re: Portland Cement Association Regulatory Reform Panel

Hi Brittany, I received this outlook cancellation. Was it intentional?

Michael Schon
Vice President and Counsel, Government Affairs Portland Cement Association
1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2> Suite 500<x-apple-data-detectors://0/2>
Washington, DC 20036<x-apple-data-detectors://0/2>
Phone: 202-408-9494 Ext. 1977<tel:202-408-9494;1977>
mschon@cement.org<mailto:mschon@cement.org>

On May 8, 2017, at 11:14 PM, Schon, Michael <mschon@cement.org<mailto:mschon@cement.org>>
wrote:

<meeting.ics>

To: Kime, Robin[Kime.Robin@epa.gov]
From: Bolen, Brittany
Sent: Mon 4/24/2017 2:49:29 PM
Subject: also

We need to reschedule 30 minute update with Sarah and Bill on the reg reform task force. We have our draft plan on the Energy Independence EO due to OMB May 12 and we have draft plan for Reg Reform EO due to the administrator on May 25. Just want to make sure there is an outline and draft prepared in enough time for Samantha and I to review. I am sure Byron will want to review as well since he is also on the task force.

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

To: Kime, Robin[Kime.Robin@epa.gov]
From: Bolen, Brittany
Sent: Tue 6/20/2017 11:46:00 AM
Subject: Can you plz print 3 copies of this?
Accomplishments - 6.5.2017.docx
ATT00001.txt

To: Rees, Sarah[rees.sarah@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
From: Bolen, Brittany
Sent: Tue 5/9/2017 4:00:23 PM
Subject: FW: Making sure everyone has seen this memo from OIRA on Regulatory Reform Accountability under EO 13777
OMB OIRA memo M-17-23.pdf

I saw this yesterday. Does it alter our draft plan?

From: McGartland, Al
Sent: Tuesday, May 9, 2017 11:50 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Kenny, Shannon <Kenny.Shannon@epa.gov>
Subject: Making sure everyone has seen this memo from OIRA on Regulatory Reform Accountability under EO 13777

To: Curry, Bridgid[Curry.Bridgid@epa.gov]; Rees, Sarah[rees.sarah@epa.gov]
Cc: Dravis, Samantha[dravis.samantha@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Germann, Sandy[Germann.Sandy@epa.gov]
From: Bolen, Brittany
Sent: Fri 4/14/2017 2:37:53 PM
Subject: RE: OAR's 13777 teleconference announcement and webpage FOR REVIEW

Thanks, Bridgid. Also, do you have the announcement for the OCIR quarterly national association outreach meeting?

From: Curry, Bridgid
Sent: Friday, April 14, 2017 9:36 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: RE: OAR's 13777 teleconference announcement and webpage FOR REVIEW

Thanks for catching that. I will contact the programs today to work on a solution.

From: Bolen, Brittany
Sent: Thursday, April 13, 2017 7:18 PM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: RE: OAR's 13777 teleconference announcement and webpage FOR REVIEW

It just occurred to me that OITA's outreach call overlaps with OAR's teleconference. It only overlaps by an hour (2-3pm). My recommendation would be to either end OAR's call an hour early (by 2pm) or to postpone OITA's call to 3pm. While it may be a rare instance, it is possible that there are tribal reps that want to participate on the air call as well as the OITA one. Can you please follow-up with OITA and OAR to reconcile this?

From: Bolen, Brittany
Sent: Thursday, April 13, 2017 7:07 PM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>
Cc: Samantha Dravis (dravis.samantha@epa.gov) <dravis.samantha@epa.gov>; Grantham,

Nancy <Grantham.Nancy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: RE: OAR's 13777 teleconference announcement and webpage FOR REVIEW

Bridgid – thanks for your patience. I have no edits on OAR's letter (and like the ones you made) – this is a great template for other offices. I had just a few edits to the webpage post (attached).

Please let me know if you have any questions.

Brittany

From: Curry, Bridgid
Sent: Thursday, April 13, 2017 5:13 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: OAR's 13777 teleconference announcement and webpage FOR REVIEW

Great. Thanks Brittany.

From: Bolen, Brittany
Sent: Thursday, April 13, 2017 5:03 PM
To: Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: Re: OAR's 13777 teleconference announcement and webpage FOR REVIEW

Hi Bridgid - thank you for reminder. I have one last meeting today I'm heading to now and will review/send edits on this before I leave for the day.

Brittany

Sent from my iPhone

On Apr 13, 2017, at 3:40 PM, Curry, Bridgid <Curry.Bridgid@epa.gov> wrote:

Hi Brittany,

I wanted to check on the status of these materials. Please let me know if you have any comments.

Thanks,

Bridgid

From: Curry, Bridgid
Sent: Wednesday, April 12, 2017 3:30 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: OAR's 13777 teleconference announcement and webpage FOR REVIEW

Hi Brittany,

I have attached drafts of OAR's teleconference announcement and reg reform website for your review. I made some initial edits in track changes. Please let me know if you have additional comments. Nancy Grantham in OPA is reviewing this also.

Thanks,

Bridgid

<DRAFT letter Apr3_4.7.17_v7.docx>

<OAR website.docx>

To: Liz Bowman (bowman.liz@epa.gov)[bowman.liz@epa.gov]
From: Bolen, Brittany
Sent: Mon 4/24/2017 2:09:37 PM
Subject: FW: updated talking points and Q&A doc for your review
Reg Reform Stakeholder Meetings_talking points_QAs v2.docx

I understand program offices are still requesting TPs for these reg meetings. Attached is what our OP folks prepared. Let me know your thoughts.

From: Nickerson, William
Sent: Friday, April 21, 2017 3:46 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: updated talking points and Q&A doc for your review

Brittany,

Here is a revised document with draft answers to the CPP, WOTUS, and 2 for 1 questions included.

Bill

To: William Lovell (lovell.william@epa.gov)[lovell.william@epa.gov]
From: Bolen, Brittany
Sent: Mon 8/7/2017 7:25:02 PM
reg reform talking points combined.docx

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

To: Lee Fuller[lfuller@ipaa.org]
From: Bolen, Brittany
Sent: Thur 4/13/2017 11:28:15 PM
Subject: RE: Regulatory Reform and Other Items

Hi Lee –

Thanks for reaching out. I apologize for the delayed response – I haven't been able to keep up with my inbox. I may have availability to meet towards the end of next week or sometime the following week. I'll have someone from my office reach out to you to schedule a meeting.

Best,

Brittany

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

From: Lee Fuller [mailto:lfuller@ipaa.org]
Sent: Friday, April 7, 2017 4:30 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Regulatory Reform and Other Items

Brittany,

I read that one of your assignments is the regulatory reform task force. Consequently, I wanted to reach out on some issues of concern. I've attached an email that I sent to Ryan Jackson that raises several issues that we would like to discuss. (Separately, we are trying to arrange a meeting for Barry Russell, IPAA's President and CEO with Administrator Pruitt through Sydney Hupp.)

Obviously, events are moving quickly. I know that the Administration filed an abeyance petition on the Subpart OOOOa litigation today. There is an issue there that is related that I'd like to call to your attention. The Subpart OOOOa fugitive emissions program – with its costly Leak Detection and Repair (LDAR) requirements – is scheduled to take effect on June 3. It would be helpful if this requirement, at least, could be stayed while the Subpart OOOO and OOOOa requirements are being reconsidered since a different approach might be developed. I know there are other provisions that are already in effect that raise similar issues.

I also spoke with Dave Rostker from the SBA Advocacy office regarding LDAR in a small business context where the issues arises in both the Subpart OOOOa and VOC Control Techniques Guidelines context. He suggested reaching out to EPA as well.

Hopefully, we can discuss these issues soon given your schedule.

Thanks for your consideration,

Lee Fuller

From: Lee Fuller
Sent: Thursday, April 6, 2017 2:40 PM
To: Ryan Jackson (Jackson.Ryan@epa.gov) <Jackson.Ryan@epa.gov>
Subject: IPAA Issues at EPA; Possible Meeting

Ryan,

I'm reaching out to you but would be happy if you point me to a preferred contact person.

After the recent Energy Executive Order, IPAA would like to discuss a number of pending issues with EPA.

Barry Russell, IPAA's President and CEO, would like to meet with Administrator Pruitt to introduce himself and IPAA. Barry worked for EPA in the 1970s before coming to IPAA.

The issues that we'd like to discuss relate to several matters.

First, EPA's actions in response to the Energy EO with regard to the methane NSPS (Subparts OOOO and OOOOa) are most important to IPAA. While currently engaged in the litigation opposing the regulations, the pathway to reconsideration and possible revision is critical. IPAA wants to be involved as soon as possible and wants to offer its cooperation.

Second, IPAA strongly supports efforts to expand and enhance delegation of regulatory authority to states. We are looking for options to be helpful in identifying pathways, working with our state cooperating associations to encourage state actions and working with Congress if there are barriers that need to be addressed.

Additionally, following are several other items – mostly directly affecting independent oil and natural gas producers – that we would like to identify as issues that we would hope EPA could address:

1. Control Techniques Guidelines (CTG) – As a part of the Energy Executive Order, EPA is directed to reconsider the oil and natural gas methane New Source Performance Standard (NSPS) – Subparts OOOO and OOOOa. When the Obama Administration proposed the NSPS, it also proposed a CTG for existing sources of Volatile Organic Compounds (VOC) in Ozone nonattainment areas. The CTG was finalized in October 2016. It should be suspended or withdrawn until the NSPS issues are resolved and determinations can be made on the appropriateness of the technology being applied to existing sources. Otherwise, the CTG will be applicable in future State Implementation Plans (SIP).

2. RCRA Subtitle D Consent Decree – EPA agreed to a Consent Decree to settle litigation regarding mandatory duties under RCRA Subtitle D related to making determinations regarding the appropriateness of state oil and natural gas production wastes regulations. EPA has until March 2019 to respond but it should act quickly for two reasons. First, EPA's mandate to act does not require an extensive burden and the longer it takes to act,

the more state programs appear to be viewed as inadequate. Second, the mandatory duties require action every three years. Action in 2017 would allow EPA to reconfirm its position in 2020 and establish a clear practice for the future.

3. Unconventional Oil and Gas (UOG) Extraction Effluent Limitations Guidelines (ELG) – EPA finalized UOG Extraction ELG for discharges to Publicly Owned Treatment Works (POTW) in June 2016. These ELG should be based on a technology standard – Best Available Technology Economically Achievable (BATEA). EPA concluded that all discharges to POTW should be prohibited based on the availability of underground injection wells and of recycling options. Neither of these are BATEA. EPA should not be making zero discharge determinations based on its perception of other options. It should determine BATEA requirements. If the BATEA requirements are too expensive, it should be the dischargers' choice to use alternative approaches.

4. Clean Air Act Enforcement Tactics – Over the past several years, EPA's Enforcement tactics have been excessively aggressive. For example, in North Dakota where the state did not have delegation of the NSPS program for oil and natural gas production, EPA Enforcement initiated direct actions against producers with regard to its interpretation of Subpart OOOO requirements for storage vessels. This interpretation differed from those EPA technical staff had initially indicated. Using its enforcement power, EPA filed proposed penalties against a privately held producer that exceeded the value of its assets. The purpose was clear and predictable. EPA wanted to use its enforcement power to compel a limited asset company to enter into a consent agreement that would require actions that met Enforcement's interpretation of the regulation and to commit to additional actions that were beyond EPA Clean Air Act authority to require. Not only did EPA use a gap in state delegation to step over North Dakota in its zeal, but these types of enforcement tactics reflect poorly on EPA and the federal government and should be ended.

5. Ozone National Ambient Air Quality Standards (NAAQS) Revisions –

The 2014 revision to the Ozone NAAQS should be reconsidered. Implementation of the 2008 revision to the Ozone NAAQS had yet to be implemented and evaluated when the 2014 revision was finalized. NAAQS attainment should be the target, not promulgating new, unachievable revisions. EPA's own data showed that the same areas it projected to fail to attain the 2008 NAAQS would fail to meet the 2014 revision. In those areas, the regulatory requirements would not change but the 2014 revision would bring new areas into nonattainment regulation. Even though EPA predicted those new areas would reach the 2014 NAAQS without additional local controls, those areas would be subject to new source permitting requirements that hamper their economic development. Where there is no compelling health benefit from a NAAQS revision – like the 2014 action – EPA should devote resources to attainment of the prior standard.

Thanks for considering this request. Please let me know how to proceed from here.

Lee Fuller

To: Nickerson, William[Nickerson.William@epa.gov]
From: Bolen, Brittany
Sent: Wed 5/17/2017 3:08:21 PM
Subject: Fwd: OCIR's E.O. 13777 Submission
Regulatory Reform; Regional Recommendations -Final-5.16.17 (003).docx
ATT00001.htm
EO13777OCIR.docx
ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Richardson, RobinH" <Richardson.RobinH@epa.gov>
Date: May 17, 2017 at 11:07:23 AM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Dravis, Samantha" <dravis.samantha@epa.gov>, "Brown, Byron" <brown.byron@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Ringel, Aaron" <ringel.aaron@epa.gov>, "Kenny, Shannon" <Kenny.Shannon@epa.gov>, "Bowles, Jack" <Bowles.Jack@epa.gov>, "Osinski, Michael" <Osinski.Michael@epa.gov>, "Rees, Sarah" <rees.sarah@epa.gov>, "Kime, Robin" <Kime.Robin@epa.gov>
Subject: OCIR's E.O. 13777 Submission

Hi Ryan, Samantha, Byron & Brittany –

As directed by the Administrator's March 24 memorandum on enforcing the regulatory reform agenda, please find attached a summary of OCIR activities and corresponding discussion and comments received from state and local elected officials and the recommendations provided by the regions regarding rules that should be considered for repeal, replacement, or modification.

As of close of business on May 15, OCIR received recommendations from Regions 1,3, and 8, and coordinated recommendations from all ten regions through the Lead Region Coordinator for air programs. Recommendations from the regional water programs were submitted through the Lead Region Coordinator directly to the Office of Water. The regional recommendations for programs under the Offices of Land and Emergency Management and Chemical Safety and Pollution Prevention were provided by the individual regions.

If you have any questions or would like to discuss further please let us know.

Thank you, Robin

Robin H Richardson

Principal Deputy Associate Administrator

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

202-564-3358 (desk)

703-581-5814 (cell)

richardson.robinh@epa.gov

Cc: Dravis, Samantha[dravis.samantha@epa.gov]
To: Bowman, Liz[Bowman.Liz@epa.gov]
From: Bolen, Brittany
Sent: Mon 6/19/2017 9:45:37 PM
Subject: Question on Task Force

Hey Liz, in case it's helpful, below are the most recent statements on the task force I provided to OCIR for hearing QFRs late last week. Just want to make sure you have the most up-to-date info in case it's helpful to you on the NYT piece.
-Britt

6. What steps has EPA taken to implement President Trump's Executive Order on Reducing Regulation and Controlling Regulatory Costs?

EO 13771 directs all agencies to repeal two existing regulations for each new regulation issued in FY 2017 and thereafter, and also directs agencies that the total incremental costs of all regulations should be no greater than zero in FY 2017. Executive Order 13777 on Enforcing the Regulatory Reform Agenda further directs federal agencies to establish a Regulatory Reform Task Force and to evaluate existing regulations and make recommendations to the Administrator regarding their repeal, replacement, or modification. Consistent with these Executive Orders, EPA has been taking a hard look at the costs associated with complying with EPA regulations and EPA's Regulatory Reform Task Force's evaluation will help identify regulations for repeal per EO 13771. EPA has also initiated the delay or reconsideration of multiple regulations finalized by the previous administration that have led to cost savings that may further EO 13771 implementation.

a. How is EPA choosing which two regulations to repeal for every new regulation promulgated?

In April, OMB released guidance clarifying implementation of EO 13771. EPA is still developing our internal process to fully implement that guidance. As of June 1, EPA had not finalized a significant regulatory action that imposes total costs greater than zero. Therefore, EPA has not had to identify any deregulatory actions.

From: Bolen, Brittany
Location: 3500 WJCN
Importance: Normal
Subject: FW: Regulatory Reform Meeting with Margaret Caravelli & Northern Star Generation
Start Date/Time: Thur 6/22/2017 2:00:00 PM
End Date/Time: Thur 6/22/2017 2:30:00 PM

-----Original Appointment-----
From: Kime, Robin **On Behalf Of** Bolen, Brittany
Sent: Monday, June 19, 2017 10:27 AM
To: Bolen, Brittany; Caravelli, Margaret; Inge, Carolyn; Lovell, William
Subject: Regulatory Reform Meeting with Margaret Caravelli & Northern Star Generation
When: Thursday, June 22, 2017 10:00 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: 3500 WJCN

Directions: Please use the William Jefferson Clinton North Entrance located on your right as you exit the Federal Triangle Metro Station. Please arrive 20 minutes prior to the meeting with photo IDs to clear Security.

EPA Contact: For an escort from Security to the meeting call (202) 564-4332; for all other matters call Robin Kime (202)564-6587.

Attendees:

Margaret Caravelli and Karen Billups will be accompanying Mr. David Sims and Mr. Gary Merritt from Northern Star Generation to discuss regulatory reform.

Contact:

Margaret Caravelli, Partner, Balch & Bingham LLP
601 Pennsylvania Avenue, NW • Suite 825 South • Washington, DC 20004-2601
t: (202) 661-6342 f: (866) 237-7416 e: mcaravelli@balch.com

www.balch.com

To: Rees, Sarah[rees.sarah@epa.gov]; Nickerson, William[Nickerson.William@epa.gov]
Cc: Samantha Dravis (dravis.samantha@epa.gov)[dravis.samantha@epa.gov]
From: Bolen, Brittany
Sent: Tue 6/27/2017 2:57:22 PM
Subject: FW: Questions for the record - house hearing
HAC QFRs for policy team and others.docx

Hi Sarah and Bill –

We've been asked to work on the Reg Reform responses to the QFRs attached. I can't readily locate the QFR responses the three of us had worked on a week or so ago, but could you please refer to those responses and prepare draft responses to the attached reg reform questions? Our final responses are due Friday by noon. That said, could you please provide us draft responses by COB tomorrow?

Thanks,

Brittany

To: Kime, Robin[Kime.Robin@epa.gov]
From: Bolen, Brittany
Sent: Thur 5/25/2017 4:39:59 PM
Subject: FW: Reg Reform Standard
Standard.Reg Reform.5.5.17.docx

Hey, just making my way through emails. I wanted to make sure I sent you this. It's the draft of the form letter from the administrator on letters regarding the task force.

From: Hope, Brian
Sent: Friday, May 5, 2017 12:36 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: Reg Reform Standard

Super. Thanks!

From: Jackson, Ryan
Sent: Friday, May 5, 2017 12:12 PM
To: Hope, Brian
Cc: Dravis, Samantha; Bolen, Brittany
Subject: Re: Reg Reform Standard

I'm fine with this.

Ryan Jackson

Chief of Staff

U.S. EPA

(202) 564-6999

On May 5, 2017, at 11:57 AM, Hope, Brian <Hope.Brian@epa.gov> wrote:

> Attached is a proposed reg reform standard to acknowledge comments routed to the Administrator instead of the docket. It would be good until the 15th when the docket closes.

Differences from the general response are the new first paragraph and modifications to the penultimate and last paras that eliminate the reference to the EPA website. Please let me know if you have changes or if we're good to go. Thanks, Ryan.

- Brian

Brian T. Hope

Acting Director

Office of the Executive Secretariat

Office of the Administrator

(202) 564-8212

<Standard.Reg Reform.5.5.17.docx>

To: Traci Kraus[traci.kraus@cummins.com]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Kime, Robin[Kime.Robin@epa.gov]
From: Bolen, Brittany
Sent: Wed 5/24/2017 10:59:13 PM
Subject: RE: Introduction

Hi Traci,

It was nice to meet you, too. Thank you for your email. I was in a meeting with Mike today and he mentioned your visit last week. I would be interested in hearing about your regulatory reform ideas. Please work with Robin to schedule a time to discuss.

Best,

Brittany

From: Traci Kraus [mailto:traci.kraus@cummins.com]
Sent: Wednesday, May 24, 2017 3:30 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Introduction

Hi Brittany,

It was great to meet you at the Chamber meeting yesterday morning. I really appreciated hearing your perspective on all of the opportunities you and your team have at the agency. As we discussed, I work at Cummins and lead our government relations efforts on energy and environment issues, including truck and engine regulation for fuel efficiency and NOx.

I also mentioned that my colleague, Brian Mormino, was in town for meetings with the White House and your colleagues Ryan and Mandy (cc'd) at EPA to discuss some of these issues. I know we wanted to follow up with Mandy and keep you all in the loop on our discussions with

the WH (Mike Catanzarro) regarding potential regulation streamlining and next-tier NOx, and I wanted to see if you might have time for a 30 minute meeting or call with me and Brian to fill you in on discussions.

Please let me know if this may be of interest to you.

Thanks so much!

All the best,

Traci Kraus

Director, Government Relations

Cummins Inc.

601 Pennsylvania Ave. NW

Suite 1100N

Washington, DC 20004

Office: 202-654-4285

Cell: 202-302-5851

To: Lovell, Will (William)[lovell.william@epa.gov]
From: Bolen, Brittany
Sent: Tue 7/25/2017 9:26:00 PM
Subject: Fwd: draft of Draft EO 13783 Report
EO 13783 Draft Final Report.docx
ATT00001.htm

Sent from my iPad

Begin forwarded message:

From: "Rees, Sarah" <rees.sarah@epa.gov>
Date: July 25, 2017 at 4:53:49 PM EDT
To: "Dravis, Samantha" <dravis.samantha@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Kime, Robin" <Kime.Robin@epa.gov>
Subject: FW: draft of Draft EO 13783 Report

Hi folks – revised version of the draft EO 13783 report. Please let us know if you have any further comments; we'd like to finalize and send to OMB tomorrow afternoon.

Cheers,
Sarah

From: Schillo, Bruce
Sent: Tuesday, July 25, 2017 4:25 PM
To: Kime, Robin <Kime.Robin@epa.gov>
Cc: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Corrales, Mark <Corrales.Mark@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Subject: draft of Draft EO 13783 Report

Here is the current (and, hopefully, near final) version. There is still the disclaimer/timestamp in the header, but if that were removed, it's ready to go. Let me know if any additional changes are needed.

Bruce Schillo | Policy & Regulatory Analysis Division | Office of Policy | EPA
1200 Pennsylvania Avenue, NW | Mail Code 1803, WJC-N 3512-a | Washington, DC 20460
202-564-6552 | 202-564-7322 (fax) | schillo.bruce@epa.gov

From: Bolen, Brittany
Location: 3513A
Importance: Normal
Subject: Accepted: Prep for Samantha's 6/28 Regulatory Reform Presentation to U.S. Electric Generating Companies
Start Date/Time: Tue 6/27/2017 1:40:00 PM
End Date/Time: Tue 6/27/2017 1:55:00 PM

To: Johnston, A. Todd[atjohnston@cement.org]
Cc: Campbell, Heather[hcampbell@cement.org]; Carolyn Inge (Inge.Carolyn@epa.gov)[Inge.Carolyn@epa.gov]
From: Bolen, Brittany
Sent: Thur 4/13/2017 2:51:08 AM
Subject: Re: Panel Discussion; Meeting

Hi Todd -

Thanks for reaching out. I would be happy to participate on the panel, but I need to get approval first. I hope to have an answer for you by Friday.

On the other request, Carolyn please work with Todd and Heather to schedule a meeting with Samantha and I next week.

Best,

Brittany

On Apr 12, 2017, at 12:15 PM, Johnston, A. Todd <atjohnston@cement.org> wrote:

Brittany,

I hope you are well. I'm writing to see if you would be interested in speaking on a panel discussion for our members and also to see if we can set up a separate meeting with you.

First, we'd be honored to have you speak on a regulatory reform panel discussion that we're hosting for our members. The panel would speak on Wednesday May 10th at 8:30 before an audience of approximately 60 representatives of PCA's

member companies, including CEOs and key decision makers. They will be in town for PCA's annual Fly-in. I don't think it would require much preparation. We'd like you to give a brief introduction of EPA's regulatory/regulatory reform priorities and to be able to answer soft questions from my colleague Mike Schon who will moderate. We'd be honored to have you.

Second, I was hoping to set up a meeting with you, Samantha Dravis, me, and my environment and regulatory affairs lead (Mike Schon) to talk about pending issues before EPA and some of our key ideas for improving and streamlining permitting and regulations that affect the cement industry. Please let me know when you might have time to do so and we'll work our schedules around yours.

Thanks,

Todd

A. Todd Johnston

Executive Vice President

Portland Cement Association

202-719-1974 (o)

202-253-4464 (c)

To: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]
Cc: Samantha Dravis (dravis.samantha@epa.gov)[dravis.samantha@epa.gov]
From: Bolen, Brittany
Sent: Fri 4/21/2017 9:33:16 PM
Subject: FW: EPA Response to DOC Plan to Streamline Permitting and Reduce Regulatory Burdens for Domestic Manufacturing
FINAL EPA Response to Commerce 4-21-2017 with appendix.pdf

Ryan and Byron – wanted to make sure you had a copy of the final submission to Commerce.

From: Dravis, Samantha
Sent: Friday, April 21, 2017 4:51 PM
To: Comstock, Earl (Federal) <EComstock@doc.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Shaw, Nena <Shaw.Nena@epa.gov>
Subject: EPA Response to DOC Plan to Streamline Permitting and Reduce Regulatory Burdens for Domestic Manufacturing

RE: EPA's Input to the Department of Commerce's Plan to Streamline Permitting and Reduce

Regulatory Burdens for Domestic Manufacturing

Dear Mr. Comstock:

Thank you for your leadership on the January 24, 2017 Presidential Memorandum on "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing." At the interagency coordinating meeting on March 28, 2017, participating agencies were asked to provide to the Department of Commerce responses to the following four requests: (1) Briefly describe any of your agency's reforms in progress now that pertain to this effort; (2) Provide specific regulatory reform targets regarding your Agency; (3) Provide a brief description of permitting processes related to manufacturing and describe ways they may be simplified; and (4) Other advice and input as desired.

Environmental permitting can be a complex and burdensome system for domestic manufacturers to navigate as they seek to expand and create economic growth, and delays result in negative impacts for new projects and improvements manufacturers seek to make. The costs associated with environmental permitting are not well documented. The "hidden cost of environmental

regulation" includes facilities that are never built and jobs never created because of environmental permitting.

We can and need to do better to streamline these processes while continuing to protect human health and the environment. The process started by this Presidential Memorandum is just the beginning. In the attached Executive Summary and the body of EPA's response, we are proposing a range of reforms including modernizing the NPDES regulatory requirements consistent with CWA amendments and recent case law, as well as revising Title V regulations to streamline and clarify processes related to the submission and review of Title V petitions. These and other streamlining efforts will help provide the certainty and timeliness important for fostering an environment for economic growth. Administrator Pruitt is committed to bringing EPA back-to-basics, and streamlining our permitting processes to create economic and job growth in the manufacturing sector is crucial to that effort.

I sincerely hope EPA's submission assists the Department of Commerce in developing a comprehensive Permit Streamlining Action Plan (Action Plan). If you have any questions, please feel free to contact me or Brittany Bolen at bolen.brittany@epa.gov.

Regards,
Samantha

Samantha Dravis
Senior Counsel/Associate Administrator for Policy
U.S. Environmental Protection Agency

To: Prero, Judah[jprero@sidley.com]
Cc: Fotouhi, David[fotouhi.david@epa.gov]
From: Bolen, Brittany
Sent: Mon 5/8/2017 2:42:12 PM
Subject: RE: Invitation to ABA event

Hi Judah,

Thank you for the invitation. Unfortunately, I am unavailable that morning. I found an excellent substitute – my colleague, David Fotouhi (cc'd). David is Deputy General Counsel and plays a key role in our regulatory reform efforts.

Best,

Brittany

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

From: Prero, Judah [mailto:jprero@sidley.com]
Sent: Monday, May 8, 2017 9:44 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Invitation to ABA event

Just checking to confirm receipt of the e-mail.

Thanks,

Judah

JUDAH PRERO*
Counsel

SIDLEY AUSTIN LLP
+1 202 736 8451
jprero@sidley.com

**Admitted only in Maryland and New York; pending approval of application for admission to the DC Bar, practicing law in the District of Columbia under the supervision of principals of the firm who are members in good standing of the DC Bar.*

From: Prero, Judah
Sent: Thursday, May 04, 2017 10:04 AM
To: 'bolen.brittany@epa.gov' <bolen.brittany@epa.gov>
Subject: Invitation to ABA event

Ms. Bolen,

On behalf of the American Bar Association's Section on Environment, Energy and

Resources (SEER) Pesticide Chemical Regulation and Right to Know (PCRRTK) committee, I would like to invite you to be the guest speaker at our next "Friday Forum" event, scheduled for Friday, May 17, 2017, at the offices of Sidley Austin, 1501 K Street, NW, Washington DC, at 9 am.

Friday Forum events are an opportunity for the attorneys in the section to hear directly from government officials, policy makers, legislators, and industry leaders in an informal and intimate setting. It allows for the audience and the speakers to discuss environmental issues, ask questions of each other, and exchange thoughts and ideas. All Friday Forums are closed to the press and media in order to promote an open and frank discussion amongst speakers and participants.

We would welcome hearing from you on the subject of regulatory reform at EPA in general, and if you would like to discuss how reforms would specifically impact or address the TSCA and FIFRA related programs, we would welcome that discussion as well.

We hope you will be able to join us. Please feel free to be in touch with me if you have any questions, whether substantive or logistical in nature, about the program.

Thank you for the consideration.

Sincerely yours,

Judah Prero

JUDAH PRERO*
Counsel

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+1 202 736 8451

jprero@sidley.com
www.sidley.com

SIDLEY

**Admitted only in Maryland and New York; pending approval of application for admission to the DC Bar, practicing law in the District of Columbia under the supervision of principals of the firm who are members in good standing of the DC Bar.*

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This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

****

From: Bolen, Brittany
Location: 3500 WJCN
Importance: Normal
Subject: Tentative: Meeting to Discuss the American Coatings Association Comment Letter on EPA Regulatory Reform
Start Date/Time: Tue 9/19/2017 5:00:00 PM
End Date/Time: Tue 9/19/2017 5:30:00 PM

EPA IN ACTION: ACCOMPLISHMENTS WITH PRUITT'S LEADERSHIP

Updated June 5, 2017

FIRST 100 DAYS:

- Since being sworn in, I have spearheaded nearly two dozen significant regulatory reform actions and have taken meaningful steps to restore our relationship with state and local partners in the name of cooperative federalism.
- I am implementing President Trump's executive orders to protect the environment, save manufacturing jobs, streamline our permitting processes, and promote American energy independence.

TOP JOB NUMBERS:

- Jobs: Over 1.4 million jobs threatened by the actions of the Obama administration.
- Overall Regulatory Impact: $204 billion from the Obama EPA's regulatory actions.
- CAFE standards: 1.1 million jobs
- Clean Power Plan: 400,000 jobs threatened.
- ELG Rule: 100 jobs saved at a chemical processing plant in Florida.

EXAMPLES:

- **ELG** – Costs about $480 million annually, $1.2 billion per year in the first five years.
- **Hard Rock Mining** – Could cost American businesses $171 million annually.
- **CCR rule** – Costs power plants between $500 and $745 million – per year.
- **CAFE** –$200 billion by 2025 to comply.
- **WOTUS** – Between $600 million and $1.2 billion.
- **Methane ICR** – Compliance costs exceeding $37 million.
- **RMP Rule** – Costs about $131.8 million annually, $1.3 billion over ten years.

DETAILS on KEY REGULATORY REFORM ACTIONS:

- ✓ **TSCA Implementation:** Clearing the backlog of new chemicals that were waiting for approval from EPA, so they can go to market, and companies can create jobs and continue to innovate. We also are on track to meet the deadlines outlined in the Lautenberg Chemical Safety Act. Our significant rules on prioritizing chemicals that need to be reviewed for safety as well as a companion final rule that establishes the Agency's TSCA Risk Evaluation Process are currently under OMB review.
- ✓ **WOTUS:** EPA is restoring states' important role in the regulation of water by reviewing the "Waters of the U.S." or WOTUS. A rule with a regulatory impact analysis of between $600 million and $1.2 billion. Our draft to rescind the WOTUS rule is currently under OMB review.
- ✓ **CPP:** Launched a review of the so-called Clean Power Plan that threatens over 125,000 U.S. jobs. Our draft to rescind the CPP is currently under OMB review.
- ✓ **Oil and Gas Methane NSPS:** EPA announced a decision to reconsider the Oil and Gas Methane New Source Performance Standards for new and modified sources, delaying a costly compliance requirement. We issued a 90-day administrative stay on the rule's compliance deadlines June 2nd. Our proposed long-term stay of the rule is currently

under OMB review.

- ✓ **ELG Rule:** EPA announced a decision to reconsider the effluent limitations guidelines and standards for the steam electric power generating category under the Clean Water Act (ELG Rule), which costs an estimated $480 million annually, and about $1.2 billion per year in the first five years of compliance. We issued a 90-day administrative stay on the rule's compliance. Our proposed long-term stay of the rule has been published in the Federal Register and is currently open for public comment.
- ✓ **Coal Combustion Residuals (CCR Rule):** CCR rule is estimated to cost power plants between $500 and $745 million – per year. We developed draft guidance for the states on the CCR rule that is currently under OMB review.
- ✓ **Landfill Methane Rules:** EPA announced a decision to review the New Source Performance Standards and Emission Guidelines for Landfills. On May 5, EPA convened a proceeding for reconsideration of the rules and issued a 90-day stay of the effectiveness of these rules. Our proposed long-term stay of the rules is currently under OMB review.
- ✓ **Methane ICR:** We rescinded the overly burdensome, unnecessary information collection request to more than 15,000 owners and operators in the oil and gas industry. This rescission saved an estimated $37 million.
- ✓ **CAFE Standards:** EPA rescinded an unjustified, premature evaluation of greenhouse gas and fuel economy standards for model year 2022-2025 vehicles, and is working with DOT to conduct a collaborative and robust review of the standards. According to the Auto Alliance, "no agency has ever set emission limits so far into the future," and the previous administration's determination would have put 1.1 million jobs at risk and cost the industry $200 billion by 2025.
- ✓ **New Source Performance Standards for EGUs:** Reviewing the New Source Performance Standards for coal-fired power plants, which prevents companies from building new plants.
- ✓ **GHG Federal Plan/Trading Rules for EGUs:** On March 28, EPA signed a notice withdrawing these proposed rules.
- ✓ **Ozone Standard:** Requested delay of oral arguments on the ozone standard.
- ✓ **Hard Rock Mining:** EPA extended the comment period on the Hard Rock Mining proposed rule that could cost American businesses $171 million annually.
- ✓ **Energy Independence EO:** Following the President's Energy Independence Executive Order, Administrator Pruitt signed four notices to review and, if appropriate, to revise or rescind major, economically significant, burdensome rules the last Administration issued. Per the EO, EPA submitted a draft regulatory review plan to OMB on May 12. We are on schedule to provide OMB a draft report due in July.
- ✓ **Flint, Michigan:** The Agency is allocating funds for vital environmental projects that go directly to the health of our citizens, such as providing $100 million to upgrade drinking water infrastructure in Flint, Michigan.
- ✓ **Chlorpyrifos:** EPA denied a petition from the NRDC and the Pesticide Action Network North America, which was seeking a ban on a pesticides used on 40,000 farms and 50 different crops because there was never enough science to justify the ban.
- ✓ **Certified Pesticide Applicators Rule:** EPA extended the effectiveness of this rule and initiated a review.
- ✓ **Formaldehyde Emission Standards for Composite Wood Products:** EPA extended the compliance deadlines and a direct final rule to address key issues with the rule.

- ✓ **Regulatory Reform:** Launched the EPA Regulatory Reform Task Force to undergo extensive reviews of the misaligned regulatory actions from the past administration, and opened a public comment period to get public feedback on opportunities to rescind or revise existing regulations. Per the President's Executive Order 13771, EPA's Task Force also delivered a 90-day progress report to the Administrator on May 25.
- ✓ **Risk Management Rule (RMP Rule):** EPA estimates the RMP rule to cost $131.8 million annually, or $1.3 billion over ten years. EPA delayed the RMP rule to make sure that any additional regulations actually make chemical facilities safer, without duplicating regulations or opening our country up to dangerous national security threats.
- ✓ **Superfund Sites:** We are getting real results at cleaning up Superfund sites, including: East Chicago (IN), West Oakland (CA) and Pompton Lake (NJ). First EPA Administrator to visit East Chicago site.
- ✓ **Superfund Plan:** We announced new plans to get better results at Superfunds, including a new task force and a new authority for the Administrator to decide remedies that cost over $50 million.
- ✓ **Water Infrastructure:** Opened the application process for EPA's WIFIA program; a low-risk loan for businesses that will provide $1 billion in credit to finance over $2 billion in water infrastructure investments.
- ✓ **Meetings with National/International Leaders:** EPA Administrator Scott Pruitt has consulted 22 bipartisan governors, 25 bipartisan members of congress, three foreign leaders, four state agriculture departments, and over a dozen bipartisan organizations.
- ✓ **EPA Originalism:** EPA Administrator Pruitt launched a "Back-to-Basics" Agenda, touring a Pennsylvania coal mine, a Missouri power plant, and visiting a contaminated "Superfund" site in E. Chicago, to discuss how EPA is refocusing the agency on its core mission of protecting the environment through sensible regulations developed in cooperation with state, local and tribal partners.
- ✓ **MATS Rule:** DoJ has obtained abeyance of a challenge to the rule to allow time for policy review. Given the broad-reaching economic implications of the Mercury and Air Toxics Rule (MATS rule), we are reviewing the costs of the rule to determine whether it complies with our statutory mandate, abides by sound regulatory principles, and is in line with the pro-jobs, pro-growth directives of this Administration.
- ✓ **Clean Air Act/SSM SIP:** Asked the court to postpone oral arguments over an Obama-era rule making 36 states rework their Clean Air Act compliance plans.
- ✓ **Pebble Mine:** Entered into a settlement agreement with the Pebble Limited Partnership to resolve litigation from 2014 relating to EPA's prior work in the Bristol Bay watershed in Alaska. This will provide Pebble a fair process for their permit application and help steer EPA away from costly and time-consuming litigation.
- ✓ **Presidential Directive on Permit Streamlining and Reducing Regulatory Burdens for Domestic Manufacturers:** Per this Presidential memorandum, EPA submitted to the Department of Commerce a detailed account of the Agency's permitting programs and identified opportunities for reducing regulatory burdens on domestic manufacturers. EPA is currently working with the Department of Commerce to finalize its report to the President.

REGULATORY REFORM AT EPA – Internal/Deliberative Process – 8/7/2017

President Trump has issued two Executive Orders on regulatory reform: **EO 13771 on Reducing Regulation and Controlling Regulatory Costs** (INSERT DATE) and **EO 13777 on Enforcing the Regulatory Agenda** (Feb. 24, 2017). EO 13771 (i.e. so-called 2 for 1) directs agencies to repeal two existing regulations for each new regulation issued in FY 2017 and thereafter. EO 13777 established a federal policy "to alleviate unnecessary regulatory burdens" on the American people. Among other things, it requires each agency to create a Regulatory Reform Task Force to evaluate existing regulations and to identify regulations that should be repealed, replaced, or modified in furtherance of EO 13771. Actions taken pursuant to these EOs include:

- **Task Force**: ….
- **Public Meetings**. EPA held public meetings to listen and learn from those directly impacted by our regulations, including federal, state, local and Tribal governments; small businesses; consumer; non-governmental organizations and trade associations.
- **Public Comment Process.** We also accepted public comment through our regulatory reform docket. That docket closed on May 15, 2017. We have received over 450,000 comments in that docket.
  - Per the EO, we are using the public input to help identify regulations that eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

Ongoing Reconsideration of Regulations. EPA has begun the review of specific regulations and withdrawal of proposed actions that impose undue burden. These include:

- **Waters of the United States Rule.** EPA has initiated its review of the rule, and a proposal to withdraw the 2015 rule was signed by EPA and Army Corps on June 27.
- **Methane ICR.** In 2016, EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. On March 2, 2017, EPA withdrew this information collection request (82 Fed. Reg. 12817; March 7, 2017). The agency expects this will lead to cost savings of approximately $37,000,000.
- **Risk Management Plans.** EPA is staying the effective date through February 2019 to allow time to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action on the RMP rule.
- **Light-duty Mid-Term Evaluation. O**n March 15, 2017, EPA and DOT announced that EPA we will reconsider the final determination that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025.
- **Clean Power Plan and Related Actions.** EPA is reviewing the Clean Power Plan and NSPS for GHGs at Electric Generating Units, and has withdrawn the Federal Plan/Trading Rule/Framework Amendments.
- **Methane Oil and Gas Rule.** EPA initiated a review of the rule and has proposed extending the compliance date.
- **Steam Electric ELG**. In June, EPA proposed to postpone compliance deadlines until completion of the reconsideration.

- **Landfill Methane Rules**. On May 23, 2017, EPA announced a 90-day administrative stay for the final rules and a proposal to stay both rules until March 13, 2020.
- **Certified Pesticide Applicators Rule**. EPA delayed the effective date of this rule until May 2018 and has initiated a review of the rule.
- **Formaldehyde Emission Standards for Composite Wood Products**. On May 24, 2017, EPA issued a direct final rule and parallel proposed rule to extend compliance dates in the final rule.

Future Actions. At this point, the Task Force is reviewing the comments received to evaluate additional regulations that are candidates for repeal and reform. There are also other regulatory reform activities that are coordinated with this work.

- EO 13783 on Promoting Energy Independence and Economic Growth requires that we review regulations, orders and guidance documents that burden the development or use of domestic energy. We are looking to the comments received in the regulatory reform docket to help inform that work.
- The Department of Commerce issued a Request for Information per the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burden for Domestic Manufacturing which resulted in 170 public comments, with most EPA-relevant comments focused on air permitting programs (e.g., NSR, Title V, SSM, etc.).

Improving EPA's Regulatory Analyses for Better Decision Making. In addition to the actions on regulation, EPA is overhauling the way we quantify the costs and benefits of regulatory action:

- **Revision to the Social Cost of Carbon (and Social cost of Methane).** President Trump's Executive Order 13783, "Promoting Energy Independence and Economic Growth," instructed agencies to re-estimate the Social Cost of Carbon (SCC) consistent with OMB's Circular A-4. Required changes include using the higher 7 percent discount rate and limiting the estimate to domestic damages only). EPA will be the first agency to re-estimate the revised estimates.
- **Accounting for Uncertainty in air quality benefits assessments.** EPA ignores many sources of uncertainty in their main estimates of benefits from air quality regulations. EPA is developing a new methodology to explicitly account for the possibilities that air quality improvements at levels below current standards would not produce any additional health benefits.
- **Accounting for State Leadership on the Environment in our regulatory analyses (Federalism).** EPA's new assessments will assume a cooperative Federalism model that assumes states will be leaders in cost-effective environmental protection.
- **Reforming Regulatory Economics.** EPA is launching some major reforms and updates to our internal ***Guidelines for Producing Economic Analysis***. These guidelines govern how EPA does benefit-cost analysis and other regulatory impact analyses.
    - **Broadening the consideration of involuntary employment changes caused by regulation.** The agency will mandate that job losses are an important regulatory impact and the impact on facilities, communities, and various working populations must be assessed in as detailed a way as the data and modeling allow. EPA will also account how regulatory-induced unemployment affects the health and welfare of specific workers.
    - **For large, costly regulations, EPA will model the economy-wide impacts, including the costs to upstream and downstream sectors.**

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: Environmental Protection Agency
June 15, 2017

Questions for the Record – Administrator of the Environmental Protection Agency

Office of Policy

Rewriting Several Rules per Executive Orders: WOTUS, Clean Power Plan, and Methane

I was pleased to see two early actions from the President to issue:

- Executive Order 13778 on *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" rule*, and

- Executive Order 13783 on *Promoting Energy Independence and Economic Growth*.

I have a number of concerns with the WOTUS rule's flawed history -- it was originally proposed before the scientific studies were complete, the Small Business Association believed EPA should have conducted a Small Business Advocacy Review Panel prior to releasing the rule, and in December 2016 the GAO determined that EPA had violated the law by expending funds on a social media campaign to promote rule.

In my opinion, the only clarity that the WOTUS rule offered was that more Federal permits would be required under an Administration that was not approving permit applications. It was a clear example of Federal overreach.

The FY17 Omnibus included language asking EPA (and the Department of the Interior) to keep the Committee apprised of actions to comply with the Executive Order to promote energy independence and economic growth. For EPA, there were a number of specific directives within the Executive Order related to the Clean Power Plan, the methane rule, and other regulations.

Calvert Q1: Please provide an update on what steps the Agency is taking to comply with these Executive orders.

Calvert Q2: Where is the agency in the process with respect to each of those rules?

Waters of the United States

Because states are primary implementers of federal rules, state input into rulemaking early in the process, well before a rule is formally proposed, is critical to an effective and efficient regulatory program. EPA's review of the Water of the United States rule is key example.

Amodei Q4: Does the EPA plan to include state environmental agencies as co-regulators in the development of a new WOTUS definition to ensure effective implementation if a final rule is pursued?

Regulation Review

Executive Order 13783 on Promoting Energy Independence and Economic Growth requires a review of all regulations.

McCollum Q92: How is EPA going about conducting this review and what scientific evidence and economic assumptions or models is the Agency relying on for the basis of its decisions?

McCollum Q93: Environmental regulations already undergo a rigorous analysis of costs and benefits as they move through the regulatory process. In its annual accounting to Congress last year, OMB found that benefits of major rules EPA officially adopted from 2005-2015 exceed their costs by up to 13 times (OMB 2016). A 2011 peer-reviewed EPA assessment of the long term benefits and costs of the Clean Air Act and its implementing regulations found that its middle estimate of annual benefits exceeds costs by 30 to one--that's $2 trillion in net benefits vs. $65 billion in costs. Which specific EPA regulations does EPA believe are overly stringent and in need of scaling back?

McCollum Q94: Administrator Pruitt has expressed concern about the compliance costs of particular industries, please provide an estimate of the change in net benefits to the American public from rolling any regulations back.

McCollum Q95: Has the Agency considered the additional cost to industry of facing a patchwork quilt of different state requirements instead of one federal standard?

McCollum Q96: What steps has the EPA taken to implement President Trump's Executive Order on Reducing Regulation and Controlling Regulatory Costs?

McCollum Q97: How is EPA choosing which two regulations to repeal for every new regulation promulgated?

McCollum Q98: In EPA's regulation review has the Agency consistently adhered to the requirements of the Administrative Procedures Act, specifically the notice-and-comment period that gives the public time to respond to any proposed changes by the government?

McCollum Q99: How does EPA justify delaying the effective date for the companion rule for Pesticide Applicator Protection for an additional year to May 22, 2018?

McCollum Q103: How does EPA plan to defend the many inevitable lawsuits it will face from rolling back environmental regulations? Is this really the most effective way for EPA to fulfill its mission?

McCollum Q104: Executive Order 13777 required the head of each agency to designate a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies to ensure agencies effectively carry out regulatory reforms, consistent with applicable law.

McCollum Q105: Who have you appointed as the Regulatory Reform Officer for EPA and what are their credentials?

Environmental Impact on Children's Health

It is estimated that 88% of the existing global burden of disease attributable to climate change occurs in children younger than 5 years old in both industrialized and developing countries. Climate change is currently affecting child health through increased heat stress, decreased air quality, altered disease patterns of some climate-sensitive infections, physical and mental health effects of extreme weather events, and food insecurity in vulnerable regions. Outdoor air pollution is linked to respiratory problems in children, including decreased lung function, coughing, wheezing, frequent respiratory illness, and asthma exacerbation. Children bear the burden of negative health outcomes resulting from exposure to pollutants across their lifespan.

McCollum Q174: The EPA has put a hold on efforts to make our air cleaner by pausing work on the ozone standard and the Clean Power Plan. Is the EPA calculating the costs to children and their families from all of the health effects of polluted air and accelerated climate change?

McCollum Q175: As the EPA Administrator overseeing this regulatory review, are you consulting with pediatric associations, patient organizations, or other representatives for children's health to determine the cost burdens that rolling back these regulations would place on impacted families and our health care system as a whole?

McCollum Q176: How will the benefits to children of strong environmental regulations be weighed in comparison to the costs to some businesses of meeting those regulations in any final decisions?

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OA-2017-0190; FRL-XXXX-XX]

Evaluation of Existing Regulations; Pesticide Program Dialogue Committee; Clarification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a public meeting that will take place on Thursday, May 4, 2017, the second day of the Pesticide Program Dialogue Committee (PPDC) meeting, to receive public feedback on regulatory reform consistent with Executive Order 13777.

DATES:

DRAFT

For the Meeting: The public meeting will be held on Thursday, May 4, 2017, from 9 a.m. to 12:00 p.m.

Agenda: A meeting agenda will be posted on the PPDC website on or before April 19, 2017.

Accommodations requests: To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: *For the Meeting:* The public meeting will be held at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA, in the lobby-level Conference Center. (EPA's Potomac Yard South Bldg. is approximately 1 mile from the Crystal City Metro

Station.)

FOR FURTHER INFORMATION CONTACT: Dea Zimmerman, Office of Pesticide Programs (LC-17J), Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 353-6344; email address: *zimmerman.dea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you work in in agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act, and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OA-2017-0190, is available at *http://www.regulations.gov* or in the Environmental

Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

II. Background

Executive Order 13777, issued by the President on February 24, 2017, directs agencies to undertake several activities to reduce regulatory burdens placed on the public. In accordance with the Executive Order, the EPA Administrator, E. Scott Pruitt, established a Regulatory Reform Task Force that is charged with evaluating existing regulations and making recommendations to the Administrator regarding those that can be repealed, replaced or modified to make them less burdensome. Executive Order 13777 also requires that the Task Force seek public input to help identify such regulations. EPA issued a solicitation for written public comments on regulatory reform opportunities, which was published in the Federal Register on April 13, 2017 (82 FR _____) (FRL-9961-60-OP). Comments must be submitted by May 15, 2017, at docket EPA-HQ-OA-2017-0190 on www.regulations.gov.

In addition to the written public comment opportunity, the Administrator requested agency offices provide the Task Force with recommendations regarding specific rules that should be considered for repeal, replacement or modification; and advised that such recommendations should be informed by consultation with their particular stakeholders, which should include a dedicated public meeting for the agency to listen and learn directly from those impacted by our regulations.

Consistent with Executive Order 13777 and the Administrator's memorandum, the PPDC will hold this public meeting to discuss regulatory reform opportunities involving the regulations governing pesticide registration activities, as codified in 40 CFR parts 150-189.

The PPDC is specifically interested in receiving feedback on the following questions:

- Is there a particular rule or regulatory provision in 40 CFR Parts 150-189 (pesticide regulations) that should be repealed, replaced or modified?

- Which regulations could be updated to be less burdensome for small businesses and/or state and local or tribal governments while maintaining environmental protection?

- Which regulations, including economically significant rules, could be transitioned from paper to electronic reporting?

DRAFT

- How can the EPA streamline or consolidate reporting requirements to reduce burden, including reducing the frequency of reporting, while maintaining effective programs?

- Which regulations could be made less burdensome through the use of advance monitoring techniques to facilitate environmental protection?

- Which regulations (or a portion of a regulation) have achieved their original objective and become obsolete?

Please be as specific as possible, include any supporting data or other information, and provide a citation when referencing a specific regulation. In addition, in drafting comments, bear in mind that the EPA must uphold both its legal obligations under governing statutes.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are free, open to the public, and no advance registration is required. Public comments may be made during the course of this meeting or in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 et. seq.

Dated: _____

_____

Acting Assistant Administrator for Chemical Safety and Pollution Prevention.

DRAFT

Meeting on Regulatory Reform Agenda for Pesticides

Date and Time

Thursday 05/04/2017 9:00AM to 12:00PM EDT
Add to Calendar

Location

2777 South Crystal Drive
Arlington, VA 20024

Details

In accordance with Executive Order 13777, the EPA is seeking public input on regulatory actions that may be appropriate for repeal, replacement or modification. As part of that process, the Office of Chemical Safety and Pollution Prevention is announcing a public meeting that will take place on Thursday, May 4, 2017, the second day of the Pesticide Program Dialogue Committee (PPDC) meeting, to receive feedback on regulatory reform from a wide variety of stakeholders.

At this meeting we will discuss regulatory reform opportunities involving the regulations governing pesticide registration activities. Specifically, we are interested in receiving input from stakeholders on the following questions:

- Is there a particular rule or regulatory provision in 40 CFR Parts 150-189 (pesticide regulations) that should be repealed, replaced or modified?
- Which regulations could be updated to be less burdensome for small businesses and/or state and local or tribal governments while maintaining environmental protection?
- Which regulations, including economically significant rules, could be transitioned from paper to electronic reporting?
- How can EPA streamline or consolidate reporting requirements to reduce burden, including reducing the frequency of reporting, while maintaining effective programs?
- Which regulations could be made less burdensome through the use of advanced monitoring techniques to facilitate environmental protection?
- Which regulations (or portion of a regulation) have achieved their original objective and become obsolete?
- Which regulations are based on data, information, or methods that are not publicly available or that are insufficiently transparent?

You may also submit comments in writing to docket EPA-HQ-OA-2017-0190 on www.regulations.gov. Comments must be received by May 15, 2017. When submitting

comments, please be as specific as possible, include any supporting data or other information, and provide a citation when referencing a specific regulation.

Links

- List of planned regulatory reform meetings
- Agenda for Pesticide Program Dialogue Committee meeting
- Submit comments to the regulatory reform docket (EPA-HQ-OA-2017-0190)

Event Type

Request for Public Feedback