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 enable 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.

[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 designating 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 nonattainment 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 facilities 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 designated 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 concentrations 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 background 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 California 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 change 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 currently working with states, industry, 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 developing 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 paper. 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 two 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 is 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 prioritization 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 chemicals list. This has been done. The amended statute, however, contains throughput and pace requirements for risk evaluations, and to meet statutory requirements, additional chemicals will 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 requested 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 chemicals on the TSCA Inventory. A consequence of this is that over the years, many chemically identical substances appear on the Inventory multiple times with multiple names. Section 8(b)(3) of LCSA includes a new nomenclature 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 substantial 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 longer. 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