



**Statement of the American Chemistry Council on House Committee on
Science, Space and Technology Hearing on
“EPA Regulatory Overreach: Impacts on American Competitiveness Hearing”
June 4, 2015**

The American Chemistry Council (ACC) is pleased to offer this statement for the record of the hearing focusing on the impact of recent EPA regulations on American manufacturing. ACC¹ represents the leading companies engaged in the business of chemistry. We apply the science of chemistry to create innovative products and services that make people’s lives better, healthier, and safer. The U.S. chemical industry is a key element of the economy, providing 793,000 skilled, good-paying jobs across the country. We are among the nation’s largest exporters and investors in research and development. Our advanced materials and technologies include many that help save energy and reduce greenhouse gas emissions.

The shale gas revolution is driving a historic expansion in American chemistry. More than \$142 billion in new chemical industry investment is planned or underway, thanks to plentiful and affordable supplies of natural gas and natural gas liquids. Fully 60 percent is foreign direct investment. The 231 projects – new plants, expansions, and factory restarts – could create and support over 650,000 jobs by 2023. They will also generate increased GDP, tax revenue, and access to innovative new products.

However, the chemical industry’s expansion is threatened by new EPA regulations. In the course of just four months, EPA will have finalized the Clean Water Rule, the Clean Power Plan, and completed its review of the Ozone National Ambient Air Quality Standard (NAAQS). Individually, each of these rules will result in large impacts to the manufacturing industry. Collectively, the result may be overwhelming, with a significant impact on U.S. manufacturing in general, and the chemical industry in particular. It is critical that EPA take a hard look at its regulatory efforts and the cumulative impact it creates for the regulated community.

¹ 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 an \$812 billion enterprise and a key element of the nation's economy. It is the nation’s largest exporter, accounting for twelve percent of all 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.



Clean Water Rule

On May 27, 2015, EPA released the final Clean Water Rule (previously referred to as the “Waters of the U.S.” rule), which attempts to clarify which bodies of water are covered under the Clean Water Act. Instead of providing the desired clarity, the final rule still leaves a substantial amount of uncertainty regarding federal authority in the permitting process and what may or may not be covered by the rule’s newly created Clean Water Act jurisdiction. One of the most problematic sources of this ambiguity is the rule’s per se jurisdictional determinations for “tributaries,” which, as defined in the final rule, could be overly broad and assert jurisdiction over waterbodies with a very limited intermittent flow. This problem is compounded by the use of the “significant nexus” connectivity test, which lacks a strong foundation in sound science and could create connection determinations based on minimal and remote environmental factors.

Further concerns exist for facilities needing to obtain water permits in the future. Under the final rule, approved jurisdictional determinations associated with issued water permits and authorizations are valid until the expiration date. However, actions of EPA and the Army Corps of Engineers are governed by the rule in effect as of the date the agency issues a jurisdictional determination or permit authorization, not by the date of a permit application. The end result is that facilities that need to obtain a new determination or permit, or are nearing the expiration date of an existing permit, are now faced with a myriad of questions on how to proceed with little guidance from the agencies. There is little doubt that the permitting process will drastically slow down as additional work is needed before moving forward with new permits.

Clean Power Plan

EPA’s proposed Clean Power Plan (CPP) is an attempt to regulate the entire economy through the energy market. EPA has never before issued an air regulation with such an unprecedented scope, and there is much concern over the potential impacts of the final rule.

The chemical industry is a major energy consumer, and is distinctive in that it uses energy inputs as both a fuel and a feedstock for the products we make. Chemistry is the nation’s top export industry, and energy cost and reliability is critical to our ability to compete in the global economy. EPA’s CPP, as proposed, could undermine the reliability of the U.S. electric grid and increase energy costs. The final CPP must be designed and implemented in a way that sustains competitively priced U.S. energy markets.



Ozone NAAQS

On November 26, 2014, EPA proposed a more stringent ozone standard of between 0.065 and 0.070 ppm. Much of the U.S. will be unable to meet a lower NAAQS. Manufacturing growth could slow or stop in states that find themselves in non-compliance, since facilities located in “nonattainment” areas face burdensome and extensive regulatory requirements. These rules make investment projects far more costly and complex. To safeguard the significant planned investment in chemical manufacturing in the United States, and to ensure that the industry can create the jobs and products that foster economic growth, we need regulatory policies that do not impose unnecessary barriers to growth in our sector.

Currently, 222 counties covering a population of over 120 million people are classified in nonattainment with the current 0.075 ppm standard. If EPA revises the standard to the lower end of the proposed range, we estimate that more than 2000 counties – urban and rural – would be in nonattainment, based on the 2011-2013 design values and modeling.

Communities designated “nonattainment” have a difficult time attracting and retaining industry and sustaining economic activity and growth. Industry located in a nonattainment area face increased operating costs, permitting delays, and restrictions on building or expanding facilities. These challenges increase the “time to market” for innovative new products.

New facilities and expansions in nonattainment areas cannot proceed until emissions are offset. Offsets are not always readily available, and increase in price as they become scarce. For example, offset prices in the Houston-Galveston-Brazoria nonattainment area are more than \$200,000/ton for NO_x and \$300,000/ton for VOC. Offset prices in southern California nonattainment areas are approaching \$125,000/ton of NO_x.

Even facilities that are not expanding can experience the burdens of operating in a nonattainment area. For example, in the Houston area, which is in nonattainment with the current standard, existing facilities are subject to additional controls under the Highly Reactive VOC (HRVOC) rule. Combustion units, such as boilers and ethylene crackers, must install costly SCRs and low-NO_x burners. These controls require firms to make additional capital investments. Nonattainment areas may also lose federal highway and transit funding, as federal projects must conform with State Implementation Plans (SIPs) in order to proceed. Furthermore, facilities located in counties designated as in “severe” or “extreme” nonattainment will face significant Clean Air Act Section 185 fees for emissions in their area, even though many of these facilities have already spent many millions of dollars to reduce emissions.

ACC believes the scientific evidence does not support a lower ozone NAAQS EPA’s existing ozone standard of 0.075 ppm, through a series of significant emission control programs, will



continue to provide ample protection of public health. Moreover, there are numerous questions about the science being used to justify a lower standard: Some recent health studies contain inconsistent or conflicting findings, while others are re-analyses of previous studies that rely on outdated information.

Rather than revise the ozone NAAQS at this point in time, EPA should be looking at the progress that has been made to date in cleaning the air and look to build on that. The nation's air quality has significantly improved and continues to improve with new voluntary and regulatory programs already in place or being implemented. According to EPA, total emissions of the six principal criteria air pollutants fell by 62 percent between 1980 and 2013, with ozone concentrations falling by 33 percent over the same time frame.

Voluntary and regulatory emission reduction programs will continue to yield benefits for decades to come. Over the next twenty years, cleaner fuel rules and utility regulations are expected to produce large air quality improvements. Current emission reduction programs will continue to reduce ozone concentrations through 2030.

The current ozone standard of 0.075 ppm is the most stringent ever and has not been fully implemented across the United States. EPA and states should focus on fully implementing and attaining the existing standard before contemplating a lower standard – an approach that will continue to provide necessary health protection. As the science develops further, EPA will have the opportunity to determine whether any additional actions might be warranted in the future.

