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Transmitted via email: Joan.Rogers@epa.gov

Dear Ms. Rogers:

The National Steering Committee for the national network of state Small Business Ombudsman (SBO) and Small Business Environmental Assistance Programs (SBEAP) thanks you for your request to comment on EPA's Retrospective Review of the President's Executive Order 13563 of January 18, 2011.

As you are well aware, the SBO/SBEAPs serve the most productive yet vulnerable part of the US Economy, businesses that employ between zero and 100 employees. In the 26 years since they were established, and despite limited and often inadequate funding these programs have developed effective, non-enforcement, compliance assistance relationships with business owners in rural, suburban, and urban communities across the country. Businesses have partnered with their state SBEAP to help them protect their environment and comply with regulations while saving them precious time and expense that they can then focus on operating and growing their business. These state programs, many staffed by only one person, assist thousands of businesses annually and the demand for their services is continuing to increase as environmental regulation reaches further and further. Even though more small businesses are struggling with environmental regulation than ever before, many states currently have incomplete, inactive, or nonexistent Small Business Environmental Assistance Programs to advocate and assist them as mandated by Congress.

As small business advocates, service providers, as well as stewards of the environment, the SBEAP recommendations contained in this document represent views based upon our experience with and comments from small business owners, as well as our experience working with other governmental and regulatory entities. We recognize the economic promise in our small business clients and are acutely aware that small business environmental compliance needs cut across the traditional media-specific regulatory silos of air, water, and waste and beyond the assistance mandates of Section 507 of the Clean Air Act. Below you will find a range of environmental issues adversely affecting small businesses that have been grouped in the suggested categories.

Integration and Innovation (EPA-HQ-OA-2011-0161)

1. Integrating Enforcement and Compliance Assistance:

Our first comment involves the state agreement and grant program, Performance Partnership Agreement/Grant (PPA/PPG), that provides the framework in which state environmental programs implement and operate US EPA's delegated programs. There are many missed opportunities within the PPA/PPG to utilize innovative strategies to improve the effectiveness of state and federal compliance assurance efforts and help businesses efficiently comply with the myriad of environmental requirements. Among these missed opportunities is the failure to provide for education and assistance like that of the SBEAPs in these agreements which we feel is a terrible waste of a critical opportunity to prevent violations from ever occurring to protect the environment and reduce emissions. In particular, we believe there would be a great benefit to integrating the work of the SBEAPs into state and federal media programs. Many of the states' 507 programs have developed innovative approaches

to increase compliance and promote pollution prevention/sustainability concepts. The programs are underutilized by state environmental agencies and could be better integrated in environmental protection programs to yield higher efficiency and industry compliance through examination of each regulatory stage for ways that compliance assistance can be integrated from rule development to implementation and enforcement. We believe coupling compliance assistance activities with traditional enforcement activities in a methodical and logical order would enhance each program's effectiveness and yield higher compliance rates than independent execution of each approach alone. Ideally compliance assistance and enforcement should be seen as complimentary programs which in turn add value to environmental protection as they each have the end goal of encouraging compliance with the regulations and protecting the environment.

The traditional compliance model that EPA has required State delegated programs to follow has primarily focused state and federal agency resources on the same group of large facilities year after year. However, state agencies and federal NESHAP regulations have increased concerns about the cumulative impact of the large number of smaller sources. These sources can be in significant non-compliance and do not have professional environmental health and safety (EHS) staff to help them understand the requirements and best practices for managing hazardous materials, wastes, discharges, and emissions. State agencies do not have adequate resources to address these smaller sources if they must focus their limited staff almost exclusively on the large and major sources as required in the PPA/PPG. To address this challenge, state programs need greater flexibility in their agreement with EPA in order to best utilize innovative and efficient compliance strategies such as Environmental Results Programs (ERP) and compliance assistance like that of the SBEAP to address smaller sources.

We recommend that USEPA evaluate and strengthen current mechanisms to ensure all states are meeting the mandates of Section 507 of the Clean Air Act to provide adequate and fully functional Small Business Environmental Assistance Programs and explore opportunities to expand the reach of these programs to issues of water and waste and that the SBEAP's and ERP approaches be integrated into the 12 elements of the PPA/PPG, instead of as a separate and voluntary 13th element.

Least Burdensome/Flexible Approaches (EPA-HQ-OA-2011-0165)

1. Once in/Always in Policy. This policy affects two types of facilities: those whose actual emissions are small but potential emissions are above major source thresholds and those whose actual emissions of HAPs are above major source thresholds.

There are many facilities (printers, small spray coaters, etc.) that have HAP PTE that exceed major source thresholds, but have small actual emissions. Under the federal Once in/Always In policy, small facilities like these that do not obtain a federally enforceable state operating permit (FESOP) that limits their operations below the major source level, an option that is only available within a short time frame, instead must obtain a complex, costly and stringent Title V permit. The OIAI policy creates a competitive disadvantage for these facilities and in essence delivers a lifetime punitive sentence on the affected business for a regulatory infraction that never actually exceeded the emission limitations contained in the regulations.

In addition, the current policy does not provide an incentive for reducing air emission once the emission threshold that triggers applicability is reached. By eliminating this policy you would:

- provide incentive for businesses to make capital investment to pursue those changes;
- reduce the regulatory impact, particularly in the form of recordkeeping and reporting
- kick start innovation in seeking out new and different processes that ultimately result in lower emissions from the business
- level the playing field so that existing facilities can fairly compete with greenfield facilities
- make measurable improvements in air quality

2. 40 CFR Part 63 Subpart XXXXXX - Metal Fabrication and Finishing Source Categories:

The monitoring requirements in §63.11517 for businesses that perform welding and blasting are burdensome. Businesses are required to make visual determinations of fugitive emissions using EPA

Method 22. The duration of each EPA Method 22 test must be at least 15 minutes and visible emissions are considered present if they are detected for a total of more than six minutes of the 15 minutes. While a graduated schedule is given, many small businesses, especially those that conduct welding, will never see visible emissions escaping from their shops. Despite this lack of emissions, the facilities are required to perform a visible emissions testing 18 times during a seven-month period. Even if they never observe visible emissions, they must continue the monitoring indefinitely on a quarterly schedule. For a small business to take a 15-minute reading can mean one-hour down time. This equates to almost half a week of lost production in those seven months with no real environmental benefit. It is more likely if corrective action was needed, it would have been noted in the operation area.

We propose starting at weekly observations instead of daily, moving to the next frequency level (quarterly) after two readings with no observed emissions, and ending at annual observations. That reduces it to 5 readings in the first 7 months, rather than 18. Those currently at quarterly could move automatically to annual

3. Flexibility for Compliance Assistance funding: Because most small business sectors have multimedia environmental requirements, including flexibility in PPAs would provide the ability for states to use more flexible compliance models and would assist in the expansion of all the SBO/SBEAP programs to multimedia funding through 105 or 106 grants. Regulatory burden for small businesses can be minimized if tools are provided that reflect all of their environmental obligations, not just one.

4. One Industry - Multiple Regulations: Where multiple regulations affect one industry, they should be integrated and use matching definitions and terminology so the industry can better understand and more easily comply with the requirements. Specific examples include:

- Small engines and multiple NSPS and NESHAP rules - each of these rules are very complex and confusing for any particular business to understand, and now so many sectors are impacted by multiple rules it is hard to sort out.
- VOC sources with RACT rules as well as NSPS and/or NESHAPs - VOC based rules are often at odds or in conflict with the HAP rules when the targeted HAPs are not VOC-based; EPA should still consider making consistent application across all aspects of their rules.

Consistent rules will achieve higher rates of compliance, while conflicting rules only create confusion and smaller businesses will just ignore them until forced to do something.

5. Longer Rule Comment Periods: Increase the comment period for all proposed rules to enable states to reach out to stakeholders and sector associations, to improve the quality of the comments and feedback to EPA on proposed rules. SBEAPs have seen it time and again, that regulations resulting from a wider base of input from the affected businesses are more flexible and less burdensome to the affected businesses while achieving the desired protections.

Benefits and Costs (EPA-HQ-OA-2011-0158)

1. Streamline Reporting: Streamline and combine the multiple reporting options for emergency response. The requirement for making multiple calls and filing multiple reports to a range of agencies does not provide any additional environmental benefit, and only increases the costs for the company involved. There should be one primary call center for emergency response where the information then gets filtered to all other groups that need the information. This would save costs for not only business but the local, state and federal agencies as well.

2. Improve "Potential to Emit" (PTE) Guidance for Small Businesses: Due to the increased importance of calculating PTE as it relates to major or area source designations in NESHAPs, it is important for EPA to provide additional technical assistance in this area by providing information on the type of operational limits that may be considered acceptable to limit the potential to emit for certain individual small source categories.

For example, small spray coating or printing operations would likely have a PTE that is major for HAPs calculated using their equipment operated 8760 hours per year. These types of facilities would need a Title V permit if it is subject to a major source NESHAP.

Facilities with small actual emissions could typically qualify for a FESOP. Because of the lack of clarification of acceptable physical limitations, however, they are subject to significantly increased costs to apply and maintain a Title V permit. This creates a competitive disadvantage and an undue burden.

We ask EPA to further clarify acceptable inherent physical limitations for small businesses as intended by the memo *Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act*, dated January 25, 1995.

Small Business (EPA-HQ-OA-2011-0164)

1. Small Business Regulatory Enforcement Fairness Act (SBREFA) and Regulatory Fairness Act (RFA) Application to Area Source NESHAP Regulations:

The Regulatory Flexibility Act (RFA), as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA), provides small entities with an expanded opportunity to participate in the development of regulations. Under these requirements USEPA is to prepare an Initial Regulatory Flexibility Analysis (IRFA) for each proposed rule unless the rule will not have a ***significant economic impact on a substantial number of small entities***. A regulatory flexibility analysis examines the type and number of small entities potentially subject to the rule, recordkeeping and compliance requirements, and significant regulatory alternatives, among other things. When an IRFA is required, EPA must also convene a Small Business Advocacy Review Panel before proposing a rule. The panel would include representatives from the Small Business Administration, the Office of Management and Budget, and EPA. A Panel conducts its own outreach to Small Entity Representatives likely to be subject to the rule and prepares a report to the Administrator of EPA on ways to reduce the potential impact of the rule on small entities. Each Panel's report becomes part of the rulemaking record for the proposed rule. In addition, if the rule may have a significant economic impact on a substantial number of small entities, the agency must prepare a Final Regulatory Flexibility Analysis that must summarize the significant issues raised by public comments on the IRFA, assess these issues, and describe any changes made in response to the comments.

To further mitigate the impact on small businesses, the USEPA must also publish Small Entity Compliance Guides that are written in plain language and explain the actions a small entity must take to comply with a rule or group of rules.

It is our experience that the SBREFA requirements have not been applied with the spirit or intent that the SBREFA law was designed. In recent years, the USEPA has proposed and finalized dozens of area source NESHAP's which in our opinion significantly impacted thousands of small businesses across the country but yet, in most cases, no panel was formed nor Small Entity Compliance Guides designed as intended by SBREFA. It seems illogical to the SBEAP programs that the NESHAP for Coal- and Oil-fired Electric Utility Steam Generating Units and NESHAP for Lime Manufacturing would warrant SBREFA panels, formal analysis and Small Entity Compliance Guides but yet the NESHAP for Gas Distribution and the NESHAP for Paint Stripping and Miscellaneous Coatings which regulate every gas station and auto body shop in the country and potentially thousands of other small coatings operations did not trigger the SBREFA requirements. In working to assist these small businesses across the country, we have found significant problems with these regulations that may have been avoided had the USEPA utilized the SBREFA process to include the industry in their development.

SBREFA and RFA requirements should be re-examined by the agency to ensure the mandates are taken seriously and the applied with the spirit in which they were promulgated. It appears the criteria the agency is using to determine ***significant economic impact on a substantial number of small entities*** is either flawed or easily misinterpreted or incorrectly applied for so many of these rules to avoid the formal safeguards SBREFA was designed to provide small businesses.

2. Excessively Burdensome Recordkeeping requirements:

Important for verification, daily recordkeeping requirements can be reduced for small businesses to reflect the changes in product formulations that have occurred over the past 20 years as a result of regulation. For example, many states have adopted prohibition of sale regulations on products with VOC limits over a certain (low) threshold (examples: inks, solvents, and coatings). This means that businesses have adapted and the purchase and use of low VOC products has become the “business-as-usual” model. Daily use/disposal record keeping for limited use of non-compliant products should still be required when applicable. Additionally, many jurisdictions now require manufacturers to report the quantity of product they sell by VOC content, providing regulators a good measure of what is in the marketplace for emissions inventory purposes. There is no need for small business operators to be required by EPA (and therefore by local regulators) to maintain daily records of VOC content of products that meet VOC requirements.

Businesses should have the flexibility of using quarterly or less frequent records of inventory and purchase records to prove compliance with permitted emission limits from such products. EPA would then have a new enforcement tool - if quarterly recordkeeping is required, less frequent recordkeeping (A GOOD ACTOR PASS) could be given to businesses with a 3-year clean record and an imposition of weekly or daily recordkeeping (A BAD ACTOR PENALTY) could be used for businesses who fail to keep required records. This would avoid penalizing the majority of small businesses who normally do the right thing and focus limited enforcement resources where most needed.

I don't think we can say it too often that, while electronic reporting is a cost saving tool for those with the equipment and access, it can be a burden if made mandatory. Until all businesses have the same level of reliable, fast internet access, mandatory electronic reporting would be an extreme burden on rural businesses across the nation.

3. Unintended Consequences of EPA Rules: While EPA does have rules in place to allow for the Administrator to consider equivalent procedures, it is unclear what the process for these types of considerations are and what, if any, requirement EPA has to respond to an entity that brings information to EPA on the possible unintended negative impact of a rule.

Science/Obsolete/Technology Outdated (EPA-HQ-OA-2011-0162)

1. 40 CFR Part 63 Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating: 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 tens of thousands of autobody shops uses products containing these heavy metals. If the regulation were modified to treat autobody shops like all other facilities subject to this regulation, then the shops would no longer be automatically covered. They would only be covered if they use automotive paints containing the target heavy metals as laid out in the applicability section.

2. 40 CFR Part 60 Subpart JJJ - Petroleum Drycleaners: Comments we previously submitted noted how this rule should not apply to newer dry-to-dry technologies. An Applicability Determination was issued on November 17th of last year by Region 4 stating for the first time that newer dry-to-dry machines are not covered by the definition of “petroleum dry cleaner.” Very few of the tens of thousands 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.

Compliance (EPA-HQ-OA-2011-0166)

1. Encourage States Use of the Small Business Audit Policies: Perhaps provide an incentive within the PPA/PPG for states to use the policies in some percentage of compliance assistance efforts. States that have been given support to utilize audit policies not only reduce businesses regulatory burden and increase compliance performance but also have a front line opportunity to introduce pollution prevention concepts which leads businesses towards economic and environmental sustainability.

2. Compile Regulations with Multiple Amendments: Provide final rules in PDF versions, instead of just the text found on the e-CFR, where regulations have gone through multiple amendments. Having rules in a cohesive whole makes for easier final implementation for sources as well as assistance providers. For example:

- 40 CFR Part 63 Subpart M - which has had multiple amendments over multiple years.
- 40 CFR Part 63 Subpart CCCCCC - just recently had multiple corrections and changes finalized just prior to the compliance date; making it harder for everyone to understand what is required, with short notice.

Having the rule writer compile the final version may also help catch mistaken cross references and other typographical errors before publication. This would also improve compliance and minimize confusion.

3. 40 CFR Part 63 Subpart HHHHHH - Paint Stripping and Misc Surface Coating: A number of compliance related issues have come to our notice as the SBEAPs have assisted shops with compliance on this rule.

- The reporting burden of periodic notification of changes reports will be excessive for such small businesses. What level of change is required to be reported? Something as simple as the change in number of painters from a previous notification, even if they're all in compliance with the training requirement? If that is the case, there does not seem to be an environmental benefit to this excessive amount of reporting.

In closing, the SBO/SBEAP National Steering Committee appreciates the opportunity to comment on the EPA's Retrospective Review, and would welcome the ability to meet with key EPA representatives to discuss ways to improve efficiencies, regulatory burden and compliance in terms of their impact on small business.

Sincerely,



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