

May 15, 2017

VIA REGULATIONS.GOV

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Re: Executive Order 13777, "Enforcing the Regulatory Reform Agenda," (Docket ID No. EPA-HQ-OA-2017-0190)

Dear Administrator Pruitt,

The National Steering Committee for the network of state Small Business Ombudsmen (SBO) and Small Business Environmental Assistance Programs (SBEAPs) thanks you for the opportunity to comment on Presidential Executive Order 13777, Enforcing the Regulatory Reform Agenda. Our comments are attached herewith.

For more than 25 years our members have provided extensive, hands-on assistance in helping businesses comply with environmental regulations. Many among this group have lengthy experience records working in various regulatory programs; additionally, most members maintain a close relationship with the regulatory programs in their states to better assist businesses. We have detailed knowledge of environmental regulations with an awareness of the impact of regulations on businesses nationwide. This allows us to play a valuable role in helping successfully implement the President's regulatory reform agenda by providing a perspective that balances environmental stewardship while still maintaining economic feasibility for business.

The state SBO/SBEAPs were mandated by Section 507 of the 1990 Clean Air Act Amendments to provide free and confidential environmental compliance assistance to small businesses. Assistance from SBO/SBEAPs is the most economical solution to small businesses striving for environmental compliance and many times is their only economically feasible solution. Even beyond that, SBO/SBEAPs actively advocate for businesses on numerous federal and state rulemaking processes and initiatives such as this. Consequently, our day-to-day efforts result in fewer, more meaningful but less burdensome regulations affecting businesses. In addition, by helping achieve compliance through collaborative non-enforcement methods, we also provide a much more effective and efficient alternative to time-consuming and costly enforcement actions carried out by environmental compliance programs.

This model has been embraced at varying levels by states across the U.S. Some states allocate only as many resources as minimally necessary to meet the mandate, thereby leaving these assistance programs with a limited ability to only focus on regulations specific to the Clean Air Act. Other states have recognized the significant value in these programs and provided

additional resources, thereby enabling the programs to assist businesses with multimedia regulations.

As we work toward our shared goal of helping businesses nationwide achieve environmental compliance, it is clear that providing more resources to our programs is a sound investment with a high rate of return. Yet, even programs with resources to provide comprehensive assistance with environmental regulations still have vastly less than what is truly needed to fully serve the businesses that need assistance. Further, based on the proposed budget, it is our concern that these programs may receive even fewer resources, since they could be viewed as non-essential when compared to traditional regulatory programs.

We contend, in times of significant regulatory change, businesses need free and confidential regulatory assistance the most. Not providing this would only result in increased confusion and non-compliance, costly and time-consuming enforcement, and a drain on the already limited resources of small businesses.

In closing, we thank you for your consideration of the attached comments. We also encourage a closer look at the value SBO/SBEAP programs provide, the model they are built around and, with some additional resources, the significant role they could play in helping the administration achieve its goal of reducing the regulatory burden on America's businesses, while helping them attain and remain in compliance.

Sincerely,



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List of enclosures: Regulatory Reform Comments

Attachment — Regulatory Reform Comments

1. Integrating Enforcement and Compliance Assistance

The U.S. EPA should re-evaluate the state agreement and grant program, Performance Partnership Agreement/Grant (PPA/PPG), which provides the framework by which state environmental programs implement and operate delegated programs. Many opportunities are missed within the PPA/PPG to utilize innovative strategies for improving effectiveness of state and federal compliance efforts, and helping businesses efficiently comply with a myriad of environmental requirements. Among these is the failure to provide for education and assistance as a critical element of a compliance enforcement program. Not including compliance assistance and education services provided by state SBO/SBEAPs in these agreements is a waste of critical opportunity to prevent violations from ever occurring, thereby protecting the environment and reducing emissions.

Many SBO/SBEAP programs have developed innovative approaches to increase compliance rates and promote pollution prevention/sustainability concepts among small businesses in their states. Most SBO/SBEAP programs are underutilized by their respective state environmental agencies. 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. Ideally, compliance assistance and enforcement should be seen as complementary programs where each adds value to environmental protection, with the same end goal of achieving compliance with the regulations and protecting the environment.

The traditional compliance model 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, federal Area Source National Emission Standards for Hazardous Air Pollutant (NESHAP) regulations have been created due to 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 or best practices for managing hazardous materials, wastes, discharges, and emissions. State agencies do not have adequate resources to address these smaller sources; 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 utilize innovative and efficient compliance strategies such as Environmental Results Programs (ERP) and compliance assistance such as SBO/SBEAPs to address smaller sources.

States have piloted a number of compliance certification programs in recent years, and many have involved the efforts of the SBO/SBEAPs. The Environmental Results Program (ERP) is an example of an evidence-based approach to environmental compliance that numerous states have successfully employed. To achieve improved environmental performance for a selected group, ERP uses a unique combination of the following:

- Plain-language assistance tools that promote compliance and beyond compliance adoption;
- Facility self-assessment, and mandatory or voluntary compliance status certification;
- Strategic government compliance inspections and enforcement activities; and

- Statistically based performance measurements.

An ERP usually employs a multi-media approach, which can be highly cost effective and the least burdensome approach both for regulated facilities and for agencies. A significant benefit of ERP is use of random sampling and statistical analysis that allows findings of inspections to be extrapolated to a whole group of similar facilities. Thus, agencies can understand the compliance status and non-compliance challenges facing a sector. This enables programs to target their limited compliance assistance and inspection resources to the most important needs. The data generated can also provide greater transparency for the public.

States utilizing ERPs have successfully implemented initiatives for printers, dry cleaners, auto body shops, auto salvage yards, small quantity hazardous waste generators, facilities with underground storage tanks, and other sectors. For more than 10 years, EPA provided State Innovation Grants that supported development and piloting of ERP projects. More information on state experience with ERP is available at www.erpstates.org and in the document, *ERP States Produce Results*, available at <http://www.erpstates.org/p/report.php>.

We recommend 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 SBO/SBEAPs, to expand the reach of these programs to issues of water and waste, and that innovative approaches be integrated into the 12 elements of the PPA/PPG instead of treated as a separate and voluntary 13th element.

2. Once In, Always In Policy (OIAI)

Many facilities (autobody shops, printers, small spray coaters, etc.) have the potential-to-emit (PTE) hazardous air pollutants (HAPs) above major source thresholds, but have small actual emissions. Under EPA's OIAI policy, a facility covered by a MACT standard under 112(d) of the Clean Air Act that does not obtain a federally enforceable state operating permit limiting its operations below the major source level, must obtain a complex, costly, and stringent Title V permit. Furthermore, this option is only available during a very short window of time following the beginning of the rulemaking and before the first substantive compliance date.

The OIAI policy creates a competitive disadvantage for these facilities when compared to an exact duplicate greenfield (new) facility. This results in a lifetime punitive sentence on the affected business that never actually exceeded emission limitations contained in the regulations.

Many small businesses were erroneously permitted as affected sources under a MACT. Many more reduced their HAP emissions below MACT thresholds, or even completely eliminated the equipment or materials containing HAPs. But all of these businesses must, under the OIAI policy, continue to demonstrate compliance with the regulations. This usually entails very complex recordkeeping and annual certification, at a minimum.

In addition, current policy does not provide an incentive for reducing air emissions once the threshold that triggers applicability is reached. Changing this policy — to allow for businesses that makes process changes that permanently reduce their emissions — to fall to a lower regulatory tier 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;
- spur innovation in seeking out new and different processes that ultimately result in lower emissions from the business; and
- make measurable improvements in air quality.

Additional arguments against the OIAI policy include the following:

- There is no regulatory basis for the policy.
- No rulemaking was ever pursued to make the policy a rule.
- Rulemaking to modify the policy failed on two attempts.
- The policy contradicts the definition of “major source,” which has no temporal component.
- The 112(j) MACT Hammer proposal was changed to allow backsliding.

Because OIAI is simply an EPA policy, removing it will be much quicker and easier than other reform efforts that involve rulemaking.

3. Use of “Potential to Emit” (PTE) for Small Businesses

Eliminate the requirement to consider PTE for new or existing unpermitted facilities with small actual emissions (actual emissions <50% of federal thresholds) when looking at prevention of significant deterioration (PSD) and major source NESHAP applicability. No or minimal pollution reductions occur when regulating small sources with PSD and major source NESHAPs. It also imposes costs to the regulated community and regulatory agency (permitting, enforcement, and assistance activities) that exceed benefits.

Due to the increased importance of calculating PTE as it relates to major or area source designations in NESHAPs and EPA’s Once In, Always In (OIAI) policy, it is important for EPA to provide additional technical assistance in this area by offering 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, an existing autobody shop or small spray-coating or printing operation would likely have a PTE that is major for hazardous air pollutants (HAPs) when calculated using their equipment operated at maximum capacity, 8,760 hours per year. These types of facilities would need a Title V permit if they were subject to a major source NESHAP.

Facilities with small actual emissions could typically qualify for a Federally Enforceable State Operating Permit (FESOP). However, because of the OIAI policy and lack of clarification of acceptable physical limitations, they are subject to increased cost to apply and comply with 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 coating or printing operations as intended, per its memo titled *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.

4. General Comments on Electronic Reporting

The SBO/SBEAP national network understands increased electronic reporting is becoming a mainstay under USEPA's Next Generation of Compliance initiative. However, a "one size fits all" approach is demonstrated to fail when applied to small businesses without regard to their industry, location, access, and knowledge-base. Mandating use of electronic reporting in each National Emissions Standards for Hazardous Air Pollutant (NESHAP) that affects area sources creates an excessive burden on those small businesses.

We ask USEPA to consider allowing greater flexibility for small businesses. For instance, if electronic reporting is made mandatory for a particular rule, then the requirement should only be mandatory for major sources, while it is optional for area sources. This captures USEPA's need to track emission reductions over time. Additionally, we ask EPA to consider giving small businesses that are also major sources a longer period of time to transition to electronic reporting. In our experience, many small businesses may not own computers, and have no access or limited access to the internet. Small businesses that are area sources should have the opportunity to opt-in to electronic reporting without being required to do so.

The SBO/SBEAP network questions benefits gained through electronic reporting as it is currently structured. At this time, it appears that making data available online is demonstrating minimal usefulness. Some states have commented that while data might be available in the Compliance and Emissions Data Reporting Interface (CEDRI), this data is not proving useful in performing a compliance review. In that case, the sources may be asked to submit additional information to the state to supplement the information that was already submitted via CEDRI, and in the end, the reporting burden has increased rather than having been reduced for the business.

The current electronic reporting infrastructure makes it very confusing for small businesses to submit required reports. Each rule may have only certain reports (i.e., Notification of Compliance Status, Performance Evaluation Results) that are required to be submitted electronically, while others can still submit on paper. Yet, when the business (or its representative) attempts to use CEDRI or the Central Data Exchange (CDX) to submit a required electronic report, the particular test method or form is not available. When questioned, USEPA contacts will indicate that a custom report option may be used within CDX. This custom option is very generic and takes the submitter additional time, and possibly a few false starts that have to be deleted and started over, to complete the required report. Once submitted, the business is left with a measure of uncertainty regarding whether the custom option truly satisfied the required electronic report and may still submit a paper copy to be certain the report is received.

Another issue with USEPA justification for electronic reporting suggests it would satisfy federal requirements and thus eliminate the need to keep hard copies. However, state inspectors often request hard copies during an inspection, so a double burden still exists.

Because electronic reporting results in excessive burdens for smaller businesses, we recommend that more flexibility in format of the reports/records be allowed.

5. Paint Stripping/Miscellaneous Surface Coating NESHAP – 40 CFR Part 63 Subpart HHHHHH (6H)

The SBO/SBEAP National Steering Committee submitted comments to EPA on the proposed rule and is concerned about a few issues that were not addressed in the final rule.

All autobody shops must petition the agency and receive approval to get out of the rule if they do not use any coatings that contain the target HAPs. This places an excessive burden on the smallest of the sources affected by this rule. Other surface-coating operations can simply maintain supplier records to demonstrate they don't use the target HAPs. There is also no incentive to switch to compliant coatings if the petition process is complicated, burdensome, or viewed as a "gotcha."

After the rule became effective, all major paint manufacturers reformulated their traditional automotive paints and/or substituted compliant paints that were already available to meet requirements for the state of California. This served to all but eliminate those paints containing the heavy metals targeted by the rule. Please reference our exclusive webpage at <https://nationalsbeap.org/content/vendor-resources-6h-petition-exemption>.

Autobody shops still must request an exemption, and without that request are automatically affected by the requirements. If the regulation were modified to treat autobody shops the same as all other facilities subject to this regulation, then the shops would no longer be automatically covered and would reobtain their presumption of innocence. Currently, an autobody shop owner who never realized that a federal rule applied to him is out of compliance simply because he didn't know to ask to be exempted. We estimate this is true of tens of thousands of shops.

Requirements for a "spray booth" found in 63.11173(e)(2) still appear to conflict with booth requirements established by OSHA, as outlined in our comment letter to EPA. Finally, the reporting burden of periodic notification of changes is excessive for such small businesses. This is especially true because of a lack of clear guidance on what level of change is required to be reported. For instance, something as simple as a change in number of painters from a previous notification, even if they are all in compliance with the training requirement, could be grounds for a violation.

6. One Industry – Multiple Regulations

Many businesses are impacted by multiple regulations in multiple regulatory programs. At times definitions and key terminology do not match between regulations under the same program. Additionally, many instances of discrepancy appear when looking across multiple programs. We recommend an initiative within USEPA to review regulations in an effort to make key definitions and terminology with significant meaning consistent. This will allow businesses to better understand and more easily comply with the requirements. Specific examples include the following:

- Small engines with multiple NSPS and NESHAP rules — each of these rules are highly complex and confusing for any particular business to understand; and now with so many sectors 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 HAP rules. When targeted HAPs are not VOC-based, EPA should still consider making consistent application across all aspects of its rules.

7. Excessive, Redundant, and Burdensome Recordkeeping Requirements

Many regulations require businesses to complete excessive and burdensome recordkeeping, some of which serve no additional compliance purpose other than complying with the regulation. Additionally, portions of some recordkeeping share redundancies with other requirements. We recommend an overall goal of simplifying recordkeeping requirements for businesses; however, a key requirement can be found when looking at recordkeeping requirements for small air sources. Although important for verification, daily recordkeeping requirements can be reduced to reflect 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 VOCs over a certain (low) threshold (examples: inks, solvents, and coatings). This means businesses have adapted to the purchase and use of low-VOC products, which has become the “business-as-usual” model. Daily use/disposal recordkeeping for limited use of non-compliant products should still be required when applicable. 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 three-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.

8. Encouragement of States’ Use of Small Business Audit Policies

EPA’s Incentives for Self-Policing: Discovery, Disclosure; Correction, and Prevention of Violations, and the Small Business Audit Policy both promote compliance with environmental regulations by reducing or eliminating penalties for violations that businesses voluntarily discover, disclose to the agency, and correct in a timely manner. States may also have similar policies to promote voluntary compliance and reduce penalties for violations. As an added benefit, audit programs provide a front-line opportunity for state agencies to introduce pollution prevention concepts to businesses, which can lead them towards economic and environmental sustainability. It is recommended that EPA support and encourage states to use such policies. One way this could be done is by providing an incentive within the Performance Partnership Agreement/Grant (PPA/PPG) program for states that use the policies in some percentage of compliance efforts.

9. Compiling Regulations with Multiple Amendments

Provide final rules in PDF versions, instead of just the text found on the e-CFR, when regulations have gone through multiple amendments. Having rules in a cohesive whole makes easier final implementation for everyone using the rule, from those writing the permits to those required to maintain and follow the regulations (businesses). For example —

- The drycleaner NESHAP – which has had multiple amendments over multiple years.
- The gas-distribution NESHAP – 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, which would also improve compliance and minimize confusion.

10. 40 CFR Part 63 Subpart XXXXXX — Metal Fabrication and Finishing Source Categories

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. 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 those 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, facilities are required to perform 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 that if corrective action was needed, it would have been noted in the operation area.

Welding operations are not traditionally high-volume dust sources. We recommend EPA remove all of the visible emissions observation requirements and rely on a periodic log or recordkeeping requirement to demonstrate that work practices to minimize emissions from welding operations are being followed. If that is not possible, 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. This will reduce readings to five in the first seven months, rather than 18. Those currently at quarterly monitoring could move automatically to annual.

11. 40 CFR Part 60 Subpart JJJ – Petroleum Dry Cleaners

Comments we previously submitted noted how this rule should not apply to newer dry-to-dry technologies. An Applicability Determination was issued November 17, 2015 by Region 4 stating for the first time in over 30 years 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. While this could be accomplished by simply changing one definition, it would be wise to reevaluate whether there is a need for the rule at all. The vast majority of machines are no longer transfer machines.

12. 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 the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides small entities with an expanded opportunity to participate in the development of regulations. Under these requirements, EPA 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 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 to get input before proposing the rule. The panel must include representatives from the Small Business Administration, the Office of Management and Budget, and EPA. The panel conducts 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 summarizes significant issues raised by public comments on the IRFA, assesses these issues, and describes any changes made in response to the comments. To further mitigate the impact on small businesses, the EPA must also publish a Small Entity Compliance Guide for the rule that is written in plain language and explains the actions a small entity must take to comply.

It is our experience that SBREFA requirements have not been applied with the spirit or intent the law was designed for. For example, EPA has proposed and finalized dozens of area source National Emission Standards for Hazardous Air Pollutants (NESHAP), which significantly impacted thousands of small businesses across the country, but in most cases, no panel was formed nor Small Entity Compliance Guides designed as intended by SBREFA. It seems illogical 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 NESHAP for Paint Stripping and Miscellaneous Coatings, which regulate every gas station and autobody 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, the SBO/SBEAPs have identified significant problems with these regulations that may have been avoided had EPA utilized the SBREFA process.

SBREFA and RFA requirements should be re-examined by the agency to ensure the mandates are taken seriously and are 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, easily misinterpreted, or incorrectly applied for many of these rules to avoid the formal safeguards SBREFA was designed to provide to small businesses.

13. Streamline Notification and Reporting for Environmental Response/Spills

USEPA should develop a process to streamline and combine multiple notification and reporting requirements in the event of a spill and the related emergency response. Whenever a business has a discharge to the environment, it must report that event to multiple agencies with different phone numbers. Rarely is more than one agency officially “notified” of the event through a single phone number or email contact. In addition, following the spill and cleanup that may follow, multiple reports are due to each agency and each has its own deadline by which the report must be filed, and content required in the report.

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

14. Reciprocating Internal Combustion Engine Rule – 40 CFR Part 63 Subpart ZZZZ (also known as “RICE regulations”)

RICE regulations are burdensome to small businesses, municipalities, and institutions. Since the first RICE rule was promulgated in 2004, five additional rules or amendments related to RICE engines have been added. As a result, some more recent regulations for engines at lower-emitting area sources have less stringent requirements than engines under earlier regulations for major sources. While many changes to the RICE rule would be welcomed, SBO/SBEAP’s comments will be limited to the 2016 change that no longer allows emergency engines to operate for emergency demand response, and deviations in voltage or frequency.

Emergency engines in emergency demand response programs should be allowed to operate with no time limit during emergency conditions such as the following:

- Periods where there is a deviation of voltage or frequency of five percent or greater below standard voltage or frequency.
- Before periods in which the regional transmission authority has declared an Energy Emergency Alert Level 2. There are instances when engines need to be operated to prevent a situation from becoming one that needs to be declared an Energy Emergency Alert Level 2. For example, one rural municipality had to repair a transformer tap changer. To do this, it had to go off the grid for four days to make the repair. Had they waited for the tap changer to explode and the situation to be declared an emergency, it would have taken longer to replace and cost significantly more. If utilities could be granted leeway in emergency situations, this would be a huge benefit to them and their members/customers.
- In an actual situation, a 349 MW power plant belonging to the regional transmission organization had equipment failure (induced-draft fans) that required it to ask the 10 small utilities in its system to go on line and support the transmission grid while repairs were being made. Some of the communities operated for up to 22 hours, and all together they supplied a significant amount of electricity, 98 MWh, during that time. If they had not responded, then there would likely have been outages.

The ability of small power plants to stabilize local voltage and frequency is an integral part of the transmission grid. Without these engines, low-voltage and frequency problems would cause relays to trip and outages to occur. The current rule is written such that these engines are not considered emergency engines and legally could not be started to stabilize the system until power was lost. This would result in increased outages and costs to utilities that would be passed on to the customer.

Costs for meeting requirements for non-emergency engines have been burdensome for small utilities. Following are examples:

- Costs gathered from an engine equipment supplier based on data from 11 states, for engines ranging in horsepower between 75 and 500, showed a new engine can cost between \$6,800 and \$65,000. A rebuilt engine can cost between \$2,400 and \$48,000.
- Emissions retrofit costs can range from \$6,700 to \$13,000, with annual testing costing \$1,000 to \$3,300. These are initial costs and do not include mandated maintenance, which significantly increases overall annual operating costs.
- One power plant in a municipality with a population of 6,500 calculated the initial cost over five years will require a rate increase on its units of 23.21%. The estimates it has received to date for oxidation catalysts range between \$10,000 and \$40,000. Testing costs range between \$1,000 and \$7,000 per unit.
- Rural municipalities have estimated a cost of \$80,000 to \$110,000 per unit to retrofit units. Over time, most of the municipalities have added small units to their plants when they were getting close to being out of compliance with their main energy suppliers' contracts. Now these utilities have several small units to retrofit, which increases the cost of compliance dramatically. Money received for a utility's capacity from demand-response programs allows them to keep their electric rates to customers down.

15. Longer Rule Comment Periods

Increase the comment period for all proposed rules to enable states to reach out to stakeholders and sector associations, in order to improve the quality of the comments and feedback to EPA on proposed rules. SBEAPs have seen 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.

16. NSPS for Small Industrial-Commercial-Institutional, Steam-Generating Units — 40 CFR Part 60 Subparts Dc

This rule applies to small boilers of 10 to 30 million BTU/hr. Many small businesses and commercial entities, which are minor sources under the Title V program, have boilers of this size and are subject to the rule. The rule contains burdensome recordkeeping requirements for tracking fuel usage when firing only natural gas, despite no applicable hourly or daily emission limitation on criteria pollutants, with which they must comply when firing natural gas only. We recommend the rule be modified to include the same definition of "gas-fired boiler" contained in 40 CFR 63.11237 (NESHAP JJJJJ) and provide for a similar exemption for a "gas-fired boiler" when they are located at minor sources of criteria pollutants and HAPs, or are restricted by a FESOP as synthetic minor sources. We further recommend similar compliance language found

in NESHAP JJJJJJ be incorporated into NSPS Dc, to address when a source switches fuels from natural gas (and outside of the definition of “gas-fired boiler”) to more polluting fuels to ensure pollution reduction and compliance for more polluting fuel usages. This would allow small businesses and minor sources to align their compliance requirements to both NSPS Dc and NESHAP JJJJJJ, and eliminate compliance demonstration, recordkeeping, and reporting requirement confusion related to both rules.

In addition, this rule can affect very small facilities that otherwise have no other air pollution emissions sources. The regulatory burden on such small businesses stems from the fact most states cannot exempt these affected sources from their Title V permitting requirements, simply by virtue of the fact they are an “affected” source under section 111 of the Clean Air Act. We recommend this rule, and other NSPS with similar small business impacts, be revised to apply a similar exemption from Title V permitting requirements that EPA has used in most of the recent area source NESHAPs affecting small businesses. Monthly recordkeeping requirements that apply for these smaller units can be adequately addressed through compliance assistance measures referenced in the Title V exemptions for area source NESHAPs.

17. NSPS for Air-Curtain Incinerators – 40 CFR Part 60, Subparts BBBB (Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999); CCCC (Standards of Performance for Commercial and Industrial Solid-Waste Incineration Units for which Construction Is Commenced after November 30, 1999, or for which Modification or Reconstruction is Commenced After June 1, 2001); and DDDD (Emission Guidelines and Compliance Times for Commercial and Industrial Solid-Waste Incineration Units that Commenced Construction on or before November 30, 1999), Sections 60.1880 through 60.1930; Sections 60.2242 through 60.2260, and Sections 60.2805 through 60.2810 through 60.2870, respectively

Definitions of air-curtain incinerators and approved wastes

Section 60.1940 – Subpart BBBB: The definition of yard waste regulated under this rule excludes clean wood. Clean wood is also excluded in the definition of “municipal solid waste.” The difference in the definitions of this regulation as it pertains to requirements for air-curtain incinerators does not align with definitions in 40 CFR Part 60 Subparts CCCC and DDDD and is confusing for small sources, such as small cities operating tree and brush collection sites. It is recommended the definition of yard waste should include wood waste, and clean lumber and sources exclusively burning those materials be exempt from 40 CFR Part 60 Subpart BBBB.

Section 60.2265 – Definitions and Section 60.2875 – Definitions: Subparts CCCC and DDDD

The definition of **solid -waste incineration unit** excludes air-curtain incinerators, which burn only wood wastes, yard wastes, and clean lumber. Air-curtain incinerators burning only those materials should be exempt from 40 CFR Part 60 Subpart CCCC and DDDD. If air-curtain incinerators are used to burn solid waste other than wood wastes, yard wastes, and clean lumber, the regulation should continue to impose requirements only on those units.

The definition of *air-curtain incinerator* excludes conventional combustion devices with enclosed fireboxes and controlled air technology such as mass-burn, modular, and fluidized-bed

combustors. By definition, an air-curtain incinerator is not an incinerator but a control device on an open-burning operation. By design, air-curtain incinerators do not have a fuel-fed burner in the open “chamber” or pit to aid in or maintain combustion, nor are these units designed to regulate combustion temperatures. New Source Performance Standards should regulate emission units, not control devices on fugitive sources, such as open-burning operations. EPA should prohibit burning of solid waste, which excludes wood wastes, yard wastes, and clean lumber in air-curtain incinerator-type units, as these units are not true incinerators. Burning of municipal wastes or other refuse, excluding wood wastes, yard wastes, and clean lumber, in a pit controlled by an air curtain, does not ensure controlled combustion or a reduction in harmful emissions from such solid-waste open burning.

Annual performance testing

Most business and entities operating air-curtain incinerators are small businesses or minor sources, such as highway construction companies clearing land for new highways or cities collecting trees and brush from residential properties that have no other air pollution emission units. These sources are required by all three regulations to conduct an initial Method 9 opacity test, as well as conduct annual Method 9 opacity tests to demonstrate ongoing compliance with opacity limits in each rule. Most NSPS regulations do not require more than the initial performance testing for these units. The cost to small businesses and minor sources operating air-curtain combustors, who are subject to this rule to hire certified Method 9 testing companies or to pay twice annually for an employee to become Method 9 certified to conduct these performance tests on an annual basis, is over-burdensome. If these sources burning wood wastes, yard wastes, and clean lumber cannot receive a complete exemption from the rule, we recommend these sources have reduced obligation to perform Method 9 performance testing.

Title V requirements for air-curtain combustors

All three regulations require owners and operators of air-curtain incinerators to obtain a Title V from their permitting authority, regardless of the air-curtain emissions. Many owners or operators of air-curtain incinerators burning wood wastes, yard wastes, and clean lumber are minor sources or sources willing to take federally enforceable limits to avoid Title V requirements. The requirement to obtain a Title V is over-burdensome and unfairly puts these sources in the same operating permit category as major sources, such as coal-fired power plants, and true incinerators, such as medical waste incinerators and hazardous waste incinerators. We recommend the Title V requirement for air-curtain combustors be removed. The Title V requirement for air-curtain incinerators should only apply to sources that are part of a major source, or that are unable or unwilling to take restrictions in a FESOP to limit potential emissions from the air-curtain combustor to below major source levels.

18. Improvements to Area Source Boiler Rule, 40 CFR Part 63 subpart JJJJJ

We believe the changes noted below would serve to clarify requirements, reduce reporting burdens, and incentivize pollution prevention.

- Regulate manufacturers of new boilers and equipment similar to the certification requirement found in 40 CFR 60 Subpart QQQQ – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces. A hydronic heater, as defined in Subpart QQQQ, is a boiler that uses coal, wood, or wood pellet fuel. Similar to 40 CFR

60 Subpart IIII and JJJJ, a requirement to operate and maintain the combustion equipment according to the manufacturer’s emission-related [written] instructions could be added.

- Clarify several key definitions, including the definition of seasonal boiler, to clearly state that units used for heating purposes meet the definition. The proposed definition for seasonally operated boilers does not adequately address the different sources not in regular use through the year. One example, especially in northern climates, is space-heating boilers (non-residential), which typically operate during the “heating season” of which the state of New York defines as between October 1 and May 31. The “heating season” in other states, such as Montana or North Dakota, may be longer.

The nature of the hot water heater definition seems to be sufficient in its scope without limiting the fuel to gas or liquid. For this reason, we would support the addition of biomass, or more simply the deletion of the specific fuels, since coal is highly unlikely to be prevalent in such small hot water heaters.

Due to the complexity of many of today’s construction projects, we believe the definition of a temporary boiler should be changed. The current definition arbitrarily prevents boilers at many construction sites from using the exemption that would otherwise qualify for utilizing it. These temporary boilers would still be considered insignificant sources and would still emit the same amount annually, if the definition allowed 24 months instead of 12.

- Clarify tune-up requirements; eliminate requirement for carbon monoxide and oxygen measurements in boilers that cannot adjust for those. While most boilers can operate under certain management practices, including a performance tune-up as defined in 40 CFR 63.11223, “How do I demonstrate continuous compliance with the work practice and management standards?”, some cannot. To eliminate gray areas, it may help facilities to not have to rely on the often-repeated phrases “as applicable” and “as necessary” found in the tune-up requirements of §63.11223 (b), but rely on the manufacturer’s emission-related [written] instructions or industry standards such as through ASHRAE – American Society of Heating, Refrigerating and Air-Conditioning Engineers.

Use of manually operated, solid-fuel-fired boilers may require additional procedures as recommended by the equipment manufacturer.

Monitoring for carbon monoxide and oxygen is both costly and a waste of time if an adjustment to the boiler cannot be made to minimize emissions of carbon monoxide. Again, it would be advisable to recommend following the manufacturer’s emission-related [written] instructions.

- If dual-fuel boilers are operating on gas, do not require them to comply with the secondary fuel requirements. The rule appears to be silent regarding the compliance deadline to complete tune-ups and energy assessments for existing dual-fuel (gas/oil) capable boilers. Ideally, these dual-fuel boilers would not be required to do anything as long as they fire gas only, except under the three exemption criteria for burning oil. If economic or other conditions change such that the facility chooses to fire oil outside of

the exemption criteria, it would have to file an initial notification as an existing source and comply with the requirements as if the boiler were an existing source that had been shut down.

If that is not possible, then the facilities should at least be allowed to file their initial notifications as oil-fired boilers without having to follow the tune-up and energy assessment requirements (if applicable) until and unless they begin to fire oil outside the exemption criteria. Tune-ups should be completed within one week after this, in keeping with the requirement for units that are not operating. Energy assessments should be completed within 180 days after switching, in keeping with §63.7 (a). This would essentially grandfather the boiler in as an existing source and provide the flexibility to use a fuel for which the boiler was designed to operate.

- We believe it would be good practice for EPA to incentivize pollution prevention. One way this could be accomplished is to treat distillate oil and ultra-low sulfur diesel differently than residual oils. The AP-42 emission factor for filterable particulate from these boilers is 2 lb/1,000 gal or 0.0143 lb/mmBtu heat input, which is less than half of the 6J standard of 0.03 lb/mmBtu. Furthermore, we believe an error was made in your reference to the NSPS requiring testing for boilers greater than 10 mmBtu/hr. 40 CFR Part 60 Subpart Dc only requires stack testing for certain boilers greater than 30 mmBtu/hr heat input.

The current regulation adds considerable burdens to predominantly small businesses with very little environmental benefit. Therefore, we believe stack testing requirements for distillate boilers between 10 and 30 mmBTU/hr heat input, at a minimum, be replaced with periodic tune-up requirements.

19. 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 is 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.

Example: Testing of new petroleum dry-cleaning machines

40 CFR 60.624 requires an initial test (at installation) to be performed to verify the flow rate of recovered solvent is no greater than 1.7 fluid oz. (50 ml) per minute. The testing requirement applies to older machines and for over 30 years it applied to newer closed loop, dry-to-dry machines. The test cannot be performed on closed-loop machines without breaking the integrity of the machine. Manufacturers of these newer machines perform the test prior to delivery and certify the machines meet emission requirements. To comply with the existing rule, the integrity of the new manufacturer-certified machine would have to be breached. This results in a machine that is now more susceptible to leaks, which negates the intent of the rule and often voids the warranty.

40 CFR 60.623 allows the administrator to consider equivalent procedures, if they are demonstrated to reduce VOC emissions as effectively as the procedure prescribed in the rule.

Test data on the testing procedures and results conducted by the manufacturer have been provided to EPA, but to date we are not aware of a response from EPA regarding this seemingly illogical requirement.

20. Listed Hazardous Wastes

Many process-specific listed hazardous wastes established in the early 1980s when hazardous waste regulations were adopted, to date have not been revisited/updated to address changing technologies and methods in those processes. New technologies and methods have changed these processes such that the concern that once existed regarding the waste generated and the hazardous constituents present, no longer exists. As a result, a considerable amount of waste generated by businesses must be managed as hazardous, based solely on the description of the process from which the waste was generated and not constituents the waste may contain. Currently, the only way to get out of managing these wastes — that by definition of the process that generates them must be managed as hazardous — is through a delisting. Delisting a hazardous waste is a time-consuming and costly process requiring extensive sampling, and may not result in a formal delisting by EPA for multiple years. We recommend wastes listed as hazardous, based on the process from which the waste was generated, be revisited and an evaluation made as to whether the same concern still exists as when the waste was originally listed. Additionally, a streamlined delisting process that reduces the effort, resources, and cost expended by the facility and the EPA to formally delist the waste, should be considered.

21. Solvent-Contaminated Wipes Regulations

Historically, EPA has not had an official position on management of contaminated solvent wipes, leaving individual states to develop their own regulatory position. However, on July 31, 2013, the EPA published the final rule titled “Conditional Exclusion from Hazardous Waste and Solid Waste for Solvent-Contaminated Wipes.” The rule was meant to clarify EPA’s position and provide a method in which solvent-contaminated wipes could be excluded from hazardous waste regulations. However, in many cases this rule made the management of solvent-contaminated wipes more difficult, specifically in states where traditionally, if a wipe was being laundered, it was not considered a waste and could simply be laundered and reused. Based on EPA’s rule, applicability to the exclusion must first be determined; if the wipe to be sent for laundering does not meet the exclusion, then it must be evaluated to determine if it is hazardous. If it is hazardous, it cannot be sent to a laundering facility unless that facility has a hazardous waste permit. This rule has made laundering of contaminated wipes more difficult and has increased the potential for compliance issues by both facilities generating them as well as laundering them. Additionally, it has opened the possibility for similar determinations to be made regarding other waste streams being sent for laundering. We recommend this rule be revised to exclude materials being laundered and subsequently reused from being defined as a hazardous waste; this would reduce regulation and encourage more environmentally sustainable practices.