



## **Industrial Energy Consumers of America**

*The Voice of the Industrial Energy Consumers*

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

### ***Re: Evaluation of Existing Regulations***

On February 24, President Trump signed Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” which established a federal policy “to alleviate unnecessary regulatory burdens” on the American people. Section 3(a) of the EO directs federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification.” The EO further asks that each Task Force “attempt to identify regulations that:

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 are outdated, unnecessary, or ineffective;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 derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.”

### **I. COMMENTS OF INDUSTRIAL ENERGY CONSUMERS OF AMERICA (IECA)**

IECA is a nonpartisan association of leading manufacturing companies with \$1.0 trillion in annual sales and with more than 1.6 million employees worldwide. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, brewing, independent oil refining, and cement.

## **II. SUPPORT FOR PRESIDENT TRUMP AND EFFORTS TO REDUCE REGULATORY COSTS WITHOUT SACRIFICING THE ENVIRONMENT**

IECA supports President Trump's efforts to reduce unnecessary regulation, thereby freeing up capital and resources that can then be redirected toward investment in economic growth and job creation. The cumulative cost impact of regulations is a serious impediment to job creation in the manufacturing sector. We are confident that regulatory reforms can occur without reducing important protections for human health, safety, and the environment.

## **III. REGULATORY BURDEN/COMPLIANCE**

### **Restore EPA Startup, Shutdown, and Malfunction (SSM) Exemptions**

EPA should restore the exemptions for periods of startup, shutdown, and malfunction (SSM) to circumvent unavoidable citizen suits and EPA fines. Unless EPA acts quickly, every manufacturing company in the country operating under a Title V air permit could be subjected to unnecessary citizen suits and potential civil penalties as they shutdown and start-up their equipment to conduct necessary and normal maintenance activities and other planned and unplanned outages. Proposed elimination of State Implementation Plans ("SIP") with Startup, Shutdown, and Malfunction exceptions, and the Title V affirmative defense for emergencies, both based on an extreme new interpretation of the Clean Air Act ("CAA") definition of "emission limitation," would have very adverse consequences if finalized as proposed. Existing rules allowed facilities some flexibility during startup, shutdown, and malfunctions. The new rules would severely limit or restrict facilities from doing so, even during periods of emergencies. EPA should withdraw the SSM SIP call as unnecessary to meet air quality standards and not act on any of the recent SIPs that have been submitted. In addition, EPA should change Part 51 to include guidance to states on the best methodologies that could be used to address start-ups, shutdowns, and malfunctions.

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

CAA Section 112(d) standards based upon the performance of the best-performing facilities are supposed to represent "the emissions control that is achieved in practice" by the best performers, which means that the best-performing manufacturing facilities would not violate the standards, which "only results if 'achieved in practice' is interpreted to mean 'achieved under the worst foreseeable circumstances'" *Sierra Club v. EPA*, 167 F.3d 658, 665 (D.C. Cir. 1999). The courts (and EPA) have recognized that there is variability in the performance of control technologies, which needs to be accounted for in establishing emission limitations based on the MACT floor. See, e.g., *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855, 862-865 (D.C.

Cir. 2001). For over 30 years, EPA had recognized that technology-based emission standards need to address the fact that even the best available control technology may not be able to meet emission limitations under all circumstances, derived from data on steady-state performance, during SSM periods. See, e.g., *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 432 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974); *National Lime Ass'n v. EPA*, 627 F.2d 416, 430-31 (D.C. Cir. 1980).

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

The only holding of the 2008 *Sierra Club* decision was to reject the General Provisions' blanket, open-ended exemption for emissions during startup, shutdown, and malfunction periods, finding it to be inconsistent with Congress's intention that "there must be continuous section 112-compliant standards" for sources subject to MACT standards, rather than periods where no standard of any kind applies. See 551 F.3d at 1027. The problem with the General Provisions SSM exemption, in the Court's eyes, was that it allowed sources to be exempt from any standard at all, and that it was not derived (by EPA's admission) applying the factors in CAA section 112(d) or 112(h).<sup>1</sup> See *id.* at 1027-28, 1030. The opinion in the 2008 *Sierra Club* case does not say that the same standard must apply at all times; in fact, it says specifically that the CAA does not require that. See 551 F.3d at 1021, 1027. And the decision also recognized that work practice standards that apply during SSM events could (if they meet the substantive criteria of section 112) result in a set of section 112-compliant standards for the source that apply at all times. See 551 F.3d at 1027. In other words, the judicial opinion that EPA cites as justification for eliminating recognition of the effect of SSM events in individual MACT standards explicitly allows EPA to address those effects, through alternative numerical limitations that apply during SSM events or through work practice standards that apply during such periods.<sup>2</sup> In fact, the approach EPA is proposing would not establish "continuous section 112-compliant standards" that the *Sierra Club* decision concluded are required, since CAA section 112 requires that MACT emission standards must be "achievable" (112(d)(2)), and, under section 112(d)(3) (the MACT "floor"), those limitations must on average be "achieved" by the best performers – neither of which is true of emission limitations that ignore the effect of SSM events on compliance with the numerical limits contained in the standards.

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<sup>1</sup> EPA told the Court that the General Provisions SSM exemption struck down in *Sierra Club* was not an alternative standard based on the work practice standard authority. See 551 F.3d at 1028. Indeed, EPA argued in that case that section 112(h) was irrelevant to its authority to exempt excess emissions during SSM events. *Id.* at 1030 (Randolph, J. dissenting).

<sup>2</sup> IECA is not suggesting, as EPA implies at 81 Fed. Reg. 97076, that accounting for malfunctions in the standards means EPA has to set numeric emission limitations, applicable at all times, that sources could meet during malfunction events. To the contrary, IECA is merely arguing that EPA can promulgate emission standards that apply to normal, steady-state operations and that reflect the performance of MACT technology during such periods, providing for alternative standards that apply during other operating (SSM) periods.

The Court of Appeals decision last year in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579 (D.C. Cir. 2016), does not require EPA to abandon its previous technical determinations about what standards are achievable and represent the best performers, in favor of EPA's latest policy preference of ignoring emissions that can be anticipated to occur during malfunctions. That decision merely held that EPA's interpretation of section 112(d) as allowing it to base section 112(d) standards on emission control performance without regard to malfunctions is a permissible one, not that it is required. See 830 F.3d 606-608. EPA is free in the current rulemaking to stick with its previous technical determinations and policy preferences, and provide that the numeric emission limitations contained in the individual MACT rules, which were based on steady-state operation, do not apply during startup, shutdown, or malfunction events. Emissions during that time could be controlled by "design, equipment, work practice, or operational standard[s]" under CAA sections 112(h) and 302(k).

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

### **EPA: NSPS, NESHAP, and MACT Regulations are Overly Burdensome and Complex**

All of the NSPS, NESHAP, and MACT regulations have similar reporting and recordkeeping timelines and requirements that should be consolidated in order to decrease complexity and increase efficiency.

### **Delay Ozone NAAQS Implementation Rules, Guidance, and Policies**

The Administration should delay final implementation of the 70-ppb ozone NAAQS implementation plan. First, new standards should not be considered unless and until existing ozone standards are met by states. A great many states cannot comply with these existing standards, let alone meet new lower standards. The EPA needs to allow a more accurate consideration of the impact of background ozone levels on the ability of states to meet the new standard. The new ozone levels are likely to impact manufacturer's abilities to expand or would delay expansion due to the more onerous federal permitting process for those areas designated as non-attainment for ozone resulting in costlier permitting process and significant expenditures for additional costly add-on air pollution control devices that will be required to be installed. It should also consider how the standard would directly and indirectly affect the ability of the manufacturing sector to increase production and jobs in the U.S. Finally, EPA must address

background emissions (natural and offshore man-made from China) and their impacts before considering implementation of lower standards. Otherwise, U.S. companies bare the cost of reducing Chinese emissions.

### **Rescind the Clean Water Rule: Definition of “Waters of the United States”**

The EPA’s 2015 Waters of the United States rule vastly expanded federal jurisdiction over state waters, posing serious implications for local economic development. Currently under review by the federal judiciary, this rule should be pulled back by the EPA.

### **Modify the Commercial and Industrial Solid Waste Incineration (CISWI) Rule that Creates Unnecessary Burdens for Non-Hazardous Secondary Materials (NHSMs)**

The CISWI rule labeled all non-hazardous secondary materials (NHSMs), such as recovered paint solids, as waste when combusted for energy recovery. By doing so, NHSM combustors would fall into a much more onerous part of the CAA, thereby essentially ending the potential for the combustion of recovered paint solids and other recyclable materials for energy purposes.

### **Restore Exemptions Under EPA’s Hazardous Waste Generators Enforcement Policy**

EPA recently revised the “conditions for exemptions” under the Resource Conservation and Recovery Act’s (RCRA) hazardous waste generator Improvements regulatory program (<https://www.gpo.gov/fdsys/pkg/FR-2016-11-28/pdf/2016-27429.pdf>). EPA’s changes pose additional requirements not only for large quantity generators, but more importantly for small quantity generators, that result in overly burdensome recordkeeping beyond what is currently required to demonstrate exemption. A violation of a condition for exemption may result in a small quantity generator losing its storage facility exemptions and becoming a treatment, storage, and disposal facility (TSDF) operator and thereby being subject to the more onerous storage facility regulations. While EPA has tried to reassure the regulated community that this is not a shift in enforcement policy, but a clarification, the new language in the rule represents a major shift in the enforcement model which may lead to an excessive and unnecessary number of violations and penalties.

### **EPA: Rescind Clean Power Plan**

The EPA’s Clean Power Plan, which is a set of regulations finalized in August 2015 targeting carbon emissions from the nation’s fleet of coal-fired power plants, would effectively force the transition from coal to natural gas as the primary fuel source for the power sector. The rule represents an overreach of executive power, is unlawful, and would allow EPA to require facilities to reduce GHG emissions that are not within their fence line. The rule would result in environmental dispatch of electricity versus economic dispatch and would almost certainly cause a hike in electricity prices and an increase in demand for natural gas. Lastly, implementation of the rule would set a dangerous precedent for how the industrial sector GHG emissions would be regulated.

### **EPA: Repeal Greenhouse Gas (GHG) Reporting Program**

The EPA's mandatory greenhouse gas reporting program simply requires certain industrial facilities to publicly disclose their annual GHG emissions statistics. The rule has no environmental or other benefit. The requirements should be repealed. Alternatively, if the rule remains in the books, it should be amended to require impacted facilities to report only the GHG tonnage that it actually emits to the atmosphere as part of their manufacturing processes. Facilities should not have to report on GHGs that they capture and either sell or use in other industrial processes.

### **EPA: Exempt RICE NESHAP from Reporting**

The EPA national emissions standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines (RICE) impacts manufacturing and distribution facilities because they all use portable engines. The costs of the required and excessive paperwork and recordkeeping outweigh the insignificant environmental benefits of regulating emissions from such small engines. All portable engines, including emergency generators, should be exempted from NSPS Subpart JJJJ and from NESHAP Subpart ZZZZ.

### **EPA: Repeal Refrigerant Management Requirements Under Section 608 of the CAA**

The recent final rule (<https://www.gpo.gov/fdsys/pkg/FR-2016-11-18/pdf/2016-24215.pdf>) expands the stricter management requirements to units containing ozone depleting substances AND their substitutes, require detailed bookkeeping of refrigerant evacuated from smaller units (containing 5-50 lbs.), lower the leak rate threshold at which units must be repaired, increases the corresponding inspection frequency and includes motor vehicle air conditioners (MVAC) as a regulated Appliance. The increased inspection, recordkeeping, calculations, repair and small equipment management will result in increased associated costs without a corresponding reduction in refrigerant releases. Including MVAC in the definition of Appliance will add confusion to the applicability of the rule, as MVACs are regulated in Section 609 of the CAA.

### **Cost-Benefit Analysis for Independent Regulatory Agencies**

Expand EO 12866 (which requires cost/benefit analysis to be conducted on "major" rules) to apply that requirement to independent regulatory agencies.

### **Encouraging Greater Use of Advance Notices**

Encourage early public engagement in rulemaking through greater use of advance notices of proposed rulemaking (before a proposed rule has been written) or through a notice of initiation.

### **Improving Retrospective Review**

Improve retrospective review by requiring all new major rules to include a retrospective review plan.

### **Requiring Agencies to Post Current Information**

Require agencies to post current information on all potential regulations, including expected timing and costs, online.

### **Setting More Rigorous Standards for Guidance Documents**

Set more rigorous standards for guidance documents, such as notice and comment for significant guidance.

### **LDAR Rules: Make Infrared (IR) Cameras a Technology Option to Meet the Federal Leak Detection and Repair (LDAR) Rules and Replace Antiquated LDAR Rules**

The current LDAR rules require point-by-point monitoring for leaks (Method 21) for every LDAR component (valves, pumps, compressor seals, pressure relief devices, etc.). This is very time consuming and inefficient. Infrared cameras (IR camera) are now voluntarily used in manufacturing to detect leaks much more quickly and efficiently. The use of these IR cameras should be a technology option to replace the current antiquated LDAR rules. There should always be flexibility in the rules to get new technologies approved and efficient and quick reviews of those requests within the agency.

### **Repeal Regulation through Enforcement**

EPA has been pursuing enforcement and consent decrees for flares, rather than revising existing flare sections of current rules to include any new requirements. Changes to a source should undergo a transparent public rulemaking comment process, rather than through enforcement where there is no oversight of the agency process.

### **Stop Requiring the Use of Overly Conservative Federal Human Health Water Quality Criteria (HHWQC)**

EPA should stop requiring states to adopt extremely stringent standards that require extremely high compliance costs for facilities or are simply unattainable and result in no additional human health protection. Under the Clean Water Act, states have primary responsibility for issuing water quality standards and establishing the acceptable risk levels for those standards. EPA has disapproved rules for states Maine and Washington and the disapprovals need to be reconsidered so the very restrictive federal rules are not used for permitting.

### **Reduce Rights of Third Party to Legally Intervene**

Reduce the rights for third parties to legally intervene or force a settlement that often displaces EPA or state agencies' responsibilities and authority pursuant to underlying statutes such as CWA, CAA and RCRA. Third party legal intervention should be limited to circumstances involving agency negligence, fraudulent behavior or inappropriate influence.

## **Streamline FERC Electricity and Natural Gas Reporting Requirements that Treat Manufacturers like Electricity and Natural Gas Producing Companies**

The Federal Energy Regulatory Commission (FERC) imposes burdensome and costly reporting requirements on manufacturing companies for issues that only directly impact “producers” of electricity and natural gas. It is a cost burden to manufacturing companies and it does not provide a benefit to FERC. FERC should streamline FERC Forms 520, 561, 552, 556, QF Cap, and EQR’s to exempt manufacturing companies.

### **IV. MANUFACTURING PERMITTING PROCESS**

#### **Regional Haze BART Emission Limit**

An IECA member is currently challenging a Regional Haze BART emission limit. EPA is imposing a very stringent limit requiring significant annual cost for the facility while producing no perceptible visibility improvement. In finalizing the requirement, EPA reported extremely small visibility improvements for the nearby Federal Class 1 areas to justify their action. However, EPA’s BART limit fails to satisfy the basic requirement that visibility improvement is “reasonably anticipated” as a result of imposing a more stringent BART requirement. EPA’s CALPUFF model used to predict visibility improvements has known technical limitations. A technical analysis conducted by the company shows EPA’s alleged visibility improvements are within the CALPUFF model’s margin of error, a threshold value below which CALPUFF predicted visibility improvements are mathematical noise and not meaningful results. Even after providing a detailed analysis of the margin of error to EPA, the Agency failed to perform its own assessment of the reliability of its model. Rather, EPA proceeded to finalize the BART limit which will require the facility to incur substantial unnecessary and unjustified costs.

#### **Third Party Right to Sue/Intervene**

An IECA member was recently sued by an environmental group under the CWA claiming damages related to stormwater discharges. The suit was settled with an unnecessary CAPEX project valued at over \$1M even though the Regional Water Management Agency indicated the facility was properly handling all applicable regulatory obligations under its stormwater permit. The applicable provisions of the major environmental statutes must be revised to introduce reasonable but tough thresholds to control the right of third parties to unreasonably intervene resulting in delays and expenses to industry. The thresholds must be based on local agency negligence, fraudulent/unlawful behavior or inappropriate influence.

#### **EPA Interpretation of NSPS Opacity Requirement**

An IECA member is currently embroiled in a three-year matter with EPA regarding the agency's unreasonable interpretation of opacity standards to facilities. The net effect of the agency's position is the prospect of a \$1.5M to \$2M CAPEX project with marginal impacts on actual emission levels. As part of the enforcement process the Agency has insisted on the use of unproven monitoring technology (the so called digital camera opacity technique or DCOT). Reform of the underlying NSPS standards must require the Agency to demonstrate that real significant measurable reductions in emissions are required to abate an ambient air quality issue or a demonstrated health concern.

### **Record Keeping Mandate on EPA Air Permitted Standby Engines: 40 CFR Part 51 (Subpart A)**

As part of EPA's reporting requirements, companies are required to report total emissions from emergency engines (standby generators and fire pumps) using the "State and Local Emissions Inventory System" (SLEIS). Standby engines rarely operate but companies, by law, are required to report emissions data. Monitoring, collecting and reporting the data is time consuming and costly and does not yield meaningful environmental benefits.

For example, in 2016, a company reported total emissions from emergency engines (generators and fire pumps) as follows.

PM10	0.0002832 tons per year
SO <sub>2</sub>	0.0002639 tons per year
NOx	0.0039906 tons per year
CO	0.0008599 tons per year
VOC	0.0003180 tons per year
<b>Total</b>	<b>0.005716 tons per year</b>

The company estimates that it takes \$500 (5 times \$100 per engine) per year to monitor, report, and do maintenance as EPA instructs them to do. Given the costs and given the emission volume, it costs about \$90,000 per ton of emissions. The point is that the cost cannot be justified on the basis of environmental benefit. Plus, EPA does not consider it as an emergency standby generator, which only runs during a power outage. In effect, the emissions of the standby generator are offsetting the would-be emissions from the electric utility. Given this example, standby generators should be exempt from permitting and reporting.

### **EPA Should Streamline the Permitting Process and Require Permit Issuance Within a Specified Timeframe**

EPA is responsible for implementing the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act, all of which require permits to operate air pollution sources, storm water sources, and hazardous waste sources. The time to obtain the permits can vary from source to source, facility to facility, county to county, and state to state.

Most permits are typically negotiated and issued by delegated state and local environmental agencies in which the facility is located, pursuant to underlying federal environmental statutes such as RCRA, Clean Air Act, and Clean Water Act. Specifically, in states with approved programs, the state environmental agencies are working on behalf of the EPA and therefore the permits are still federally enforceable. Permits issuance lag times (other than for minor changes) can range between nine months to two years.

To build, expand, or modify a major source, as defined under the Clean Air Act, two new air permits are required – a permit to install (construct) and a permit to operate (Title V operating permit). The size of the project and its potential impact on the environment plays into how lengthy the air permitting process will be. However, in some cases, a total of three to five major permits are required.

A streamlined permitting process is needed which would require that a permit for a major source be issued within 180 days and would provide very clear guidelines that would be uniform across the U.S.

In addition, EPA should streamline and simplify the New Source Review/PSD permit program. Doing so would provide an incentive to companies to modernize facilities to improve quality and profitability without investing significant dollars in pollution control equipment that is functioning properly and that has remaining economic life.

Also, there should be limitations established on EPA's right to review and object to Title V/PSD air permits properly issued by state agencies in the absence of negligence, fraudulent behavior or inappropriate influence.

### **EPA Should Not Revise NAAQS in Less than Five Years**

National Ambient Air Quality Standards (NAAQS) – Clean Air Act Section 109. Section 109(d)(1) requires EPA to review the standards every 5 years. EPA has discretion to only conduct the reviews and to not continually revise the NAAQS standards downward without special circumstances to justify those changes. EPA should exercise its discretion to consider the economic impact on the manufacturing sector when deciding whether to lower the NAAQS because of the significant economic burdens on manufacturing competitiveness and jobs.

### **State Plans Should Not be Deemed Inadequate when States are Not Able to Attain or Maintain the NAAQS or Regional Haze Visibility Glide Paths Due to Emissions Emanating from Outside the U.S.**

Appropriate treatment of international emissions for purposes of National Ambient Air Quality Standards (NAAQS) and for meeting Regional Haze visibility improvement glide paths is needed. State plans should not be deemed inadequate when states are not able to attain or maintain the NAAQS or Regional Haze visibility glide paths due to emissions emanating from outside the U.S. EPA needs to take responsibility to assess and inform the states of the international contributions and the impact to background levels prior to the state developing its State Implementation Plan (SIP). Clean Air Act Section 179B states that the Administrator shall approve SIPs if the submitted SIP establishes to the satisfaction of the Administrator that the implementation plan of such state would be adequate to attain and maintain the NAAQS, "but for" emissions emanating from outside of the United States.

### **EPA Air Modeling Input Should Use Actual Emissions and Not Allowable Emissions**

Additional improvements are needed to 40 CFR Part 51, Appendix W in addressing air dispersion models and guidance so they apply less conservatism. EPA's current policy of assuming that peak background concentrations occur continuously is unrealistic. EPA's insistence on implementing NAAQS using overly-conservative background data is increasingly less appropriate as standards move closer to background concentrations. Effective implementation of the more stringent NAAQS requires a more unbiased and realistic characterization of background concentrations, emissions inputs, and modeling physics.

Model input should use actual emissions and not allowable emissions. The only sources for which allowable emissions might be required are sources for which there is no record of actual emissions. EPA policy for ambient air should be modified to make modeled impacts consistent with reasonably anticipated exposures for which the NAAQS are designed to protect. Utilize probabilistic approaches for air modeling to allow less conservative inputs of emission estimation. If EPA cannot specify which computer model is appropriate for a given situation, then model selection and approval should be left to the state permitting authority without requiring any delayed review and EPA approval.

### **EPA Should Provide Clearer Guidelines to Facilitate the Issuance of Air Permits in a Timely Manner**

The timeline to obtain an air permit to build, expand, or modify a major source continues to be one of the greatest challenges for manufacturing facilities. Due to the many requirements and complex modeling analyses that are required as part of a permit application, the permitting process can be a lengthy, back-and-forth process between the company and the agency. There is no set timeline by which an agency must issue a permit. The permit gets issued only when the agency has approved the terms and conditions of the permit. However, it is in the negotiation of a permit that a lot of discretion is given to the state agency in deciding what the terms and conditions should be. Some states take it upon themselves to continually require more stringent permit requirements that are above and beyond what is required under the federal regulations. The states can be more stringent than federal requirements, however, it is this discretion that oftentimes results in an unnecessary and lengthy process for getting a permit issued. The result is that the permitting process for identical sources can be significantly different from state to state, creating uncertainty and costly delays for manufacturing facilities. Presently, there are also conflicting interpretations as to what is considered "installation" with differing views by the districts, agencies and regions, as well as individuals within those offices. Clearer guidelines would greatly facilitate manufacturing facilities. With appropriate guidelines, including the development of model permits, the length of time taken for review can be reduced significantly.

### **Permitting Agencies Should Allow Companies the Flexibility to Use Plantwide Applicability Limit (PAL) Permits**

One change that could significantly reduce the burden of permitting and compliance for manufacturing facilities would be if more agencies issued Plantwide Applicability Limit (PAL) permits. Under a PAL, a manufacturing facility can make certain pre-approved changes without having to modify their permit every time a small change is needed, so long as they have documented the changes and demonstrate that the changes do not trigger a major modification and do not exceed their enforceable emissions limits. Such a process increases flexibility for manufacturing facilities, allowing them to make changes in a timelier basis without having to go through a lengthy, costly and uncertain permitting process each time.

### **Allow a Manufacturing Facility to Start Construction or Install an Emissions Source, but not Operate It, Before Securing the Requisite Permits, as Provided the Facility Has Submitted a Complete Air Permit Application**

The current permitting process prohibits manufacturing facilities from beginning construction or installing an air emissions source until they have obtained an approved air permit by the agency.

This prohibition, along with the lengthy permitting process, prevents a manufacturing facility from “putting a shovel” in the ground before having an approved permit. This time delay creates a significant burden which can be extremely costly, serves as an impediment to job creation that is usually part of manufacturing modifications and expansions and puts manufacturing facilities at a competitive disadvantage when the time required to bring a product to market is so critical. Consideration should be given to allow a manufacturing facility to start construction or install an emissions source, but not operate it, before securing the requisite permits, so long as the facility has submitted a complete air permit application. A temporary permit to construct and install could be issued pending the negotiation of the final permit to install. The manufacturing facility would assume all the risk and would have to halt construction or uninstall any emissions sources in the event a permit was denied. This kind of change would create the certainty that manufacturing facilities lack under the current permitting regulations.

### **Restore and Increase Permitting Authority and Flexibility to the States**

Permitting should be delegated to the states when feasible. The states are the most familiar with the sources in their area and are the most efficient at issuing those permits. Leaving permitting to a Federal agency can introduce variables that slow down the permitting process. Federal government reviews and consultations with other agencies, such as the Fish & Wildlife Service, the Federal Agency Historic Preservation Program, and the National Marine Fisheries Service can unfortunately become part of the permitting process when there is no need for them to be involved. Other federal agencies have no idea how to review these permits nor do they have any concerns for timelines.

### **Improvement to Air Dispersion Models and Guidance**

EPA’s current policy of assuming that peak background concentrations occur continuously is unrealistic. EPA’s insistence on implementing NAAQS using overly-conservative background data is increasingly less appropriate as standards move closer to background concentrations. Effective implementation of new, more stringent NAAQS requires a more unbiased and realistic characterization of background concentrations, emissions inputs, and modeling physics. EPA should develop new and long overdue reasonable guidance on this subject. EPA also should issue guidance providing more realistic treatment of emissions used in modeling to provide more accurate predictions of ambient concentrations. Modeling of actual (versus allowable) emissions should be allowed. This would lead to a change in Section 8 of the Appendix W guidance that is long overdue. The only sources for which allowable emissions might be required should be sources for which there is no record of historical actual emissions. EPA has embraced probabilistic approaches in other parts of the Agency and should embrace them for air modeling to allow less conservative inputs of emission estimation. If EPA cannot specify which computer model is appropriate for any project or situation, then model selection and approval should be left to the state permitting authority without requiring any delayed review and EPA approval.

EPA should not set any new NAAQS unless it can simultaneously update all rules for compliance. For example, EPA should conduct rulemakings to update Appendix W more frequently. Unfortunately, EPA has been lowering the NAAQS but doing nothing to update the rules on how to demonstrate compliance with them, such as approving improvements to models. This would better achieve the PSD program’s explicit statutory purpose of ensuring

economic development while protecting air resources. EPA should update Appendix W to fix model over-prediction at low wind speeds and update AP-42 emission factors for fugitive emission sources of PM<sub>2.5</sub> (e.g., materials handling, road dust, roof vents).

Long-standing EPA policy requires that ambient air impacts be evaluated anywhere the general public could access but EPA requires many inappropriate 'ambient air receptors' to be set in the models used for permitting. EPA unrealistically requires evaluation of ambient air impacts at locations where individuals would not reasonably be exposed for the frequency and averaging time of the NAAQS (e.g., on a waterway, roadway, railway or cliff face for 24-hour or longer time periods, that may be running through or adjacent to an industrial facility). EPA policy for ambient air should be modified to make modeled impacts consistent with reasonably anticipated exposures for which the NAAQS are designed to protect. Modeling should not be required if human exposure at a site is unrealistic for the period addressed by a NAAQS. These unrealistic modeling scenarios not only prolong the permitting process, but also result in additional and unnecessary modeling costs and perhaps more importantly, oftentimes force a facility to either install additional unnecessary pollution control devices or raise emission stacks to unnatural heights that otherwise wouldn't be required if more realistic modeling scenarios were employed. IECA supports changing 40 CFR section 50.1(e) definition explaining that "exposures to pollutants" can be interpreted differently with newer probabilistic NAAQS. Alternatively, modify Appendix W by adding "Site-specific circumstances that may be taken into account and that receptors may be excluded from areas where natural, man-made or jurisdictional barriers reasonably preclude the potential for public exposure with the frequency or averaging time specified for the NAAQS or PSD increment that is under evaluation."

#### **Appropriate Treatment of International Emissions under Section 179b of the CAA**

It should be EPA's responsibility to assess and inform the states of the international contribution to background prior to the state developing its SIP. EPA has a model for everything else, so it is appropriate, if not vital for EPA to provide a model that maps international impacts. Expecting each state to do this impact analysis and modeling is duplicative, extremely inefficient and unnecessarily impacts a state's resources that are already constrained, especially when there are common elements to all the modeling. 40 CFR Section 179b states that the Administrator shall approve SIPs if the submitted state establishes to the satisfaction of the Administrator that the implementation plan of such state would be adequate to attain and maintain the NAAQS, but for emissions emanating from outside of the United States. We interpret this as a nondiscretionary duty of the Administrator that has not been performed and so states do not have the information on international contributions to background that they require to submit their SIPs.

#### **Proposed Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Revisions and the Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program (<https://www.gpo.gov/fdsys/pkg/FR-2016-10-03/pdf/2016-21475.pdf>) are Onerous and Unnecessarily Create Permitting Uncertainty for Manufacturers**

EPA's proposed SER for GHGs would require the application of Best Available Control Technology (BACT) to minimal amounts of emissions that would result in both a significant administrative and economic burden on the construction and expansion of existing and new manufacturing facilities. EPA should reevaluate its presumptive SER threshold and justify that

the SER that is promulgated, represents an accurate de minimis threshold that ensures meaningful reductions in GHG emissions.

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