Comments Regarding Evaluation of Existing Regulations Consistent with

Executive Order 13777

EPA-HQ-OA-2017-0190

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Submitted by

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Executive Summary:

These comments are respectfully submitted following my verbal comments at the EPA's Office of Small and Disadvantaged Business hearing held on April 25, 2017. Thank you for holding that productive hearing giving many small business entities an opportunity to provide brief but clear comments. Comments are offered on key EPA regulations that merit actions to re-propose or modify as well as several process recommendations that cut across all regulatory actions.

This list is intentionally concise because many EPA regulations have been proposed and finalized under the authorizing statutes where the final action seemed generally consistent with the statute. However, these suggestions are significant regulations or programs that need mid-course corrections. No rules are recommended for complete repeal. Nor do my comments offer any fundamental criticism of the agency's priorities.

The comments reflect my experience with some current clients and the 30 years' regulatory experience for general manufacturing and electric utility industry. I have served on approximately six panels as primary representative or technical expert for EPA's small entity regulatory panels (SERs) for other industries. This process was established under Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (PL 104-121 as Amended by PL 111-28, May 2007). I have participated as a technical back up on one Unfunded Mandates Reduction Act (UMRA) meeting in 2014. These comments reflect that experience as well as almost 30 years of attending SBA Office of Advocacy meetings and hearing about the experiences of other small business entities in the EPA rulemaking and the

convening SBREFA process. My opinions are entirely my own and not the opinions of any former employers.

I. Specific regulations for modification:

1. Instruct EPA's Office of Air and Radiation along with the Office of Enforcement and Compliance Assistance (OECA) to work together to **Revise the current New Source Review enforcement policy** that excludes opportunities to modernize factory equipment to remain competitive. **Citation:** Clean Air Act Section 7470 or 42 U.S.C. Section 747(1)(3), 40 C.F.R. Part 51.166(b)(3)(iii) and 40 C.F.R. Part 551.116 (b)(47)(iii). This policy is not expressed in law but has been a policy expressed through a variety of enforcement actions by OECA since the late 1990s. **Factories and power plants should modernize**. All of our major industrial competitors in other nations have policies that encourage efficiency improvements to keep factories modernized. **In fact, Canada, Britain, Germany, France and Japan have no such policies that deter or penalize those that make modernization of factories and power plants.** More detailed comments were submitted on March 31, 2017 in response to Department of Commerce's solicitation[1] regarding permitting bottlenecks and how to improve permitting.

This recommendation does not require changes to the 1990 law which amended the 1977 law. At least five of the 27 speakers at the April 27, 2017 hearing mentioned fixing or changing NSR at the hearing. Approximately one third of the manufacturers' comments to the U. S. Department of Commerce appeared to be addressing permit streamlining necessitating corrections to NSR.

(a) **Consider placing OECA functions within the EPA program office** to work with those companies that make nonintentional compliance errors to take corrective action through training for improved compliance. Many prior Administrations have discussed this and even attempted this action through other actions such as voluntary self-audits etc. but all were tabled after much discussion. This recommendation regarding enforcement does not mean that businesses that make intentional actions to fraudulently avoid compliance should be given a mere slap on the hand. Fraudulent or willful acts should be punished and fined.

But actions should be taken to encourage compliance assistance for businesses that make errors in permit applications, paperwork filings, electronic filings, and errors in air modeling that result in insignificant violations and no real threat to public health or welfare. This change requires some enforcement flexibility and working with the U. S. EPA and state agency permit writers. Often the permit writers have a good sense as to whether the business' action was inadvertent or due to the complexity of the rule or due to a blatant disregard for the law. **Blatant disregard for the law should be treated harshly**.

[1] U. S. Department of Commerce, Docket No. 170302221-7221-01 or DOC-2017-0001

In my capacity of working for industry, I witnessed small parties mandated to take several days of training in lieu of fines to improve upon compliance accuracy. A specific example is when a group of electric utilities were mandated to take training when labeling on some of their electric transformers containing PCBs was incorrect. But this was not a flagrant disregard for the law. The state enforcement action reflected that the transformers containing PCBs had not leaked and were not a public health threat but were incorrectly labeled. The small utility had fewer than ten employees including those in billing, customer service, and linemen. The small utility parties who attended the training were treated with respect by enforcement officials although training attendance was mandatory and the testing was tough. Comprehension testing was required at the end of two days. I was impressed with this approach. It appears that Europe's individual country or Directorate General 13 policies suggest that this approach is common in Europe when industries have made errors or simply didn't understand the regulations.

Additionally, placing enforcement staff within each EPA program office has been historically the practice until about ten years ago—and perhaps worthy of consideration. **Placing the enforcement personnel with the individual programs does not marginalize enforcement or its significance.**

2. **Repeal and revise the 2015 Start Up, Shut Down and Malfunction (SSM) regulation to allow state flexibility and judgment:** (or perhaps take actions through negotiated settlement). **Citation:** 40 C.F.R. 63.1111 or Section 63.6 (6)(3)(3). Many state agencies and small business parties have requested that the current SSM regulation mandating that 16 states' State Implementation Plans (SIPs) be revised to disallow any time for the equipment to meet the standards. SSM policies have not been a gimmick but necessary and pragmatic. Many pollution standards cannot be met by combustion equipment and other manufacturing processing equipment in the first minute upon start up, upon shut down or during unexpected equipment malfunctions. States have had robust programs to watch their industries and know how much lenience should be allowed to get the equipment 'warmed up' to run and meet the pollution standards.

One example of why SSM will be more problematic is during the running of Combined Cycle Natural Gas (NGCC) units (electric utilities) is that these utilities will have significant intermittent renewables (wind and solar) where there might be short term NOx and CO_2 emissions that spike above emissions standards during normal operations. California has historically recognized ramping of renewables can cause these short-term emissions spikes but that the overall emissions reduce significantly with renewables. SSM time periods should reflect common sense operational issues—not a loophole to bypass appropriate public health protection regulations.

3) Repeal and replace the New Source and Existing Source CO_2 Regulation for Steam Electric ("NSPS" and "ESPS") for new and existing sources. Citation: 80 Fed. Reg. 64,510 (October 23, 2015) and codified at 40 C.F.R. part 60,70, 71, 98, and 80 C.F.R 64.662 (October 23, 2015 to be codified at 40 C.F.R. part 60).

Regulating CO_2 (or any other GHG if defined as a pollutant) should be regulated consistent with the Clean Air Act's regulation within the fence line of a factory or power plant. Regulations under the Clean Air Act are not designed by Congress to address the entire value chain of the electric utility sector blurring the lines between segments or ignoring the remaining useful life of the plant. The Clean Air Act should not punish any fuel type and all technology controls should be based upon those that are commercially and widely demonstrated without significant economic subsidies.

Commercial technologies that have any cross-media impacts, such as geological sequestration of CO_2 or other acid gases, should require all relevant U. S. EPA program offices for consultation before that technology is deemed "demonstrated" and included in the proposed regulation. An example of this would be to determine if CO_2 may be injected by the electric utility sector in non-Enhanced Oil and Gas Recovery (EOR) in all geologic locations for all fifty states. If injection of an acid gas is not technically feasible and practical in all fifty states then it is not a demonstrated technology. EPA should also consider that all states do not have laws and commercial ventures to allow for injection of CO_2 into pore space. Nor do all states have special high pressure CO_2 pipeline for transporting the CO_2. Many of these issues were provided to U. S. EPA over a five-year period by many parties before the New & Modified Source regulation was proposed but these comments were ignored. This included a special four hour briefing entirely on carbon separation and carbon injection held at Research Triangle Park, NC for the Office of Air and Radiation staff preparing for the NSPS rulemaking in November 2012. This information on CCS was provided in advance of the rulemaking in 2010 and during EPA's "listening sessions" during the summer/fall of 2012.

EPA presented their findings that CCS was commercially demonstrated to the December, 2013 Science Advisory Board (SAB)[2] although EPA had not reviewed any of the waste, water storage issues (not water pollution issues), or legal issues such as pore space ownership that would make CCS unrealistic as a technology. Although there are a few CCS trial projects[3], none have successfully become commercially demonstrated for these many reasons along with major CO_2 tax subsidies or carbon taxes in Europe. Before re-proposing either the new source or existing source power plant regulation CO_2 "control" through CCS must be studied as to whether it is economically viable for the electricity consumer with serious review of what has happened at the Kemper project in Mississippi and the costs to residential consumers.

However, if a power company finds that its proximity to suitable geology and CO_2 pipeline allows it to reduce CO_2 through CCS, this should be encouraged. However, it is not yet a

[2] Testimony by EPA staff before the Science Advisory Board, December 3-4, 2013 by EPA's. EPA responded that the Clean Air Act did not require that any other program or media issues needed to be considered beyond the ability to separate the CO_2 at power plants. This is not consistent with EPA's overall obligations to look at cross-media issues under NEPA.

[3] Kemper, NRG outside of Houston and the Shell project near Alberta, Canada as well as the conventional natural gas recovery project near Sleipner, Norway.

demonstrated and commercially viable technology due to the sequestration issues. Perhaps by the next NSPS technology review that might be possible.

Note: These comments do not mean to imply any critique of use of CO_2 as a like-kind hydrocarbon that can be reinjected under Resource Conservation and Recovery Act (RCRA) because the CO_2 is used for enhanced oil and gas recovery at oil and gas production sites. EOR, using CO_2 to release oil and gas, should not be confused with the large volume or the speed of CO_2 injection from power plants. EPA's Underground Injection Control (UIC) program and state agencies regulates EOR and EOR is an entirely different process because typically the CO_2 is recycled and is not always permanently stored. These comments are not meant as a criticism of using CO_2 for EOR because EOR is a specific process allowed and regulated under the UIC program. In that context, CO_2 is considered a like-kind hydrocarbon and allowed to be reinjected into the well or formation. Power plants do not have this same RCRA treatment.

4) **Modify EPA's Section 112 "OOOOa" methane leak repair regulation for the midstream oil and gas sector for new sources commenced construction after September 18, 2015. Citation:** *Regulation was named in the Executive Order for review.*

If EPA determines, after its review, that fugitive methane leaks from midstream natural gas pipeline and compressor stations should be repaired, the timing for the leak repair should accommodate the local reliability concerns of natural gas users. EPA ignored the possibility that some factories and some power plants, might be served by only one pipeline or affected by an out of service compressor station close to that customer. A local compressor station taken offline could have some negative localized reliability unless there is significant re-routing capability (within a chain of compressor stations) is out of service for fugitive methane leak repairs.

Even a single day of gas delivery downtime if no alternative source of natural gas is available could be problematic for electric reliability on a localized basis. The 2016 regulation, issued by the Obama administration, stated that the repairs should be made within 30 days "if feasible". *Feasible* has often been a very severely applied word by U. S. EPA for leak repair regulations at other industries. "If feasible" does not give all natural gas users the assurance needed that there could be no problem for obtaining gas in states where gas infrastructure has not yet been fully built out to serve all the customers. Many states lack the surplus of gas infrastructure or capacity found in states like Texas, Oklahoma, and Louisiana. **If** EPA re-proposes a methane leak repair rule for pipelines and compressor stations, it should give time for methane leak repairs to be made at the compressor station or pipeline during a future scheduled outage within two years when there could be no adverse impact on local power customer(s) or where those power customers have concerns about data centers, hospitals, refineries and factories needing to avoid even "flicker" introduced into their system or during longer outages. These references to reliability do **not** mean to imply the national electric grid might have a reliability problem. "Localized reliability" might mean one single power plant in a state, or single pipeline serving a municipal electric, natural gas or drinking water utility where pumping of water uses electricity.

For example, even during the Polar Vortex in 2010, some refineries had difficulties because of inadequate power to compressor stations moving chemicals or natural gas yet the entire state did not lose either electricity or natural gas. Polar Vortex events[4] are often not predictable and can result in deaths if electricity is not available for home heating and district steam to some hospitals.[5] Some scientists predict more Polar Vortex events as late as March[6] due to changing weather patterns/ Yet, March is often considered "shoulder season" for both power plants and natural gas transmission facilities so presuming that March is always the best time for fugitive methane leak repairs is also a bad assumption. It is possible that an unexpected cold front or Polar Vortex could mean that March is not a timely time for making methane leak repairs for fugitive leaks at compressor stations. In that instance, the March downtime and scheduled fugitive leak repair might be 'feasible' but not wise.

These gas-electric complexities need to be considered in any new EPA methane regulation dealing with fugitive methane leak repairs. Also, if there is a leak, pipeline and compressor station companies should be encouraged to use a variety of techniques and technologies to find the leaks. LDAR cameras may be outstanding in some applications where other sensors and monitors may be more suitable in other applications.

Any fugitive methane leak repair proposed rule should seek for comments from natural gas users (factories or power plants) on appropriate communications with all major natural gas customers regarding advance warning regarding service disruptions. The power sector needs to be asked about notification regarding when repairs might be made in advance if the gas system is out of service with no secondary routing systems. "Reliability" in this context could be a very narrowly applied term for one or more power plants and just one or two factories on a new natural gas pipeline where there are no re-routing capabilities on that pipeline segment. EPA permit writers should be encouraged to give flexibility on the timing for fugitive methane leak repair timing with more clarity than stating the repairs are required in 30 days "if feasible". Conversely, some states have multiple gas pipelines with many re-routing systems or can easily reverse flow. In those instances, the permit writer might have a different expectation for the frequency or timing of repairs.

If EPA re-proposes a fugitive methane leak regulation, the EPA staff should also contemplate the impacts of the December, 2016 natural gas storage interim final rule standards[7] from

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[4] http://www.reuters.com/article/us-usa-power-weather-kemp-idUSKCN0HQ4TB20141003 and https://weather.com/science/weather-explainers/news/polar-vortex-shifting-away-from-north-america-climate

[5] PHMSA's Interim Final Rule on Natural Gas Storage, issued Dec. 14, 2016 and effective sixty days from publication in Federal Register is the first of several new safety rules under Section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Underground_Natural_Gas_Storage_Interim_Final_Rule_Corrected.pdf

[6] https://weather.com/science/weather-explainers/news/polar-vortex-shifting-away-from-north-america-climate

[7] PHMSA's Interim Final Rule on Natural Gas Storage, issued Dec. 14, 2016 and effective sixty days from publication in Federal Register is the first of several new safety rules expected in 2017 or 2018 under Section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. See December, 2016 interim storage rules at http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Underground_Natural_Gas_Storage_Interim_Final_Rule_Corrected.pdf

Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) or new state regulations regarding natural gas storage facility structural integrity and monitoring requirements and the time that each facility will be out of operation. If the nation's existing natural gas storage facilities are undergoing maintenance and safety upgrades, the impacts of the three segments of the energy sector should be contemplated in any repair timing requirements in the final EPA rule. This does not mean that PHMSA should not require safety upgrades. It just means that EPA's fugitive leak repair requirements should contemplate the entire chain of gas segment and the ultimate users of natural gas. This is especially important now that DOE's Energy Information Agency[8] states that natural gas generation surpasses coal-fired power plants.

The electricity and natural gas value chain segments are not owned by the same parties and they don't always understand operational issues that affect another segment. **The call for comments on any re-proposal of OOOO(a) for new sources (or any subsequent action on existing sources) should also be clear in the Federal Register that the entire value chain of the natural gas production, storage, gas transmission (intrastate and interstate) pipeline and power sector should provide comment. This cross-cutting impact to power plants should also be clear in the announcement in the Federal Register.** Similarly, an information collection request (ICR) for the natural gas production, storage and transmission sector (pipeline) should attempt to inquire about whether those pipelines have new pipelines that might only serve one power plant, one factory or one hospital assuming that there might be commercial, financial or permitting delays that prevent the robust pipeline system in states like Texas where "belts and suspenders" for delivery pipeline re-routing is available if a compressor station or pipeline is out of service for a day, week or, perhaps even, a month. If necessary, those gas infrastructure companies may need to provide comment under Confidential Business Information for either commercial reasons or physical security reasons.

Similarly, any regulatory actions by EPA should give some policy nod of approval for power plants to have some permitting leeway to have emergency use of **oil for dual fuel** in the event of a force majeure of a gas storage location, gas pipeline or natural gas compressor station **if** that downtime causes disruptions of >1 day where other natural gas resources are not available or cannot be transported within one hour. This might mean Clean Air Act Title V permits should have language provided, *with limitations*, for burning diesel oil in circumstances where natural gas infrastructure is not adequate. Many states are loath to allow oil-fired generation because of the emissions from oil combustion. Similarly, most power plants and factories are loath to run oil-fired units because often the cost of oil is as much as five times the cost of coal and far higher than the current price of natural gas. Factories and power plants rarely have enough oil to run for

[8] https://www.eia.gov/naturalgas/

more than a few days due their facility's tank size and its footprint. Some power plants and factories have not maintained their fuel handling equipment or have updated Spill Prevention, Control and Countermeasure (SPCC) regulation to allow them to suddenly store and use oil in the large volumes necessary to run on oil during a downtime. Also, it is not entirely clear how long it takes to go from black start on an oil-fired unit if the natural gas infrastructure has an unexpected downtime of a day because the fleet of oil-fired units don't have to disclose this data.

However, as more states exceed 60% natural gas for the power sector, some emergency provisions should allow the running of oil-fired units to avoid problems if there are unexpected force majeure events in the natural gas delivery system. This should be especially a concern in the many states where subsurface natural gas storage is not possible given the state's geology. Examples of this are in New England, Florida, Arizona, and many other states.

To allay the fears about pollution from running oil-fired units of U.S. EPA, state agencies or environmentalists, perhaps the permit language should allow the limited running of oil-fired units if the factory or power plant has dual fuel capability based upon a triggering event. Examples of triggering events might include when the power plant must show a voltage support drop, service to or electric demand from a hospital or medical facility, electricity for pumping and running a drinking water facility, or other extreme factors. Perhaps U. S. EPA and state agencies might consider allowing air permit writers to have approval to allow running of these units in limited circumstances where gas pipelines or compressor stations might be under water, receive "must run orders" from a PUC or North American Electric Reliability Corporation (NERC)'s [9] Planning Authority, or face unexpected repairs. (An electric utility receiving a "must run" order for relialibty reasons does not mean the electric utility cannot receive an enforcement action or citizen suit under the Clean Air Act. (While many courts might likely recognize the need to run and dismiss the enforcement action or citizen suit action but power plants cannot count on this. Electric utilities point to the enforcement action on the small coal plant in Alexandria, Virginia formerly owned by PEPCO in 2011 during the intense storm. That plant received a must run order to maintain voltage support and keep the lights on at the U. S. Capitol complex but also received an enforcement violation).

Some limitations or restrictions are needed for dual fuel so that running of oil-fired units is not common and result in higher SO_2, NOx, and other pollutants than the natural gas plants. This recommendation is not designed to be a loophole.

This gas-electric issue is pointed in these comments out because this is an example of where EPA regulated one industry (fuel switching from coal to gas) that could affect another industry (new compressor stations and pipelines with methane leak repairs) without any thought of the connections between the two. All too often EPA's policies and regulations have pushed the power sector from coal to natural gas and ignored these 'interconnections" between industry segments. (As mentioned in #3 on 2015 NSPS for CO_2 for the steam electric power sector, the EPA completely ignored the many cross-media and cross industry issues related to the transport and geologic sequestration of $CO_{2\ as}$ well).

[9] North American Electric Reliability Corporation

These are pointed out because they deserve considerable thought by U.S. EPA and state agencies before a midstream fugitive methane leak regulation should be re-proposed. EPA should review the DOE report[10] following the 2016 Aliso Canyon leak and any subsequent reports from North American Electric Reliability Corporation (NERC). NERC is expected to issue its natural gas-electric "single point of disruption" report by August, 2017.

II. EPA process and management issues in the regulatory process:

(A) EPA should always clarify in the proposed rule, final rule, guidance or ICR announcements to which industries the rulemaking either directly or indirectly the action applies. Ex. EPA's 2016 Ferroalloy industry NESHAP[11] reconsideration referenced that the use of a special camera for that metal industry, with only two factories in the entire United States, would be later deployed for other industries that emit precursors of Particulate Matter. EPA claimed the camera's costs would decrease because so many other industries would later use the camera. That statement was deceiving because the two ferroalloy factories would not benefit from the market pressures to have more camera device makers enter the market. There was only one product at the time of the final rule. And other camera makers would have no way of knowing that EPA was promoting the technology. Nor would the other industries know to read the obscure EPA ferroalloy regulation's reconsideration in order to know that it should anticipate the impacts on their industries.

This type of "hide the ball" in rulemakings where EPA seeks to get technology demonstrated by requiring it for only one industry and then apply it to many is unfair. That original proposed rule should have made it clear that use of the camera had implications for the technology's application in many thousands of other industries. **EPA should clearly reference this in a special section at the beginning of its announcement. EPA should add in the introduction some language such** as "Proposed rule has technology selection with implications beyond x industry" and provide the NAICSs for all industries the EPA believes could be forced to use this technology under subsequent rulemakings.

(B)Technology selections by EPA should not be named "demonstrated" until the technology is clearly and widely demonstrated and proven to be effective. In the instance of the ferroalloy NESHAP, the single camera device named in the rule was not commercially demonstrated because the State of Virginia found that it had "false positives" when shadows from clouds or trees passed over the roofline of the factories. Nor did EPA make it clear to other camera manufacturers that they should file comments. By "hiding the ball" on the camera device selection, EPA staff made the critical error of not making it clear to other camera device manufacturers that they too could enter the market, provide a successful product- without false positive readings, and perhaps those products might lower costs.

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[10] Department of Energy's Ensuring Safe and Reliable Underground Natural Gas Storage Final Report https://www.energy.gov/sites/prod/files/2016/10/f33/Ensuring%20Safe%20and%20Reliable%20Underground%20Natural%20Gas%20Storage%20-%20Final%20Report.pdf

[11] 40 C.F.R. Part 63 RIN 2060-A590, Docket EPA-HQ-OAR-2010-0895), Comments submitted to the docket by Theresa Pugh Consulting, American Iron and Steel Institute, American Petroleum Institute and ErametMarietta company, a ferroalloy manufacturer.

These comments do not mean to oppose cameras or other commercially demonstrated technology to improve upon Method 9. In fact, perhaps in the future camera devices can reduce compliance costs and better identify real pollution. But EPA staff need to be careful that they can sometimes be sloppy with the term "commercially demonstrated" when they mean a company makes the product. Often EPA fails to note that the product is not widely available or made by only than one vendor. As in the case with the ferroalloy NESHAP device, there were design flaws with false positive pollution readings (identified by the state of Virginia's DEP) that had not been corrected

Discussions about technology selection also pertains to EPA's determination of what Best System of Emissions Reduction (BSER) and Best Available Control Technology (BACT) floor. Just as explained before about CCS not being fully vetted across all media and whether each state allows the injection of an acid gas into pore space under state law, EPA has been sloppy in selecting technologies. Other examples include the Industrial Commercial and Institutional Boiler Maximum Achievable Control Technology (ICI MACT) mercury rulemakings over the last decade where "FrankenMACT" reflects EPA's "cherry picked" combination of technologies that were not a representation of available technology on boilers. Deference to the details explained by Council of Industrial Boilers (CIBO) and American Forest and Paper Association (AF&PA)'s comments in submitted over many years on this problem is referenced in these comments.

(**C) Small Business Regulatory Enforcement and Fairness Act's (SBREFA) and Unfunded Mandates Reduction Act (UMRA) panels convened by EPA should be truly meaningful and with purpose**. Some of the recent SBREFA panels have been more of a "check the box" exercise that offered little opportunity to discuss regulatory alternatives. This is a terrible shame and not what Congress intended. Examples of very poor quality SBREFA panels include recent ESPS/NSPS for power sector where almost three hours of the first day's meeting were spent going through 85 slides on a PowerPoint slide panel. The industry representatives were hardly allowed to speak on the first day. The second meeting's agenda was not provided by EPA staff for the meeting two weeks before as required under the law. Instead small utilities offered two speakers on efficiency at small power plants. EPA's regulatory options never mentioned any "outside the fence" regulatory options as expressed in the EPA's proposed rule with building blocks on energy efficiency, renewables and other measures such as changing electric industry economic dispatch to environmental dispatch based upon CO_2 or CO_2e. It is highly improbable that given the complexity of the existing source NSPS proposed rule on the power sector that the EPA staff had no notion that economic dispatch might be changed to environmental dispatch. *How could the SBREFA panel have any meaning if that extraordinary change to the entire electric utility industry and all state utility regulatory systems not be worth bringing up? How could a SBREFA panel that failed to offer any of these major regulatory options even pass for a legitimate SBREFA panel?*

Other industries, participating or witnessing the 2016 SBREFA Risk Management Plan (RMP) rule panel said the proposed rule was submitted to the Office of Management and Budget (OMB) for review before the report from the panel was received. *How could this SBREFA process be*

considered legitimate if the report reflecting the panelists view to the EPA policy makers arrived after the proposed rule went to OMB for review?

The RMP rule revisions was designed, perhaps with the most admirable of intent, to prevent another tragic explosion like the one in West, Texas in 2013. Press accounts state that Federal investigators and local investigators stated that the tragic factory explosion was the result of a criminal act[12]. Given that the criminal act, however tragic, caused the explosion, it begs the question whether EPA staff should have been so dismissive of the SBREFA process that was designed to look at regulatory alternatives and options.

These examples are offered to explain why some in the business community have grave doubts about the sincerity of EPA when it calls for participants in the SBREFA or UMRA panels. Can they be blamed for some cynicism?

By contrast, EPA's SBREFA panels on Section 316(b) (Clean Water Act) in 2004 or 2005 and PCBs (in 2014) were professional, respectful, thorough, and resulted in reasonable recommendations for possible regulatory alternatives for the proposed rules. Meeting agendas were distributed two weeks in advance with ample time for meaningful discussions. The staff demonstrated respect for the small business who participated on the panel. Even when the industry people did not like all of the regulatory options they were well explained by EPA staff. Kudos to those EPA employees who were well prepared and provided practical problems or questions to the SBREFA panel participants.

(D) Unfunded Mandates Reduction Act (UMRA) panels should be meaningful and respectful of local government. EPA convened a UMRA panel regarding Effluent Guidelines Limitations (ELG) revisions for Steam Electric on October 11, 2011. To my knowledge, no one in industry disputed that, after almost 25 years, it was time to update the ELG with new control technology choices. EPA estimated that approximately 158 state and local electric utilities (municipal and coop) would be affected by the rule. Mayors for twenty-five cities were invited to attend the EPA meeting with less than three weeks' notice. That planning time was not realistic for small town mayors—many of whom have fulltime job outside of city hall to travel to Washington, D. C. or participate in a four-hour conference call. EPA should have notified those mayors at least two months in advance given the significance of the rule and the solicitation of UMRA comments. Instead it felt like a "check the box" exercise.

The Unfunded Mandates Reduction Act (UMRA) panel participants were selected by EPA with invitations sent to approximately 25 small electric utility participants. Quite a few city representatives expressed that their cities were still affected by the severe economic downtown

[12] http://www.cnn.com/2016/05/11/us/texas-fertilizer-plant-blast/ and http://www.nbcnews.com/news/us-news/deadly-west-texas-fertilizer-plant-explosion-was-criminal-act-feds-n572231 and with ATF announcing reward of $50,000 for arrest for crime https://www.nytimes.com/video/us/100000004401218/fertilizer-plant-blast-a-criminalact.html?action=click&contentCollection=timestopics&region=supplemental&module=undefined&contentPlacement=2&pgtype=collection

from 2009. When one small town's electric utility discussed the lingering economic conditions the EPA's staff reaction was surprising. The small municipality representative discussed what percentage of the school children (K-9) were now on food stamps, received free school lunch, and how the electric utility had recently been tasked with paying for emergency medical (EMT) services, new ambulances, and new school buses. Simply put, local community property taxes were not sufficient to keep up with fire, police, EMT and school bus replacement expenditures. The municipal representative said that these new ELG costs would also come on top of new drinking water regulations at the water utility on a small town that was losing its tax base and where the electric utility was undertaking other costs in lieu of taxes until circumstances changed.

Regrettably, one EPA staff member responded that these economic issues did not matter to EPA. The reaction was both tremendously insensitive toward a town with **11% unemployment** (and higher for those citizens under 30) in 2011 and where the unemployment had been as high as 15% in 2009. It was also incredibly rude to the person who had called in to participate in the UMRA meeting convened by EPA. This insensitive response was truly rare but so insulting that it is easily recalled almost six years later.

Later, when the ELG was proposed, it contained many instances of redacted data where the power sector and environmental advocates could not replicate the data or confirm if it was right. Proposed rules should not have redacted data unless the data is truly Confidential Business Information (CBI). In the case of the ELG rulemaking, the data had not been submitted as CBI. The electric utility sector has petitioned for reconsideration of that final rule and pointed out this data problem. Data on pollution and pollution control and costs should be transparent unless there is an overwhelming CBI reason. (See item E).

EPA staff should be required to hold SBREFA and UMRA panels long before the proposed rule is written or submitted to OMB for review. When small businesses or municipal governments offer real world examples about unemployment, food stamps, loss of tax revenue, and the ability to raise bonds, these parties should receive respect regardless if the EPA believes that EPA regulations are needed. And those factors should be considered in the context of compliance dates, subcategorization, de minimis determinations or where economics may be considered in setting standards.

Agendas, as required in the SBREFA law, should be sent electronically two weeks before the meeting with practical information about the regulatory options. If requests for data or operational experiences are to be requested, the commenters need at least 10 days to obtain that information—especially if this is before the comments are due following the SBREFA SER meeting. And, EPA staff should send those who travel to Washington, D. C. for these meetings, and written acknowledgement thanking them for their participation. Citizens serving on jury duty get a written acknowledgment of service to take back to their employers. Even a form letter is better than no acknowledgement.

(E) Data used in air dispersion modeling, AERMOD and other models and rulemakings should be transparent to all parties except when classified as CBI

Recent EPA rulemakings and permit determinations have been increasingly made by difficult data to replicate by permit applicants or regulated parties. These include AERMOD, dispersion modeling and the modeling and resulting state budgets under Cross-State Air Pollution Regulation (CSAPR) where the models and allocation of budgets were not clear in the proposed rules.

The recent Effluent Guideline Limitation rule for Steam Electric (electric utilities) actually had redacted selenium data that had not been submitted through Confidential Business Information. This is not right. It would be equally right if the regulated industries offered redacted data that made the environmental community unable to see non-confidential business information.

(F) EPA staff levels need to match the regulatory reform challenge

The FY2018 and 2019 budgets must align with the regulatory reform plan with an internal EPA/OMB deadline of July 24 with notification in the Federal Register in September 2017. EPA must have the commensurate number of EPA employees to complete the regulatory reform mission. News articles suggest a possible 31% staff cut through retirements, reductions in force, and contractor cuts. It is worrisome if staff cuts might result in insufficient staff to undertake the many regulatory reforms that are needed over several years. Additionally, EPA has new TSCA regulations with Congressionally mandated tight deadlines. These factors should be considered during budget decisions in July 2017 before the future budgets are submitted to Congress and ultimately determined by Congress. An arbitrary budget cut may make the agency incapable of conducting needed reforms and corrections to existing regulations. Some of these recommended changes are not simple and may take more than one fiscal year to complete if the rules must be re-proposed. Staff redeployment may be needed and EPA personnel have skills that are useful in more than one regulatory program.

It also is essential that the Assistant Administrators for the various programmatic offices are named by the White House along with the naming of Regional Administrators to execute regulatory reform along with the court-ordered deadlines.

Thank you for looking at ways to maintain human health and environmental protections under all regulatory programs while considering reforms. Perhaps these comments will also assist you in determining appropriate EPA budget and staff size for the many regulations that need to be revised or modified. The comments are expressed out of respect for the EPA's core mission to protect public health. These comments do not recommend a withdrawal of any U. S. environmental regulations or massive budget/staff cuts.