

EPA's Improving Environmental Rulemaking Public Meeting

March 14, 2011

Summary

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Plenary Summary

Purpose

EPA is beginning a new periodic retrospective review of its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. One of the primary goals of this effort is to make the Agency's regulatory program more effective or less burdensome in achieving its environmental mission and regulatory objectives. As called for by President Obama in Executive Order (EO) 13563, EPA is developing a plan for how to conduct this retrospective review process. For more information, please see the Executive Order at:

<http://edocket.access.gpo.gov/2011/pdf/2011-1385.pdf>

On March 14, 2011, EPA held a public meeting to receive input on the plan and ideas about regulations that should be considered as candidates for review.

Opening Presentation

Michael Goo (Associate Administrator for EPA Office of Policy) provided the opening presentation. He emphasized that protecting public health and the environment is a collaborative effort between EPA and stakeholders and that the Agency is always looking for ways to achieve its mission in a cost effective manner. Although the Agency already conducts periodic reviews of regulations based on statutory requirements and judicial challenges, the Administration is requiring all agencies under EO 13563 to develop a plan for retrospective review of significant regulations. The Plan is due to the Office of Management and Budget (OMB) by May 18, 2011 and will include a list of regulations targeted for review.

On February 18, 2011, EPA launched a website to inform stakeholders of the process and to give them the opportunity to submit comments. EPA is particularly interested in information and data that might support the justification for rule changes. Michael Goo encouraged stakeholders to consider the following types of issues and impacts: technological changes, different approaches to adopt (e.g., place-based), and job creation. The last one is of particular interest/importance given the current state of the economy.

Mr. Goo noted that this is a national listening session but that EPA media offices and Regional offices are also holding meetings specific to their program or region.

Participants had the opportunity to ask questions about what was presented.

- Given that EPA wants detailed comments and data, why are we being given such a short timeframe for submitting comments?

- Mr. Goo noted that the timeframe is based upon meeting deadlines set by the President and OMB.
- When you come up with the initial plan, are the regulations that will be listed the ones that will be addressed first? Or, is the preliminary plan just a mechanism by which EPA can show that it's started the process?
 - Mr. Goo noted that the priority of regulations to be addressed has not yet been established. The time frame and priority will be established after comments have been received.
- Can you confirm that OMB has given guidance that this review does not have to be limited to only large regulations and can include Information Collection Requests and other types of rules and documents?
 - EPA responded that Executive Order (EO) 13563 clearly focuses on existing significant regulations with significant being defined by EO 12866. However, OMB has noted that agencies are not precluded from including other types of rules and documents, as appropriate.
- Could you explain the condensed process for this review?
 - The time for this review was provided by EO 13563 which requires agencies to submit a plan to OMB within 120 days from the day the EO was issued. OMB subsequently requested that draft plans be submitted by April 29. Our timeline is based upon meeting these deadlines.

After hearing the public's concerns about the tight time frame for responding with comments, Mr. Goo extended the deadline for submitting comments to **April 4, 2011**.

Tracey Westfield (EPA) provided a demonstration of the Web site (<http://www.epa.gov/improvingregulations>) that had been established for posting information about and gathering information on EO 13563 for EPA's regulations. It contains 14 different dockets categorized by media office and issue/impact areas. There is also a fifteenth docket for general comments. Those commenters that cannot easily apply their comments to one issue/impact or media office can use the general docket to submit their comments. The public may also use the following email address to submit comments: ImprovingRegulations.SuggestionBox@epa.gov.

- Could you give some guidance on how to submit comments that are relevant to multiple dockets?
 - Ms. Westfield recommended just submitting the comment to the most relevant docket, or into the general docket if there was not another docket that seemed more appropriate. Comments will be reviewed by EPA staff and distributed to the appropriate experts within EPA even if comments do not appear in every docket to which they may apply.

Comments Received During Focused Comment Period

Before addressing the pre-identified questions that were posted in the Federal Register Notice, participants posed the following additional questions to EPA regarding the schedule for developing the Plan:

- **James Cooper**, National Petrochemical & Refiners Association – Is the May 18th deadline for a draft plan or final plan? In a multi-stakeholder process such as this, EPA gathers a lot of information very quickly. It could be beneficial to form a task-oriented multi-stakeholder group to help define this process over a longer period of time.
 - **EPA Response:** The draft preliminary plan will be produced by end of April and the final preliminary document will be submitted on May 18th.
- **Tyrone Wilson**, Portland Cement Association – Will the draft plan be open for public comment before finalization?
 - **EPA Response:** EPA is considering opening the draft plan for public comment.
- **Howard Feldman**, American Petroleum Institute – Should we be commenting on the existing review process and the development of future review processes?
 - **EPA Response:** Yes.

During the remainder of the focused comment period, the facilitator asked participants the questions posted in the Federal Register Notice intended to help provide direction to EPA in its development of the Plan. Below are the questions and participant responses.

1) How should we identify candidate regulations for periodic retrospective review?

- **Andrea Field**, Hunton & Williams LLP– Where there is a consensus that a regulation needs to be changed, it should be done quickly (e.g., less than 5 years).
- **Susan Ferenc**, Chemical Producers & Distributors Association – How are you defining what is a significant regulation? How are you handling the existing regulatory review process cycle?
 - **EPA Response:** The EO and OMB guidance originally defined “significant regulations” as those regulations that had been reviewed by OMB. EPA felt that this definition was too strict and has opened up the review to all regulations.
 - **EPA Response:** The review cycle varies by statute and EO. EPA is still working out how existing review cycles should be considered with

retrospective review required under the EO. We would like advice on this matter.

2) What criteria should we use to prioritize regulations for review?

- **Julie Becker**, Alliance of Automobile Manufactures – Regulations and rules that are coming out soon should be given priority (e.g. Labeling Rule for vehicle fuel economy and greenhouse gas emissions). EPA and National Highway Traffic Safety Administration coordinate fairly well on their labeling regulations, but the California Air Resources Board and Federal Trade Commission are not as well coordinated. We should get things right from the beginning, rather than have to go back and make changes once regulations are already in effect.
- **Daren Coppock**, Agricultural Retailers Association – Priority should be given to those regulations that are duplicated among EPA branches or between EPA and other federal agencies. Also, if there has been significant changes in the technology or the underlying science on which a rule or regulation has been based, the regulation should be subject to review.
- **Nick Goldstein**, American Road & Transportation Builders Association – At what point will there be coordination between the various agencies that are reviewing their regulations? Priority should be given to those regulations that conflict with other regulations from other agencies.
- **Cordell Burton**, Pella Corporation – Recently issued regulations present great opportunities to review their expected versus actual impacts.
- **Keith Onsdorff**, Liquid Fence – Under the pesticides regime, there is no preemption of state regulations. There is a need for statutory reform in this case because the current landscape of state regulations is a patchwork and causes great inconsistencies in labeling requirements. Congressional intervention is needed to reduce the burden on industry.
- **David Baron**, Earthjustice – EPA should consider a series of steps for addressing those regulations that are required by statute to be reviewed. EPA is already behind schedule on these reviews. A second area for consideration should be those regulations that do the most to protect human health. EPA is already behind schedule on these reviews.
- **James Cooper**, National Petrochemical & Refiners Association – It is important for EPA to understand the cumulative effect of reporting rules that require reporting to multiple agencies. The information is often very similar.
- **Julie Becker**, Alliance of Automobile Manufacturers – Regulations that are impacted by significant scientific changes or depend on consumer uptake to adopt new behaviors or understand new information should be a priority.

- **Jennifer Cleary**, Association of Home Appliance Manufactures – The Agency should more closely scrutinize the costs and benefits of regulations. Regulations that have a low benefit-to-cost ratio should be identified and given priority for review.
- **Greg Weatherman**, Aerosolver – Regulations that get caught up in litigation on a regular basis should be prioritized, because this is a good indication of where problems exist and clarity is needed.

3) How should our review plan be integrated with our existing requirements to conduct retrospective reviews?

- **Julie Becker**, Alliance of Automobile Manufacturers – Reviews should be timed so that the Agency can fully assess the statutory benchmarks that the regulation was meant to bring about. Alternatively, the Agency should set statutory timeframes to guide their reviews—for example, Clean Air Act (CAA) 5-year reviews and National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS), and Maximum Achievable Control Technology (MACT) standards.
- **Jonathan Gledhill**, Policy Navigation Group – EPA should look prospectively at reviews anticipated over the next decade and build other reviews into those timetables. It should use OMB to help coordinate review of related regulations between agencies.
- **David Baron**, Earthjustice – We would be very concerned if existing review processes were to be slowed down by this broader retrospective review process. EPA is already behind on some of the existing reviews that are required by statute.

4) How should we solicit input from the public on the plan?

- **Susan Ferenc**, Chemical Producers & Distributors Association – If you are going to be conducting a rule-by-rule review, open the docket as soon as EPA receives a date for review and not just 30 days before.
- **Christopher Dana**, Pella Corp – Please be more realistic with the timeframe for public involvement, particularly in listening sessions, that require business owners to step away from the day-to-day operations of their companies.
- **Cordell Burton**, Pella Corp – The utilization of social media (e.g., Facebook or Twitter) would greatly help small business owners to comment and stay involved in the public input process. Many small business owners cannot take a day off work to come to a meeting like this.
- **David Baron**, Earthjustice – Another EO (EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations, 1994) is relevant to public outreach. EPA needs to make a special effort to get meaningful input from those communities that are directly impacted by these rules and regulations but are generally left out of the review process.

5) What should be the timing of any given regulatory review (e.g., should a regulation be in effect for a certain amount of time before it is reviewed)?

- **Howard Feldman**, American Petroleum Institute – In terms of timing, reviews should be conducted initially and should be done in all cases. A trigger for the review process could be looking at projected outcomes vs. achievements.
- **David Baron**, Earthjustice – For the CAA standards, a review is required every 5 years. EPA has often asserted that the 5-year window is not enough time to collect adequate data for a meaningful review.
- **James Cooper**, National Petrochemical & Refiners Association – A lot of reviews are required by statute. A cookie-cutter approach is probably not the best option. Regulations could be categorized and then addressed in more specific terms. The trigger for review could be milestones, thresholds, or specific timeframes
- **Susan Ferenc**, Chemical Producers & Distributors Association – Information Collection Requests (ICRs) under the Paperwork Reduction Act contain an evaluation of the costs and benefits of regulations, including a timeframe for which of the costs/benefits are to be realized. This would seem to be a natural trigger and timeframe for reviewing those regulations.
- **Christopher Dana**, Pella Corporation – Regulations impacting workplace standards should be reviewed within two years of going into effect and the results should be ground-truthed against the actual burden within that timeframe.

Comments Received During Open Comment Period

During this portion of the comment period, the facilitator opened up the discussion to additional comments and questions not addressed above.

- **James Cooper**, National Petrochemical & Refiners Association – Commends EPA for holding this type of meeting. EPA should hold similar public meetings for every rule under development and review. He provided the following comments:
 - Rules should be reviewed every 3-5 years and efforts should be coordinated within and among agencies.

- Consider conducting reviews when new and valid science has been established.
- Reviews and adjustments of regulations should consider the impact on stakeholders.
- Reporting rules should be reviewed more often because of their cumulative impact on businesses.
- Timing for reviews should vary.
- EPA should not attempt to influence the market place through their regulations.
- **Nick Goldstein**, American Road & Transportation Builders Association –
 - All federal agencies should coordinate with each other during their regulatory review process.
 - The most recent data should be utilized during the review process.
 - When tackling larger issues, EPA should solicit as much public involvement as possible.
 - With permitting issues, EPA should set deadlines where they can to give affected businesses a timeline.
 - EPA should consider the costs and impact of a regulatory scheme, particularly when determining the human health impacts of materials.
- **Howard Feldman**, American Petroleum Institute – EPA should be sure to utilize a cost estimate. EPA also needs to be careful to not double count costs or benefits. EPA should also avoid using guidance in lieu of regulation, as regulation requires more extensive public involvement.
- **David Baron**, Earthjustice – EPA's top priority should be to meet legally defined responsibilities and to address those reviews that are overdue. There is a long backlog of reviews that are required by statute. Many of these statutes are important in protecting human health.
- **Jeff Hannapel**, Policy Group – Developing a rule is a time consuming and expensive process. The Agency's budget is getting slashed and it is important that EPA ensure that it is taking on a manageable workload. The Agency should also be careful in setting up retrospective reviews not to create more process and bureaucracy that costs more and produces less.
- **Tyrone Wilson**, Portland Cement Association – EPA should consider opening the draft plan for public comment.
 - The number of dockets open for public response is a little overwhelming and confusing.
 - EPA's principal focus should initially be on the development of its preliminary plan for conducting a pragmatic retrospective review of its

existing regulations and not simply an effort to compile a list of regulations to review.

- EPA's criteria for prioritizing regulations for review should include final rules adopted with less than a 60-day public comment period.
- EPA should make public the scientific research and other copyrighted materials on which it relies for the rulemaking process. These documents should be added in a timely manner.
- The combined and cumulative effects of regulations should be considered.

Overview of Breakout Sessions

Following the morning plenary discussion, which was primarily focused on the development of the Plan for Retrospective Regulatory Review, participants moved to breakout sessions in the afternoon. The goal of these sessions was to provide participants with the opportunity to identify specific regulations and Agency actions that they felt should be candidates for review. The sessions were structured primarily along programmatic lines – Air, Water (Surface Water and Drinking Water), Solid Waste, Toxics, and Pesticides. There was an additional “General” breakout session offered to capture broader comments that participants may have had that were not media or program specific. Common themes from these breakout sessions are included below. Full summaries are included in subsequent sections of this document.

Observations from Breakout Sessions

Although suggestions about specific regulations differed from session to session due to the programmatic focus, there were some overarching observations about the sessions that may be important for the Agency to consider as part of its efforts to develop its plan or to identify candidate regulations. These observations include:

- **Heavy participation by businesses, industry groups, and their affiliates –** Although environmental groups also participated in the meeting, most sessions were dominated by industry representatives. For example, of the total 58 participants, only about 5 represented environmental interests.
- **Most comments focused on regulatory burden and costs and benefits of regulations –** There was very little focus across the sessions on impacts to vulnerable communities and burden on state/local/tribal governments. This could be a result of the predominance of industry representatives.
- **There is a cumulative burden to reporting and regulatory compliance –** Participants across sessions expressed concern about the cumulative burden that multiple reporting requirements have on industry, especially small businesses. The need to respond to multiple requirements often falls on one individual or one part of

the organization and can result in significant burden when reporting deadlines are not spread out. For example, some participants noted the need to provide similar information to comply with Toxics Release Inventory Form R requirements, the Greenhouse Gas Inventory, and the Refinery Information Collection.

- **There appear to be diminishing returns from regulatory actions or reporting requirements** – Many participants felt that EPA should keep in mind the law of diminishing returns and should focus their regulatory efforts where the most environmental benefits can be gained. For example, participants cited examples of reporting requirements related to greenhouse gases on small appliances that do not have any emissions and tightening regulation on dust releases below the level that occurs naturally in some parts of the country.
- **There seems to be information that is being collected that has little or no utility** – Participants expressed concern about the utility of some information being collected by EPA. Given the burden to industry to supply the information, the Agency should ensure that it needs and will use what it is requesting and is not already getting the same or similar information through other mechanisms. For example, the Inventory Update Rule (IUR) has made data publically available at a cost to industry, but there is a perception that this has not been used for regulatory or risk management.

Compilation of Suggested Candidate Regulations or Actions for Review

Below is a consolidated list of regulations or agency actions that participants suggested should be candidates for review. Context for these suggestions is included in the full breakout session summaries that follow.

Air

- Clean Air Act (Subpart 812, National Ambient Air Quality Standards, Maximum Available Control Technology, Particulate Matter Reductions)
- Greenhouse Gas Reporting Rule (Subparts QQ and MM)
- Light Duty Vehicle – LEV 3 Tier 3 Emissions Standards
- Regional Haze Program
- Transportation Conformity Determinations

Pesticides

- Federal Insecticide, Fungicide and Rodenticide Act (40 CFR 152.10, 152.15, and 25(b))

Solid Waste

- Resource Conservation and Recovery Act (Subtitles C & D, Universal Waste Regulations, Definition of Solid Waste, Hazardous Waste Determinations, Unexploded Ordinance Requirements)
- Toxic Substances Control Act (TSCA) Inventory Update Rule
- Non-hazardous Secondary Material Rule

Toxics

- TSCA sections on Export Notification
- TSCA Section 402 – Lead Renovation, Repair, and Painting (RRP) rules
- Inventory Update Reporting (IUR) rules

Water

- Clean Water Act (Fill Rule, Section 404, Section 208, Blending)
- FIFRA and NPDES overlap
- Phosphate Standards for Florida
- Safe Drinking Water Act (Maximum Contaminant Level)
- Underground Injection Control
- Consumer Confidence Report

List of Participants

Last Name	First Name	Affiliation	Breakout Sessions													
			Air		General		Toxics		Pesticid		Waste		Water			
			R-1	R-2	R-1	R-2	R-1	R-2	R-1	R-2	R-1	R-2	R-1	R-2		
Abrams	Fern	IPC-Association Connecting Electronics Industries						X							X	
Aspatore	Amanda	National Mining Association													X	X
Baron	David	Earthjustice														
Becker	Julie	Alliance of Automobile Manufacturers	X													
Bradley	Patrick	LimnoTech														X
Burton	Cordell	Pella Corporation						X	X							
Castorina	Stephanie	IPC-Association Connecting Electronics Industries						X							X	
Cleary	Jennifer	Association of Home Appliance Manufacturers	X													
Cooper	James	National Petrochemical & Refiners Association				X	X									
Coppock	Daren	Agricultural Retailers Association		X						X						
Creger	Tim	Nebraska Department of Agriculture, Association of American Pesticide Control Officials								X						
Dana	Christopher	Pella Corporation						X								
Detwiler	Stacey	American Rivers														X
Einik	Daniella	Jones Day	X													
Enssle	Colin	General Electric														X
Feldman	Howard	American Petroleum Institute	X						X							
Ferenc	Susan	Chemical Producers & Distributors Association								X						
Field	Andrea	Hunton & Williams LLP on Behalf of the Utility Air Regulatory Group	X													
Finley	Cynthia	National Association of Clean Water Agencies														X
Fortune	William	U.S. Department of Energy														
Friedman	David	National Petrochemical & Refiners Association	X				X									
Gilson	Susan	National Association of Flood & Stormwater Management Agencies (NAFSMA)														X
Gledhill	Jonathan	Policy Navigation Group	X											X		
Goldstein	Nick	American Road & Transportation Builders Association		X												X
Graves	Beth	Environmental Council of the States (ECOS)		X												X
Hannapel	Jeff	The Policy Group														
Heady	Daniel	D.C. Legislative and Regulatory Services														X
Kardos	Dale	Dale Kardos & Associates, Inc.	X													X
Kubsh	Joseph	Manufacturers of Emission Controls Association	X													
Lamartin	Andrea	URS Corporation														X
Lane	Cynthia	American Water Works Association (AWWA)														
Lieske	Sean	City of Aurora Water														
Litynski	John	U. S. Department of the Environment														X
Lovell	Aaron	Inside EPA		X				X								
Ludwizewski	Raymond	Gibson Dunn & Cruthcher												X	X	
Menchey	Keith	National Cotton Council of America														
Miller	Whitney	American Veterinary Medical Association														
Moss	Daniel	Society of Chemical Manufacturers and Affiliates														
Murad	Dale	U. S. Coast Guard														
Newton	Dan	Society of Chemical Manufacturers and Affiliates (SOCMA)		X				X								
Onsdorff	Keith	Liquid Fence								X						
Patnaik	Bivan	U.S. Department of Transportation/FMCSA														
Pearl	Larry	Agra Informa							X	X						
Riggs	Russell	National Association of Realtors														
Roberson	Alan	American Water Works Association														X
Rooth	Kate	Alliance for Appalachia														X
Rosenfeld	Kate	D.C. Legislative and Regulatory Services							X	X						
Seeger	Arline	National Lime Association	X													
Smith	Burleson	Policy Navigation Group			X					X						
Stephenson	Mike	Wal-Mart Stores, Inc.													X	
Traceski	Thomas	U.S. Department of Energy	X													
Van Voorhees	Bob	Bryan Cave	X													
Via	Steve	American Water Works Association														X
Wagger	David	Institute of Scrap Recycling Industries							X						X	
Ware	Patricia	BNA/Daily Environment Report														
Watkins	Matthew	National Association of Home Builders					X		X							X
Weatherman	Greg	The Solver Group						X	X	X						
Wenk	Michael	m4 Consulting LLC								X						
Wilson	Tyrone	Portland Cement Association														
Total Number of Participants by Session			12	6	n/a	3	9	6	9	n/a	2	6	12	5		

Air Breakout Summary – Round 1

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Public Comments Regarding Specific Regulations and Agency Actions

Julie Becker, Alliance of Automobile Manufacturers

- There is a redundancy between National Highway Traffic Safety Administration (NHTSA) and EPA in fuel economy and greenhouse gas emissions compliance and certification processes. These processes should be harmonized across agencies so as not to result in duplicate or conflicting data.
- There are redundancies in the Greenhouse Gas (GHG) Labeling Rules. There are labeling requirements put forth by the California Air Resource Board (CARB), Federal Trade Commission (FTC), NHTSA, and EPA. Each organization requires its own label. We would want a single national label if possible.
- Future Regulation of Criteria Pollutants – Low Emission Vehicle (LEV) 3 Tier 3, Light Duty Vehicles
 - CARB is developing new LEV standards for Light Duty Trucks that will emissions essentially to ZERO, so that average emissions from these vehicles will be less than the cleanest vehicle today.
 - There are non-essential and duplicative compliance and certification requirements for auto emissions. Automakers report 400 different parameters in two different databases. Different requirements are a waste of resources.

Jennifer Cleary, Association of Home Appliance Manufacturers

- Under the GHG Reporting Rule, Subpart QQ, there is a reporting requirement for equipment that contain fluorine refrigerants. These pieces of equipment are pre-charged when they are imported or exported. They do not emit any GHGs, but manufacturers are still required to report under Subpart QQ. This is a costly reporting burden for industry, especially small businesses, without any environmental benefit. There should be a de minimis level below which less onerous data collection and reporting are permitted.

David Friedman, National Petrochemical & Refiners Association

- The NAAQS regulatory review time frame in the Clean Air Act Amendments is five years. This is hard to meet already. There should be a moratorium on new or revised NAAQS until the full benefits of compliance with current standards are

- realized. What happens if this new process is in conflict with that required 5-year review cycle?
- For refineries, it is energy intensive to make fuel cleaner and no credit is given to refineries for the reductions that result from these cleaner fuels. In fact, they are penalized at the refinery level because their GHG emissions increase as a result of the additional energy it takes to make the fuel cleaner.
 - Conflicting Regulations:
 - Ethanol has a negative impact on ozone, although it helps us achieve energy independence.
 - If there is a lowering of standards NAAQS, then there is a significant energy expenditure – lots of money and energy is spent to make more reformulated fuels (pull out sulfur), and a refinery's carbon footprint will increase (increase GHGs).
 - The Office of Policy and Program Evaluation (OPPE) was a former office within EPA. It served a good purpose. We would like the EPA to reinstate that office to serve as an internal “watch dog” to provide more insight and oversight when writing new regulations.

Howard Feldman, American Petroleum Institute

- Regulatory impacts are not fully calculated. Specifically, the economic impacts on stationary sources for recent GHG regulations were never calculated as part of the regulatory development process. This should be addressed during a review process sooner rather than later.
- Guidance and ICRs are not going through the regulatory review process. This is problematic because an ICR on refinery data that was estimated at \$30 million is actually costing close to \$70 million to comply. There is no apparent benefit to the data and no one appears to be reviewing it.
- There appears to be double counting under Section 812 of the Clean Air Act that requires benefit-cost analysis. Specifically, the Agency is double counting benefits from Particulate Matter reductions (in the form of lives saved) from direct PM emissions reductions and from reductions under other rules (e.g., ground-level ozone standards) that also result in PM reductions (from precursors). It would be best to separate the sets of populations that benefit from each of these regulations and have a goal of meeting PM standards across all regulations. There is no indication that EPA is counting these benefits in an incremental fashion. This sort of double counting also happens when EPA estimates reductions in criteria pollutants from both stationary and mobile sources. There is an overall lack of clarity.

- **Andrea Field**, Hunton and Williams LLP – Another example is that reducing SO₂ reduces sulfates, and it is unclear if these particulate reductions are being counted under the PM regulation as well as part of the SO₂ regulations.
- NAAQS Process needs to be reviewed. There is a great deal of effort spent on reviewing NAAQS standards every five years. There is now marginal benefit to further tightening of the standard, because the Agency initially picked low hanging fruit. Unless the Agency sees compelling new science that indicates that the additional 5-10% in reductions that can be achieved is feasible, it should spend its resources trying to achieve the existing standards and work on attainment plans. It should specifically look at the review process and determine if benefits are possible as well as the environmental engineering/equipment aspects to determine what reductions are feasible before undergoing a review.
- The regulatory impact analysis does not include all costs. For ozone, the analysis left out areas of California that were in attainment from the analysis, so the Agency did not catch all the costs in these areas. This would dramatically change cost estimates.

Andrea Field, Hunton and Williams LLP

- Information Collection Request Process
 - The utility industry is in the midst of responding to an information collection request for the Utility MACT standards. The deadline is too short to complete the data collection. There is not enough time to figure out what is being asked and to analyze the data being requested. The estimated cost to respond to the ICR was estimated at \$70 million, but closer to \$100 million has been spent.
 - The ICR process overall is broken. People that do not have the technical expertise drive the process. Agencies should put all the people that are involved in an ICR together in one room to bring all of their relevant expertise to bear.
- Congress generated a request for a snapshot of GHG emissions from large sources over a three-year period. The three years have expired and this data collection should not continue. Other programs are collecting these data.
 - **Howard Feldman** – The data should help inform the regulatory process but the regulatory process charges ahead before getting the data.
 - **David Friedman** – This data is for policy makers and not to trade carbon. The EIA (from DOE) is already collecting this information on petroleum products under Subpart MM. My suggestion is to look cross agencies for the same information.

- Before consent decrees are put into motion, all interested parties should be brought together rather than allowing them to comment after the agreement is reached. This would reduce unrealistic schedules or the need to rush through a regulation without sufficient data. Examples where this has occurred include: Industrial Boiler MACT, ozone ambient air quality standards, and GHG New Source Performance Standards (NSPS).
- There appears to be a movement to use modeling data instead of monitoring data in the regulatory process. If there needs to be a reliance on models, then there needs to be a better process to improve the inputs into those models. An example is the CALPUFF model. This model was not created by EPA but by a consultant, and the Agency has stopped incorporating the improvements made to the model as the improvements are developed. After meeting with Agency's modelers, they have said that they have no resources to include the improvements and a rulemaking to include these changes would take 3-5 years. The Agency needs the best models for rulemaking. This would be a great opportunity to create public-private partnerships to move the process along more quickly and to stay current with the technology.
- The Agency needs to do a better job quantifying the benefits and risks of regulations, especially in regard to the EPA nitrogen dioxide and sulfur dioxide ambient air quality standards. Currently, the Agency looks at risk to public health if the air quality degrades, not if it stays the same based on the current standards. Then, they look at the potential risk to public health under the new proposed standards, which creates an artificial comparison. The Agency should look at the difference between the current and the proposed standards.

Joe Kubsh, Manufactures of Emission Controls Association

- Ensure that available technologies match the regulations on “the books”. I have been talking to Office of Transportation about aftermarket catalytic converters, and the 25 year old policy and technology is long surpassed. There are new technologies available providing additional benefits, and there should be a new policy that mirrors the policy in California. This is low on EPA's list of priorities. Right now there are two different levels of performance and the public always chooses the cheaper options (the reconditioned converter) to pass emissions. Changing this policy to recognize the benefits of the new catalytic converter technology would result in benefits for the environment and the consumer.

Arline Seeger, National Lime Association

- There is a lot of data being submitted under the GHG Reporting Rule that raises concerns about confidential business information. Competitors can look to see

product formulations and use this information to unfairly adjust their own prices. The EPA should accept the information but not make it available to the public until they understand ramifications, which may be very bad. The Federal Trade Commission recognizes this problem.

- In the Preamble to the Hourly NO₂ and SO₂ NAAQS Final Standards, there is some confusing language that appears to compel states to modeling data to determine exceedences. Later guidance did not appear to make this same requirement, but it was not widely communicated. Please offer clarification to the preamble statements and related guidance.
- Under the Regional Haze Program, there is an incremental assessment of affordability and Best Available Retrofit Technology (BART) based on the distance of facilities from National Parks. We are not finished with the first phase of data collection and assessment, but we are already moving on with the second phase. The first reviews took place and found an insufficient reduction to submit to EPA. The next wave of information is being collected under a 114 Letter. This letter implies there is “foot-dragging,” and it is a heavy-handed approach to get the new data. The Agency should look at what was collected initially and then use this data to inform decisions moving forward.

Highlight of Comments by Impact and Issue Areas

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting. These points are not re-attributed to the person who provided them. Any new comments or statements that may have been provided during the specific review of these impact and issue areas in the breakout are provided below along with attribution.

Regulatory Burden and Small Business

- GHG reporting requirements for small businesses who manufacture, import or export small appliances that have fully contained fluorinated refrigerants are overly burdened by the requirement that has no environmental benefit.
- **Jonathon Gledhill** – Small businesses and local utilities are being discouraged from using backup generators that are vital in emergencies, because too much use can violate permit requirements.
- **David Friedman** – In regard to the Refinery ICR, small refineries usually have one person that does all their reporting. This ICR requirement is particularly burdensome for these small facilities, especially because of the tight deadline. There is just no time to do it with available resources.

Benefits and Costs

- Reductions of particulate matter from different regulatory requirements where benefits such as lives saved may be double counted and thus EPA may be overestimating the benefits of particular regulations.
- Some ozone regulations had been developed without full cost information.
- Some of the incremental benefits gained from tightening ambient air quality standards may not be justified by the cost to achieve reductions.
- **Jonathon Gledhill**, Policy Navigation Group – Ozone NAAQs should stop after a certain point. Some parts of country can't comply with the ozone NAAQs (Blue Ridge Mountains, southern areas). As a result of this situation, cost estimates are incomplete, because there are no affordable ideas to include. The Agency talks about the benefits of the standard without a full accounting of the cost (e.g. California data missing in one example).
 - **Howard Feldman** – Reminded the group about the example where the California data was missing from the cost estimate.

Science Obsolete/Technology Outdated

- If the Agency is going to rely more heavily on modeling to inform regulatory processes, it must invest in the most up-to-date models. It also needs to be clear when models need to be used versus monitoring data.
- Catalytic converter technology has changed since the standards were developed on sale of these units 25 years ago. These standards need to be revisited.

State, Local, and Tribal Governments

- **Andrea Field** – States have motivation to meet the sulfur dioxide ambient standard, but the short turn around in the regulatory review cycle causes them to reassess frequently. EPA should have discussions with states before changing standards.
- **Howard Feldman** – States complain about NSPS and GHG requirements, and they need resources to meet these mandates.

Least Burden/Flexible Approaches

- **Howard Feldman** – Previously asked EPA to allow petroleum facilities to use infrared technology to spot leaking valves. The current requirement is to use “sniffers,” which are labor intensive. Infrared technology would provide nearly the same result at much less cost.
- **Julie Becker** – Under the Vehicle GHG rule, the approval process for off-cycle credits is a cumbersome and it would be nice to have a more streamlined process.

- **Howard Feldman** – Under the NSPS for GHGs, while there are flexibilities, the proposed date becomes the effective date for the rule (required under Clean Air Act) for utilities in July and refineries in December. This process of making the applicability date the date of proposal discourages efficiency and improvement. Please take advantage of the Advanced Notice of Proposed Rulemaking approach that gives people more notice about compliance time frames.
- **Howard Feldman**
 - The Preconstruction Permitting under the Clean Air Act is cumbersome. It takes years to get a permit, and the review process goes through several courts. Financing is unattainable until the permitting process and review process are completed. Furthermore, the appeals process is no less than a year and mostly more than a year.
 - Many rules are developed in an unreasonable time frame because EPA misses deadlines and a ruling is issued with a time frame. Industry tried to work with EPA to extend the Boiler NAAQS rulemaking and EPA did not present the facts on resources spent on the rule. EPA should specify the resources (more than just FTE, typically the same group of people responding to multiple rulemakings/reviews) devoted to meeting the deadline obligations so that the public can comment on these resources.
- **Joe Kubsh** – Before developing the geologic sequestration rule, a technical workshop was held beforehand and invitations were sent to all stakeholders. Then there were several rulemaking workshops to solicit ideas, bringing stakeholders into the process. This was an effective way to proceed and these steps ultimately led to the rule not being challenged.

Integration & Innovation

- EPA should be looking across agencies and other EPA programs to eliminate redundancies in areas such as fuel efficiency labeling and GHG emissions standards.
- Better integration is needed to eliminate conflicting standards that require cleaner fuels to reduce GHG emissions and penalties due to increases in GHG emissions at facilities that are working to make these fuels cleaner because of the increased energy that is required to implement these new cleaning processes.
- **Joe Kubsh** – EPA should look across the UIC program and the Air program's GHG reporting requirements at the requirements related to injection of CO₂. It should consider looking at a flexible approach that may just defer reporting of CO₂ injections to the programs at the state or regional levels that manage these programs to avoid duplication.

- **Jonathan Gledhill**, Policy Navigation Group – EPA does a good job with subpart 812 retrospective analyses and could use that as a road map. Lessons can be learned from the review process. Are we optimizing across media?

List of Attendees

Julie Becker, Alliance of Automobile Manufacturers, represent 12 manufactures
Jennifer Cleary, Association of Home Appliance Manufacturers
Howard Feldman, American Petroleum Institute
Andrea Field, Hunton & Williams LL (On behalf of the Utility Air Regulatory Group)
David Friedman, National Petrochemical & Refiners Association
Dale Kardos, Dale Kardos & Associates, Inc.
Joseph Kubsh, Manufactures of Emissions Controls Association
Arling Seeger, National Lime Association
Jonathon Gledhill, Policy Navigation Group
Bob Van Voorheese, Bryan Cave
Thomas Traceski, DOE
Einik Daniella, Jones Day

EPA Participants

Lori Stewart, U.S. Environmental Protection Agency
Dennis, O'Conner, U.S. Environmental Protection Agency
Glynis Hill, U.S. Environmental Protection Agency
Jeremy Arling, U.S. Environmental Protection Agency
Stewart Miles, U.S. Environmental Protection Agency
Alex Cristofaro, U.S. Environmental Protection Agency
Eric Ginsberg, U.S. Environmental Protection Agency

Air Breakout Summary – Round 2

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Public Statements Regarding Specific Regulations and Agency Actions

Daren Coppock, Agricultural Retailers Association

- There is no way that certain areas of the country can attain zero dust emissions, especially in the West. EPA is proposing to lower dust standards to an unachievable level. If this is evaluated on cost/benefit approach, then the cost would approach an infinite value. What is the EPA's science behind its

recommendation? What is the EPA's approach? When are the economic impacts considered? I recommend setting a standard with consideration of how achievable the standard is and the cost as the standard is developed.

- **EPA Response** – Cost is typically evaluated when assessing implementation and not when a standard is being developed. The standard would go through a public comment period in the proposed rule phase. NAAQS standards are also peer reviewed and there are multiple opportunities for public review and comment during multiple stages of the standard development process.

Nick Goldstein, American Road & Transportation Builders Association

- Transportation Conformity Determination:
 - This is not an exact science. The Air Quality Multi-Pollutant (AQMP) process uses the most current data, not future data generated through a model. Model data is not current or realistic because they are prediction based. These processes should use the most current and most accurate information.
 - Emissions Budget should have a built-in flexibility of 10-15% because a county may experience a temporary increase in emissions based on a number of different events for a momentary period of time.
 - Hot Spot conformity should be repealed. There may be temporary construction taking place that may actually contribute to an overall reduction in emissions (e.g., new public transportation or infrastructure that eases congestion). Stress the predictability of future standards (e.g. ozone standard).
- The NAAQS standard setting process changes too frequently. It is difficult for local communities to make changes to meet NAAQS standards before the standards are up for review. Local governments need predictability in order to achieve the standards. EPA should consider progress being made toward a particular standard before they consider changing it.
- The State Implementation Program process under the Clean Air Act is broken. There are lots of discussions about the unyielding process and about how it may not be accomplishing its goals. The Agency should look for alternatives such as the ones being proposed by siptransformation.org.
- It seems like standards are set in a vacuum. The Agency should consider other regulations that may be taking effect when they consider modifying or changing related regulations. Data from those other efforts will show reductions in emissions when they come on line. The Agency should look broadly across its programs to evaluate emissions reductions.

Beth Graves, Environmental Council of States

- When a new rule is promulgated, EPA should concurrently issue implementation plan guidance to states and local governments instead of states and local governments trying to guess about implementation.
- EPA should develop a web-based tool similar to the Regulation Gateway that shows existing rules that are going through this review or retrospective analysis process.

Burleson Smith, PNG

- Under the Clean Air Act statutory 5-year review cycle deadline, EPA should incorporate the results that were achieved during that period into the next review process to determine if changes are needed. The Agency should also consider aligning the review timeframe with the CAA reauthorization process.
- Will EPA have a Master Calendar across the Agency to identify those regulations under review?

Highlight of Comments by Impact and Issue Areas

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting. These points are not re-attributed to the person who provided them. Any new comments or statements that may have been provided during the specific review of these impact and issue areas in the breakout are provided below along with attribution.

State/Local/Tribal Governments

- State, local and tribal governments would benefit from having implementation plans when regulations are issued.
- Local governments in particular have longer planning timelines and this needs to be factored in when looking at results of regulations.

Regulatory Burden and Small Business

- **Nick Goldstein** – See trickle-down effect when things are not working (cost impact, dust, fuel emissions standards). Small businesses are impacted significantly by nonattainment designations.
- **Daren Coppock** – Proposed GHG (standard set for carbon emissions) may raise price of fertilizer and price of fuel (not far enough down the track yet to know), which could significantly impact small businesses.

Benefits and Costs

- **Daren Coppock** – Costs are limited to state and local governments and manufactures. They should be evaluated across the spectrum of impacted parties.

Compliance

- Compliance is difficult if the background value is above the threshold (e.g., for dust).
- A temporary increase in emissions (i.e. during a construction phase) may lead to lower emissions in the future and overall, although it impacts a local government's compliance in the near term.

Science Obsolete/Technology Outdated

- Ensure that the Agency is using the most appropriate data in its processes, including the best modeling data or, if more appropriate, monitoring data.
- **Daren Coppock** – The Agency should consider whether there is a market that can supply or purchase the technology that would be recommended as part of a standard. What complies may not be there on the market yet, or it may be prohibitively expensive, especially for small businesses.
- **Nick Goldstein** – How well is our air quality monitoring doing at giving us an accurate picture of air quality? How often is it pulled and what geographic area does it apply to? Is it giving you representative information?
 - Explain the process to the public more clearly as far as the information EPA uses to make choices. Public wants to comply but just don't understand – look across the whole regulatory review!
 - Show people where the monitors are and where the data is coming from, communicate the assumptions, and account for flexibility if pulling from a small data set.
 - Factor how to extrapolate air quality based on limited data sets into decisions on NAAQS implementation and base flexibility on the levels of certainty or uncertainty.

Least Burden/Flexible Approaches

- There should be more flexibility in the emissions budgets for local governments related to transportation conformity determinations.

Economic Conditions/Market

- **Daren Coppock** – The best role for the government to play is to keep a fair and level playing field not to encourage markets or pick winners. The Agency should do more to encourage the private sector to innovate. EPA should set the rules

and make goals more outcome-based and give industry the flexibility to meet those outcomes. The Agency should not interfere or compete with private-sector enterprises.

- **Nick Goldstein** – The Diesel Collaborative is an example of a successful venture to help the public get funds to meet regulatory objectives, but it's a non-regulatory program.

Integration & Innovation

- Look across programs and agencies to avoid duplication and redundancy and to see what other regulations may be having an impact on the emissions being targeted by a particular regulation under review (e.g., how are transportation regulations impacting NAAQS levels that could impact decisions to change the standard?).
- Create a master EPA calendar for rules, reviews, and retroactive reviews.
- **Daren Coppock** – Different states will have different emissions readings – get away from “one size fits all” and allow the states to fix the problem. Give States more flexibility to manage within their borders, but do more to share information on successes – create a repository of State strategies and achievements.

List of Attendees

Daren Coppock, Agricultural Retailers Association

Dan Newton, Society of Chemical Manufacturers and Affiliates (SOCMA)

Nick Goldstein, American Road & Transportation Builders Association

Beth Graves, ECOS

Aaron Lovell, Inside EPA

Burleson Smith, PNG

EPA Participants

Lori Stewart, U.S. Environmental Protection Agency

Dennis, O'Conner, U.S. Environmental Protection Agency

Glynis Hill, U.S. Environmental Protection Agency

Jeremy Arling, U.S. Environmental Protection Agency

Eric Ginsberg, U.S. Environmental Protection Agency

Pesticides Breakout Summary – Round 1

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Public Comments Regarding Specific Regulations and Agency Actions

Greg Weatherman, Aerosolver

- The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) failed to define the word mitigate in relation to antimicrobials, which has allowed too much latitude.
- 40 CFR 152.10 and 40 CFR 152.15 specifically exclude cleaners and deodorizers and bleach, but there is inconsistent interpretation and enforcement of these exclusions.
- MSDS requirements should be applied to antimicrobials. Professionals need the toxicology information to justify use of an antimicrobial. The toxicology information should be on the products, not just the signal word.
- Bacteria can be structurally similar. Pesticides that work by structural impact can work on an entire suite of bacteria that share a particular structure. It does not make sense that EPA should require pesticide retesting on a bacteria of the same structure just to show that it is effective. For example, how many forms of Type A influenza do you really need to test to make sure the product works?
- The treated article exemption clause is not being applied in a practical way. For example, HVAC cooling coils are coated in copper to prevent the growth of mold; however, they cannot be called antimicrobial.

Daren Coppock, Agricultural Retailers Association

- EPA should be commended for the regulations under FIFRA as scientifically rigorous, comprehensive, and generally predictable.
- One area of concern for the Agricultural Retailers Association is the proposed change to the spray drift regulations that would remove language about causing “no unreasonable adverse effect” and change the language to say “cause no harm.” Without a specific and comprehensive definition of “harm,” the proposed language change increases the potential for liability. There is a lengthy case history to define unreasonable adverse affect, but this does not exist for harm.
- There is too much duplication of effort when trying to respond to multiple regulatory programs—such as under the National Pollutant Discharge Elimination System (NPDES)—one entity has to meet multiple reporting and

- permitting requirements under FIFRA and the Clean Water Act (CWA). These programs should be coordinated. The NPDES requirement resulting from the court case is costly, burdensome, and duplicative.
- The program to distribute legal labels via the Internet that is currently being piloted leads to the label being separated from the actual container. This situation would open up additional liability if there were issues with a label being updated while a container was in storage and then used for an unapproved use. EPA should keep the labels affixed to the container and designate the affixed label as the only legal label. Updates and changes to the data on the label could then be distributed via the Internet.
 - EPA should not spend time reviewing and deliberating over regulations where the science has not changed. An example of this is that EPA is reviewing atrazine for the sixth time, and the science has not changed. These regulations should not be a priority for the Agency to review and update.
 - It is inappropriate for EPA to be regulating to create an adverse effect on a market, technologies, or jobs.
 - EPA should work with the National Marine Fisheries Service and the Fish and Wildlife service to get reasonable counterpart regulations in place.

Keith Onsdorff, Liquid Fence

- A statutory amendment to FIFRA is needed to address dilemmas in labeling. States maintain individual requirements for label content and a business must then answer to 50 different sets of requirements when labeling a single product. EPA should mandate a standard for label review.
- We support local authority to ban products if harmful to a locale, but not inconsistent standards for having the label approved. We are not advocating total preemption but consider mandating some national clearinghouse for label reviews so that we can have access to the market with a single label.
- Some states will not approve a label from another state, precluding products from the market unless they develop a new label. This hurts interstate commerce and makes national distribution of the regulated product impossible. A specific labeling requirement may be appropriate, if there is a special environmental condition or situation that is unique to a particular area, but just crossing the state line doesn't necessarily change the environment.
- We support the existing FIFRA 25(b) program. In response to a 2006 petition to evaluate mosquito and tick repellents, EPA may propose to require regulation of 25(b) products. This could unwind the entire program. The original petition had a narrow scope, and EPA is going way beyond what was requested. This reaction is

counter to the White House mandate to streamline regulations and reduce the burden.

- EPA is considering toxicity studies on 25(b) products, but the products have already been deemed non-toxic. Our products are efficacious, and we have data to support that. There is concern that there is a broader array of regulations to be imposed on 25(b) products.
- We are not aware of any enforcement cases for insect repellants where repellent claim was not true.
- In the context of providing data to show an existing need for regulation, EPA should also consider the absence of data and not increase economic burdens when there are no data to show a need.

Susan Ferenc, Chemical Producers & Distributors Association

- EPA should include significant guidance in this review process, not just significant rulemakings. Guidance can greatly impact the burden on the regulated community, yet does not receive the same level of scrutiny. EPA underestimates the costs of guidance. Guidance becomes so institutionalized that it is impossible to change, but it can drive decision-making and data collection.
- EPA should not use market manipulation as a mandate for regulation. EPA should not attempt to influence market inefficiencies through regulation.

Highlight of Comments by Impact and Issue Areas

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting.

Regulatory Burden and Small Business

- There is lack of definition about the limitations of the regulations. For example, what is meant by “mitigate” for antimicrobials and the definition of “harm” in the proposed new language for the spray drift regulations?
- An absence of data on detrimental impacts may indicate that there is no need for regulation and imposing an undue burden. Only regulate where there is a demonstrated need and a scientific basis.
- Endocrine Disruptor Screening Program is one example of a program where the Agency has underestimated the cost of the program. There is a good basis to evaluate the practical utility of the program, and the strength of the science is not there.

Compliance

- EPA should mandate a standard for label review and requirements so that there is less disparity among state labeling requirements.
- There is inconsistent interpretation and enforcement of 40 CFR 152.10 and 40 CFR 152.15.

List of Attendees

Daren Coppock, Agricultural Retailers Association

Tim Creger, Nebraska Department of Agriculture

Susan Ferenc, Chemical Producers and Distributors Association

Keith Onsdorff, Liquid Fence

Larry Pearl, Agra Informa

Kate Rosenfeld, DC Legislative & Regulatory Services

Greg Weatherman, Aerosolver

Michael Wenk, m4 Consulting

Burleson Smith, Policy Navigation Group

EPA Participants

Bill Diamond, U.S. Environmental Protection Agency

Martha Shimikin, U.S. Environmental Protection Agency

Deborah Hartman, U.S. Environmental Protection Agency

Cameo Smoot, U.S. Environmental Protection Agency

Angela Hofmann, U.S. Environmental Protection Agency

Pesticides Breakout Summary – Round 2

No participants attended the second Pesticides Breakout, so no summary is provided.

Solid Waste Breakout Summary – Round 1

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Public Comments Regarding Specific Regulations and Agency Actions

Raymond Ludwiszewski, Gibson, Dunn and Cruthcher

- The retail industry finds Resource Conservation and Recovery Act (RCRA) regulations significantly burdensome as many products in the store are viewed as hazardous wastes under RCRA. This is converse to the same product disposed of by homeowners classified as household hazardous waste exempt.
- EPA should revive consideration of RCRA regulations as they pertain to consumer products contained in consumer packaging including pharmaceuticals. This may include revising the Universal Waste Regulations. About three to four years ago, the Agency had this issue on the regulatory agenda and there was some activity; however, no changes have been made to date relieving the retail industry of making RCRA waste determinations.
- Retailers are challenged by not knowing what is in a product due to trade secrets. This makes it difficult to make hazardous waste determinations.
- The RCRA program centers around one paradigm focused on waste that legally cross-cuts into the area of products—ultimately the issue is how to determine a product versus a waste.
- Best source of data include the Retail Industry Leaders Association. EPA can also contact Ray Ludwiszewski at rludwiszewski@gibsondunn.com that can help obtain additional information.

Jonathan Gledhill, Policy Navigation Group

- In the past, EPA has thrown out consideration of comparable fuels and issues surrounding the Definition of Solid Waste (DSW) that has impacted munitions and metal recycling. Public entities such as DOD and DOE deal with challenges of munitions disposal as do private entities such as blasting ranges and the mining sector. These challenges are specific to unexploded munitions—what should be done with what is left in place? When left in place, these devices present a hazard.
- Metals contained in unexploded ordinance waste include lead, titanium, chromium and others.

- If unexploded munitions are picked up to be addressed, the entity could be considered a generator.
- Thermal oxidizing enclosed box technology currently exists and could alleviate these issues. This technology would facilitate explosion of the unexploded ordnance allowing recovery and recycling of metals such as lead, chromium, and titanium.
- Aggregation is a big hurdle that prevents efficient recycling. Solutions to these issues could make disposal more efficient while recovering valuable metals. Aggregation does not occur now because of the DSW Rule.
- EPA could develop solutions that could be win/win for EPA and other agencies without throwing issues out during the rulemaking.
- EPA can use the military to test potential solutions. We would like to see EPA consider DSW reforms and continue the flexibility the courts have given to these issues.
- The Navy and DOD's Office of the Secretary of Defense (OSD) are good sources of data. The Navy is the lead doing the majority of the work.

Highlight of Comments by Impact and Issue Areas

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting. No new comments or statements are included.

Regulatory Burden and Small Business

- EPA should revive consideration of RCRA regulations as they pertain to consumer products in consumer packaging including pharmaceuticals. Products are being characterized incorrectly as hazardous wastes under RCRA presenting significant burden to the retail industry and pharmaceuticals.

Compliance

- Potentially revise the Universal Waste Regulations clarifying and defining a product versus hazardous waste. Retailers are challenged by the difficulty in making hazardous waste determinations.

Least Burden/Flexible Approaches

- EPA should consider issues related to comparable fuels and the DSW Rule as it relates to the handling of munitions.
- Unexploded ordnance pose a hazard, but if they are picked up to be addressed, the entity could be considered a generator. Thermal oxidizing enclosed box technology currently exists and could alleviate this issue.

- Aggregation is a big hurdle that prevents efficient recycling and should be considered to increase the efficiency of disposal and allowing recovery of metals. EPA should consider DSW reforms and continue the flexibility the courts have given to these issues.

Suggested Data Sources

- Gather data from the Retail Industry Leaders Association. EPA can also contact Ray Ludwiszewski at rludwiszewski@gibsondunn.com who can help obtain additional information.
- The Navy and DOD's Office of the Secretary of Defense (OSD) are good sources of data. The Navy is the lead doing the majority of the work.

List of Attendees

Raymond Ludwiszewski, Gibson, Dunn and Cruthcher
Jonathan Gledhill, Policy Navigation Group

EPA Participants

David Nicholas, U.S. Environmental Protection Agency
Betsy Devlin, U.S. Environmental Protection Agency
Lucinda Power, U.S. Environmental Protection Agency
Kathy Lett, U.S. Environmental Protection Agency
Gerain Perry, U.S. Environmental Protection Agency
Charlotte Mooney, U.S. Environmental Protection Agency
Jim O'Leary, U.S. Environmental Protection Agency

Solid Waste Breakout Summary – Round 2

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Public Comments Regarding Specific Regulations and Agency Actions

Mike Stephenson, Wal-Mart Stores, Inc.

- The retail sector can be hampered by RCRA regulations that consider in-store products as hazardous wastes. RCRA works when applied to its original paradigm—chemical hazardous waste. Retailers struggle in the application of RCRA regulations to consumer products. The burden outweighs the benefits.
- Retailers do not have a cost-effective way to make hazardous waste determinations. Products are made across the globe and contain ingredients that

are trade secrets. MSDS sheets do not provide sufficient information to make a determination.

- EPA should create a RCRA exemption to consumer products and packaging. Homeowners can dispose of products under the household hazardous waste exemption; however, retailers struggle to deal with these same products that are considered hazardous waste under RCRA.
- Products that should be exempt include:
 - Multi-vitamins (considered hazardous waste because of selenium and chromium).
 - Aerosol cans that make up a large percentage of the waste stream because they are ignitable and uncertainty exists with reactivity. Many times, the disposal costs are more than the product itself.
 - Consumer electronics such as cell phones. EPA has exempted CRT's; however, there are ambiguous guidelines pertaining to small consumer electronics presenting significant risk to the retailer.
- EPA should expand the definition of Universal Waste. EPA previously considered this and found potential changes were appropriate. This could give the Agency a greater level of regulatory authority and limit environmental risk.
- EPA should expand the finalized Pharmaceutical Universal Waste Rule. Most retail pharmacies deal with challenges associated with this rule and could be considered large quantity generators under RCRA. Generating as few as 65 pill bottles could bring this determination to retail pharmacies.

Stephanie Castorina, IPC-Association Connecting Electronics Industries

- EPA offices should communicate more. For example, EPA's Toxic Substances Control Act (TSCA) Inventory Update Rule is being updated to be significantly more stringent; however other EPA programs conflict with this. A chemical considered a RCRA hazardous waste is considered a new chemical under OPPT's New Chemical Program. These conflicts cause confusion and cause people to ask if chemicals need to be reported.
- There is a need for EPA's Office of Policy to review regulations from different offices to avoid conflicts.

David Waggoner, Institute of Scrap Recycling Industries

- EPA should include an exclusion under RCRA for all scrap metal.
- EPA needs to reconsider the definition of "discard" under RCRA. For example, if the intent is to refurbish more or less of a product or use parts of one product in other products, this does not fit the definition of "discard". However, if waste

goes to a landfill, there is no intent to recover value, and it fits the current definition.

- Including reclamation in the definition of “discard” impedes sustainability.
- Variations in state regulations and the issues of crossing state boundaries add further difficulties and confusion. Waste is handled one way in one state and another as it crosses state boundaries.
- There are also conflicts between RCRA Subtitle C and RCRA Subtitle D. Scrap metal is exempt under Subtitle C; however, states can regulate scrap metal under Subtitle D. Also, state regulations under Subtitle C may be more stringent.
- There is conflict among EPA regulations, and it is important for EPA to review regulations to ensure consistency and avoid confusion.

Fern Abrams, IPC

- Substances currently listed as a hazardous waste under RCRA are obsolete and need to be revised. This can be seen in the bath plating processes that produce sludge byproducts that are hazardous wastes by RCRA definition.
- Sludge listed as hazardous waste from these processes tended to contain hexavalent chromium and cyanide, and when the process is changed so that the electroplating sludge no longer contain those toxics, they remain listed and must be managed as hazardous waste.
- Listings that are retained even when processes change is a disincentive for companies from getting toxics out of listed wastes. Ultimately, the delisting process has a reputation for being difficult, which is why the electroplaters have not gone that route.
- Reviewing the list of hazardous wastes and updating information can provide benefits without loss of environmental protection.

Amanda Aspatore, National Mining Association

- There are concerns that cost/benefit analyses do not take into consideration cumulative economic impacts. When multiple EPA rules are released at once, the impact is significant. There is no current mechanism in place taking into account all Agency actions to decrease the economic burden.

Kevin Bromberg, Small Business Administration

- There is confusion as to the reasoning behind EPA's legitimacy criteria under the Non-Hazardous Secondary Material Rule.
- There are concerns related to the determination of tires, urban wood, and used oil as secondary waste material.

Highlight of Comments by Impact and Issue Areas

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting. No new comments or statements are included.

Integration & Innovation

- EPA should review the areas of conflict between RCRA Subtitle C and RCRA Subtitle D. For example, scrap metal is exempt under Subtitle C; however, states can regulate scrap metal under Subtitle D.
- There is conflict among EPA regulations, and it is important for EPA's Office of Policy to review regulations to ensure consistency and avoid confusion.
- Reviewing and updating the list of hazardous wastes and removing those substances no longer considered hazardous.

Least Burden/Flexible Approaches

- EPA should create a RCRA exemption to consumer products and packaging. Homeowners can dispose of products under the household hazardous waste exemption; however, retailers struggle to deal with products that are considered hazardous waste under RCRA. Products that should be exempt include: multi-vitamins, aerosol cans, and consumer electronics such as cell phones.
- EPA should expand the definition of Universal Waste. EPA previously considered this and found potential changes appropriate. This could give the Agency a greater level of regulatory authority and limit environmental risk.
- Reconsider the definition of "discard" under RCRA, and include an exclusion under RCRA for all scrap metal.
- Including reclamation in the definition of "discard" impedes sustainability.
- Listings that are retained even when processes change is a disincentive for companies from getting toxics out of listed wastes. Ultimately, the delisting process has a reputation for being difficult and that is why the electroplaters have not gone that route.

State, Local, and Tribal Governments

- There is variety in how State governments implement RCRA regulations including requirements under Subtitles C and D. In some instances, State government regulations are more stringent causing issues when waste is transported across state boundaries.

Benefits and Costs

- There are concerns that cost/benefit analyses do not take into consideration cumulative economic impacts. When multiple EPA rules are released at once, the impact is significant. There is no current mechanism in place taking into account all Agency actions to decrease the economic burden.

Regulatory Burden and Small Business

- EPA should expand the finalized Pharmaceutical Universal Waste Rule. Most retail pharmacies deal with challenges associated with this rule and could be considered large quantity generators under RCRA. Generating as few as 65 pill bottles could bring this determination to retail pharmacies.
- There is confusion as to the reasoning behind EPA's legitimacy criteria under the Non Hazardous Secondary Material Rule.
- There are concerns related to the determination of tires, urban wood, and used oil as secondary waste material.

List of Attendees

Raymond Ludwiszewski, Gibson, Dunn and Cruthcher

Mike Stephenson, Wal-Mart Stores, Inc.

David Waggoner, Institute of Scrap Recycling Industries

Amanda Aspatore, National Mining Association

Stephanie Castorina, IPC-Association Connecting Electronics Industries

Fern Abrams, IPC

Kevin Bromberg, Small Business Administration

EPA Participants

Anne Bavuso, U.S. Environmental Protection Agency

Betsy Devlin, U.S. Environmental Protection Agency

Kathy Lett, U.S. Environmental Protection Agency

Charlotte Mooney, U.S. Environmental Protection Agency

David Nicholas, U.S. Environmental Protection Agency

Gerain Perry, U.S. Environmental Protection Agency

Tracey Westfield, U.S. Environmental Protection Agency

Toxics Breakout Summary – Round 1

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

General Comments

The comments below pertain broadly to EPA's regulatory or regulatory review process.

Fern Abrams, IPC

- There is an implicit assumption that information made publicly available, via regulatory reporting requirements, is invaluable, but rarely is there an adequate cost-benefit analysis. It is difficult to assign value to publically available information because it is free for the public yet costly to small business. However, these costs are passed on to consumers in the price of products or services. The value of this publically available information needs to be assessed in a cost-benefit analysis – what is the public willing to pay?
- The EPA Office of Policy could have a stronger role in coordinating regulations within the agency. This would be easier for industry and provide stronger regulations for the EPA.

James Cooper, National Petrochemical & Refiners Association

- EPA has been working on a zero tolerance premise for lead exposure even while toxicologists are still debating safe exposure levels. Additionally, EPA needs to consider the law of diminishing returns. Eliminating small percentages of lead will cost disproportionately more than eliminating the large, easily addressed areas of lead exposure. EPA needs to convene a public debate on the costs and benefits of this approach.

Public Comments on Specific Regulations Organized by Impact and Issue Areas

The section below highlights comments provided by session participants on specific regulations organized according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting.

Environmental Justice/Children's Health/Elderly **Cordell Burton, Pella Corporation**

- It is likely that vulnerable populations will forgo installing new windows, which is dangerous to their health, because of the added costs of the Lead Safe program.

Regulatory Burden and Small Business

Cordell Burton, Pella Corporation

- Contractors, of which many qualify as small businesses, lose business to those who are not compliant with the Lead Safe regulations. There is a need for enforcement to ensure those who are following regulations are not inadvertently being punished.

Chris Dana, Pella Corporation

- Contractors following Lead Safe regulations have lost out, because of price, to contractors who do not carry the cost burden of complying with the Lead Renovation, Repair, and Painting (RRP) rule.
- The EPA recommends that businesses maintain records for three years when contractors are working on a job that falls under the Lead RRP rule. However, litigation often covers time periods that are longer than three years. Thus, businesses are advised to keep records for much longer. This additional record keeping, beyond the mandated three years, is burdensome and costly to small businesses. Therefore, when developing regulations, EPA should take into account the accumulated cost of all necessary record keeping.

James Cooper, National Petrochemical & Refiners Association

- In general, small businesses are disproportionately affected by basic regulatory reporting rules – those that are considered record keeping or data reporting and found in all EPA programs. The impact of reporting requirements on small businesses is due to the cumulative effect, not a single regulation. Cost-benefit analysis on a per-rule basis does not capture this, and there is only piecemeal data available to demonstrate it. The EPA should consider the burden of cumulative effects that their regulations have on small business.

David Waggoner, Institute of Scrap Recycling Industries

- Statistically, the cumulative environmental impacts of small businesses are not significant. To maximize effectiveness, reporting requirements should capture the large percentage of businesses that have the most impact, which are the larger businesses. The greenhouse gas rule employed this technique.
- The definition of a small business needs to be consistent and reasonable.

- With regard to the TSCA Inventory Update Rule (IUR), the proposed amendment to move the reporting threshold from 300,000 lbs to 25,000 lbs essentially means all the scrap recyclers will need to report on every shipment. Due to its nature, scrap metal is often shipped at weight much higher than 25,000 lbs, thus inadvertently triggering this regulation. Since TSCA includes inorganic substances, this places a large regulatory burden on small businesses that are shipping non-toxic metals.

Benefits and Costs

James Cooper, National Petrochemical & Refiners Association

- Publically available industry information – via regulatory reporting requirements – comes at a cost to the economy and it is not clear the public is deriving great benefit from that information. The TSCA IUR, for example, has made data publically available at a cost to industry but has not been used for regulatory or risk management. It is “nice to know” not “need to know” information. Likewise, the Clean Air Act Risk Management Program, 112r, is redundant with an OSHA program, and that data has not been used for any benefit. A stakeholder group would be able to quickly identify the reporting requirements that are redundant or “nice to know.” While much publically available information is important, there needs to be a discussion about the balance between the benefit of publically available information and the costs to businesses that provide it.

Compliance

Chris Dana, Pella Corporation

- The following comments concern Toxics Substance Control Act (TSCA) Section 402 – the lead-based paint Renovation, Repair, and Painting (RRP) Rule.
 - Pella agrees with the intent of this regulation, which requires the use of lead-safe work practices and certification by EPA in these practices, but believes it is unnecessarily burdensome to the construction industry. Even so, Pella has encouraged its over 1,000 independent contractors to comply with lead certification and Lead Safe work practices provisions.
 - The results of the regulation have included wasted energy – by keeping old windows and doors from being replaced – and a loss of business for construction workers during difficult economic times.
 - Even though older windows often contain lead-based paints, the costs of complying with RRP rules are passed onto homeowners who avoid replacing older windows and doors containing lead-based paint with newer, energy-efficient windows and doors because of the added costs.

- Contractors who do not comply with RRP rules are less expensive to consumers and outcompeting contractors who do comply. Work done by uncertified contractors puts people at risk. EPA should levy fines against firms who do not attempt to follow the Lead Safe program.
- Pella asks EPA to reconsider the opt-out clause that was eliminated July 6, 2010. This clause allowed homeowners to decline Lead Safe work practices if 1) no children were present; 2) the home is not a childcare facility; and 3) no pregnant women are present.
- Even with the opt-out clause, properly educated contractors still employ work safe practices, but not to the unnecessary extent that the regulation requires.
- Those in or related to the building renovation industry feel singled out by the RRP rule, particularly the window manufacturers. Projects that disturb a window automatically trigger the RRP rule. However, federal and state enforcement is nonexistent, putting those who comply at a disadvantage compared to those who do not. Because states see minimal enforcement at the federal level, they do not set aside the necessary funding to enforce the rule.

Fern Abrams, IPC

- With regard to the TSCA IUR inclusion of inorganic substances, solutions containing metal are considered chemical stock when they should be considered by-product. Thus, they are treated as hazardous waste and must be reported as a new chemical. This discourages and confuses the recycling industry and acts as a disincentive.

Dan Newton, Society of Chemical Manufacturers and Affiliates

- The TSCA IUR proposed amendment to move the reporting threshold from 300,000 lbs to 25,000 lbs greatly expands the range of chemicals that must be reported and is unnecessarily burdensome.

Least Burden/Flexible Approaches

James Cooper, National Petrochemical & Refiners Association

- EPA could avoid litigation if they used Section 8 IUR data gathering, Section 8 PAIR reporting, and Section 4 test rules as Congress intended and in a proper order. IUR was intended for compiling and keeping current a list of chemicals in commerce, not for exposure data. This could be used as a tool to prioritize which chemicals in commerce need to be looked at further. Then, EPA would use the Section 8 PAIR rule to find more exposure information and, lastly, the Section 4 test rule. This streamlined order would allow flexibility and be more efficient.

- EPA is to be commended on their creativity and flexibility in their use of enforceable consent agreements that will get information in a timely manner while avoiding litigation and angst.

Chris Dana, Pella Corporation

- Pella appreciates how good EPA has been to work with on the innovative work standards with regard to the RRP regulations that were issued last April, as exemplified by the FAQs on the regulations. They would like to see this continue and would like to continue the conversation on innovative work practices.

Economic Conditions/Market

James Cooper, National Petrochemical & Refiners Association

- EPA should never have a role in the marketplace, specifically with incentives because of the danger in picking winners and losers. The Pollution Prevention Act of 1990 (P2 Act) is an effective way to solve problems by working collectively with the regulatory program down the supply chain – this should be looked at as an example.

Matthew Watkins, NAHB, and **James Cooper**, National Petrochemical & Refiners Association

- Regulations unintentionally pick winners and losers.

Fern Abrams, IPC

- The Design for the Environment program gets this right by looking at substitutes rather than banning particular substances – this should be looked at as an example.

Chris Dana, Pella Corporation

- Lead safe work regulations of RRP affect job growth because higher costs of renovation translates into homeowners spending less on windows and doors, which impacts the manufacturers of those products.

Integration & Innovation

Greg Weatherman, Aerosolver

- The Lead RRP rule should have followed the example of asbestos and responsibility should be shifted to OSHA to avoid conflicts between EPA and OSHA programs.
- According to EPA regulations, contractors must test for lead, which violates state law that states only lead inspectors may conduct lead tests. Furthermore, a paint chip lab sample is relatively cheap and holds up in court.

- Inconsistent action levels among federal agencies create risk to contractors in the form of litigation, lawsuits, and attorney costs.

Matthew Watkins, NAHB

- Historically, there have been some inconsistencies between agencies. CDC action levels are different than the levels EPA is using in their public relations campaign. This should be explained or reconciled.

James Cooper, National Petrochemical & Refiners Association

- There seems to be significant overlap between OSHA and EPA regulations and there needs to be coordination.

Fern Abrams, IPC

- The proposed TSCA IUR rule on recycled material ventures into domain covered by OSHA.

List of Attendees

James Cooper, National Petrochemical & Refiners Association

Cordell Burton, Pella Corporation

Chris Dana, Pella Corporation

Aaron Lovell, Inside EPA

Dan Newton, Society of Chemical Manufacturers and Affiliates

David Waggoner, Institute of Scrap Recycling Industries

Stephanie Castorina, IPC

Fern Abrams, IPC

Matthew Watkins, NAHB

Greg Weatherman, Aerosolver

List of Attendees

Anne Bavuso, U.S. Environmental Protection Agency

Wendy Cleland-Hamnett, U.S. Environmental Protection Agency

Bicky Corman, U.S. Environmental Protection Agency

Emily Dougherty, U.S. Environmental Protection Agency

Marc Edmonds, U.S. Environmental Protection Agency

David Giamporcaro, U.S. Environmental Protection Agency

Lindsay Moose, U.S. Environmental Protection Agency

Tracey Westfield, U.S. Environmental Protection Agency

Toxics Breakout Summary – Round 2

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to

also provide written comments to the docket to ensure that their suggestions are fully captured.

Comments Regarding EPA's Regulatory or Regulatory Review Process

Matthew Watkins, National Association of Home Builders (NAHB)

- There needs to be an accountability process – approximately five years after implementation – that reviews how well regulations are meeting their intended goals and the lessons learned. This would be particularly important for lead regulations. Data from large manufacturers could be part of this review and is trusted enough that small businesses would not need to be burdened with gathering and submitting data for a regulatory review process.

Cordell Burton, Pella Corporation

- In the review of a regulation, the cost-benefit analysis should include data from blood lead testing to determine if the regulations are resulting in lower lead levels in children.
- Industry uses “continual improvement processes,” which convene the day-to-day users of a policy or process to determine its effectiveness and lessons learned. The same review process could be used on the lead rules in five years and industry would be able to help EPA implement such a method.
- Enforcement is critical because those who comply are competing against those who are not compliant. Often, windows are replaced at the point of sale, either when buying a property and seeking to renovate or when selling to enhance the property. This is the critical time for enforcement. This scenario should be part of EPA's analysis.

Greg Weatherman, Aerosolver

- A five-year review of regulations should consider separately the effects on upper- and lower-income brackets, since those in the lower-income bracket are more likely to spend less money on renovations and thus risk hiring a contractor who does not follow Lead Safe practices.
- EPA needs to consider the impact of diet, outlier factors, and synergistic effects on chemical exposure with regard to endocrine disruptors.
- There may be a loophole in the regulations with regard to some cleaning products that allows the use of harmful chemicals in the ingredients.

Howard Feldman, American Petroleum Institute

- There needs to be greater opportunity for stakeholder input into the Integrated Risk Information System (IRIS) given its significance for regulations.

Public Comments on Specific Regulations Organized by Impact and Issue Areas

Environmental Justice/Children's Health/Elderly

Matthew Watkins, NAHB

- The lead rule, which is supposed to benefit children ages six and under, is mostly focused on adults rather the vulnerable populations it was intended to protect.

Small Business

Greg Weatherman, Aerosolver

- It is increasingly difficult to fulfill the requirements of the lead program reporting as profit margins for small business continue to shrink. EPA needs to study the industries involved in renovations when developing lead regulations in order to understand their needs and constraints.

Least Burden/Flexible Approaches

Matthew Watkins, NAHB

- The lead RRP should be segregated into two sector tracks if possible: homeowners and property managers.

Compliance

Howard Feldman, American Petroleum Institute

- TSCA section 12B, which covers export reporting, creates a regulatory burden but does not provide any benefits, to public health or otherwise.

Greg Weatherman, Aerosolver

- Enforcement should be the responsibility of the states and, as a result, there should be incentives for the states to engage in enforcement actions. The fines EPA collects should be given to states.

Cordell Burton, Pella Corporation

- EPA regulations should focus on testing the results rather than dictating the process – performance-based regulation vs. specification. Testing standards, as opposed to specifications, will speed up innovation.

Integration & Innovation

Greg Weatherman, Aerosolver

- EPA needs more agility and to have a process for quickly testing and implementing innovative techniques, e.g., the quick turnaround that was needed for testing and implementing innovative dispersants during the Gulf oil spill.

List of Attendees

Cordell Burton, Pella Corporation

Howard Feldman, American Petroleum Institute

Larry Pearl, Agra Informa

Greg Weatherman, Aerosolver

Matthew Watkins, NAHB

Kate Rosenfeld, DC Legislative & Regulatory Services, Inc.

EPA Participants

Lucinda Power, U.S. Environmental Protection Agency

Angela Hofmann, U.S. Environmental Protection Agency

Tobias Schroeder, U.S. Environmental Protection Agency

Marc Edmonds, U.S. Environmental Protection Agency

Wendy Cleland-Hamnett, U.S. Environmental Protection Agency

David Giamporcaro, U.S. Environmental Protection Agency

Lindsay Moose, U.S. Environmental Protection Agency

Water Breakout Summary – Round 1 – Surface Water

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Before the public was asked to comment, EPA reminded participants that there will be an additional opportunity from Office of Water (OW), in the form of a webinar, for public comment and involvement on March 17, 2011.

Public Comments Regarding Specific Regulations and Agency Actions

Kate Rooth, Alliance for Appalachia

- The Clean Water Act (CWA) for a long time successfully regulated the surface water bodies (e.g., rivers, streams, creeks, etc.) in the Appalachian community.
- In 2002, a court illegally ruled that mining waste could be used as a fill material (aka. the Fill Rule). This rule change was never approved by Congress, yet mining waste was/is used as fill material. Over 2,000 miles of streams have been buried, impacting critical headwaters for the East Coast. Even though in the past 2 years EPA has done more to protect against the negative impacts of mountain-top mining, as long as the integrity of the CWA is not fully restored, the waters and health of the Appalachian community are still at risk.
- EPA's Environmental Justice (EJ) program has become extensively involved, but we would like to see greater coordination between EJ and OW staff on this issue. For instance, the Alliance's constituency was not well informed about this particular public meeting, even though they would have wanted to attend.
- Our constituency also has little trust in their states' environmental departments. Compliance offices at the state level are understaffed and cannot respond to the number of complaints and reported violations that occur.
- The ability for citizen enforcement and compliance officers to handle the scale of the issue needs to be addressed.
 - The public needs better transparency in the enforcement process and with complaints to EPA.
 - The recently found 12,000 violations in Kentucky against one company and filed a citizen lawsuit.
 - EPA needs to strengthen enforcement.
- Thank you for the webinar session on March 17th.

Nick Goldstein, American Road & Transportation Builders Association

- When considering a technology-based standard, the availability of that technology being prescribed by EPA (e.g., stormwater treatment systems) can have a significant impact on the market for those technologies (e.g., cost, availability, etc.). If the technology is not readily available, it becomes a barrier for entities to comply with the standards set by EPA.

Steve Via, American Water Works Association

- A specific example of an opportunity for EPA to work across silos is the National Pollutant Discharge Elimination System (NPDES) permitting for pesticides under the CWA. A similar regulation already exists under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These two regulations are almost identical and EPA should not go down the path of duplicative regulations due to a court's ruling.
- There are simpler solutions like writing the general permit in such a fashion that compliance with FIFRA labeling would have been sufficient. This would have avoided the court case that has prompted the creation of the NPDES permit.
- EPA continues to heavily regulate point source pollution, which it has been doing for a long time, when it should be focusing on how best to regulate non-point source pollution.
- Do not utilize the NPDES permitting structure for non-point source pollution reductions.
- One way of approaching non-point source pollution regulation could be to structure it as a place-based regulatory scheme for farms and other similar types of areas.

Cynthia Finely, National Associations of Clean Water Agencies

- EPA should consider the cumulative economic impacts on business and more holistic approaches to measuring the costs and benefits of regulations. Instead of simply focusing on one particular type of pollutant (e.g., nutrients), the entire system should be considered.

Nick Goldstein, American Road & Transportation Builders Association

- The jurisdiction of the CWA should be clarified without being expanded.
- EPA should use the formal rule making process rather than agency guidance if it is intending to expand the jurisdiction of the CWA, because the process requires EPA to engage the public in a formal, complete, and understandable fashion. This is in contrast to guidance documents that do not require public comment and should be used to clarify CWA jurisdiction.

- Reforming the CWA 404 wetlands permitting process (e.g., wetlands permitting) is an opportunity to reduce project delays. These reforms should include: firm deadlines for permitting decisions, the creation of a wetlands classification system, and not retroactively vetoing CWA permits unless the law has been broken.
- Stormwater regulations should allow for enough flexibility for the individual projects to be successful. The issues of cost and liability need to be considered to ensure projects are not delayed.

Colin Enssle, GE Water & Process Technologies

- EPA should consider using incentives, such as an investment tax credit incentive.

Patrick Bradley, LimnoTech

- Since this retrospective review is driven by an Executive Order (EO), why not get the EO changed so that this can be a real dialogue instead of a one-way listening session?

Steve Via, American Water Works Association

- When looking at benefits and costs, Environmental Assessments (EA) generally only look at national averages and not how the local community is impacted. The disadvantaged community's ability to handle the rates that generally follow from the implementation of regulations does not seem to be given priority in decision making.
- EJ communities are considered in the EA process but they do not generally get wrapped into the decision making process.
- There needs to be clear policy objectives where EPA picks the top 2 or 3 issues that are pursued and completed. These issues should be decided upon through broad-based stakeholder engagement.

Specific Questions and Discussion

What are your thoughts on cumulative impacts? How do you define that term?

Kate Rooth, Alliance for Appalachia

- Cumulative impact on public health needs to be considered but without appropriate and accurate data, a baseline cannot be established. Water quality data is outdated (2002 at best), so regional water quality measures are a big focus for communities. These communities try to take it upon themselves to measure water quality, but this is a costly course of action and EPA is not guaranteed to accept the data that is produced through these steps.

Cynthia Finely, National Associations of Clean Water Agencies

- Utilities need more flexibility to handle peak weather flows, especially if they are meeting their permit limits. Blending should be allowed to reduce economic impacts on industry.

Patrick Bradley, LimnoTech

- Cumulative impacts must take into consideration hydrologic changes as well as the number and type of pollutants. However, the CWA and existing regulations are not designed to handle hydrological changes.

The cost-benefit analysis (CBA) and a community's ability to implement regulations are considered during the decision-making process. In doing CBA and looking at national statistics and data sub-sets, at what level does regulation get implemented? In other words, is the level of environmental protection that a distressed/disadvantaged community can afford the level that everyone else gets? Is it the lowest economic denominator?

Steve Via, American Water Works Association

- Once it is determined that there is an opportunity to make a health risk reduction, the rule must be structured to allow that community to implement the regulation.
- Practically speaking, costs do inform the level of protection.

Patrick Bradley, LimnoTech

- There is an assumption that there is always a CBA, but that is not necessarily the case.
 - **Jim Hanlon**, EPA
 - When EPA promulgates Water Quality Standards, a cost analysis is conducted.

Beth Graves, ECOS – Specific Question and Response

- Can you talk a little about what areas work well and what needs to be improved during EPA's retroactive reviews of regulations?
 - **Jim Hanlon**, EPA
 - The management of stormwater is a good example of this process. The National Academy of Sciences put out a report in 2006, there have been listening sessions, there was a notice out in the Federal Register, and are now working towards the development of a regulatory proposal. EPA participates in monthly work group

meetings with states. The proposal is to be published in September.

- The nature of this process is that more time and more money are always wanted, but you work within the resource constraints that are available.
- In many watersheds, the loads are weighted in favor of non-point source rather than point source, yet point sources are generally more regulated. Given the structure of the CWA, what is the alternative?
- Total Maximum Daily Loads (TMDL) indicate what the waste load limitations have aggressive permit limits.

Darren Coppock, Agricultural Retailers Association

- Standards for phosphates proposed by EPA for Florida would require some communities to reduce the phosphate level to below pristine levels. This is particularly an issue for those communities that mine phosphate and have a higher background level than normal.
 - **Jim Hanlon**, EPA
 - The promulgation of the Inland Water Quality Standard does include several different eco-regions in the State of Florida. If it is a specific question of nutrient levels in these specific eco-regions, it would be best to contact Region 4 staff or the EPA staff here can take your name and pass along your question.

Given the statutory authority in CWA, what are the suggestions for addressing non-point sources?

Steve Via, American Water Works Association

- EPA is putting the regulations in place that force the point sources to negotiate on the local level. This creates a challenging local situation. If EPA needs more authority to act, this regulatory review is a perfect opportunity.
- If EPA needs more authority, then they should ask [Congress].
- There is a long history of place-based community building in USDA, which suggests that there are other options besides NPDES permits to achieve water quality standards.

Cynthia Finely, National Associations of Clean Water Agencies

- There is some room in the CWA to think creatively about non-point source regulations. For instance, Section 208 planning.

What are your feelings that EPA is putting out information that the public can understand and utilize? We need a well-informed public to get the type of results in water quality. There are tipping points in terms of pollutants and nutrients, so how does the national waters program educate and inform the public so they act responsibly?

Darren Coppock, Agricultural Retailers Association

- Communication is a challenge for all of us and we just have to keep hitting the point home through as many avenues as possible.
- Agencies ought to favor empirical data versus model output.
- There are practice-based regulatory options that can reduce the amount of nutrient run-off that could be implemented and suggested.
- The duplication of regulations on pesticides under FIFRA and NPDES permits is a regulatory issue that will add to the cost of doing business. The implementation process needs to be streamlined.

Highlight of Comments by Impact and Issue Areas

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting. No new comments or statements are included.

Integration & Innovation

- Alternative regulatory schemes (e.g., place-based, practice-based, etc.) could be used to address non-point source pollution regulation issues.
- Considering cumulative impacts and designing regulatory systems in a holistic, systematic manner can help to address concerns about human health, the impact of regulations on utilities and businesses, costs and benefits, and implementation.

Environmental Justice/Children's Health/Elderly

- The use of mining waste as fill material has a huge impact on the water quality of Appalachian communities that have little or no recourse against the mining companies.

Benefits and Costs

- The benefit to cost ratio needs to be maximized as much as possible, especially for communities that are disadvantaged.

Compliance

- FIFRA and NPDES permitting for pesticide/herbicide use in surface water should be considered an area for working across federal statutes. This issue is complicated by the federal court rulings and the nature of permitting for the use of pesticides/herbicides.

List of Attendees

Amanda Aspastore, National Mining Association
Patrick Bradley, LimnoTech
Colin Enssle, GE Water & Process Technologies
Cynthia Finley, National Associations of Clean Water Agencies
Susan Gilson, NAFSMA
Nick Goldstein, American Road & Transportation Builders Association
Beth Graves, ECOS
Daniel Heady, DCLRS
Andrea Lamartin, URS
Kate Rooth, Alliance for Appalachia
Steve Via, American Water Works Association
Matthew Watkins, NAHB

EPA Participants

Keith Bartlett, U.S. Environmental Protection Agency
Sandy Evalenko, U.S. Environmental Protection Agency
Jim Hanlon, U.S. Environmental Protection Agency
Andrew Hanson, U.S. Environmental Protection Agency
Macara Lousberg, U.S. Environmental Protection Agency
Tobias Schroeder, U.S. Environmental Protection Agency
Elizabeth Skane, U.S. Environmental Protection Agency

Water Breakout Summary – Round 2 – Drinking Water

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

Before the public was asked to comment, EPA reminded participants that there will be an additional opportunity from Office of Water (OW), in the form of a webinar, for public comment and involvement on March 17, 2011.

Opening Comments

Mike Shapiro, EPA

- Under the Safe Drinking Water Act (SDWA), EPA implements two programs. One is to work with states to ensure the implementation of protective standards for public water supplies. Maximum Contaminant Levels (MCL) are established and promulgated, set at a level to be protective of human health. The creation of MCLs takes into account costs and available technology. MCLs are periodically reviewed.
- The Underground Injection Control (UIC) program manages the injection of fluids into the earth. Depending on the nature and size of an operation, permitting for this activity may be required. In many cases this program is implemented by the states.
- We are interested in two types of feedback:
 - Specific regulations (part or whole) and
 - How can we make our regulatory programs more effective? This is a broad question that can include better communication with our stakeholders, streamlining processes, etc.

Ron Bergman, EPA

- Every 6 years, EPA is required to review the primary drinking water regulations to see if there have been any changes that would necessitate a change in regulations. EPA looks at occurrence, health effects, and changes in science.
- The last time this review was done EPA performed a data call with the states on all the regulated contaminants. Public comments were received. This review resulted in a revision to the total coliform rule.

Public Comments Regarding Specific Regulations and Agency Actions

Robert Van Voorhees, Underground Injection Technology Council

- EPA did a good job of engaging stakeholders in the development of the geologic sequestration rule. EPA started with technical workshops, then had rule making workshops, and gave an opportunity for stakeholders to give suggestions and feedback.
- In the 1990s, the UIC program had an initiative called the Reinventing Government Program that was a good model for stakeholder engagement. One of the major products of this program was "The Mailbag" that was recommended by the Ground Water Protection Council. It served as a gathering mechanism for regulatory suggestions from industry and other stakeholders.

Alan Roberson, American Water Works Association

- The Safe Drinking Water Act (SDWA) presents a difficult situation. At risk populations (e.g., the elderly and children) are not necessarily the populations that are dealing with the cost burden of the regulations.
- An interesting health study done by Scott Rueben, a lawyer in PA, shows that if there are increased rates for treatment of drinking water then low-income populations will reduce their spending on preventative health care.
 - **Mike Shapiro**, EPA
 - The nature of the decision-making process is that we strive to give everyone equal protection. There are some tough societal problems when dealing with costs and providing these services.

Alan Roberson, American Water Works Association

- There have been 18 regulations under the SDWA. Of those 18, 3 regulations cover about two-thirds of costs associated with the regulatory program. These cannot be changed without impacting human health and environmental protection. However, looking at those regulations with the highest aggregate costs is one way to prioritize regulations for review.
- Extending the timeframe for compliance (similar to what was done for the arsenic rule) so that those who are closer to new regulatory levels have more time to get into compliance.

Specific Questions and Discussion

One of the limiting factors for approving new methods is that it takes time and resources. Are there changes that you would suggest to improve the data gathering, approval, and regulatory processes?

Alan Roberson, American Water Works Association

- The delivery of reports that are not statutorily required (e.g., the Consumer Confidence Report (CCR)), or any official document is something that should be taken into consideration. The CCR was last published in 1998 and was delivered mainly via printed version. With technology now, these documents need to be delivered electronically while ensuring that compliance is maintained.
- There are analytical methods out there that are not fully vetted. Also, approval of online monitoring methods will be needed because this method will become more prevalent.

Robert Van Voorhees, Underground Injection Technology Council

- Electronic submissions for the program are an area where the program can cut costs and make the program more efficient.

- Within the UIC effort there has been a move to create a national database. This has resulted in a shift in how data is collected. Data reporting and collection regulations are quickly becoming out of date.
- In the Class 6 Rule, a real effort was made to identify within the regulation a specific performance standard and not a methodology. This was a successful effort. This move from a practice standard to a performance standard would help the regulatory process. This review could be a good opportunity to further make this shift.

Steve Via, American Water Works Association

- Environmental Justice is about community-level costs and individuals' ability to pay the rates. This means that there are individuals out there who are focused on basic needs.
- There needs to be checks somewhere early in the process that look at health risk reduction and how to maximize that reduction while minimizing costs. The Office of Water should look at programs and opportunities to utilize non-regulatory mechanisms to affect health risk reduction.
- It seems that there are substances that are regulated just to be regulated because of political pressure.

Alan Roberson, American Water Works Association

- An example of a substance that is regulated but does not offer a real health risk reduction is the active ingredient in Roundup. This substance falls under the Phase 5 rule that came out in 1993, but there have been no violations. Its testing method is expensive but the MCL is so high that there have not been any violations on file.

Are there any thoughts on opportunities for better public health protection?

Robert Van Voorhees, Underground Injection Technology Council

- Underground injection plays an important role in protecting the quality of underground water sources. There are several examples where underground injection has proven to be a way to protect drinking water sources.

Specific Comments About Regulations

The section below highlights some of the key points raised during the comment period summarized in the previous section but groups these points according to the impact and issue areas that were posted in the Federal Register Notice prior to the meeting. No new comments or statements are included.

Integration & Innovation

- The use of electronic delivery systems for programmatic uses (e.g., reports, payments, etc.) is something that can help to make the program more cost effective and efficient.
- The use of online monitoring methods and data collection methods need to be approved for use within the program.

Environmental Justice/Children's Health/Elderly

- Community-level costs and impacts of regulations need to be considered when reviewing and implementing regulations. Disadvantaged communities tend to bear a greater burden of the costs of regulations.

List of Attendees

Daniel Heady, DCLRS

Steve Via, American Water Works Association

Alan Roberson, American Water Works Association

Stacey Detwiler, American Rivers

John Litynski, U.S. Department of Energy

EPA Participants

Mike Shapiro, U.S. Environmental Protection Agency

Ron Bergman, U.S. Environmental Protection Agency

Elizabeth Skane, U.S. Environmental Protection Agency

Macara Lousberg, U.S. Environmental Protection Agency

Sandy Evalenko, U.S. Environmental Protection Agency

Keith Bartlett, U.S. Environmental Protection Agency

General Breakout Summary – Round 1

No participants attended this session, so no summary is provided.

General Breakout Summary – Round 2

The summary below represents feedback received during this breakout session. It is not intended to be a transcript of participants' statements. Participants were encouraged to also provide written comments to the docket to ensure that their suggestions are fully captured.

General Comments

David Friedman, National Petrochemicals and Refiners Association

- Until the mid-1990s, the Office of Policy was the Office of Policy and Program Evaluation (OPPE). The value of this office was lost when it was split. It served a very good purpose in challenging and questioning what was being done. It would be useful if there was a mechanism for bringing it back—it made for smarter regulations before they went out.
- Asked if comments could be received by mail.
 - Nicole Owens (EPA) confirmed comments could be submitted in writing until April 4th.

James Cooper, National Petrochemicals and Refiners Association

- It has been brought up in other sessions that programs have to talk to each other. Sometimes it takes someone outside the agency to do this. This lack of communication across programs can result in disjointed regulations.

Comments by Impact and Issue Areas

Environmental Justice/Children's Health/Elderly

James Cooper, National Petrochemicals and Refiners Association

- Office of Toxics deals with this well. Overall, EPA usually considers sensitive sub populations.

State/Local/Tribal

David Friedman, National Petrochemicals and Refiners Association

- Has been hearing that at the state level, more money is needed.

Regulatory Burden and Small Business

David Friedman, National Petrochemicals and Refiners Association

- The refining industry includes lots of small refiners. There is a significant burden on these refiners related to Greenhouse Gas reporting, TRI, and the Refinery Information Collection Request. Timelines for small refiners to do all the reporting within the deadlines are too short when they have limited resources and time.

James Cooper, National Petrochemicals and Refiners Association

- Small businesses are disproportionately affected by the reporting, as they are also reporting to other agencies. This leads to a cumulative burden.

Benefits and Costs

James Cooper, National Petrochemicals and Refiners Association

- There is a diminishing cost-benefit return. A company may accomplish 95% of its goals, but what are companies going to have to do to reach 100%? The burden can be high, but this is rarely discussed.
- The Inventory Update Reporting requirement is now used as a vehicle to collect detailed exposure information. EPA has tools to collect this information under Section 8 “reporting” and under Section 6 “actions”. Considered it was a burden to ask businesses to go through the same mechanism as a consumer company. EPA could, if they sequenced their regulations, use the IUR to collect this information. If something is used in a consumer product, you collect more information under Section 8. Could report to the IUR on the general use and production volumes.

David Friedman, National Petrochemicals and Refiners Association

- Regarding the GHG reporting rule, companies are chasing down the last 5% of information but spending 50% of their time doing this.

Compliance

James Cooper, National Petrochemicals and Refiners Association

- EPA compliance tools are doing a reasonably good job.

Science Obsolete/Technology Outdated

James Cooper, National Petrochemicals and Refiners Association

- Commented that for toxics, new tests are in research and development that are subject to rigorous testing.
- Electronic reporting makes things easier, but there are compatibility issues so it might be too much to make this happen in the next reporting cycles. Not opposed to it, but suggested delaying implementation for one cycle to make sure it works.

- When new science comes to light, the Agency revisits the regulations. There is an assumption that discussions are taking place.
- Field of toxicology is always dynamic, and there is always new testing going on. Decisions should stand on their own scientific merits. How do you weigh different tests and science against each other? He questioned how these are weighted correctly and that the EPA process is not always transparent.

David Friedman, National Petrochemicals and Refiners Association

- This area was not an issue as he felt science/technology was driven by the best technology.
- The Ozone NAAQS is being reconsidered but there is no new science. Also mentioned EPA is operating outside the five year standard in regard to the Ozone NAAQS.

Least Burden/Flexible Approaches

James Cooper, National Petrochemicals and Refiners Association

- Sequencing is good if EPA uses the information that is collected. EPA can use the information to justify getting more information.
- The last time EPA changed the IPR, there were stakeholder meetings. It was not the case this time, and meetings took place at OMB. Time could have been saved if the discussion took place at an earlier stage.
- Liked public meeting forums and appreciated today's meeting but noted that he was expecting larger and more diverse attendance.

David Friedman, National Petrochemicals and Refiners Association

- Considered ANPRM more useful than NSPS. Under NSPS, the proposal date becomes the effective date, which is a problem.

Economic Conditions/Market

James Cooper, National Petrochemicals and Refiners Association

- Agencies are using regulations to try and create market conditions. There must be good information before this is done. He did not think it was a good idea for EPA to do this.
- Acceptable to use programs as vehicles under the Pollution Prevention Act.
- There are federal agencies already involved in matters that affect the economy. He did not think EPA should do this but rather EPA should focus on protecting the environment and stay within their core tasks.

- EPA's approach should be as convener but not in a regulatory context. EPA has an important role in convincing stakeholders to problem solve. Innovative programs, some voluntary, can have significant results.

Innovation/Integration

David Friedman, National Petrochemicals and Refiners Association

- Expressed concern about conflicting regulations. He commented on problems with the NAAQS program. GHG footprint vs. NAAQS. Example: when pulling sulfur out of a fuel or stack, energy is used and the GHG footprint increases, creating inherent conflicts. Use of ethanol is another example of inherent conflicts – which can result in ozone levels increasing in urban areas.

James Cooper, National Petrochemicals and Refiners Association

- Regarding IUR reporting and new chemical reporting, these are items that are already covered by RCRA. There is a disincentive to recycle and there does not seem to be a mechanism to get these items resolved.
- Informed the panel that he appreciated the deadline for comments being extended and that written comments could be submitted.

Additional Discussion Questions

Should we explore place-based approaches to achieve our environmental goals?

James Cooper, National Petrochemicals and Refiners Association

- Asked EPA for clarification/definition of what a “place-based” approach meant.
 - **Alexander Cristofaro**, U.S. Environmental Protection Agency, noted that geographic-based programs focus on cost-effective approaches for a given geographic area. In the past, EPA has piloted these approaches in a few areas. Although experimental, these approaches have been carried out in addition to other traditional approaches.

James Cooper, National Petrochemicals and Refiners Association

- EPA would face a debate on State vs. Federal intervention. Could see a role for EPA as a convener/resource provider.

How can we intelligently incorporate the review required by this EO with the reviews already required by law?

James Cooper, National Petrochemicals and Refiners Association

- Rules by law take precedence. He was sympathetic to the Agency in taking on this job, but noted that this meeting is a good step.

How can we improve the compliance of regulated facilities, while reducing the administrative and financial burden they may bear? Specifically, how can rules be improved to ensure that facilities that are out of compliance don't get an economic benefit over those that are in?

James Cooper, National Petrochemicals and Refiners Association

- Enforcement is key. This exercise of reviewing regulations is going to make it easier. Streamlining and simplification make regulations easier to comply with, especially for small businesses.

Gerard Kraus, U.S. Environmental Protection Agency

- Are regulations clear enough to be understood?

James Cooper, National Petrochemicals and Refiners Association

- Small refiners may need to outsource reporting depending on the rules and their complexity, although there are hotlines for people to take advantage of. Guidelines can be as complicated as the regulations and knows there are many small businesses that have to hire Washington DC lawyers to help with compliance.

Matthew Watkins, National Association of Homebuilders

- Regulations must have objectives. The question should always be asked "Does the regulation meet the objective? Does it meet the goal that is intended?"

Nicole Owens, U.S. Environmental Protection Agency

- Do you have examples?

James Cooper, National Petrochemicals and Refiners Association

- Information collected should have a utility, not just be nice to have. Many databases at EPA are not used by many people. Practical utility should be revisited and balanced by the reporting burden. Public information as a goal has to be discussed in the context of the cost when half of the compliance dollars are spent getting the last 5% of information. It can be tough to pull information together in a short space of time, especially in a business area that is highly regulated.

Matthew Watkins, National Association of Homebuilders

- Questioned the cost-benefit analysis and the process for developing and reviewing regulations. Thought it would be beneficial to bring Small Entity Representatives into a room and ask how they have been impacted, something beyond notice and comment.

Andrew Hanson, U.S. Environmental Protection Agency

- Asked Matthew if he could elaborate.

Matthew Watkins, National Association of Homebuilders

- Bring regulatory community back to discuss and review. Any rule under review should be discussed beyond the Regulatory Flexibility Act.

Are there other options, such as self-monitoring by facilities or public disclosure of their performance that could build an environment of minimizing costs while maximizing compliance?

Matthew Watkins, National Association of Homebuilders

- Suggested expanding TRI to other fields and to other stove pipes.

James Cooper, National Petrochemicals and Refiners Association

- Thought that this was already happening.

Alexander Cristofaro, U.S. Environmental Protection Agency

- Ask participants to give an example where direct economic actors can have an effect on consumers. For example: labeling versus work practice standards.

Stuart Miles-McLean, U.S. Environmental Protection Agency

- Suggested the question be read more broadly to initiate more comments.

James Cooper, National Petrochemicals and Refiners Association

- Could benefit in an EPA stamp of approval, for example the Energy Star label. They are good motivators and companies see value. Saw benefit in a consumer manufacturing stamp (e.g. safety).

Matthew Watkins, National Association of Homebuilders

- The National Green Building Standard is a housing standard. EPA could be involved to review these green standards from an environmental protection perspective. Suggested an "EPA Green meter"/ stamp / gauge/ label that could be used.

General Comments

James Cooper, National Petrochemicals and Refiners Association

- Thought the Listening Sessions were a healthy exercise. Got to hear what others were saying.

Matthew Watkins, National Association of Homebuilders

- Noted there are specific programs in the Agency that are behind, for example with statutes and/or court orders.
- In addition, the EPA is dealing with budget cuts.
- Commended the EPA for setting up the Listening Sessions.

Alexander Cristofaro (EPA) thanked everyone for their time and comments. Participant comments would be considered at the highest levels in the Agency. He encouraged participants to submit their comments online before the April 4th deadline.

List of Attendees

James Cooper, National Petrochemicals and Refiners Association

David Friedman, National Petrochemicals and Refiners Association

Matthew Watkins, National Association of Homebuilders

EPA Participants

Alexander Cristofaro, U.S. Environmental Protection Agency

Nate Folkemer, U.S. Environmental Protection Agency

Andrew Hanson, U.S. Environmental Protection Agency

Gerard Kraus, U.S. Environmental Protection Agency

Stuart Miles-McLean, U.S. Environmental Protection Agency

Nicole Owens, U.S. Environmental Protection Agency

Richard Yost, U.S. Environmental Protection Agency