

May 15, 2017

Ms. Samantha K. Dravis  
Regulatory Reform Officer and Associate Administrator, Office of Policy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Via [www.regulations.gov](http://www.regulations.gov)

**RE: Enforcing the Regulatory Reform Agenda - Evaluation of Existing EPA Regulations;  
Docket ID No. EPA-HQ-2017-0190**

Dear Ms. Dravis:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice published by the U.S. Environmental Protection Agency (EPA) regarding docket no. EPA-HQ-2017-0190, Enforcing the Regulatory Reform Agenda - Evaluation of Existing EPA Regulations.

#### About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

The chemical distribution industry is heavily regulated. While the majority of these regulations are necessary for the business of handling hazardous chemicals, some of the rules are overly burdensome and do little, if anything, to protect health and the environment. In addition, it is a challenge to stay on top of all the regulations and changes, particularly for small businesses who do not have dedicated staff to read the *Federal Register* every day. NACD commends EPA for exploring ways to relieve the regulatory burden while continuing to protect the environment.

NACD is pleased to submit recommendations on the following EPA regulations:

## **Accident Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; 40 CFR Part 68; Final Rule Published in the *Federal Register* on January 13, 2017**

On January 13, 2017, EPA published a final rule to amend the Risk Management Program (RMP) requirements under Section 112(r) of the Clean Air Act, 40 CFR Part 68. This was a key initiative stemming from President Obama's Executive Order 13650, *Improving Chemical Safety and Security*, issued in the aftermath of the April 2013 West Fertilizer explosion. This new final rule is a classic example of regulatory overreach. Before these recent amendments, the RMP requirements were already robust and effective in preventing chemical accidents when followed and enforced. The new rule would impose several burdensome requirements on facilities that would not improve safety. Nor would these measures have prevented the West Fertilizer explosion from occurring had they been in place at the time of the incident. EPA recently issued a proposed rule to extend the effective date of this final rule to February 19, 2019, and has convened a proceeding to reconsider the rule. NACD commends EPA for taking these actions. We strongly support the effective date delay and will provide input throughout the reconsideration process.

### **General Duty Clause Under Clean Air Act Section 112(r)(1)**

NACD requests clarification of the General Duty Clause under Clean Air Act Section 112(r)(1), which requires owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances to use appropriate hazard assessment techniques to design and maintain safe facilities to prevent releases. The main concern is that EPA has never issued a rule to define the terms "extremely hazardous substance," "appropriate hazard assessment techniques," and "design and maintain a safe facility." Despite this lack of clarity, EPA has increasingly used the General Duty Clause to impose substantial penalties on facilities. This situation has created unacceptable uncertainty for companies that do not know how compliance is measured or when it has been achieved.

NACD requests EPA to complete a rulemaking process before finding any additional facilities in violation of the General Duty Clause. This rulemaking should include definitions of "extremely hazardous substance," "appropriate hazard assessment techniques," and "design and maintain a safe facility." Further, NACD requests EPA to issue guidelines to ensure EPA enforcement procedures are uniform across its regions. These steps would facilitate effective and efficient compliance by eliminating subjectivity and by providing facility owners and operators a clear understanding of the requirements.

### **Toxic Chemical Release Reporting: Community Right-To-Know; 40 CFR Part 372**

NACD requests EPA to reconsider the requirement that companies in NAICS code 424690, Other Chemical and Allied Products Merchant Wholesalers, chemical distributors, file annual Toxics Release Inventory (TRI) reports. As EPA's own data demonstrates, chemical distributor releases are miniscule compared to industries that actually manufacture products.

Despite the lack of emissions to report, chemical distributors must spend valuable time and resources to complete and submit TRI reports to EPA each year. Depending on the number of chemicals subject to reporting and the type of operation, it takes chemical distributors from 12 to 40 hours *per facility* to complete and submit the reports.

The costs associated with complying with TRI reporting are high for distributors, while the benefit to the public is questionable at best. In fact, the burden is even greater for chemical

distributors than it is for other covered industries. Chemical distributors do not manufacture products from the same raw materials day after day as other industries do. Instead, chemical distributors handle a wide variety of substances at threshold amounts, depending on the needs of their customers, which frequently change. These facilities are required to submit an individual report for each covered chemical, regardless of whether the facility ever had a release.

Many distributors subject to the reporting requirements simply receive chemical products from suppliers and ship them out to their customers without even opening the packages. Yet, because they are within the covered NAICS code and have more than 10 employees, they must report. As a nominal source of toxic releases as an industry but even less per facility, it begs the question, what benefit is the public deriving from the information, especially when industry reports over 21 years provide the same result, that chemical distribution is a tiny source of emissions?

When EPA subjected chemical distributors to the TRI reporting requirements in the mid-1990s, the agency justified this by claiming the distribution segment was similar to the chemical manufacturing segment and would have similar emission levels. In its 1996 proposed rule, EPA stated that “activities of this industry - handling of chemicals- and its involvement with TRI chemicals are very similar to those of the manufacturing universe already subject to TRI reporting.”

That assumption was wrong in 1996 and remains wrong 21 years later. Each year, the amount of emissions reported by chemical distributors is less than .003 percent of those reported by chemical manufacturers. Most NACD members submit data every year not because they have sizable releases, but because they handle or store chemicals above the threshold quantity of many of the substances covered under TRI. Many of these facilities report zero emissions.

Each year, chemical distributors, the majority of which are small businesses, must spend valuable hours preparing and submitting TRI reports, despite the fact that their emissions are miniscule. Even the Small Business Administration argued against subjecting chemical distributors to the TRI reporting requirements because the costs so far-outweighed the benefits. Now is the time for EPA to reconsider this requirement for chemical distributors.

#### **Hazardous Waste Generator Standards - Satellite Storage Limits; 40 CFR 262.34(c)(1)**

The hazardous waste generator rules currently allow only 55 gallons of waste to be collected in a satellite storage area. (40 CFR 262.34(c)(1)). This is the total amount and does not consider the number of different streams that might be generated from a process.

It would be beneficial if the rule allowed for up to 55 gallons of *each* stream produced in the process to be stored in the satellite area. This is allowed by some states but not by the federal rules. Flexibility is needed to help facilities to comply with the rule and still be able to manage the generation of waste streams. For example, if a facility has three different streams, the 55 gallon limit allows only a 15- to 18-gallon container of each; however, standard containers are 30-gallon drums or 55-gallon drums. It is not practical for employees to measure each drum to ensure the facility stays below the maximum. The 55 gallon total limit is an arbitrary number and does nothing to improve safety or the environment. In fact, the limit causes facilities to spend more time moving around small containers that are susceptible to damage and leaks rather than being able to move drums that have better

integrity. Therefore, changing the limit from 55 gallons total to 55 gallons for each stream would enhance both worker safety and environmental protection.

### **Pesticide Registration and Classification Procedures; 40 CFR 152**

The EPA's pesticide registration and classification procedures are far too complicated. An application can cost hundreds of thousands of dollars and multiple-years' worth of man-hours to complete. The one to two-year registration cycle exacerbates this situation. This is a severe barrier to market entry, particularly for smaller businesses.

NACD requests that EPA recognize data already in the public domain by adopting a process similar to that of the U.S. Food and Drug Administration's (FDA) process for evaluations in food contact substances. The FDA evaluates current registrations and recognizes public data in their process. The same products are registered with both bodies, so it does not make sense for the EPA to have so many additional requirements. If the product application is that of *direct food contact* it falls into the FDA's hands. If the product application is that of *surfaces* inside food or other facilities, the responsibility is with the EPA.

### **EPA Enforcement Policies**

NACD urges EPA to review and reform the agency's enforcement policies to make them more fair, reasonable, clear, consistent, and predictable. Environmental protection would be enhanced if EPA would take a more collaborative, compliance assistance-oriented approach rather than the too-common "find and fine" approach. There are several steps the agency could take to improve the process while still ensuring those in violation of the rules are appropriately penalized.

First, EPA should work with facilities to ensure they are aware of their regulatory obligations before issuing penalties. In many cases, facilities, particularly small businesses, may be out of compliance not out of malice, but because they are simply unaware of the requirements or do not understand them. In small companies, the individual in charge of regulatory compliance is usually not only overwhelmed by the amount and complexity of federal, state, and local regulations, but also has other duties at that company. Rather than issuing penalties without question, EPA should give these facilities tools and a period of time to come into compliance.

Second, EPA should reform its self-disclosure policy to encourage companies to report minor oversights such as paperwork violations without fear of severe repercussions. NACD is familiar with cases where small businesses have self-reported Toxic Substances Control Act Chemical Data Reporting errors to EPA only to be presented with six-figure penalties. This is unjustified and has the adverse effect of discouraging companies from reporting. EPA should refrain from issuing penalties upon a first self-disclosure, particularly if the oversight was a paperwork mistake that did not threaten health or the environment.

In addition, NACD strongly urges EPA to adopt time limits between the time of an inspection and the time when the agency presents a company with a notice of violation (NOV). There have been far too many cases in which EPA conducts an inspection and raises some issues but then the company does not hear anything until one, two, or even three years later when they are presented with a NOV and proposed six-figure penalties. This is inexcusable. If a violation is so severe that it deserves a six-figure penalty, it does not make sense for EPA to keep that company in limbo for up to three years. NACD urges EPA to adopt a policy in which inspectors

are straightforward with facilities and provide them with a clear description of the next steps and the timeframe for additional action.

Thank you for the opportunity to present these recommendations. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

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