May 12, 2017 ***DRAFT FOR DISCUSSION***

Submitted electronically to the Federal eRulemaking Portal (www.regulations.gov):

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

Sarah Rees, Director
Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW.
Mail Code 1803A
Washington, DC 20460

RE: Environmental Protection Agency Request for Comment on Evaluation of Existing Regulations

Dear Director Rees:

The Vinyl Institute (VI)[1] is pleased to submit this response to the U.S. Environmental Protection Agency's (EPA) notice requesting comments on regulations that may be appropriate for repeal, replacement, or modification. *entitled Evaluation of Existing Regulations*, 82 Fed. Reg 17,793 (April 13, 2017).

The Agency's notice is intended to implement Executive Order 13777,[2] which directs all agencies to establish a Regulatory Reform Task Force (Task Force), and instructs the Task Force to identify regulations that:

1. eliminate jobs, or inhibit job creation;
2. are outdated, unnecessary, or ineffective;
3. impose costs that exceed benefits;
4. create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
5. are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

[1] The Vinyl Institute (VI), a U.S. trade association founded in 1982, represents vinyl resin, monomer, and additive producers. The VI serves as the collective voice for the vinyl industry, engaging industry stakeholders in shaping the future of the vinyl industry. More information about the Vinyl Institute can be found on our website: www.vinylinfo.org.

[2] Exec. Order No. 13,777, 82 Fed. Reg. 12,285 (Mar. 1, 2017).

6. derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

In addition, Executive Order 13777 directs agencies to focus on regulations that "are outdated, unnecessary, or ineffective" in meeting the regulatory offsets required by Executive Order 13771.[3]

The VI appreciates the opportunity presented by this notice as our member companies are impacted by a variety of regulatory requirements that add unnecessary costs and delays to the manufacture of polyvinyl chloride (PVC) resins and the primary materials needed for PVC resin manufacturing, such as vinyl chloride (VCM). VI member companies are also impacted by regulations that unnecessarily restrict, impede, and burden construction in the United States and thereby limit the market for vinyl products.

VI members look forward to working with the EPA Office of Policy to modify and reform EPA regulations that increase regulatory costs. The VI submitted comments on the regulatory reform efforts by the Department of Commerce,[4] which identify regulations that impose burdens on manufacturing.[5] The VI has also submitted detailed recommendations in past comments and other correspondence to EPA on the PVC MACT rule and its ongoing reconsideration, as well as the Clean Air Act (CAA) Risk Management Program. Given the May 25 deadline for the Task Force to submit a report[6] and the statutory requirements of the Administrative Procedure Act, the VI's comments are focused on identifying problematic regulations, with the understanding that EPA will need to convene limited notice-and-comment rulemakings as part of its regulatory reform efforts.

I. PVC MACT Reconsideration

The National Emissions Standards for Hazardous Air Pollutants from Polyvinyl Chloride and Copolymers Production Rule ("PVC MACT", 40 C.F.R. Part 63 Subparts DDDDDD and HHHHHHH) was promulgated on April 17, 2012.[7] The PVC MACT is a prime candidate for consideration by EPA's Regulatory Reform Task Force because reconsideration of the rule is already under way, and modifications to the PVC MACT would qualify as deregulatory action for purposes of E.O. 13771.[8] Such an action would reduce regulatory costs; without significantly impacting emissions of hazardous air pollutants ; and EPA is mandated by the Clean Air Act. For example, EPA promulgated a wastewater emission limit in the final rule, without providing an opportunity for comment, that EPA later admitted was based on erroneous data. The resultant limit is a major barrier to the construction of any new greenfield PVC manufacturing facilities in the U.S.[9]

[3] Exec. Order No. 13,777 § 3(f).

[4] *Impact of Federal Regulations on Domestic Manufacturing*, 82 Fed. Reg. 12,786 (Mar. 7, 2017).

[5] Docket Document Nos. DOC-2017-0001-0159 and DOC-2017-0001-0171.

[6] Exec. Order No. 13,777 § 3(g).

[7] *National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production*, 77 Fed. Reg. 22,848 (Apr. 17, 2012).

[8] Exec. Order No. 13,771, 82 Fed. Reg. 9,339 (Feb. 3, 2017).

[9] 40 C.F.R. Part 63 HHHHHHH Table 2 (New source total non-vinyl chloride organic hazardous air pollutant limit for process wastewater).

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The CAA mandates that EPA convene a reconsideration proceeding to provide an opportunity to comment on any aspect of central relevance to the outcome of a final rule when that feature was not included in the proposed rule.[10] This is the case for the PVC MACT and it has been nearly five years since EPA accepted industry petitions for reconsideration "on at least the following: Petitioners' claims that the public was not afforded a reasonable opportunity to comment on emission limits in the final rule for process vents, process wastewater and stripped resin for major and area sources."[11] Nevertheless, EPA has yet to formally initiate a reconsideration proceeding and provide an opportunity to comment, despite the fact that the rule has been in effect for more than two years. More egregiously, EPA required companies to collect and submit data since 2012 but has taken no action on this new data. In all, the industry has spent over $50 million and ten person-years to collect data for the original rulemaking and reconsideration with no result in sight. The return on investment on this mandatory testing has been zero.

EPA estimated the annualized costs of the PVC MACT would be $4.1 million.[12] This vastly understates the actual costs of compliance with the rule; the VI provided comments on the significant cost underestimates in EPA's most recent renewal of the Information Collection Requests for this rule.[13] Conservatively, the rule imposes approximately $60,000 in annual testing costs for resin and wastewater at each facility. Stack testing to meet the process vent limits will add an additional $20,000 on an annual basis and as much as $300,000 on a less periodic basis per stack tested. In some states, the new leak detection provisions of the rule have increased annual compliance costs by $40,000 per facility. These estimates do not include the administrative costs of dealing with increased data collection requirements of the rule. EPA did not calculate the benefits provided by the final rule but did estimate emission reductions.[14]

The VI believes that the errors, ambiguities, and unnecessary requirements in the PVC MACT can be corrected, thereby significantly decreasing regulatory compliance costs without significantly impacting the emission reductions estimated by EPA. These unnecessary costs arise from emission limits that do not meet the requirements of the CAA and ambiguities and omissions in the language of the final rule that create uncertainty and over-compliance. The VI has submitted detailed documents since EPA promulgated the final rule, identifying flaws in the PVC MACT that are too numerous to identify here.[15] The VI requests that EPA devote the necessary resources to the PVC MACT reconsideration and begin the process of proposing a reconsidered PVC MACT rule for notice and comment as soon as possible.

[10] 42 U.S.C. § 7607(d)(7)(B).

[11] Letter from Gina McCarthy, Assistant Administrator EPA, to Mr. Jean-Cyril Walker, Keller and Heckman LLP (Sept. 28, 2012), Docket Document No. EPA-HQ-OAR-2002-0037-0564.

[12] 77 Fed. Reg. 22,847, 22,902; EPA, Economic Impact Analysis for the Polyvinyl Chloride and Copolymer NESHAP, 19 (2012), available at https://www.regulations.gov/document?D=EPA-HQ-OAR-2002-0037-0178.

[13] Docket Document Nos. EPA-HQ-OECA-2014-0101-0005 and EPA-HQ-OECA-2014-0104-0005.

[14] 77 Fed. Reg. at 22,897.

[15] *See, e.g.,* Docket Document Nos. EPA-HQ-OAR-2002-0037-0561, EPA-HQ-OAR-2002-0037-0574, and EPA-HQ-OAR-2002-0037-0620.

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II. Risk Management Program Amendments

On January 13, 2017, EPA promulgated amendments to the CAA Risk Management Program (RMP, 40 CFR Part 68).[16] These amendments, which substantially overlap the requirements of the OSHA Chemical Process Safety Standard, require facilities to develop, implement, and submit an overly burdensome and bureaucratic risk management program for all covered processes at a facility. Rescinding the January rule would be deregulatory, would decrease compliance costs for industry, and would not remove significant regulatory benefits.

EPA estimated the annualized costs of the amendments to the RMP at $131.8 million.[17] EPA was not, however, able to estimate the benefits provided by the rule, stating only that "promulgation and implementation of this rule would result in a reduction of the frequency and magnitude of damages from releases."[18] EPA estimated that, on an annual basis, a total of $274.7 million onsite and offsite damages occur at RMP facilities.[19] Thus, for these amendments to the RMP regulations to be cost-effective, they would have to prevent nearly half of all annual damages projected by EPA to occur at RMP facilities. EPA made no attempt to estimate how much, if any, or these damages would be prevented by the new rule. To justify the costs of the rule as reasonable in comparison to its benefits, EPA cited four "broad social benefit categories" that might be provided by the rule but did not provide any estimates of the monetary value of these speculative benefits.[20]

On April 3, 2017, EPA proposed to delay the effective date of the RMP amendments until February 19, 2019, while the Agency considers petitions for reconsideration filed by numerous groups.[21] This is an important first step. As the VI stated in its comments on the proposed rule to amend the RMP regulations,[22] existing regulatory requirements, voluntary outreach, and educational and training efforts provide the best approach to promote and enhance safe chemicals management. EPA therefore should review and rescind the RMP regulation amendments in their entirety as part of the Agency's evaluation of existing regulations.

III. Lead Renovation, Repair, and Painting Program Rule

In 2008, EPA promulgated the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule, which was subsequently amended in 2010 and 2011.[23] Since implementation of the RRP, it has become clear that this rule is overly broad. Consumers and small contractors are most impacted by the increased costs of renovation

[16] *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4,594 (Jan. 13, 2017).

[17] 82 Fed. Reg. at 4,596.

[18] 82 Fed. Reg. at 4,597.

[19] 82 Fed. Reg. at 4,597.

[20] 82 Fed. Reg. at 4,598.

[21] *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date*, 82 Fed. Reg. 16, 146 (Apr. 3, 2017).

[22] EPA Docket Document No. EPA-HQ-OEM-2015-0725-0362.

[23] 40 C.F.R. Part 745 Subpart E.

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created by the RRP. For example, the testing requirements of the RRP on average added $134.41 to the cost of each vinyl replacement window during remodeling activities conducted in 2016.[24]

Too many home renovations are needlessly captured within the scope of the RRP. This is a problem that is ripe for correction during EPA's evaluation of existing regulations. The RRP requires that renovators test existing paint for the presence of lead.[25] Frequent false-positive tests occur, and result in the requirement to follow work practice standards when lead is not present above the regulatory action level (1.0 mg/cm^2 or 0.5% by weight)[26]. When the rule was promulgated, it was with the expectation that a lead test that met both the false negative rate (≤5%) and false positive rate (≤10%) criteria of the rule[27] would be available soon. At the time, only tests that met the false negative rate criterion were available.

EPA has not been able to provide or identify a test that meets the false positive criteria outlined in the rule.[28] Based on EPA's projections, the regulatory costs arising from the lack of suitable testing is $200 million per year.[29] Additionally, the overly broad certification and recordkeeping requirements add a significant financial burden to small renovation firms.

In 2010, EPA added recordkeeping requirements and removed an exemption that allowed informed homeowners to opt-in of costly work practices when potentially vulnerable persons would not be exposed.[30] EPA estimated that annual regulatory costs for the 2010 rule would be $500 million per year.[31] EPA estimated the benefits of that rule as $870 million per year.[32] EPA's estimates, however, did not include the opportunity costs of renovations that are not undertaken due to increased costs from RRP compliance. In addition, no benefits are provided when a false positive test result triggers unnecessary remediation activities during a renovation.

EPA should take steps to ensure the near-term availability of a test method that meets the false positive criterion of the RRP regulations, either through EPA research and development or the provision of public grants. In the absence of a functional test, EPA should make regulatory improvements to reduce the burden of the rule and better reflect the statistical uncertainty regarding the presence of lead in buildings. Specifically, EPA should: (1) reevaluate the stringency of renovator certification and recordkeeping requirements; (2)

[24] Docket Document No. DOC-2017-0001-0171 at 2.

[25] 40 C.F.R. § 745.82(a).

[26] 40 C.F.R. § 745.82(a).

[27] 40 C.F.R. §§ 745.88(c)(1)-(2).

[28] U.S. EPA, "Lead Test Kits", available at: https://www.epa.gov/lead/lead-test-kits ("to date no lead test kit has met both of the performance criteria outlined in the RRP rule").

[29] *See Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program*, 75 Fed. Reg. 24,802, 24,812 (May 6, 2010); *see also* Docket Document No. EPA-HQ-OPPT-2016-0126-0004 at 2.

[30] 75 Fed. Reg. 24,802.

[31] 75 Fed. Reg. at 24,812. EPA projected the costs would decrease to $300 million annually once a suitable test method was available.

[32] 75 Fed. Reg. at 24,811.

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reinstate the opt-out provisions based on occupant categories; and (3) remove the exclusion for window replacement from the definition of "minor repair and maintenance activities".[33]

IV. SIPs and FIPs for NAAQS

State Implementation Plans and Federal Implementation Plans for the National Ambient Air Quality Standards (NAAQS) (40 C.F.R. Parts 50 & 58) impose significant requirements on manufacturing facilities. NAAQS are reviewed by EPA every five years, as required by the CAA. This short review cycle does not allow enough time to achieve the goals of the previous NAAQS and puts unnecessary regulatory burdens on states and industry. The provisions implementing NAAQS for nitrogen oxides (NO_x) and ozone are particularly problematic. Congressional amendment of the CAA to increase the statutory review time is the ideal solution to this issue, but EPA should consider taking steps to make NAAQS reviews more practical and cost-effective.

V. Leak Detection and Repair (LDAR) Rules

Currently, there are at least eight regulations that address control of volatile organic compound (VOC) and hazardous air pollutant (HAP) fugitive emissions from individual components within defined equipment (e.g., valves and pumps) at CAA-regulated facilities. These regulations include 40 C.F.R. Part 60 Subparts KKK, VV and VVa; 40 C.F.R. Part 61 Subparts J and V; and 40 C.F.R. Part 63 Subparts H, TT and UU. These requirements include monitoring for leaks and requiring prompt repair of any identified leaking equipment.

The Federal LDAR regulations are in addition to State rules that are just as stringent, or even more stringent, than the Federal rules. EPA should take steps to consolidate the Federal requirements, eliminate redundancies, and reduce inefficiencies. The State of Louisiana's Fugitive Emission Consolidation Program provides an example. EPA also should allow the use of infrared cameras as an alternative to performing point-by-point monitoring for leaks.

VI. Proposed Site Remediation MACT

On May 13, 2016, EPA proposed to make significant and precedent-setting changes to Part 63 Subpart GGGGG, based on a petition for reconsideration filed more than 12 years ago.[34] EPA proposed to remove exemptions from the rule for site remediation activities performed under authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and for site remediation activities performed under a Resource Conservation and Recovery Act (RCRA) corrective action or other mandatory RCRA order. EPA also proposed to remove the applicability requirement that site remediation be co-located with at least one other stationary source regulated by another NESHAP.

EPA estimated an annualized cost of $2.16M ($13,000 per affected facility for facilities with remediation waste containing HAPs below 1 megagram and $41,000 per affected facility for facilities that contain ≥1 megagram of

[33] 40 C.F.R. § 745.83.

[34] *National Emission Standards for Hazardous Air Pollutants: Site Remediation*, 81 Fed. Reg. 29,821 (May 13, 2016).

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HAPs).[35] EPA did not provide any estimate of monetary benefits, and stated that hazardous air pollutant emissions would not be reduced by the rule.[36]

The Fall 2016 Regulatory Agenda indicated a January 2017 target date for a final rule. EPA should not move ahead with a rule that imposes costs but provides no commensurate benefits.

VII. Clean Air Act "General Provisions"

The various regulatory programs implementing the CAA (Parts 60, 61 and 63 of the Code of Federal Regulations) each contain a section of "General Provisions" (found within Subpart A) that apply to any affected source within the Part. Across all three Parts there are similar notification requirements (e.g., at the start of construction) and reporting requirements (e.g., semi-annual reporting) with varying timelines and nuances. This fragmented approach greatly increases the complexity of compliance when a source is affected by multiple CAA programs.

For example, Part 63 Subpart A contains more than 11 notifications that may be required, in addition to any other notifications under the primary Subpart (e.g., Subpart HHHHHHH for the PVC MACT). EPA should reduce redundancies, standardize program requirements, and remove unnecessary notifications, such as the requirement to notify EPA of the date of startup of a New Source Performance Standards- or MACT-affected source within 15 days of the event.[37]

VIII. Clean Air Act Startup, Shutdown, and Malfunction Events

Over the past several years, EPA has worked systematically to eliminate existing exemptions to comply with CAA emission standards during periods of startup, shutdown and malfunctions (SSM), in response to several Federal court decisions. EPA eliminated affirmative defense provisions that addressed SSM events but failed to develop alternative emission limits that apply during SSM periods. This approach subjects every Title V facility to a higher likelihood of a CAA citizen suits for SSM activities that cannot be safely avoided. This change puts affected facilities in the dangerous position of choosing between shutting down to avoid a safety event or continuing operations to avoid a CAA excess emission. The Agency must continue to evaluate and resolve the SSM conundrum in a manner that places safety first.

IX. Clean Water Act Cooling Water Intake Structures

On August 15, 2014, EPA promulgated a final rule setting out requirements for cooling water intake structures (CWIS) at existing power generating facilities, manufacturing facilities, and industrial facilities under Section 316(b) of the Clean Water Act.[38] The rule requires facilities that withdraw more than 2 million gallons per day

[35] 81 Fed. Reg. at 29,825-26.

[36] 81 Fed. Reg. at 29,825-26.

[37] 40 C.F.R. § 63.9(b)(4)(v).

[38] *National Pollutant Discharge Elimination System-Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities*, 79 Fed. Reg. 48,299 (Aug. 15, 2014).

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(MGD) of water and use at least 25 percent of this water for cooling purposes to implement best technology available (BTA) for minimizing adverse environmental impacts from impingement and entrapment. Additional studies and site-specific controls are required by facilities that withdraw at least 125 MGD. Impingement BTAs include one of several options such as reduced intake velocity of 0.5 feet per second, traveling screens meeting BTA standards, demonstration of an impingement mortality standard.

Some of these steps require permitting agency approval. The rule is to be implemented with the next revision of a facility's existing [water discharge?] permit, and imposes different requirements depending on whether the permit renewal occurs before or after 45 months from the date of promulgation. Although the 2 MGD threshold seems significant, the practical effect of the trigger at 25% for cooling purposes (500,000 gallons per day cooling) is to capture many smaller and medium size facilities within the ambit of the rule

EPA estimated that 1,065 facilities (521 manufacturing facilities and 544 power plants) would be impacted by this rule. EPA estimated the annual cost of the rule at $275 million.[39] This estimate is woefully short as the Agency did not include the cost of implementing site-specific BTA for entrainment.[40] In contrast, EPA estimated the annual benefits of the rule at $29 million, which raises significant about its usefulness or reasonableness.[41]

X. Refrigerant Management Regulations

On November 18, 2016, EPA published a final rule extending the requirements of its Refrigerant Management Program for ozone depleting substances to non-ozone depleting refrigerants like hydrofluorocarbons (HFCs). The new rule, which went into effect on January 1, 2017, does not appear to have been covered by the January 20, 2017 White House directive to review new and pending regulations. The new regulations lower the leak rate thresholds that trigger the duty to repair refrigeration and air-conditioning equipment containing 50 or more pounds of refrigerant.

- Lowers from 35% to 30% for industrial process refrigeration (IPR)
- Lowers from 35% to 20% for commercial refrigeration equipment
- Lowers from 15% to 10% for comfort cooling equipment

Facilities using non-ODS refrigerants would be required to conduct quarterly/annual leak inspections or continuously monitor devices or components of refrigeration equipment that have exceeded the threshold leak rate. The rule also requires reporting to EPA if a refrigeration system contains 50 or more pounds of refrigerant, leaks 125% or more of their full charge in one calendar year, and imposes sales restrictions on HFCs and other non-exempt substitutes. In addition, technicians working on such systems will be required to

[39] 79 Fed. Reg. at 48,303.

[40] 79 Fed. Reg. at 48,304.

[41] *Id.*

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keep a record of refrigerant recovered during the disposal of systems with a charge size from 5–50 lbs. [**Not sure what the concern is with this rule. Please advise.]**

* * *

The VI appreciates EPA's consideration of these comment on the Agency's regulatory reform efforts. Should you have any questions on the regulations identified in these comments, please do not hesitate to contact me.

Sincerely,

Richard Krock
Vice President, Regulatory and Technical Affairs

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