NEDA
CAP
CLEAN AIR PROJECT

National Environmental Development Association's Clean Air Project

May 15, 2017

Docket No. EPA–HQ–OA–2017–0190
Mr. Ryan Jackson, EPA Administrator Pruitt's
Chief of Staff
Ms. Samantha Dravis, Associate Administrator
EPA Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr Jackson and Ms. Dravis

NEDA/CAP, a coalition of American manufacturers, is responding to EPA's Notice requesting recommendations for repealing, replacing and/or modifying burdensome EPA regulations. 82 Fed. Reg. 17,793 (Apr. 13, 2017). The attached Table of NEDA/CAP recommendations lists over 40 Clean Air Act (CAA) regulations that impose mammoth costs on U.S. manufacturers with little or no environmental benefit. **The following CAA regulations and policies constitute "our top ten" candidates for repeal or replacement.** (Each candidate has a reference such as "A.2," "B.19", etc., that refer to the entry in the attached Table of Recommendations).

1. Modify the Exceptional Events Rule to *Include* High Background Ozone Levels and International Ozone Transport (See A.2);
2. Replace the New Source Review (NSR) exclusion for "Routine, Maintenance, Repair and Replacement (RMRR) following protracted enforcement litigation on this issue so that a reasonable man knows what changes at a plant are excluded from NSR (See B.3);
3. Repeal Revisions to the Refrigerant Rule that Illegally Regulate Substitutes for Ozone Depleting Substances Banned under the Montreal Protocol. (See D.1);
4. Repeal Federal "SIP Call" of State Rules Containing Affirmative Defenses or Exclusions from Violation for Excess Emissions During Startup, Shutdowns (See A.3);
5. Repeal and Replace EPA's "Major Source" and "Major Modification" Aggregation Policies (See B.1, B.2);
6. Modify the NSR "Offset Interpretative Ruling" (See B.4);
7. Modify NSR Atmospheric Air Dispersion Modeling Requirements in Appendix W for Secondary Pollutants Until EPA Approves a Sole Source Model (See A.4, B.6);
8. Repeal the NESHAPs "Once In Always In Policy" (See C.2);
9. Repeal 2016 Regional Consistency Revisions Rule and Ask the Court to Remand the Revisions Rule (See B.16).
10. Modify and expand the regulations authorizing Plantwide Applicability Limits ("PALS") (See B.14).

The attached table provides full citations to these candidate rules and policies, with a description of each and the burdens they entail, with a proposed solution that is consistent with the Clean Air Act.

Respectfully submitted,

Leslie Ritts on behalf of NEDA/CAP

Cc Dominic Mancini, Deputy Administrator, OMB
Amanda Gunasekara, HQ OAQPS Liaison

Attachment – Table of NEDA/CAP Recommendations

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NEDA/CAP Recommendations
to Repeal, Replace or Modify Existing Clean Air Act Regulations and Policies
82 Fed. Reg. 17,793 (Apr. 13, 2017) - Docket No. EPA–HQ–OA–2017–0190

NAME OF REGULATION – Brief Description	CITATION to C.F.R. & FED. REG. Issue Description	(i)-(vi) criteria listed at 82 Fed. Reg. 17,793, Col.3	Savings/economic impact information
A. IMPLEMENTATION OF NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS): State Implementation Plan (SIP) Rules 42 U.S.C. Chapter 85, Subchapter I, Part A - Air Quality and Emission Limitations			
A.1 Repeal the SIP Requirements and Designation Rules for the 2015 Ozone NAAQS & Delay Implementation of the 2015 NAAQS Revisions.	**Clean Air Act (CAA) 42 U.S.C. §7410(b), 40 C.F.R. § 50.15 (*Ozone NAAQS*), 40 CFR Part 51 Subpart AA, and Proposed Subpart CC.** For the 2015 ozone NAAQS, final nonattainment designations and State Implementation Plan (SIP) revision requirements were proposed at 81 Fed. Reg. 81,276 (Nov. 17, 2016) and will be codified at 40 C.F.R. § 51 Subpart CC ("*Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards*"). The 2008 Ozone NAAQS have not been fully implemented, nor have Judicial Petitions for Review of the 2008 NAAQS Implementation Rule, 40 C.F.R. Subpart AA, have not been adjudicated. *South Coast Air Quality Management District v. EPA*, D.C. Cir. Case No. 15-1115. The 2015 Implementation Rule should be repealed and reconsidered after the 2008 NAAQS has been implemented.	**(i) Eliminates jobs, or inhibits job creation; (iii) Imposes economic costs that exceed benefits (v) Relies in part on scientific information that has not been disclosed to the public**	As the Business Roundtable pointed out to the White House National Economic Council in its Feb. 22, 2017 letter, the 2015 Ozone NAAQS hampers economic growth in vast sections of the country without delivering additional, meaningful health benefits. Further, implementation of the 2015 rule would interfere with resources for implementing the 2008 rule for States, Industry and EPA Regions.
A.2 Modify the Exceptional Events ("EE") Rule to Exclude from Nonattainment Monitor "Design Values" High Biogenic Background Ozone Levels and International Ozone Transport	**CAA, 42 U.S.C. 7619(b); 40 C.F.R. § 50.14, last amended 81 Fed. Reg. 68,216 (Oct. 3, 2016).** The 2016 amended "EE" rule is an improvement and helps States exclude high monitored NAAQS values from area nonattainment designations (i.e., "NAAQS design values") if they resulted from exceptional events such as forest fires, natural calamities, stratospheric ozone intrusion into the troposphere, and other events beyond the control of regulators. EPA recognized in the rule the potential for high naturally occurring seasonal ozone from biogenic & other sources contribute to violations of the NAAQS, but declined to include these in the scope of the revised rule because they are "normally occurring events." 81 Fed. Reg. 68,228. EPA noted the availability of CAA Section 179B to exclude internationally-transported emissions but suggested it should be limited to Mexican and Canadian emissions.	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	When U.S. human-caused sources account for but a small portion of a non-attainment event, it should be possible to aggregate all the other causes that cannot be controlled and exclude these from non-attainment determinations, thus relieving states of the burdensome/impossible task of quantifying separately each non-human, non-U.S., or uncontrollable cause of the event

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A.3. Repeal the 2015 FIP Call and Preserve Rights of States to Adopt Local Rules Containing Affirmative Defenses and/or Exclusions from Violation for Excess Emissions During Startup, Shutdown, and Malfunctions (SSM)	**42 U.S.C. §§ 7410 (a)(2)(H), (l); 40 CFR Part 52 (Approval of State-by-State SIP Provisions); 80 Fed. Reg. 33,839 (Jun. 12, 2015)** ("State Implementation Plans: Responses to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Final Rule" ("FIP Call"). The 2015 FIP call is inconsistent with States' flexibility to plan how each will attain and/or maintain the NAAQS and enforce their own laws. The FIP call disapproving 36 SIPs is not based on a finding, required by Clean Air Act (CAA) Section 42 U.S.C. § 7410(l), that these provisions interfere with timely NAAQS attainment. Petitions for Review of the FIP Call were accepted by the D.C. Circuit in *Walter Coke, Inc., et al., v. EPA*, D.C. Cir. Case No. 15-1166. The D.C. Circuit issued an Apr. 24, 2017 Order granting EPA's motion to remove oral argument from the May 8, 2017 calendar and holding the case in abeyance pending further proceedings. The "FIP Call" overrides improperly State authority to allow certain types of emissions to be excluded from CAA violation when they occur during startup, shutdown or malfunctions of process or pollution control equipment, including but not limited to instances where affirmative defenses explain why the emissions are not predictable or cannot be prevented (as is the case for certain technological malfunctions). States have primary authority over their air quality and regulation of emission sources, and EPA did not even attempt to demonstrate that exclusion of emissions from stationary source SSM events or the exercise of affirmative defenses resulted in violations or interfered with attainment of the NAAQS.	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** to return authority over NAAQS Implementation to the States.	The importance of avoiding safety issues involved in startup, shutdown, and malfunction, including but not limited to startup of combustion equipment and purging of process equipment and pollution control equipment like oxidizers cannot be over-estimated. Moreover, exclusion of emissions during a reasonable period of startup, particularly for combustion equipment and fuel-fired control equipment like oxidizers that takes time to reach a steady state, do not interfere with ambient air quality or cause NAAQS exceedances except in rare instances. Also, affirmative defenses in SIPs that can be administratively implemented save court resources, or if an issue proceeds to court review, as perhaps in the case of a citizen suit, amplifies a court's record of decision.

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A.4. Repeal applicability of CAA PM2.5 SIP Implementation (including PM2.5 NSR applicability) to VOCs and Ammonia and Reinstitute PM2.5 Surrogacy Policy until Air Dispersion Modeling for Secondary Air Pollutants is Available at a Reasonable Cost.	**Clean Air Act, 42 U.S.C. §§ 7410(m), 7475(c) (NAAQS Pollutants, SIP Modeling and PSD Modeling Requirements) 40 C.F.R Subpart Z—Provisions for Implementation of PM2.5 National Ambient Air Quality Standards §51.1000 Definitions; 81 Fed. Reg. 58,010 (Aug. 24, 2016) *("Fine Particulate Matter NAAQS: State Implementation Plan Requirements").* 40 C.F.R. § 51.1000 defines $PM_{2.5}$ precursors as sulfur dioxide (SO_2), oxides of nitrogen (NO_x), volatile), volatile organic compounds (VOCs), and ammonia (NH_3).** PSD single source air dispersion models are *not* available for modeling secondary PM2.5 formation from ozone and NH3 EPA's Technical Assistance Document (TAD), at https://www.epa.gov/nsr/draft-guidance-comment-significant-impact-levels-ozone-and-fine-particle-prevention-significant is not sufficient and in fact underscores the difficulty of a case-by-case approach to air dispersion modeling for secondary pollutants such as PM2.5.	**(i)Eliminates jobs, or inhibits job creation;** **(iii) The implementation rule imposes economic costs that exceed benefits**	Until adequate evaluation tools exist to model secondary pollutants, EPA should not require air dispersion modeling on a case-by-case basis, particularly since the agency's prior surrogacy policies (e.g., evaluating $PM_{2.5}$ using PM_{10}) have about the same amount of accuracy as case-by-case modeling, and can be backstopped with other recordkeeping & reporting requirements without delaying or discouraging economic expansion and new products.
A.5 Repeal/Modify $PM_{2.5}$ Stack Compliance Testing for "Wet Stacks"	40 C.F.R. § 51, Appendix M recommends test methods for compliance with $PM_{2.5}$ (fine particulate) emissions limits, provided for states to implement into SIPs. "Artifacts" (i.e., fine particulate) are created by the EPA reference test methods, especially for wet stack plumes – which EPA acknowledges—and results in emission limit noncompliance. EPA should re-implement the $PM_{2.5}$ stack testing surrogacy policy until it fixes the compliance testing method. See S. Page, Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas" (April 5, 2005) at https://www.epa.gov/sites/production/files/2015-07/documents/pm25guid.pdf	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** **(iii) Imposes costs that exceed benefits;**	Noncompliance with EPA and State NAAQS emission limits is intolerable when it is caused by EPA technical issues. Joint efforts by API, EPRI, and NCASI to address the test method issues are underway with EPA's blessing, so there is widespread recognition of the problem. A fix would reduce testing costs at facilities and reduce the costly likelihood of triggering PSD because of well-known testing problems.

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B. NEW SOURCE REVIEW (NSR) & PERMITTING: 42 U.S.C. 85 Subchapter I Part C and Part D			
B.1 Repeal and Replace *All* "Major Source" 'Aggregation Policies' & Interpretations.	42 U.S.C. §§ 7410(a)(2)(C) & (I), 7479(1) [def. of *"major emitting facility"*]' 7501-7506 [*Nonattainment NSR Permitting]*; 7601(z) [*"stationary source]*; 77602(j) [def. of "major stationary source", "major emitting facility"]40 CFR §§51.165(b)(1)(ii)(A [*def. of "Building, structure, facility, or installation" in PSD areas*]; 52.166(b)(6) [*def. of "Building, structure, facility, or installation" in nonattainment areas*]; (i)(a), 70.2, 71.2. (CAA program *applicability definitions of "major stationary source" major source" and "major emitting facility").* See also *Summit Petroleum Corp., LLC v. EPA,* 690 F.3d 733 (6th Cir. 2012). There are dozens of EPA Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) applicability "guidance" documents and interpretations regarding when emissions activities under common ownership or operation must be "aggregated" and permitted as a single source. One controversial group of EPA applicability interpretations addresses when emissions of a pollutant from different pieces of equipment, even emissions units located as far as 30 miles apart and thus non-adjacent in a plain meaning sense of the word "adjacent," (i.e., physical proximity) must be "*aggregated*" to determine if the projects are part of the same "major source" or "major modification of a major source"—and require a major NSR permit. **EPA should withdraw prior aggregation policies and issue new rules on NSR applicability. Reasonable people should be able to agree when projects are part of the same "source" and are required to obtain a PSD or NNSR permit. States should be able to make these decisions with minimal EPA oversight**	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	Uncertainty in the applicability of the most basic CAA requirement of when a preconstruction permit or an operating permit is required costs the gross national product dearly by interfering with economic development of domestic manufacturing.
B.2 Repeal EPA Stay of Final 2009 "Project Aggregation" Rule and Finalize the 2010 "Proposed Reconsideration Rule"	*See* 74 Fed. Reg. 2,376 (Jan. 15, 2009), as amended by 74 Fed. Reg. 22,693 (May 14, 2009), ("Stay of PSD & Nonattainment NSR Aggregation" Rule published 74 Fed. Reg. 2,376 (Jan. 15, 2009); 75 Fed. Reg. 27,643 (May 18, 2010). See also "Applicability of NSR Review Circumvention Guidance to 3M - Maplewood, Minnesota (PDF)." Similar to the "major source aggregation" policy and guidance situation, a raft of EPA policies and interpretations exist regarding aggregating the emissions from individual projects at a	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	Uncertainty in the applicability of the most basic CAA requirement of when a preconstruction permit is required for projects undertaken at the same plant costs the gross national product millions of dollars

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Project Aggregation Recommendation Cont'd.	manufacturing plant into a single project (in order to determine the applicability of "major modification" new source review permitting), based on EPA's judgment that some business projects are "substantially related." EPA stayed the 2009 aggregation interpretative rule and started a rulemaking to replace it. EPA should finalize the proposed 2010 rule that establishes bright line presumptions -- for instance that projects cannot be substantially related if they occur more than three years apart. EPA should create bright line test to eliminate EPA second-guessing and enforcement of business decisions that plant projects are independent, provided that these conclusions are reasonable and supported by businesses before projects are constructed (i.e., a project does not depend on construction of a succeeding business project to "pay back" expenses of the first project).		annually. Businesses plan new products, routine maintenance, non-routine maintenance, and new equipment installation and replacement on a project-by-project basis, but EPA applies the PSD/NSR permit requirements to groups of purportedly "related projects" based on a haphazard policy called "project aggregation."
B.3 Replace NSR Exemption for "Routine Maintenance, Repair & Replacement (RMRR)" Approach Utilized by EPA Enforcement with a Regulatory Definition on Which Reasonable People Can Agree.	**40 C.F.R. §§ 51.165(a)(1)(27)(A)*(2)(C); 51.*166(b)(3)(iii); §52.21(b)(2)(i):** EPA, 1990 (Draft) NSR Manual, at A.33; *New York v. EPA.*, 443 F.3d 880 (D.C. Cir. 2006)*("New York II") (vacating 2006 NSR equipment replacement process rule*). EPA has implemented a longstanding NSR Program rule exempting from the definition of a "major modification," physical changes that are routine maintenance, repair and replacement ("RMRR"). But the exemption has been re-defined in numerous EPA interpretative policies and enforcement actions against numerous U.S. manufacturers based on multiple EPA definitions of "RMRR." A number of federal courts repudiated EPA's interpretations of "RMRR." It is *critical* to manufacturers that EPA provides a clear and meaningful definition of RMRR that encourages maintenance and/or "like kind" replacement of process equipment. States and other stakeholders over the years have periodically urge EPA to formally adopt a rule that allows physical changes and changes in the method of operation that constitute less than 5 percent of the capital cost of brand new equipment used by the IRS. *See IRS Publication 534.* We also recommend that EPA add language that policies on equipment replacement be based on typical practices for the entire industry sector," (i.e., not what is typical at an individual source).	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** EPA's enforcement policy of defining "RMRR" on a case-by-case application based on a number of factors repudiated by many federal district courts is improper and should be replaced by an EPA rulemaking that defines the longstanding exemption from a "major modification" subject to NSR in a predictable manner.	Enormous savings to companies who could maintenance equipment without the ambiguity and risk of EPA's enforcement office and citizen suits. If the rules would also encompass energy efficiency improvements in like-kind replacements using better materials to improve throughputs, additional savings for manufacturing, industry and the environment could be realized.

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B.4 Modify the Nonattainment NSR Offset Geographic Location Requirements.	40 C.F.R. § 51.165, 40 C.F.R. § 51 Appendix S, "Emission Offset Interpretative Ruling" at §§ IV, 3, D.1-2 ("Location of offsetting emissions") stipulates that offsets from other areas that impact the location of the proposed new source are not eligible unless the upwind location also is a nonattainment area for the pollutant. In order to obtain a NNSR permit, CAA Section 173 (c) requires a company to obtain emissions reductions from other sources within the same air quality control region that are equal to or greater than the "potential" new emissions from a new source or major modification. EPA has interpreted geographic boundaries in the offset provision very strictly, particularly in the face of well-understood science regarding emissions transport across multistate regions of the country and the relative contribution of certain precursor emissions such as NO_x, SO_2, and VOCs to the formation of ozone and $PM_{2.5}$. To facilitate company expansions and new products, EPA's rigid interpretation of the law can be relaxed (even without the amendments to the 1977 law that NEDA/CAP also believes are needed.) This Emission Offset Interpretative Ruling is scientifically inconsistent with EPA modeling used in the Cross-State Air Pollution Rule that EPA argues demonstrates that many upwind attainment area emission sources impact downwind monitors. See 1997 Cross State Air Pollution Rule (CSAPR); 2008 CSAPR and 2015 CSAPR modeling runs at 76 Fed. Reg. 48208 (July 6, 2011).	**(i) Eliminates jobs, or inhibits job creation;** **(ii) Is outdated, unnecessary, or ineffective;** **(iii) Imposes costs that exceed benefits;**	Companies cannot consider building in parts of the U.S. where eligible offsets are not available including rural nonattainment areas that often otherwise have no economic development potential and developed areas in States like Arizona). This issue particularly impacts facilities in the oil & gas and natural resource sectors.
B.5 Debottlenecking - Repeal EPA Withdrawal of 2006 Proposed Rulemaking and Clarify that Upstream & Downstream Debottlenecked Units Never are Subject to BACT Controls.	74 Fed. Reg. 2,460 (Jan. 15, 2009) (withdrawing proposed rule that attempted to clarify when emissions increases upstream or downstream of modified emission sources trigger NSR); 71 Fed. Reg. 54,235 (Sep. 14, 2006). Debottlenecking, like traffic control, is the removal of a constraint in a plant that allows it to increase production. Counterintuitively, EPA policy dis-incentivizes replacing old equipment with new process equipment that is more efficient because emissions increases from debottlenecked "upstream or downstream" process units are counted toward the determination of whether a project is major and must be permitted under NSR (even when the emissions from the new unit decrease, remain the same, have only a small increase, and/or the upstream/downstream emission increase is	**(i) Eliminates jobs, or inhibits job creation;** **(ii) Is outdated, unnecessary, or ineffective;** **(iii) Imposes costs that exceed benefits.**	NEDA members by themselves report projects worth hundreds of $ million have not moved forward due to EPA debottlenecking policies. The debottlenecking policy thwarts plant efficiency by subjecting commonsense changes to lengthy permit review and additional costs of

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Debottlenecking Cont'd.	already allowed by permit). Notably, most but not all EPA interpretations exclude a debottlenecked emissions unit that has not undergone a physical or operational change from BACT. See 40 CPR §52.21(j)(3) (*stating that BACT applies to units that experience a net increase "as a result of a physical change or change in the method of operation in the unit"*). See, e.g., Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards, to Michael M. Johnston, Chief, Air Operations Section - Region X, titled "PSD Applicability Pulp and Paper Mill" July 28, 1983.		pollution control, and simply results in leaving these projects on the engineering floor or moving them abroad where efficiency and innovation is prized instead of punished.).
B.6 Modify Ambient Air Dispersion Modeling Requirements for Secondary Formation of Ozone and $PM_{2.5}$ and Replace Draft EPA Guidance and Requirement for Case-by-Case Modeling	**42 U.S.C. § 7475(a)(3); 40 C.F.R. §§ 51.166(k)(1), (m), and 52.21(k)(1); 40 C.F.R. § 51, App. W, §5.2.1(c).** App. W default models and data processors are periodically listed in Appendix W, which was revised on Jan. 17, 2017 (82 Fed. Reg. 5,182) after nearly 20 years. 40 C.F.R. § 51, App. W, §5.2.1(c) does not include an EPA-approved "single source" ozone model for ambient air impact demonstrations under PSD. Only a few models and their data processors are pre-approved for use without case-by-case approval by EPA's Modeling Clearinghouse. Included in these lengthy case-by-case determinations (assuming they even get State agency authority and EPA Regional Office approval to move forward) are model "fixes," "tweaking" model algorithms to better replicate case-by-case site emission conditions, or using beta-tested non-Appendix W-default processors." In lieu of selecting a single source model for secondarily-formed pollutants like ozone and $PM_{2.5}$, EPA published draft guidance in 2016, to assist new source review permit applicants: https://www.epa.gov/nsr/draft-guidance-comment-significant-impact-levels-ozone-and-fine-particle-prevention-significant (a Technical Assistance Document or TAD). *Also see* 2015 Ozone Implementation Rule at 81 Fed. Reg. 81,276 (Nov. 17, 2016).	**(iii) Imposes costs that exceed benefits** PSD applicants were allowed to make qualitative comparisons of increases in ozone precursors to ozone values in an area to meet 40 C.F.R. §§ 51.166(k)(1) and 52.21(k)(1) or to use EPA's PM2.5 Surrogacy Policy (SEE A.4. *supra).* The Sierra Club petitioned EPA to establish a "single source" model for ozone. However, EPA acknowledges in the 2017 Appendix W revisions that it has been unable to establish a single source model for secondary pollutants like ozone and $PM_{2.5}$. Alternatively EPA can resume application of the PM2.5 surrogacy Policy	We estimate that the absence of an approved EPA single-source ozone and PM2.5 model for PSD applicants results in roughly eight to ten abandoned manufacturing expansions in the U.S. annually. A single source photochemical modeling run will cost at least $50,000 to $100,000, assuming States can provide an inventory of emissions from nearby facilities and acceptable meteorological data; if these data are unavailable, costs will increase significantly. agency's prior surrogacy policies (e.g., evaluating $PM_{2.5}$ using PM_{10}) have about the same amount of accuracy as case-by-case modeling, and can be backstopped with other recordkeeping & reporting requirements

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			without delaying or discouraging economic expansion and new products.
B.7 Replace the Significant Impact Level ("SIL") for Nitrogen Dioxide.	CAA, 42 U.S.C. §§ 7410(m); 7475(e); 40 C.F.R. § 52.21(b)(23)(iii); 51.166(k), Part 51,Appendix ;W 75 FR 6474 (Feb. 9, 2010)(*"Revision of NO2 NAAQS"*); EPA, *"General Guidance for Implementing the 1-hour NO2 NAAQS in Prevention of Significant Deterioration Permits, Including an Interim 1-hour N02 Significant Impact Level"* (June 28, 2010). In order to obtain a NSR permit under the CAA, an applicant must demonstrate that the proposed emissions from a new major source or major modification will not violate a NAAQS or a NAAQS increment. If that cannot be done, a source, including a pollution control that is based on burning fuel and pollutants cannot be permitting in the U.S. Since the SIL is so low, EPA published the cited guidance to develop a modeling "work around" for the NSR ambient air quality analysis, but it costs thousands of dollars more in modeling resources and requires a case-by-case EPA approval *and importantly often fails*. The NO2 SIL should be raised. It is so low that new pollution control equipment, like an oxidizer for VOC pollution control, that has less than a 10 MMBTU/hr. heat input capacity and a 45' stack fails to pass the PSD model screening limits and must therefore obtain a PSD permit.	**(iv) Creates a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies** by interfering with new energy and pollution control projects.	In order to obtain a NSR permit under the CAA, an applicant must demonstrate that the proposed emissions from a new major source or major modification will not violate a NAAQS or a NAAQS increment. If that cannot be done, a source, including a pollution control that is based on burning fuel and pollutants cannot be permitting in the U.S. Since the SIL is so low, EPA published the cited guidance to develop a modeling "work around" for the NSR ambient air quality analysis, but it costs thousands of dollars more in modeling resources and requires a case-by-case EPA approval *and importantly often fails*. There are no NO2 nonattainment areas in the country, and no ambient air monitors can detect excess NO2 so the SIL can safely be increased to support domestic manufacturers with state of the art pollution equipment.

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B.8 Repeal and Replace the Definition of "Begin Actual Construction"	42 U.S.C. §§ 7475(a)(1); 7479(2)(1); 40 C.F.R. § 52.21(b)(), 40 C.F.R. 51.166(b)(11), 40 C.F.R. 51.165(a)(1)(xv); 40 C.F.R. § 51 Appendix S II.A.17 (definitions of "begin actual construction"); see also https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index such as https://www.epa.gov/sites/production/files/2015-07/documents/19951213.pdf) PSD and a NNSR permits are "construction permits," and thus PSD applicants are not allowed to "begin actual construction" before a NSR permit is issued. Conflicting EPA and State guidance exists on what "begin actual construction" means, and EPA has issued CAA Notices of Violation (NOVs) for activities only peripherally related to an emissions unit, such as site lighting, demolition of emission units to be retired or replaced, electrical installation for a new building or section of a building, construction of building footings, digging drainage conduits, and building excavation (unrelated to the emission unit pad itself). Given the length of time it takes to get NSR permits, preconstruction (typically at least 10 to 18 months), pre-permit activities that are not "on an emission unit" (e.g., a boiler, or storage tank) can help expedite projects (particularly in parts of the country with severe weather), and should be allowed at the project proponent's own risk even though they may be directly related to a project to install or modify NSR affected emissions units. The construction of foundations, buildings, and tie-ins to existing process units are examples of activities that should be allowed prior to permit issuance. (A "tie-in" is piping and other equipment, including cut-off valves, used to connect or link (i.e., "tie-in") other equipment, either directly or indirectly.).	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	The global market place and speed to market easily trump EPA's conjecture that it is more difficult for EPA or a State to disapprove a permit application if a company has not spent money on it yet It also is easier, safer, and less expensive to install tie-ins during turnarounds, as opposed to hot tapping while the unit is running to facilitate installation of an emitting unit, once its PSD permit application is approved.

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B.9 "Project Netting" - Repeal and Replace Current Agency Policies	42 U.S.C. §§ 7475 (PSD Permit Applicability); "Project netting" would allow a company to replace a piece of equipment or a process with another piece of equipment or process quickly, -- provided that the new equipment has similar or lesser environmental impacts on a per-unit-of-production basis. In such instances, however, EPA requires a full facility-wide emission netting analysis, aggregating emissions increases and decreases for every project undertaken at a plant over a five-year period. This is unnecessary and discourages equipment replacement. EPA should streamline the procedures for project netting by finalizing a proposed September 14, 2006 rule (71 Fed. Reg. 54,235) that allowed certain types of project netting.	**(i) Eliminates jobs, or inhibits job creation; (ii) Is outdated, unnecessary, or ineffective;**	Project netting would keep domestic manufacturing jobs at home, and EPA can modify its regulations to assure that small energy efficiency improvements provided by like-kind replacements (e.g., provided by better metallurgy, etc.) by like-kind replacement equipment will protect production and the environment.
B.10 "Fugitive Emissions" – Withdraw Illegal EPA Stay of Rule Exempting from NSR Applicability Determinations for Plant Expansions in Many Industry Sectors	**42 U.S.C. § 7602(j); 40 CFR 51.165 (a)(iv)(C) [excl. in def. of "major modification" in nonattainment areas]; 51.166(b)(2)(iv) [excl. in def. of "major modification" in PSD areas for fugitive emissions; 52.21(b)(2)(iv).** 75 Fed. Reg. 16,012 (Mar. 31, 2010); 76 Fed. Reg. 23,489 (Apr. 27, 2011). Fugitive emissions are defined by EPA guidance as emissions that can neither be readily captured nor prevented. See e.g., T. Curran, EPA, "*Interpretation of the Definition of Fugitive Emissions*" (Feb. 10, 1999). See also 40 C.F.R. §§ 51.166(b)(1) and 51.165(a)(iv). EPA violated CAA 7607(d)(7) and finalized an "Interim Final Rule" on Mar. 30, 2011, 76 Fed. Reg. 17,548 (Mar. 30, 2011), *without* notice and public comment rulemaking, indefinitely staying a Dec. 19, 2008 regulations (73 Fed. Reg. 77,881), which excluded consideration of fugitive emissions from certain manufacturing sectors in determining whether a plant expansion was a "major modification" and needed a NSR permit.	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** The staying of 73 Fed. Reg. 77,881 and issuance of the Interim Final Rule (76 Fed. Reg. 17,548) violates CAA Section 307(d)(7)(B), which does not allow EPA to indefinitely stay effective final regulations without rulemaking as well as § 7602(j) that requires rulemaking for an industry before fugitives are included in "major source" determinations.	Some projects trigger NSR/PSD review, with lengthy delays to get permits and significant control costs, simply because of fugitive emissions (often from material handling like wood or chip piles, piles of agricultural materials used to make ethanol or seed oils, minerals, coal, etc.). If fugitive emissions were excluded, many more projects would move forward, and more quickly, improving domestic manufacturing's economic competitiveness.

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B.11 "Ambient Air" Interpretations - Repeal and Replace EPA to Provide a More Realistic Meaning Regarding Public Access and Potential Exposure to Emissions, Particularly in Air Modeling	CAA 42 U.S.C. § 7475(a)(3) ; ("PSD modeling requirements"). "Ambient air" is not defined by the CAA but is defined at 40 C.F.R. 50.1(e) as the "portion of the atmosphere, external to buildings, to which the general public has access. EPA has re-interpreted the definition many times--*see* EPA NSR DETTERMINATION Index: https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index; - and made unreasonable determinations that the public has access to areas like a fenced train railroads, roads and rivers, and independent contractor-operated property in the middle of a "source" that is otherwise owned and operated by the same person (i.e., the definition of "major source"). The definition of "ambient air" is pivotal to PSD modeling outcomes because it delineates the location of receptors for which ambient air quality impacts must be analyzed. Placing air dispersion receptors in the modeling grid in the *middle of a source*, where the general public is *highly unlikely* to be exposed to pollutants for more than a few moments, greatly increases the likelihood that a source will be shown in air dispersion modeling to "cause or contribute to" a NAAQS violation, leading to unnecessary, but costly, control measures or abandonment of a proposed project.	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** These modeling decisions defining "ambient air" should be left up to States and EPA should replace guidance	EPA's ambient air policy causes many projects to show modeled violations of NAAQS, meaning sources must install expensive controls or take other measures to reduce pollutant impacts or cancel projects because the needed controls make the projects uneconomic. Requiring placement of receptors where real exposures are likely to occur for relevant durations for the NAAQS in question, typically outside the boundaries of a source's property, would mitigate these negative economic impacts.
B.12 Combined Heat and Power (CHP) Projects – Replace Emission Netting Rules to Provide Incentives for CHP Projects.	40 C.F.R. §§51.165(b)(1)(a)(1)(i), 40 C.F.R. § 52.166(b)(1); 52.21 (b)(1)[NSR Program Definitions of Major Stationary Source and/or "major emitting facility"] that include the requirement for a source to be owned or operated by the "same person" have thwarted dozens of energy-efficiency and environmentally beneficial CHP projects over the past three decades because a cogeneration plant is generally not owned or operated by the manufacturer, who wants to an independent power provider or municipal utility to provide steam to the manufacturing process at the same time the power plant is generating electricity to the U.S. power grid. Since the CHP plant therefore is not under "common control," emission decreases from the manufacturer's existing (higher-emitting) steam plant cannot be "netted" with emissions increases from the new (cleaner and more efficient) CHP plant, which would avoid PSD or NNSR permitting altogether (or at least greatly streamline permitting). EPA should reinterpret/redefine	**(iii) Imposes costs that exceed benefits** **(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	CHP projects that produce process steam for industrial lines and electricity for public consumption or to regional power grids are meritorious and could be allowed by modifying EPA's anachronistic netting rules to allow these projects, even if they are not under common control or ownership. Changing the rules as suggested could also result in emissions decreases, by including regulatory

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	the first prong of the three-part definition of "major source" to redefine common control for CHP project review to treat the host and the owner/operator of the power plant as being "under common control."		mechanisms like discounts. CHP plants are inherently more efficient than utility units because the steam from a CHP unit is used twice. Plants that have added CHP are less costly to operate and less reliant on uncertain electricity grid pricing and is also consistent with smart grids promoted by DOE and the FERC for reliability.
B.13 Replace NSR Policies on NSR Application "Completeness Determinations" -	**42 U.S.C. § 7475(c) requires that States and the EPA grant or deny a NSR application *within one year. Avenal Power Center LLC v. EPA*, 787 F.Supp.2d 1 (D.D.C. 2011). S. Page, "*Timely Processing of Prevention of Significant Deterioration (PSD) Permits when EPA or a PSD-Delegated Air Agency Issues the Permit (Oct. 12, 2012).*** "Completeness determinations" are critical for establishing a bright line for grandfathering NSR applications when a NAAQS is revised or another critical CAA regulation changes and are high on the list of why American manufacturers take new product lines abroad to avoid typical lengthy permitting delays for new major sources and major source expansions in the U.S. EPA and state regulators "game the system" utilizing completeness determinations to control workflow (e.g., through belated and/or repeated requests for additional application information) in order to "re-start" the clock, thereby slowing the permit review process. Thus the 12-month period for obtaining a NSR permit can stretch for years. EPA must repeal old policies and establish a bright line test on which reasonable people can agree regarding "completeness determinations." An application which contains sufficient information for the permitting authority to begin work on the review should be considered to be complete, and only the failure of the applicant to provide additional information reasonably requested by the permitting authority within a reasonable time should stop (but not reset) the clock.	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	IF the PSD one-year time line were implemented as intended by Congress, it would accelerates economic benefits because projects are no longer delayed and likely to encourage more expansion of product lines in the U.S. discouraged by the long review periods typically associated with PSD review.

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B.14 "Plantwide Applicability Limits (PALs)" - Modify NSR Regulations to Broaden Opportunities to Utilize PALs	**42 U.S.C. § 7602(z) (definition of "stationary source"); 40 C.F.R. § 51.166(b)(2)(v) and (w) (definition and rules applying to PALs); *Chevron USA Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984); *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005) (upholding PALs).** There is no question that PALs are legal and that they result in emission reductions and innovative process and control technologies. The EPA regulations are too restrictive and thus many companies do not consider the use of PALs. One of the easiest and best ways to encourage PALs would be to allow "mini-PALs" instead of requiring "plant-wide" PALs, especially for logical equipment groupings like "all tanks in a tank farm" or "process heaters in specific production areas." Most plants are enormous – even allowing "west-side or south-side PALs would be environmentally and economically beneficial. In addition, eliminating requirements to reset PALs every 10 years, eliminating the ability of permit authorities or EPA to reopen PALs at any time, and eliminating restrictions on terminating PALs, would lead to a significant increase in their use, providing long-term certainty to domestic manufacturers.	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	See EPA's assessment of the cost savings and striking environmental benefits of approved PALs in "Evaluation of Implementation Experiences with Innovative Air Permits" (2002), which was cited with approval by the D.C. Circuit in *New York I*. https://www.epa.gov/sites/production/files/2015-09/documents/eval-implementation-experiences-innovative-air-permits.pdf.
B.15 Replace methods for calculating whether certain physical changes or changes in the method of operation of a source is subject to NSR.	**B.13 <u>BASIC "EMISSIONS INCREASE" MATH</u>** - The 2002 NSR Reform Rule provided needed clarifications and revisions to how manufacturers calculate whether a "physical change or change in the method of operation" to an existing "major source" resulted in a significant increase in emissions and is therefore subject to NSR. 67 Fed. Reg. 80,186 (Dec. 31, 2002). However, other revisions/ clarifications for calculating emissions increases under a Plantwide Applicability Limit (PAL) or for debottlenecked equipment and in other contexts were unclear and often unreasonable. **Clarifications to the method for calculating emissions increases are needed:** **(1) Eliminate the need to consider emissions increases from non-modified affected emission units;** **(2 (e.g., "debottlenecking)" (ii) Allow "project netting" so that emissions reductions associated with a project can be considered in Step 1 of the PSD applicability analysis;** **(3) Establish a more-flexible PAL program that includes a**	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	Encourages replacing old equipment with new, more efficient equipment; reduces permitting costs for domestic manufacturers; accelerates the benefits that accrue from expanded, modernized facilities; and/or allows projects that would be shelved due to NSR-required controls to move forward.

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	simplified "facility-wide actuals" emission test under which NSR is not triggered if facility-wide actual emissions for a given pollutant may not increase by greater than the respective significant emission rate; and **(4) Use a Baseline Actual-to-Post-Project Actual comparison or NSPS hourly increase methodology to determine whether PSD is triggered.** **B.13.a. EMISSION NETTING CALCULATIONS – EPA also should revise its guidance concerning the inclusion of actual-to-projected actual (ATPA) calculations in a netting analysis when the ATPA occurred within the netting contemporaneous project window.** The current approach discourages the retirement of older, higher-emissions manufacturing equipment that can be replaced with modern manufacturing processes that answer demands in the global marketplace. The current approach uses; this unnecessarily conservative environmental protectionism, which has been was discouraged by Congress in balancing environmental protection with economic development. 42 U.S.C. § 7470(3). **B.13.b. CURRENT REGULATIONS REGARDING THE CALCULATION OF EMISSIONS INCREASES ASSUME THAT ANY UNIT THAT HAS UNDERGONE A NON-ROUTINE PHYSICAL CHANGE "**has not begun normal operation", and hence the manufacturer may not compare projected actual emissions from that unit with historical emissions, but instead must base NSR applicability on the unit's potential to emit (because it has not begun normal operations). This is unreasonable and subjects manufacturers to NSR despite other constraints that limit projected actual emissions, leading results in manufacturers to abandon or relocating projects. EPA should amend 40 C.F.R. § 51.166(b)(47)(iii). **B.13.c Amend Plantwide Applicability Calculation Method to provide a comparison of "allowable [PAL] emissions" before and after a modification."**		

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B.16 Repeal 2016 Agency "Regional Consistency Rule," Stay Current Rule, and Ask Court to Hold Litigation in Abeyance Pending Reconsideration	**42 U.S.C. § 7601(a)(2); 40 C.F.R. §§56.1-6;** 81 Fed. Reg. 51,102 (Aug. 3, 2016) (*"Amendments to Regional Consistency Regulations."*) The CAA unambiguously requires EPA to make regionally consistent permit decisions to "level" the playing field for capital investment and permitting across all states Until 2016, following a unanimous decision by the D.C. Circuit Court of Appeals enforcing EPA's own regional consistency regulations, EPA regulations echoed the CAA. Following that decision, *NEDA/CAP v. EPA*, 752 F.3d 999 (D.C. Cir. 2014), which vacated an EPA directive to the ten EPA Regions to ignore a 6th Circuit ruling holding that EPA lacked authority under its own regulations to require a Title V operating permit for Summit based on the aggregated emissions from gas wells across 31 miles, EPA amended 40 C.F.R. § 56 regulations to erase the consistency requirement and allow the agency to engage in "intercircuit nonacquiescence." *The amendments have been challenged by industry as contrary to the consistency requirements of Section 301(a)(2) of the CAA and briefing will not be final until fall 2017.* (*NEDA/CAP v. EPA*, D.C. Cir. No. 16-1344).	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** • **Violates the CAA**	Any inconsistency in permitting policy between regions creates uncertainty for manufacturers subject to Title V operating permits and preconstruction permitting, and favors certain states and regions over others potentially resulting in a misallocation of resources. EPA should request a remand of the 2016 regulation from the D.C. Circuit and withdraw the rule in order to prevent "forum shopping" and make preconstruction permitting consistent across the country.
B.17 Modify the Court-vacated NSR Exclusion for "Pollution Control Projects (PCPs)"	From 1994 until 2005, when the federal DC Circuit Court of Appeals held that the codification of the NSR PCP exclusion in the 2002 NSR Reform Rule was inconsistent with the Clean Air Act in *New York v. EPA*, 413 F.3d 3 (2005), PCPs were exempted from NSR even if incidental increases of other pollutants occurred that exceeded the NSR significance levels (i.e., generally NOx or CO increased from the energy required to run the pollution control devices). EPA should revise its regulations to provide presumptive NSR approval of PCPs if they meet the EPA 1994 PCP policy and the *New York v. EPA*. https://www.epa.gov/sites/production/files/2015-07/documents/pcpguide.pdf	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	Modification of the PCP Policy/rule would allow net "environmentally beneficial" projects to proceed without undergoing NSR. EPA should be encouraging the use of PCPs; current policy does not.

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B.18 "Significant Emission Rate (SER)" for GHGs with a Higher Value - Repeal PSD BACT Review for GHG Emissions When a "Major Modification" Triggers PSD for Another "Regulated NSR Pollutant" or Replace Proposed GHG	**40 C.F.R. §§ 51.166 (b)(48); proposed 40 C.F.R. §§ 51.166 (b)(31) with parallel changes to 52.21(b)(31), 70.2 and 71.2 in §§ 51.166(b)(23) and 52.21(b)(23)(i);** 81 Fed. Reg. 68,110 (Oct. 3, 2016) ("Proposed *Revisions to the PSD and Title V GHG Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for Greenhouse Gas (GHG) Emissions under the PSD Program: Proposed Rule*"). The Supreme Court ruled in *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014), that EPA could not apply NSR or Title V Operating Permit requirements to "major sources" or "major modifications" based solely on emissions of GHG, but might still require NSR BACT review of "significant" GHG increases when NSR is triggered for other NSR-regulated air pollutants. The current GHG significant emission rate (SER) level is 75,000 tpy CO_2etons/year. Justice Scalia pointed out that there was no basis for the value, but EPA proposed to retain that value in the 2016 rulemaking when it is clear that GHGs do not affect ambient air quality and the value should be much, much higher if EPA continues to demand BACT review for GHGs.	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	Even though the Supreme Court found it to be within EPA's discretion, review of GHG BACT controls results in delays of NSR permits, added pollution control costs, and a disincentive to domestic manufacturing when there is .
B.19 Streamline NSR for Modifications at "Clean Units"	The CAA provides for special treatment of clean and innovative technologies under the provisions New Source Performance Standards (NSPS) at 111(j). In the 2002 NSR Reform Rule, EPA attempted to provide NSR relief for a certain number of years for "clean units" that met BACT and lowest achievable emissions rate (LAER), based on the agency's judgment that pollution control technology does not rapidly improve. The D.C. Circuit held that the "clean unit" exclusion from NSR violated the CAA in *New York I, supra.*	**(i) Eliminates jobs, or inhibits job creation; (iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies**	EPA should incentivize manufacturers to build in America and install "clean units," by adopting a conditional NSR exclusion for a set period of years for units that have undergone NSR and installed BACT or LAER; alternatively, EPA should streamline NSR applicability to changes that occur at clean units by not applying additional BACT review or modeling to reduce NSR/PSD permitting costs and provides regulatory certainty.

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C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS ("NESHAPs") (a.k.a. "MACT Standards") and FEDERAL NEW SOURCE PERFORMANCE STANDARDS ("NSPS")			
C.1 Issue Revised Final Boiler MACT Emissions Limits As Soon As Possible.	**42 U.S.C. § 7412(d); 40 C.F.R. 63 Subparts JJJJJJ, DDDDD *U.S. Sugar v. EPA*, 830 F.3d 579 (D.C. Cir. 2016) (*ordering EPA to vacate and revise ICI boiler MACT limits*).** EPA has been working on boiler MACT since 1996 through at least three iterations; many companies have already "stranded" capital in the form of controls at least twice, and are ready for regulatory certainty. EPA should revise and reissue final standards as soon as possible.	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** • **Expeditious issuance of the final MACT limits is required by law.** •	If EPA does not finalize this rule with recent emissions testing data, as required by the D.C. Circuit, it "new" stack testing (at a cost of $15,000-$30,000/each stack) could be required, which would be unnecessary and duplicative.
C.2 Repeal the MACT "Once In, Always In" Policy	**42 U.S.C. § 7412(d) (NESHAPS/a.k.a. "MACT Standards"); J. Seitz, "Potential to Emit for MACT Standards – Guidance on Timing Issues" (May 16, 1995); 72 Fed. Reg. 69 (Jan. 3, 2007) (*Proposed rule to withdraw Once In Policy).*** Current EPA policy says that once you have triggered MACT, you are forever bound to all the requirements of the underlying MACT standard, even if you replace or retire equipment or otherwise reduce emissions by substituting non-Hazardous Air Pollutants (HAPs) in your process so that a source that you operate is no longer a MACT "major source." This acts as a disincentive to meeting market demands, responding to opportunities for use of innovative technologies, lowering or eliminating HAP emissions, and being a responsive corporate citizen.	**(iv) Creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies** • **Not required by law.**	Maintaining compliance and recordkeeping when processes have eliminated HAP emissions or the source has controlled its HAPs below a NESHAPs applicability level is equivalent to the costs EPA quantified in the Regulatory Impact Analysis for each MACT. Since Title V permits can contain restrictions to maintain minor source status, there is no need for this policy.

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C.3. Replace *All* MACT and NSPS Standards Applicable to Small Reciprocating Internal Combustion Engines (RICE) and in the Interim, Enforce Only the Most Egregious Violations.	**42 U.S.C. § 7412(d); 40 C.F.R. Part 63, Subpart ZZZZ (RICE MACT); 40 C.F.R. Part 60, Subparts IIII and JJJJ (RICE NSPS):** All (NSPS)RICE are subject to EPA standards, including area sources, but the regulations have been amended so many times that it is difficult for owners and operators to understand the standards' application to equipment, including but not limited to emergency fire pump engines; gasoline engines; and uncontrolled emergency engines used for "demand response" to avert voltage sag and collapse of the U.S. power grid. Many of the requirements, besides being complicated to understand, provide very limited environmental benefit but place a large burden on manufacturers. Many of these requirements are unnecessary since the RICE manufacturers are already subject to separate certification requirements. Also replace RICE MACT work practice requirements – changing oil and filters and inspecting air cleaners, hoses, and belts should be based on actual run time of the units instead of calendar time. Using calendar time creates additional operating expenses and environmental impact (waste generation) with little environmental benefit. For example, the current rule requires and operator to • Change oil and filter every 1,000 hours of operation or annually, whichever comes first; • Inspect air cleaner every 1,000 hours of operation or annually, whichever comes first, and replace as necessary; • Inspect all hoses and belts every 500 hours of operation or annually, whichever comes first, and replace as necessary.	**(iii) Imposes costs that exceed benefits** The regulation is messy and unclear, creating potential enforcement vulnerability. The RICE Work Practice Standards requiring annual replacement of oil, filters, hoses and belts is unnecessary for equipment that only operates between 50-100 hours annually (mostly for readiness testing to assure that it *can* operate during an emergency)	Replacement of this rule with a clearer set of applicability provisions, reasonable testing & recordkeeping requirements for fire pumps and emergency engines, and organization to remedy the number of times the rule has been amended would increase clarity, certainty and compliance. While this rulemaking is going on, NEDA/CAP recommends that EPA enforcement stands down except in the case of egregious violation of the standards.
C.4 Withdraw Proposed NSPS if They are Not Finalized within Five Years.	**42 U.S.C. § 7411(a)(2), 40 CFR § 60** is interpreted to mean that after the day of proposal of a NSPS, a newly constructed or modified will be subject to the NSPS if and when finalized. This prevents new sources from circumventing "new" NSPS, but here are about a dozen, maybe more, proposed NSPS for various industries (e.g., 40 C.F.R. § 60, Subpart YY) that were proposed decades ago but have never been finalized. EPA should create a regulatory mechanism that withdraws these proposed NSPS rules expire if the agency does not take final action within a reasonable time.	**(iv) Creates a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies** *** 42 U.S.C. §§ 7607 (b), (d) require proposed rules become final before they can be adjudicated.**	A regulation that imposes emission limits and other conditions of operation on a "major affected source" has clear cost implications. If a final action on a proposed rule has not been taken after five years, fairness and equity demand it be withdrawn.

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C.5 Repeal or Replace the National Air Toxics Assessment (NATA).	See https://www.epa.gov/national-air-toxics-assessment/2011-national-air-toxics-assessment. NATA is not required by the CAA, and in some respects is a vestige of the failure of the Act up until the 1990 Clean Air Act Amendments to include air toxics. In 2015, EPA released the results of its 2011 national-scale assessment of air toxic emissions, which is the first problem – NATA is always based on data that is "old." The purpose of NATA is to identify and prioritize air toxics, emission source types, and locations that are of greatest potential concern in terms of contributing to population risk. EPA uses NATA (1) to work with communities in designing their own local-scale assessments, (2) to set priorities for improving data in emissions inventories, and (3) to help direct priorities for expanding and improving the network of air toxics monitoring. Use of the outdated data for these purposes is inappropriate. (NATA is not required by law, is substantially weak when compared with toxics data collected and reported by industry under the NESHAPs (MACTs) for existing sources of hazardous air pollutants under the 1990 amendments, and the data it provides is old and misleading to the public.)	**(ii) Are outdated, unnecessary, or ineffective.** **(iii) Imposes costs that exceed benefits;** **(iv) Creates a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies**	It is unclear how much the EPA Offices of Research and Development and Air Quality Planning and Standards invest annually in maintaining NATA in terms of resources, but expenditure of any more money on this program is far in excess of its usefulness.
C.6 Repeal/Withdraw Proposed Revisions to Site Remediation Rule.	**42 U.S.C. § 7412(d); 81 Fed. Reg. 29,821 (May 13, 2016) (**Proposed Amendments to 40 C.F.R. 63 Subpart GGGGG including the proposed removal in 40 C.F.R. § 63.7881 is amended by: a. Revising paragraphs (a)(2) introductory text, (a)(2(i) and (ii), (a)(3) introductory text, and (b) introductory text; b. Removing paragraphs (b)(2) and (3); and c. Redesignating paragraphs (b)(4) through (6) as (b)(2) through (4)). The proposed revisions to the site remediation NESHAP would 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 required RCRA order.	**(iii) Imposes costs that exceed benefits;** • **Duplicative and Inconsistent Regulation with 40 C.F.R. § 264-265 RCRA Onsite Waste Management Requirements (TSDF Standards)**	The additional CAA costs of compliance are entirely unnecessary when these activities are regulated under RCRA and/or CERCLA, and there is potential additional liability for dual federal regulations of the same activity.

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C.7 Modify Proposed Risk & Technology Rule (RTR) for Publicly Owned Treatment Works (POTWs).	**42 U.S.C. §§ 7412(d)(6), (f); 40 C.F.R. § 63 Subpart VVV, 81 Fed. Reg. 95,352 (Dec. 27, 2016).** In the proposed revisions to the POTW RTR Rule, EPA determined that under § 7412(f), that the Section 112 MACT category of POTWs does not represent any residual risk, but also proposed significant new requirements, including but not limited to pretreatment requirements for direct and indirect dischargers into POTWs requiring dischargers to adopt VOC pretreatment programs as a condition of the MACT. The proposed new standard is not only unnecessary but it is in violation of the Clean Water Act (CWA) and 40 C.F.R. § 403 (development of pretreatment standards). EPA's basis for this costly and significant change is that this revision would be consistent with future changes in CWA regulations. See 81 Fed. Reg. 95,373. Please note that a POTW may already develop a local limit to reduce or eliminate a discharge of a pollutant from a particular discharger *without setting a nation-wide air standard.*	**(iii) Imposes costs that exceed benefits;** EPA erroneously concludes that this new POTW requirement will not cost anything. See 81 Fed. Reg. at 95,373.	Implementing the proposed changes to the POTW RTR Rule would potentially cost indirect and direct discharges millions of dollars in capital and up to $1 million for annual maintenance and operation, depending on the size of the facility. A POTW may already develop a local limit to reduce or eliminate a discharge of a pollutant from a particular discharger *without setting a nation-wide air standard.*
C.8 Repeal or Replace Modify NSPS and NESHAPS Methane Monitoring Requirements.	**42 U.S.C. § 7411(b); 40 C.F.R. 60 Subpart OOOOa; 81 Fed. Reg. 35,824 (June 6, 2016)** (*Methane Leak Detection and Repair (LDAR) program revisions*); **77 Fed. Reg. 49490 (Aug. 16, 2012)** (VOC NSPS Part OOOO). EPA's 2016 "methane LDAR program" regulates the same emission points as the 2012 NSPS Subpart OOOO. There is little or no evidence that the 2016 rule's incremental benefits provide regulatory justification for revisions, particularly since implementation of the 2012 NSPS has resulted in a decline of methane emissions by 13.3% despite a 400% increase in U.S. shale gas production.	**(iii) Imposes costs that exceed benefits;** • **Unnecessarily duplicative with 2012 rulemaking for VOC sources.**	EPA "conservatively" estimated that capital cost of the 2016 revisions will be $250 mm in 2020 and $360 mm with O & M and recordkeeping/reporting costs of $390- $640 mm in 2020 - 2025. See, 81 Fed. Reg. at 35886.
C.9 Modify RTR Rule for Refineries and Other Industries Requiring "Fenceline Monitoring."	42 U.S.C. §§ 7412(d)(6), (f); 40 C.F.R. § 63 Subpart CC at 40 CFR §63.658; 80 Fed. Reg. 75,177 (Dec. 1, 2015). EPA determined in the RTR Rule that there was no residual risk from Group 1 and Group 2 refineries, see page 75,187-8, but nonetheless the agency adopted expensive fenceline monitoring requirements for affected refineries, ostensibly to study fugitive emissions from facilities and because such monitors would make surrounding communities feel safer. There are not rigid monitoring protocols for such fugitives monitoring, and there are no compliance emission limits from the monitors.	**(iii) Imposes costs that exceed benefits; not the least of which is the potential to suggest improperly to the public that emissions levels are not incompliance with law.** • **Not required by law.**	EPA estimated the total capital cost of fenceline monitoring to be $ 12.5 million with $6.36 million in annual maintenance and operation costs. See 80 Fed. Reg. 75,226 Table 2. Industry believes the overall sector costs will be higher.

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C.10 Amend NSPS and NESHAPs to Include High Pressure Ground Flares	**42 U.S.C. §§ 7411(b); 7412(d); 40 CFR 60.18 (NSPS) and 63.11 (NESHAP).** Currently, high pressure ground flares are not covered by NSPS or NESHAP standards and thus require EPA's approval of an Alternative Monitoring Emission Limitation for each flare, which inhibits new project developments since approval can take months or years and currently requires a federal register notice proposal, public comment and final federal register approval in addition to those associated with NSR permitting public notice requirements.	**(i) Eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective**	Questions regarding ground flares and approval of case-specific alternative monitoring methods for ground flares weigh in decisions to site projects in the US and lead to less efficient control technology selection.
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D. CAA TITLE VI - OZONE DEPLETING SUBSTANCES ("ODS") AND NON-ODS SUBSTITUTES			
D.1 Repeal or Reconsider the Regulation of Non-Ozone Depleting Substitutes under CAA Title VI Section 608 Refrigerant Management Rule and Section 612 Significant New Alternatives Policy ("SNAP") Program Based Solely on their GWP.	**Montreal Protocol; Clean Air Act Title VI, 42 U.S.C. §§ 7671-7671q ("Regulation of Ozone Depleting Substances (ODS)"); [1] 40 C.F.R. §§ 82.151 (def.); 156-157 as amended by 81 Fed. Reg. 82,272 (Nov. 18, 2016)** (*"Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act") and* **[2] 42 U.S. C. § 612;40 C.F.R. Part 82, Subpt G (SNAP Program), App B42 81 Fed. Reg. 86,778 (Dec. 1, 2016) (SNAP Rule #21; 81 Fed. Reg.70,029 (Oct. 11, 2016).** [1] The Revised 2016 Refrigerant Management Regulations 40 CFR Part 82 Subpart F impose significant new regulatory requirements, including but not limited to leak detection and repair and reporting programs and retrofit/retirement planning requirements for equipment using non-ODS Substitutes (based on their GWP potential). The new regulations also impose very harsh consequences for units on which leaks have been repaired but recur. [2] Under the SNAP program, 40 CFR Part 82, App. G, EPA listed non-ODS substances as unacceptable alternatives based on their GWP. Substitutes that are non-ODS should not be listed as an unacceptable alternative for any use, based in whole or in part on their GWP. **Note, *however, that NEDA-CAP supports the acceptable alternatives determinations in each of these rules, including but not limited to:*** *For Fire suppression and explosion protection end-uses*, subject to use conditions, as of January 3, 2017 for : • 2-bromo-3,3,3-trifluoroprop-1-ene (2-BTP) as a total flooding agent for use in engine nacelles and auxiliary power units (APUs) on aircraft; and • 2-BTP as a streaming agent for use in handheld extinguishers in aircraft.	**(iii)imposes economic costs that exceed benefits** **(vi) derives from or implements Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.** CAA Sections 608 and 612 are designed to implement the Montreal Protocol in the 1990 Clean Air Act Amendments, and the recent "amendment" to the Protocol agreed to by the U.S. in Kigali, Rwanda in Fall 2016 must be presented to the U.S. Senate for ratification before the Congress can amend the Act to regulate non-ODS substitutes under the refrigerant management and/or SNAP program.	Without consideration of benefits using the social cost of carbon, the Regulatory Impact Assessment indicates that the costs of these rules far exceed their benefits. Replacement of comfort cooling, industrial refrigeration process units for manufacturers who relied on agency assurances that replacement of non-leaking equipment with non-ODS substitutes would provide long-term assurances and certainty to industry. EPA should however incentivize the use of non-ODS refrigerants by expanding the list of exempt refrigerants because it is not clear that substitutes like propane and other flammable VOCs are either safe or provide reliable cooling needs to current non-ODS. Also note that this regulation applies to institutional (hospital, church, school, government, etc.-owned air conditioners).

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E. OTHER CAA REGULATONS			
E.1 Modify Proposed Revisions of CAA Risk Management Rule	42 U.S.C. § 7412(r); 40 C.F.R. § 68; 82 Fed. Reg. 4,594 (Jan. 13, 2017), as delayed at 82 Fed. Reg. 8,499 (Jan. 26, 2017) and 82 Fed. Reg. 13,968 (Mar. 16, 2017). Specifically the "Safer Technology & Alternatives Analysis" ("STAA") at §68.67(c)(8) and in §68.3 (definitions) exceeds EPA's authority as does disclosure of information (particularly information required to be managed as sensitive security information under the Chemical Facility Assessment rules administered by the U.S. Dept. of Homeland Security). Further, in §§ 68.79-80, EPA has dramatically and unnecessarily expanded audits to require review of ALL records and ALL procedures versus allowing for the use of recognized audit protocols, which is wasteful and unnecessary.	**(iii) Imposes costs that (far) exceed benefits**	EPA estimates that the annualized costs for the STAA analysis is $70 million, with little or no economic benefit form this "make work" provision
E.2 Apply Good Faith Policy to the Use of EPA Emissions Factors, Including WebFIRE & AP-42 Factors.	Emission factors, compiled by EPA on WebFIRE, https://cfpub.epa.gov/webfire/index.cfm?action=fire.SearchEmissionFactors, are commonly used to estimate emissions from proposed new sources for purposes of New Source Review preconstruction permitting and to calculate compliance with CAA requirements, particularly where such emissions cannot be accurately measured. EPA's emissions reporting tools, part of the 21st Century Emissions Reporting Project, continuously update new emission factors for industry sectors based on a variety of reported emissions data, including but not limited to stack-testing. Thus, a source that was literally in compliance based on yesterday's emission factors may not be in compliance based on tomorrow's emission factor. The CAA Enforcement Office should issue a good faith policy on industry's reliance on AP-42 and emission factors while it continues to clean up the "old" ("C"- & "D" graded AP.42 emission factors) through ERT & WebFIRE.	**Good public policy.**	EPA's civil policy includes daily fines of almost $50,000/per day per occurrence and, in some jurisdictions, operating without a valid preconstruction permit is viewed as a continuing violation.
E.3 Modify the Title V Permit Objection Policy by Removing Retroactive NSR Applicability Issues from Consideration.	42 U.S.C. § 7661(2)(b); 40 C.F.R. §§ 70.8(d), 71.8. 81 Fed. Reg. 57,822 (Aug. 24, 2016) (Proposed Rule to Improve Title V Petitions): CAA Title V operating permits must be renewed every five years, which affords the public to opportunity to comment on all applicable Title V requirements. Environmental advocacy groups take advantage of this opportunity to make—and renew—objections regarding a Title	The courts apply the general federal 5-year statute of limitations to NSR, (i.e., the failure to obtain a required NSR permit), so EPA should apply the same	Requiring EPA's Administrator to review historical NSR applicability is not constructive, especially as memories fade and personnel change. It has

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	V source's historic NSR compliance, including whether a source implemented BACT at the time when the permit was issued, which may be decades before. These are two separate EPA programs, and NSR applicability review is not appropriate in the context of Title V permit renewal.	Statute of Limitations to Title V review of historic NSR applicability. Further, with respect to projects for which an NSR permit was obtained, any objections should be brought in a timely, direct, and procedurally proper challenge to that permit and not in a Title V renewal proceeding.	become a tremendous drain on state permitting authorities, EPA, regulated entities, and the courts.
E.4 EPA Should Automatically Issue "§ 705 Stays" with Notices of Agency Reconsideration of Rules that are Also Under Judicial Review.	**5 U.S.C. §705.** The Administrative Procedures Act provides that "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." While EPA, on a case-by-case basis, can postpone effective date of any action taken by it pending judicial review, the reconsideration process and judicial review process can take years and frustrate the process for reconsidering regulations that the Administrator has agreed are appropriate for reconsideration, *unless the regulation itself is stayed.* Adoption of an agency rule or policy automatically staying the implementation of a rule on which the Administrator has granted reconsideration would promote expeditious reconsideration of such regulations and save millions of dollars spent on implementation of some regulations that are ultimately reconsidered.	**Good public policy.**	Millions of dollars in costs imposed by implementing regulations that are administratively and judicially challenged and reconsidered by EPA, could save the U.S. economy $$ millions.