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FW: COMMENTS ON EXECUTIVE ORDER 133777: ENFORCING THE REGULATORY REFORM AGENDA
To: CMS.OEX@epamail.epa.gov

To OP for inclusion in the docket.

From: Bill LaMarr [mailto: (b) (6)]
Sent: Monday, May 15, 2017 11:20 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: COMMENTS ON EXECUTIVE ORDER 133777: ENFORCING THE REGULATORY REFORM AGENDA



DEDICATED TO ENVIRONMENTAL PROGRESS AND ECONOMIC GROWTH

May 13, 2017

Administrator Scott Pruitt
U. S. Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Subject: Comments on Executive Order 133777: Enforcing the Regulatory Reform Agenda

Dear Administrator Pruitt:

Thank you for the opportunity to provide comments under Executive Order 13777 regarding specific U. S. Environmental Protection Agency (EPA) air and radiation actions that should be modified to reduce their regulatory burden without reducing air quality protection. These comments are submitted on behalf of the **California Small Business Alliance**, a non-partisan coalition of California trade associations committed to providing small businesses with a single constructive voice before regional, state, and federal environmental regulatory agencies.

The challenges facing California's small businesses are enormous, as the legislature, courts, special interests, and environmental advocacy groups call for even stricter, and more costly regulations notwithstanding the enormous progress that has been accomplished in improving air quality and reducing risk to public health for more than fifty years. While there is still more to be done to improve air quality in our region, the nature of the challenge has materially shifted since many of the original Clean Air Act regulations were first adopted and implemented. Today, the major contributors to poor air quality, and the risks it presents to the public, are mobile sources (trucks, busses, automobiles, trains, planes, and ships) under the control of California Air Resources Board (ARB) and the EPA.

For decades, California's ARB and regional air quality management and air pollution control districts have promulgated seemingly endless volumes of increasingly more stringent rules and regulations on stationary sources (businesses). And most of these businesses have been and continue to be in the manufacturing sector.

Considering the resolve of the state's regulatory, political, judicial, special interest and environmental advocacy groups to reach some yet-to-be defined standard of air quality, Alliance members want to use this unique opportunity to offer some recommendations for EPA to earnestly considering reducing regulation and controlling regulatory costs, in accordance with EO 133777.

- 1) EPA should amend their rule or guidance on **Potential to Emit**. The federal regulations define "potential to emit" as: *the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of fuel combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.* (40 C.F.R Sections 52.21(b) (4), 51.165(a) (1) (iii), 51.166(b) (4).)

This standard has no basis in fact, and it makes California's ARB, and local air quality management and air pollution control districts, impose unrealistic emission reduction targets that translate into exorbitant compliance costs for struggling small businesses. For example, in the jurisdiction of California's South Coast Air Quality Management District (SCAQMD), "Potential to Emit" is generally defined as the maximum amount of emissions that can be generated from a device operating at maximum capacity, one hundred percent all the time, twenty-four hours per day, seven days a week. On an annualized basis that number would be multiplied by 365 days per year. Whereas this is a relatively simplistic approach to determining emissions, it is impossible for devices to operate under these conditions. They can only operate under these conditions for relatively short intervals when the equipment is first fired. The reason given by the SCAQMD is that all the devices in their source specific rules are based on a defined operating temperature, whereas temperatures fluctuate widely depending on many factors, including weather conditions and consumer demands for certain products and services.

The Alliance recommends that rather than being mandated to use "Potential to Emit," rules and regulations should be based on actual emissions. And, this is not difficult to do with the metering and measuring technologies that are currently being used by all natural gas utilities. These range from smart meters giving real-time fuel usage to simple non-resettable timers on devices, that can limit the number of hours per day for a given BTU input, if the agency and facility owner agree it is necessary.

By using "Potential to Emit" as the basis for calculating emission reduction goals, EPA, together with state and local regulatory agencies are overestimating the reductions needed to reach our attainment goals. Moreover, **this practice adds billions of dollars in unnecessary costs to businesses to comply with unnecessarily conservative rules which are based on what they might produce in the way of emissions rather than what they actually produce based on market demands.**

This is a classic example of over-regulation, which if amended or eliminated, could greatly ease the compliance burden on small businesses without harming the environment.

- 2) EPA, together with state and local air pollution control and air quality management districts, **should amend the methodology and guidance for calculating "Cost Effectiveness."** In the first place, **regulators should be removed from the process because they have a predisposition, or bias, to recognize only those costs which will support the rules and regulations that they have already committed to in federal or state implementation plans and/or local air quality management plans.**

The responsibility for calculating "cost effectiveness" should be transferred to the businesses being most affected by rules, regulations, and programs, or by recognized business or trade associations that represent multiple businesses in certain segments of industry (e.g. American Petroleum Institute, American Power Association, Printing Industries Association, National Association of Manufacturers, etc.). If peer review is believed to be necessary, then the findings or conclusions by these private entities should be evaluated by recognized economic or academic institutions.

At first glance, Alliance members see no precipitable difference in the funding required for this process. In California, regulated businesses pay fees for the services provided by state and local air pollution control and air quality management districts. So, rather than budget for civil service employees to calculate "cost effectiveness," budgets could be established to pay outside entities to perform this service. Adjustments could be made, if necessary.

- 3) Finally, Alliance members recommend that **EPA should establish a "look back" policy or guidance for all agencies.** The purpose would be to set standards **for measuring success or failure of certain control measures, rules, regulations, and programs** which are promulgated and proclaimed to achieve specific amounts of emissions reductions over time.

As an audit or quality assurance measure, Alliance members believe that **EPA and other lower-tier agencies should establish a schedule to "look back" or perform retrospective analyses on these emission reduction mechanisms to see if they have, in fact, accomplished their purpose.** Schedules could be set at 7 to 10 year intervals, for example. And, if they haven't achieved their purpose, these control measures, rules, regulations, and programs should be immediately considered for revision and/or elimination.

Thank you for the opportunity to submit comments. We hope that our recommendations will be of assistance to you in developing

Bill La Marr

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Executive Director

California Small Business Alliance

cc:

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