To: Dravis, Samantha[dravis.samantha@epa.gov]
Cc: Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Lorraine Gershman
Sent: Tue 5/16/2017 2:47:45 PM
Subject: RE: Follow up on NSPS DD: Grain Elevators
NSPS DD Letter to Dravis Regulatory Reform FINAL 5-15-17.pdf
NOPA Reg Reform FINAL 05.15.17.pdf

Samantha,

As a follow up, here are the filed comments of the NSPS DD Coalition on EPA's proposal to evaluate existing regulations, along with NOPA's comments. In these remarks we ask that EPA's newly-formed Regulatory Reform Task Force recommend to the Administrator to:

1)Not finalize the proposed amendments to NSPS Subpart DD; and

2)Formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule in order to offset the costs of a future rule, as detailed in E.O. 13771 - Reducing Regulations and Controlling Regulatory Costs.

Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS ***prospectively*** and/or modifying it based on the Coalition comments submitted in 2014, as part of a larger Regulatory Reform effort.

We have also shared these comments directly with Josh Lewis.

Best,

Lorraine

From: Lorraine Gershman
Sent: Tuesday, May 09, 2017 5:06 PM
To: 'dravis.samantha@epa.gov' <dravis.samantha@epa.gov>

Cc: 'bolen.brittany@epa.gov' <bolen.brittany@epa.gov>; 'gunasekara.mandy@epa.gov' <gunasekara.mandy@epa.gov>
Subject: Follow up on NSPS DD: Grain Elevators

Samantha, thank you again for meeting with the Regulatory Improvement Council (Valis Associates) this morning. It was a pleasure to hear from you regarding some of industry's big concerns.

As I mentioned in our brief discussion, NOPA is a part of a coalition of agribusiness trade associations that have been working on the NSPS DD: Grain Elevators for the last decade. In October 2016, EPA's final NSPS package was sent to OMB for review under EO 12866. The revisions would include new emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating emissions from temporary storage facilities. The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 - the date the proposed amendments were published in the *Federal Register*. This rule package was not finalized by EPA, and on January 24, 2017, the rule was officially withdrawn from OMB. (See: https://www.reginfo.gov/public/do/eoDetails?rrid=126938) At this point in time, we are uncertain if this rule is going to be resubmitted to EPA for review or if EPA will no longer pursue revision of NSPS Subpart DD. That said, in order to not subject new grain elevators to these burdens, it is critical that EPA:

1) not finalize the proposed amendments to NSPS Subpart DD; and 2) formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. By formally rescinding this rule, EPA would be able to "bank" the costs of this rule in order to offset the costs of a future rule, as detailed in E.O. 13771 - Reducing Regulations and Controlling Regulatory Costs. Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS, and other outdated NSPS, as part of a larger Regulatory Reform effort.

Jess McCluer, my counterpart at NGFA, briefed Josh Lewis on this issue at the OSDBU stakeholder meeting last month, and requested a meeting. Josh's response was that he is talking to colleagues in the air office and will be in touch soon to discuss next steps.

The coalition will be submitting more detailed comments on this issue to the docket next week, and we are happy to meet with you or the relevant contact person to discuss this issue in more detail.

(As an aside, I was encouraged to hear about EPA's intentions to bring back the Sector Strategies program. I was involved in that effort, and the CAAAC multipollutant sector strategy effort as well, when I was with the American Chemistry Council and found value in both efforts. And I also support EPA educational visits to regulated facilities. I worked with Penny Lassiter in OAQPS to have several of her technical staff accompany me to ethylene production facilities in advance of the RTR efforts.)

Please do not hesitate to contact me if I can be of further assistance.

Best,

Lorraine Gershman

Lorraine Gershman, P.E.

Vice President, Regulatory Affairs

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May 15, 2017

VIA ELECTRONIC MAIL

Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re.: NOPA's Comments on Evaluation of Existing Regulations (82 Fed. Reg. 17,793)
(Docket ID No. EPA-HA-OA-2017-0190)

Dear Ms. Dravis:

The National Oilseed Processors Association (NOPA) appreciates the opportunity to submit comments on EPA's Evaluation of Existing Regulations (82 Fed. Reg. 17,793, April 13, 2017).

The National Oilseed Processors Association (NOPA) is a national trade association that represents 13 companies engaged in the production of food, feed, and renewable fuels from oilseeds, includ ing soybeans. NOPA's member companies process more than 1.8 billion bushels of oilseeds annually at 64 plants located in 20 states throughout the country.

The NAICS code that directly applies to oilseed processing facilities is 311224 – Oilseed processing. NOPA member company facilities range in size from small, family -owned businesses to large multi - national corporations.

NOPA belongs to the New Source Performance Standard (NSPS) DD Coalition, the National Ambient Air Quality Standards (NAAQS) Implementation Coalition (NIC), and the Food Associations Coalition managed by Herbert Estreicher of Keller and Heckman and fully support the comments submitted by those groups to this docket.

Regulatory Burden/Compliance

The ever-changing landscape of regulatory requirements for manufacturing facilities results in more and more resources devoted to compliance, in lieu of investing in new equipment and additional jobs. The list compiled below reflects regulations and policies that have a detrimental impact to the oilseed processing industry.

1) ***EPA's NAAQS/Preconstruction Permitting Process***. One of the biggest concerns with NAAQS is that a new/revised NAAQS is effective almo st immediately after finalization, without any accompanying implementation regulations. A facility undergoing permitting may have to restart the entire permitting process in order to accommodate a revised NAAQS that becomes effective before the final permit is issued. The PSD regulations are highly complex and their implementation is largely achieved through ever -changing EPA guidance and policy documents that have not gone through rulemaking. As noted in comments below and in more detail in the comments su bmitted by the NIC, EPA's Appendix W modeling requirements do not accurately predict emission impacts for all

facilities, and can lead to overly restrictive pollution control requirementsEPA should strive to promptly issue implementation regulations afte r a new NAAQS is finalized in order to provide certainty to the regulated community.

2) ***EPA's NSPS DD (Grain Elevators) Rulemaking***. As noted in the comments submitted by the NSPS DD Coalition, NOPA is a part of a coalition of agribusiness trade associations that have been working on the NSPS DD: Grain Elevators for the last decade. In October 2016, EPA's final NSPS package was sent to OMB for review under EO 12866. The revisions would include n ew emission limits for certain grain elevators; additional testing, monitoring, recordkeeping and reporting requirements; different compliance requirements for periods of startup, shutdown and malfunction; and a new method for calculating emissions from te mporary storage facilities. The final rule would apply to grain handling facilities on which construction, modification or reconstruction began after July 9, 2014 - the date the proposed amendments were published in the *Federal Register*. This rule package was not finalized by EPA, and on January 24, 2017, the rule was officially withdrawn from OMB. We are uncertain if this rule is going to be resubmitted to OMB for review or if EPA will no longer pursue revision of NSPS Subpart DD. That said, so as to not subject new grain elevators to these burdens, it is critical that EPA: 1) not finalize the proposed amendments to NSPS Subpart DD; and 2) formally rescind the July 9, 2014 proposed amendments to NSPS Subpart DD. Furthermore, we encourage EPA to look to the possibility of rescinding this NSPS, and other outdated NSPS, as part of a larger Regulatory Reform effort.

3) ***EPA's Startup, Shutdown, and Malfunction (SSM) Policy.*** Beginning with the court decision in Sierra Club v. Johnson, 551 F.3d 1019 (D.C. Cir. 2008) , EPA has required facilities to be in continuous compliance with normal emission and operating limits, without allowing for any deviations due to unforeseen circumstances. If an event occurs that causes the facility to exceed a limit, the facility is at the mercy of the regulatory authority's discretion regarding enforcement for that event. Since this court decision, EPA has rarely allowed for the use of a work practice during the startup and shutdown periods of operation. EPA should look to set work pract ice standards or set alternative emission limits during periods of SSM, as allowed under sections 112(d)(2) and 112(h) of the Clean Air Act (CAA)

4) ***EPA's Risk and Technology Review (RTR) Rules*** . Section 112(f) of t he CAA requires EPA to review National Emission Standards for Hazardous Air Pollutants (NESHAP) rules after eight years toevaluate the remaining risk posed by the regulated facilities, andsection 112(d)(6) of the CAA requires EPA to review advances in pollution control technologies. EPA has been slowly conducting these RTR rules over the past decade, and faces many more in the next few years. Despite regularly finding low residual risk from various regulated facilities, EPA has regularly pushed for lower emission limits, requiring the installation of expensive new equipment with limited to no demonstrated benefits. EPA should focus its reviews on ensuring that the NESHAP rules are effective, pose little residual risk, and do not impose additional costs on regulated industry without demonstrated benefits.

5) ***Federal Response Plans (FRP)***. EPA requires facilities that store over one million gallons of oil to prepare a Federal Resp onse Plan . For the oilseed processing industry, this requirement also applies to vegetable oil, which is one of the primary products of our business. A FRP is required even if the facility has adequate secondary containment for their oil tanks. The FRP req uires that regulated facilities have a contract with an oil spill response organization (OSRO) to provide emergency response if needed. Often, this contract requires a retainer be paid to the OSRO based on the amount of oil that the facility

stores. Because these facilities generally have adequate containment, the OSRO's services is rarely needed. In order to provide a timely response to a spill, facilities may be required to buy and maintain a boat to deploy spill -containing booms on a water body. Facilities with a FRP are also required to hold periodic costly drills. Finally, FRPs duplicate requirements in the Spill Prevention Control and Countermeasure (SPCC) plans – in particular, the Emergency Response Action Plan (ERAP). EPA should look to remove duplicative requirements that add burden to regulated facilities. One way for EPA to minimize the burden on vegetable oil producers is to exclude vegetable oil from the definition of "oil" in the FRP, and instead require vegetable oil producers to prepare only SPCC plans.

6) ***TSCA Reporting Requirements.*** The Toxic Substances Control Act (TSCA) requires facilities to regularly report the manufacture or use of chemicals in commerce. This requirement also applies to food products that are used for non-food uses. Although these substances are regulated by FDA for human consumption, if the same substance is used for a non-food use, information about its end use, production volumes, and other information is required to be reported. As requested in the the Food Associations' comments, EPA should eliminate the TSCA CDR reporting requirements for food substances already regulated by FDA.

7) ***Regional Consistency Requirements***. On August 3, 2016, EPA finalized revisions to its Regional Consistency regulations to more clearly address the implications of adverse federal court decisions that result from challenges to locally or regionally applicable actions. These revisions introduced a narrow procedural exception under which an EPA Regional office no longer needs to seek Headquarters concurrence to diverge from national policy in geographic areas covered by such an adverse court decision. EPA claimed that the revisions will help to foster overall fairness and predictability regarding the scope and impact of judicial decisions under the Clean Air Act, but in fact, it provides little regulatory certainty to companies that have operations in multiple EPA regions. EPA should reconsider this regulation.

8) ***EPA Electronic Reporting Requirements.*** In many new rules, EPA has begun requiring facilities to submit testing data electronically, such as through CEDRI. The goal of these rules is to reduce the paperwork burden; however, this has not yet been accomplished. For many of these rules, the states also need to obtain the test data, and not all states have access to EPA's database. In some cases, EPA requires the submittal of data before the testing companies can reformat their results to comply with EPA's rule, or EPA's database is not yet ready to accept testing data. EPA should work to ensure that all states have access to the same facility data to reduce duplication of effort for the regulated parties, and that the electronic databases and submittal portals are extensively tested before use.

9) ***Rulemaking through guidance.*** EPA has frequently issued guidance documents that served as de facto regulations, but these documents never underwent public notice and comment. Many are not even considered final agency actions and therefore can't be challenged. One such example is the 1990 New Source Review Draft Guidance. Even though this document is 27 years old and was never finalized, it still serves as the basis for many NSR permitting decisions. All federal Agencies should follow the proper notice and comment procedures to ensure that the regulations are being interpreted and applied consistently.

Manufacturing Permitting Process

New oilseed processing facilities undergo a lengthy and detailed environmental permitting process. This permitting process is filled with many challenges that can derail a project, including uncertainty in schedule for obtaining a final permit, the requirement to model emissions using pr ograms that cannot account for site -specific inputs, and public input and challenges. Once a project hits a roadblock or is substantially delayed, the project may be scrapped and the accompanying jobs and growth would disappear.

A new or modified oilseed processing facility may need to obtain a preconstruction (Prevention of Significant Deterioration (PSD)/ Nonattainment New Source Review (NNSR)) air permit, a National Pollution Discharge Elimination System (NPDES) wastewater permit, an Army Corps wetlands permit, a state building permit, a state groundwater withdrawal permit, as well as develop numerous plans, including facility response/Spill Prevention Control and Countermeasure (SPCC), Process Safety Management (PSM)/Risk Management Plan (RMP), and Foo d Safety Modernization Act (FSMA). Furthermore, these facilities may also need to undergo the following reviews: Wetlands Assessments and Surveys , Threatened and Endangered Species and Habitat Assessments and Surveys , Floodplain Assessments and Surveys , Cultural Resources Assessments and Surveys , U.S. Army Corps of Engineers Clearances, and Section 401 State Water Quality Certifications . Once the preconstruction reviews and permits are secured, these facilities then need to obtain operating permits.

A large majority of these permits are regulated under EPA.For most environmental permits, the states have the authority to issue permits, with an EPA review often required. Such permits require dedicated permit staff in each state that are familiar with permitting requirements and facility operations.

For the past few years, states have struggled to balance their budgets, and permit writers have often been eliminated as part of budget cuts , losing experience and knowledge of the applicability of the rules and the industries under permit . At the same time, many states have been trying to welcome new manufacturing facilities and new jobs, resulting in a permit backlog that has not yet been resolved. Facilities will not be built unless permits can be issued in a timely manner.

Typically, the most onerous regulatory review/permitting program for oilseed processing facilities has involved air permitting. Over the past seven years, EPA has tightened several ambient air quality standards while increasing its relian ce on modeling to demonstrate attainment and project impacts. For example, in 2010 EPA finalized a one -hour NO_X standard, only to later discover that models are predicting exceedances where monitors demonstrate attainment. At the same time, EPA has been slow to issue guidance to the state permitting agencies and has failed to highlight flexibility states have in drafting permits. As such, many permits have gotten bogged down, lengthening the timeline to permit issuance and increasing the permit backlog at the states.

Some specific examples of technical issues that recent industrial projects have encountered include:

- There is no formal mechanism for the States or the regulated community to implement any changes in the model or methods via EPA guidance or 40 CFR 51 Appendix W. Without changes to the model or methods, states are wed to using the current suite of modeling tools which frequently do not account for site -specific conditions and overestimate projected impacts. An overestimate of projected emission impacts may result in a facility having to install costly, unneeded control technology or a project not moving forward at all.
- Currently approved modeling programs do not adequately represent all facility scenarios. When modeling is compared to a ctual monitoring data, the model proves to be overly conservative. By having overly conservative models, some facilities have not be en able to

demonstrate attainment with the current standards and have been forced to abandon new projects.

- Finally, in many cases EPA has failed to provide direction to the states which are responsible for permitting industrial facilities. Without guidance from EPA, many states are struggling to determine what is acceptable to EPA, and may resist innovative and flexible approaches. The result is that projects may be scrapped,along with any new jobs that would have accompanied the project.

Recently, several NOPA members have announced new facilities or expansion of existing facilities, and have undergone the permitting process. One of the most trying aspects of the permit process is the never-ending uncertainty in the process itself. Any minor comment or correction may result in another full review of the permit application. Each delay in the permit process might result in a changed limit or guidance that must now be addressed in the permit. This would include a new NAAQS, or a ratcheting down of a storm water benchmark. A final permit is rarely final until all appeals are exhausted.

In conclusion, NOPA appreciates this Administration's efforts to relieve some of the regulatory burdens faced by the oilseed processing industry. Thank you in advance for your consideration of NOPA's comments. If you have any questions, or will like to further discuss our comments, please contact me at lgershman@nopa.org or 202-864-4368.

Sincerely,

Lorraine Krupa Gershman, P.E.
Vice President, Regulatory Affairs