May 15, 2017

Ms. Sarah Rees
Director
Office of Regulatory Policy and Management
Office of Policy
1200 Pennsylvania Avenue, N.W.
Mail Code 1803A
Washington, D.C. 20460

Docket ID No. EPA-HQ-OA-2017-0190

Dear Ms. Rees:

The National Lime Association (NLA) submits the following comments on the Environmental Protection Agency's request for input on regulations that may be appropriate for repeal, replacement, or modification. 82 Fed. Reg. 17,793 (April 13, 2017). This action was taken pursuant to the President's Executive Order 13777 titled: "*Enforcing the Regulatory Reform Agenda*" (February 24, 2017). NLA represents U.S. and Canadian commercial lime companies, as well as suppliers to the lime industry. NLA's members produce more than 98% of the lime produced for sale in the United States.

Lime is an integral ingredient in many other manufacturing processes and industries. It is an important part of the steel manufacturing process, as well as in road building, and for creating other building products like mortar and plaster. Lime is also a critical component for the environmental compliance of many industries, because it is used to purify water and scrub pollutants from air stack emissions.

Although the lime industry is burdened with numerous regulatory requirements, the following are examples of existing EPA rules and policies that could be significantly improved to avoid unnecessary burdens on our industry. These examples provide the name of the rule or policy, a brief description of the problem, and recommended solutions.

NLA appreciates the opportunity to provide comments to EPA on its request for comments regarding regulations that may be appropriate for repeal, replacement, or modification. Should you require any additional information, please feel free to contact me by telephone at Ex. 6 Ex. 6 or via email at bfrisby@lime.org.

200 North Glebe Road, Suite 800, Arlington, VA 22203 * Ph 202.243.5463 * Fax 202.243.5489 * www.lime.org

Sincerely,

Bradford V. Frisby
Deputy General Counsel
National Lime Association

"Once In, Always In" Policy

Regulation/Policy: 1995 Guidance Memo titled: "*Potential to Emit for MACT Standards -- Guidance on Timing Issues*"

Description of the problem:

EPA issued a guidance document in 1995 called: *Potential to Emit for MACT Standards -- Guidance on Timing Issues*. This guidance says that once an air emission source becomes a major source (emitting more than 10 tons of any hazardous air pollutant per year), it will always be considered a "major source" even if it later emits less than that threshold amount. This policy is unfair and is contrary to the Clean Air Act, which says that sources that emit less than the threshold amount are classified as "area sources" rather than "major sources."

This policy is not required by statute, and is not spelled out in any regulation. It is based solely on a 22-year old policy memo. It discourages manufacturers from reducing emissions of their facilities to below the threshold amount. In addition, there have been instances where this policy has been applied to sources that have never actually exceeded the threshold for a major source. This situation occurred when a company purchased property and proposed permits for two sources at a site that (together) would have exceeded the threshold for a major source. However, it turned out that only one of the two lime kilns at the site was constructed. But because of this policy, that lime plant has been required to meet the standards for a major source, even though it never emitted more than the threshold triggering amount.

Proposed Solution:

EPA should revoke the 1995 guidance document and eliminate the "once in, always in" policy.

Chemical Data Reporting

Regulation/Policy: Chemical Data Reporting (40 C.F.R. Part 711)

Description of the Problem:

Chemical data reporting requirements under the Toxic Substances Control Act are duplicative and extremely burdensome, requiring substantial hours of preparation and input from multiple individuals and departments within each company required to submit the report. Within the lime industry, customers and end uses of lime seldom vary, and due to the estimates and potential inaccuracies inherent in the report, it follows that the CDR report filed every 4 years is of questionable use and benefit. In particular, the downstream reporting is the most burdensome aspect of this regulation, and a partial exemption for typical commodity products such as lime should be available after at least one cycle of complete reporting has occurred.

Proposed Solution:

Have EPA review these downstream chemical data reporting requirements and eliminate those that are overly burdensome, and repetitive (or offer a partial exemption from future reporting).

New Source Review/Prevention of Significant Deterioration

Regulation/Policy: New Source Review/Prevention of Significant Deterioration, 40 C.F.R. Parts 51-52

Description of the Problem:

New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements discourage, and sometimes prohibit, the construction of new manufacturing facilities and the improvement and/or expansion of existing facilities. These requirements can have the perverse effect of making it less burdensome to continue operating old, less efficient and higher-polluting sources than to build new facilities or upgrade equipment that would be more efficient and produce fewer emissions. Offsets are allowed, but are prohibitively expensive in many cases.

Proposed Solutions:

Allow the use of probabilistic modeling instead of extreme and unlikely worst case scenarios.

Increase flexibility in the use of offsets generated outside of a nonattainment area to be used for emissions increases in a nearby nonattainment area.

Allow States to set aside a portion of State Implementation Plan reductions for offsets.

Grandfather pending permit applications to ensure that applications are not required to be continually updated based on delays in EPA permit processing.

Allow emission fees in lieu of obtaining offsets. Fees paid to State or local agencies should be used to pay for or subsidize emission reductions that will most effectively lead to attainment.

Require better PSD/NSR permit issuance timing consistency to ensure that the permitting process does not take too long.

Greenhouse Gas Reporting Requirements

Regulation/Policy: Greenhouse Gas Reporting Regulations (40 C.F.R. Part 98)

Description of the Problem:

The greenhouse gas (GHG) reporting program is burdensome and takes many hours to complete. To gain accurate information on emissions, employees must: collect the necessary samples for GHG analysis; analyze the GHG samples; log the analytical data; retrieve and compile the analytical data from both internal sources and fuel suppliers; complete the necessary calculations; quality assure/internally audit the data; and enter the data into EPA's electronic greenhouse gas reporting tool (e-GGRT).

There are also concerns regarding confidential business information required to be reported to EPA. Some lime industry specific data considered inputs to emissions equations have been granted CBI protection; however, other lime industry specific data has yet to receive a final CBI determination.

Proposed Solution:

Given the President's recent executive order on energy independence and its instruction to reverse GHG policies, eliminate these reporting requirements or mandate reporting only when a significant change in emissions has occurred (from a base year).

Enforcement and Compliance History Online (ECHO database)

Regulation/Policy: ECHO Database

Description of the Problem:

There is a consistent thread of errors in the ECHO database that seriously undermines the credibility and value of this public electronic compliance history. EPA's own inspector general report found that almost 9% of the information in the database for key data elements is not correct. Reliable data on facility compliance is essential to maintain public trust and to ensure that facilities are not unfairly maligned in the press or at community gatherings. While State environmental agencies can and will assist facilities to remove incorrect compliance information, these "fixes" are often piecemeal, one-off corrections that take considerable effort on the part of the State agency staff and do nothing to correct flaws in the underlying data collection system. Transparency is only as valuable as the accuracy of the underlying data used to measure compliance efforts.

Proposed Solutions:

EPA should expand the use of a disclaimer on the website to warn viewers that the ECHO database should not be relied upon for the most accurate information. Rather, viewers should contact their State agency officials to obtain the most accurate information.

EPA should remove the ECHO database from their website and start over to create a new system that better collects and reports the compliance and enforcement history submitted by each State agency.

Toxic Release Inventory (TRI)

Regulation/Policy: Toxic Release Inventory (40 C.F.R. Part 372)

Description of the Problem:

The Emergency Planning and Community Right-To-Know Act (EPCRA) Section 313 toxic release inventory (TRI) program provides little benefit to the environment or to public health. In the TRI program, the EPA does not consider health risks in the list of reportable chemicals or in establishing reporting thresholds. TRI data provides no information on whether releases reflect responsible management of chemicals or recycling. TRI overlooks quantities treated, recycled, and energy recovery.

Companies face potentially millions of dollars in penalties for untimely reports, errors in reporting, and accidently misreporting under the TRI program. The EPA heavily inspects companies utilizing a long tedious inspection process with heavy fines. TRI reporting is extremely difficult given the thousands of pages of regulations and guidance documents (over 30 documents) that have become enforceable. The threshold analysis is more difficult than the actual report, where many of the chemicals have a threshold of 10 lbs. This threshold can easily be missed even by environmental engineers who work within the company year around.

Not only is the TRI database not relevant for measuring risks to health or the environment, it is not accurate. It is widely known throughout industry that large errors exist in the TRI database; even EPA studies have shown large errors. This is unsurprising, considering the arcane and often ambiguous requirements of the rule and the related guidance, including difficult (and often nonsensical) distinctions among chemicals that are "manufactured," "processed," or "otherwise used," distinctions that can significantly change the applicable thresholds.

The lime industry is particularly burdened by several inconsistencies in the TRI rule and guidance. Lime manufacturing facilities are subject to TRI reporting requirements because they are within SIC code 3274 (Lime). Stand-alone limestone mines are not subject to TRI reporting requirements, because they are within SIC code 1422 (Crushed and Broken Limestone). However, EPA, in guidance, has stated that a multi-establishment facility must make threshold determinations and must report on releases, waste management activities, and source reduction activities for the *entire facility*, even from establishments that are not in covered SIC codes. (See EPCRA Section 313 Questions and Answers, Revised 1998 Version ("Q&A"), Question 68.) This means that lime plants with co-located mines must report on quantities of reportable chemicals in waste rock and overburden from those quarries, even though they are no different from off-site quarries in terms of operations and risk.

To make this even more difficult for lime plants, EPA in 1997 extended TRI reporting obligations to metal mines, but not to limestone mines—but at the same time provided a threshold and reporting exemption to overburden at those metal mines. In 2004, NLA wrote EPA to ask for a clarification that a similar overburden exemption should be applied to co-located limestone mines. Meetings and discussions followed, and EPA ultimately agreed that an exemption made sense, but said that it would consider a rulemaking to apply the exemption. No such rulemaking was undertaken.

Proposed Solutions:

The EPA owes it to the public to take an honest look at the value and the social cost of the data that is being reported under TRI. Making vast amounts of data on chemical quantities available to the public should not be assumed to provide value without an examination of whether reliable and meaningful information is being conveyed about health and environmental risk. In fact, in many cases, TRI information can be misleading, and can therefore result in limited resources being misallocated away from serious environmental problems and toward situations that have very limited environmental impacts.

The TRI regulations should be comprehensively reviewed and overhauled, and if they are retained, at the least they should be extensively revised to make their requirements clear and consistent.

More specifically, EPA should immediately clarify in guidance that limestone mines co-located with lime plants should be excluded from TRI reporting, and that the exemption for overburden applies not only to metal mines, but also to non-metal (including limestone) mines that are co-located with facilities subject to TRI reporting.