KOHLER.

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May 15, 2017

U.S. Environmental Protection Agency
Docket Number: EPA-HQ-OA-2017-0190
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: *Evaluation of Existing Regulations*, Docket No. EPA-HQ-OA-2017-0190, FRL–9961–60–OP, 82 Fed. Reg. 17793 (April 13, 2017)

To Whom It May Concern:

Kohler Co. (Kohler) appreciates this opportunity to identify regulations that may be appropriate for repeal, replacement, or modification pursuant to the referenced docket. Kohler understands that the Environmental Protection Agency (EPA) has formed a Regulatory Reform Task Force pursuant to Executive Order 13777 (82 FR 12285 - March 1, 2017) that has been charged with, among other things, identifying regulations that:

- Eliminate jobs, or inhibit job creation;
- Are outdated, unnecessary, or ineffective;
- Impose costs that exceed benefits; or
- Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

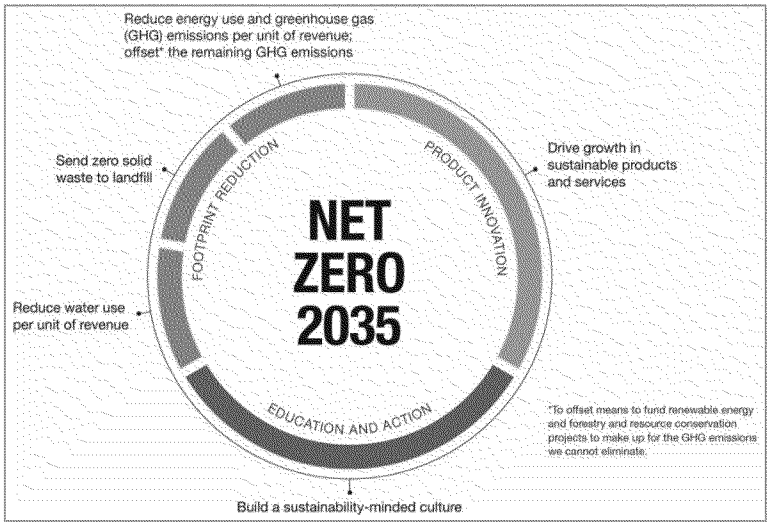
On March 24, 2017, EPA Administrator Pruitt issued an agency-wide memorandum on implementation of Executive Order 13777, which directed program offices to seek public input on existing regulations that might meet these criteria. As explained below, Kohler believes that EPA's Clay Ceramics National Emission Standards for Hazardous Air Pollutants rule, 40 CFR 60, Subpart KKKKK (Clay MACT Rule), and the regulation of emissions testing of non-road engines and generator sets as stationary sources, each meets one or more of these criteria. As such, both rules warrant consideration by EPA for repeal, replacement or modification under this initiative. Aspects of each rule contain requirements that impose significant expense with no discernable benefit, threatening Kohler's competitiveness in the global economy.

Background

Kohler, founded in 1873, is one of America's oldest and best known manufacturers. The Company is a leading maker of kitchen and bath fixtures and also manufactures small engines used in off-road equipment, generators and water pumps, as well as generators powered by KOHLER engines and other

leading engine manufacturers. Kohler competes in the global marketplace and therefore always must be mindful of the increasing burden of United States government regulation on Kohler's international competitiveness. As such, Kohler supports the Administration's effort to reduce the regulatory burden on American manufacturing companies while not undermining environmental protection. The latter point is critical to Kohler, as we firmly believe that integrating business and environmental practices is undeniably better for everyone — our company, our associates, our customers, and the environment.

Indeed, Kohler believes that better business and a better environment go hand in hand. Kohler works hard to reduce the Company's environmental impact. We have committed to a goal of sending no solid waste to landfills, reducing or offsetting 100% of our greenhouse gas emissions and reducing our water usage through a program called "Net Zero 2035" (see graph). Kohler has been driving growth and innovation by developing products that have lower environmental impacts over their entire life cycle, and we are systematically incorporating sustainability into the product development process itself.



Clay NESHAP Rule Background

The 1990 Amendments to the Clean Air Act (CAA) establish a fairly complex program to regulate emissions of Hazardous Air Pollutants (HAPs) from specific industrial source categories. The program requires EPA to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) that regulate HAP emissions emitted by discreet industrial source categories throughout the country.

NESHAPs apply to major sources of HAP emissions and also can apply "as deemed appropriate by EPA" to minor sources. Major sources are defined as those that emit 10 tons per year of any single HAP, or 25 tons per year of all HAPs combined. Minor sources (a/k/a "area sources") have HAP emissions below these major source thresholds.

As a general matter, major source HAP emission limitations are more stringent. For a major source category, EPA will impose technology-based emission standards requiring the maximum degree of reduction in emissions that EPA deems achievable, often referred to as "maximum achievable control technology" or MACT standards. 42 U.S.C. Sec. 7412(d)(1)-(2). Achievability is determined based upon a review of the best performing similar sources in the category using clean processes, emission control devices, work practices, or other pollution reduction methods. *Id*. These best performing emissions levels set a baseline, or "MACT floor," for creating the MACT standard. The floor differs for existing and

new sources, with new sources having stricter emission limitations. The more stringent a MACT floor, the more stringent the associated MACT limitation.

For area source categories, EPA may choose to promulgate emission standards that reflect "generally available control technologies or management practices" as a HAP emission limitation. 42 U.S.C. § 7412(d)(5). These standards can be – and typically are – less rigorous than those required for major sources under 42 U.S.C. § 7412(d)(1).

Kohler Co.'s Concerns with EPA's Co-location Interpretation of the Clay MACT Rule

Kohler currently employs approximately 9,000 associates at its three locations where it has sanitaryware manufacturing facilities impacted by the Clay MACT Rule (1,700 of whom are dedicated to sanitaryware operations). These sanitaryware facilities are located in Wisconsin, South Carolina and Texas and manufacture toilets, sinks and other ceramic kitchen and bath fixtures.

Kohler Co. is the only sanitaryware company affected by the Clay MACT Rule, which makes it cost-prohibitive for Kohler to expand its existing sanitaryware facilities at these locations because they are regulated as "major sources" due to EPA's co-location interpretation of the CAA. Kohler's sanitaryware facilities themselves are minor (area) sources based on the low HAP emissions levels associated with the sanitaryware manufacturing processes. However, solely because Kohler's sanitaryware facilities are co-located with other Kohler manufacturing operations, the sanitaryware units are now regulated by EPA as "major" sources. In other words, EPA's policy is to aggregate HAP emissions from the sanitaryware area sources with all other HAP emissions from unrelated co-located processes. This policy results in Kohler's sanitaryware facilities being regulated as major sources, with the attendant more stringent pollution control requirements, even though the HAP emissions from the sanitaryware facilities are below major source thresholds. The EPA's policy makes little sense since the HAP emissions from Kohler's sanitaryware operations are not any higher simply because the facilities are located next to other manufacturing operations. EPA's interpretation of the CAA essentially penalizes Kohler for having built sanitaryware operations next to other operations long before the CAA was in existence.

The Clay MACT Rule puts Kohler's sanitaryware facilities at a significant competitive disadvantage vis-à-vis foreign-owned competitors, which do not have to comply with the Clay MACT Rule as they operate only sanitaryware facilities, which are area sources themselves, and are not co-located with any other major sources. Foreign-owned competitors are not subject to the same compliance costs, including additional testing, monitoring, record keeping and reporting obligations, when operating their existing facilities, or when considering where to build and expand. This gives them a competitive advantage.

While it may not have been the intent of EPA to single out Kohler, the Clay MACT Rule does just that, with no measurable benefit to the environment, as Kohler's sanitaryware facilities do not emit HAPs at major sources quantities. Moreover, Kohler is placed at a competitive disadvantage by being subjected to more stringent and costly regulatory requirements even though its HAP emissions may be similar to, or lower than, those of its foreign-owned competitors.

The EPA's co-location policy for determining "major source" status for the various source categories should be revised or eliminated. The CAA identifies specific industrial source categories for a reason, and "major source" determinations should be based solely on emissions output from each source category in operation at any facility site, and not by a company's siting decisions made decades before the CAA was even enacted. This change would ensure a level playing field for all businesses in a given category, and would not impose and force us to waste "major source" compliance resources on sources with HAP emissions at the levels of a minor (area) source.

Kohler Co.'s Concerns with the MACT Floor Used to Establish the Clay MACT Limitations

Kohler maintains that EPA violated the CAA by using emission data that was not representative of an existing sanitaryware kiln operating at the time of the Agency's rulemaking to set the MACT floor for the Clay MACT Rule. Rather than collect emissions data from an existing sanitaryware kiln, in 2010 EPA directed Kohler to change the operational configuration of a sanitaryware kiln by operating an emission scrubber while testing the HAP emissions from that kiln. At that time, there was no federal or state requirement to operate the kiln with a scrubber, nor did Kohler operate its kiln with a scrubber. The EPA mandated testing measured artificially low HAP emissions from the kiln that did not reflecting real world emissions rates. Nonetheless, EPA used this scrubber-related emissions data to establish the existing source emissions floors in the Clay MACT Rule. As a consequence, many of the HAP limitations in the Clay MACT Rule are predicated upon an emissions floor that assumes existing sanitaryware facilities in the United States operate with scrubber technology – a premise that is simply not true.

On December 23, 2015, Kohler filed a Petition for Administrative Reconsideration of the Clay MACT Rule that raised this issue. See Docket EPA-HQ-OAR-2013-0290. By letter dated May 12, 2016, EPA denied the Petition with respect to this issue. Kohler also filed a Petition for Judicial Review of the Clay MACT Rule with the United States Court of Appeals for the District of Columbia, which challenges the manner in which EPA established the MACT floor. See *Sierra Club, et al. v. US EPA, et al.*, Case No. 15-1487 (and consolidated cases)(D.C. Cir.). The appeal has been fully briefed, but oral argument has not yet been scheduled.

Notwithstanding these other administrative and judicial proceedings, EPA should, at a minimum, revise the existing source floor analysis in the Clay MACT Rule without the data points generated by this fabricated "existing" kiln utilizing a scrubber.

Emissions Testing of Non-road Engines and Generator Sets as Stationary Sources

Kohler Co. manufactures and tests non-road engines and generator sets. Kohler believes the testing of these engines and generators is exempt from stationary source rules; specifically, 42 U.S.C. §§ 7602(z), 7543, and 7550, and 40 CFR § 1068.30. EPA Region 7 issued a guidance letter dated November 10, 2016, to the Air Quality Bureau of the Iowa Department of Natural Resources, stating this type of testing is exempt from stationary source rules. See https://www.epa.gov/nsr/john-deere-dubuque-works-stationary-or-mobile-source-determination. **Kohler requests EPA further clarify this in their rules and among all EPA regions, so that these operations are treated equitably across the U.S.**

Conclusion

Kohler believes the aforementioned rules warrant consideration for repeal, replacement, or modification. EPA should promulgate rules and establish policies consistent with the requirements under the CAA without unfairly singling out and penalizing a U.S. company, which provides good manufacturing jobs for thousands of Americans and contributes to our national economic growth. We would welcome EPA directing a staff member to work with our environmental team to find a way to make these rules workable.

Respectfully,

Kohler Co.