Situation Assessment Report
on
Convening a Negotiated Rulemaking Process
to
Negotiate a Proposed Rule to limit Chemical Data Reporting Requirements for Certain Inorganic Byproducts under Section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank. R. Lautenberg Chemical Safety for the 21st Century Act

U.S. Environmental Protection Agency
Chemical Control Division (7405M), Office of Pollution Prevention and Toxics

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I. INTRODUCTION

The United States Environmental Protection Agency Intent to Establish a Negotiated Rulemaking Committee and Negotiate a Proposed Rule on Chemical Data Reporting Requirements

On December 15, 2016, the United States Environmental Protection Agency (EPA) published a notice in the Federal Register concerning its Intent to Establish a Negotiated Rulemaking Committee and Negotiate a Proposed Rule on Chemical Data Reporting (CDR) Requirements under Section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank. R. Lautenberg Chemical Safety for the 21st Century Act. The latter Act requires EPA to initiate the regulatory negotiation specific to CDR reporting requirements for inorganic byproduct chemical substances that are subsequently recycled, reused or reprocessed.

Negotiated rulemaking[1] is a process in which a committee composed of representatives of stakeholder groups that will significantly be affected by a proposed rule is charged with reaching consensus on the text of a proposed rule. The convening Agency responsible for the regulation, "to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment" (Negotiated Rulemaking Act of 1996, §563(a)(7)). (See Appendix B for the U.S. EPA Fact Sheet on Negotiated Rulemaking.)

The regulatory negotiation will be conducted in accordance with procedures required in the Negotiated Rulemaking Act (NRA) of 1996, and the Federal Advisory Committee Act (FACA) of 1972. This includes the formation of a Federal Advisory Committee composed of concerned stakeholders.

The Convening Process and Situation Assessment

Part of the convening process for a FACA regulatory negotiation is the conduct of a situation assessment by an independent situation assessor that identifies key potential stakeholders, their issues and interests and recommendations on procedures for parties to engage in productive negotiations. This report describes the findings and recommendations of Dr. Christopher Moore, Partner of Collaborative Decision Resources (CDR Associates), and Ms. Laura Sneeringer, Senior Associate of the Consensus Building Institute, the impartial situation assessors and future mediators, or facilitators, of the regulatory negotiations.

Between January 9th and March 15th, 2017, Moore and Sneeringer contacted 35 potential stakeholder groups, and conducted 30 interviews in-person or by telephone to assess their interest in participating in the regulatory negotiation, and, if so, to solicit their views on issues to be addressed and interests met. Based on the results of the interviews, 22 stakeholder groups, including the EPA, stated they wanted to participate. These groups include manufacturing industries (including importers) and recyclers engaged in producing and/or processing inorganic byproducts, states with an interest in using EPA's CDR data, and the environmental community that also relies on CDR reporting.

It is the judgment of the situation assessors that EPA should convene the regulatory negotiation, as soon as is feasible. All concerned parties are ready to proceed.

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[1] Negotiated rulemakings are also called regulatory negotiations or "reg-negs". The terms are used interchangeably in this situation assessment report.

The EPA Administrator, under the FACA process, makes a final decision to proceed with the regulatory negotiation. The situation assessors, who will be the future facilitators/mediators of the process, will contact concerned stakeholders to identify mutually acceptable dates for the first and second meetings, prepare an operating protocol for the negotiations and, in consultation with the parties, develop mutually acceptable agendas for the first two meetings.

II. BACKGROUND

The U.S. Environmental Protection Agency Toxic Substances Control Act and Chemical Data Reporting of Inorganic Byproducts

Under TSCA, the EPA evaluates potential risks from new and existing chemicals and finds ways to prevent or reduce pollution before it gets into the environment. The EPA classifies chemical substances as either "existing" chemicals or "new" chemicals. "Existing" chemicals are chemicals that were identified as already in commerce and were reported for the initial TSCA Inventory or are chemicals that have undergone EPA new chemical review and subsequently were added to the TSCA Inventory. "New" chemicals are chemicals that are not listed on the TSCA Inventory.

In 1986, EPA promulgated the Inventory Update Reporting (IUR) regulation under TSCA Section 8 (a). Under the regulation, EPA requires manufacturers (including importers) of certain chemical substances included on the TSCA Inventory to report data on chemical manufacturing every 4 years. Initially limited to organic chemical substances, in 2005 EPA amended the IUR to, among other changes, require the reporting of information on inorganic chemical substances.

In 2011, EPA changed the name of the IUR to the CDR and required electronic reporting of CDR information.

EPA uses information collected under CDR, which is the only comprehensive collection of exposure-related data for chemicals in commerce, to inform and support Agency programs. EPA uses the data to help assess the potential human health and environmental effects of these chemicals and makes the non-confidential business information that it receives available to the public.

Some chemical substances are byproducts, which are defined at 40 CFR 704.3 as substances produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s). Byproducts used for a non-exempt commercial purpose are reportable under CDR. Those manufactured without commercial intent, not used for a separate commercial purpose, or used only for very limited specific types of commercial purposes (identified under the exemptions found at 40 CFR 720.30 (g) which includes burning the byproduct as a fuel, disposing of it as a waste such as in a landfill, or extracting a component chemical substance for commercial purposes) are exempt from reporting.

Background on the Negotiated Rulemaking

On June 22, 2016, TSCA was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to include the requirement that EPA convene a negotiated rulemaking to develop and publish a proposed rule providing for limiting the reporting requirements under TSCA section 8(a) for manufacturers of any inorganic byproducts, when such byproducts, whether by the byproduct manufacturer or by any other person, are subsequently recycled, reused, or reprocessed. In the event a proposed rule is developed through the negotiated rulemaking process, a final rule must be issued by December 22, 2019. (See §2607(a)(6) of TSCA.)

This situation assessment report is one of the first steps for convening the Federal Advisory Committee and conducting negotiated rulemaking. It includes identification of key stakeholders concerned about the issues in question, solicitation of their interest in participating in the initiative, recommendations on stakeholder groups and representatives to be involved, identification of issues to be discussed and addressed, and suggestions for procedures that will promote productive negotiations.

III. STAKEHOLDER GROUPS AND REPRESENTATIVES

During the situation assessment, the assessors contacted 35 groups of potential stakeholders from government, industry and the public interest sectors; and interviewed 30 groups and 80 individuals, either in groups or individually (see Appendix A: List of Interviewees).

The situation assessment identifies five categories of stakeholders that want to and should be involved in the negotiated rulemaking:

- **The U.S. Environmental Protection Agency (EPA**) This Agency, under TSCA, has, among many other authorities, the broad authority to require information collection from manufacturers and processors of chemical substances (including importers), and the maintenance of records and/or reports of such data as the Agency may reasonably require to carry out TSCA mandates. EPA uses data collected under CDR to support risk screening, assessment, priority setting and management activities which allows EPA to construct an in-depth picture of the types, amount, end uses, and possible exposure to chemicals in commerce.

- **States** – Because many states don't collect chemical data collected by EPA, they are dependent on getting data on chemical substances in commerce from EPA's reporting requirements under CDR. States interests are the prioritization of chemicals for risk evaluation, implementation of risk determinations and assurance that regulation of chemicals is not limited by preemption, confidential business information management, and other procedural processes that could impact or inform environmental statutes delegated to States to implement, such as the Clean Air Act (CAA), Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA), and other State legislation involving chemical substances. The State Committee representatives from the Massachusetts Department of Environmental Protection and Minnesota Pollution Control Agency will coordinate with the Environmental Council of the States (ECOS), the national non-profit, non-partisan association of state and territorial environmental agency leaders whose purpose is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment in the U.S.

- **Environmental Organizations** – A number of national environmental groups are interested in CDR reporting of inorganic byproducts by manufacturing companies and recyclers. They use CDR data for research, and development of programmatic initiatives. A central interest is having adequate, detailed and regularly reported data.

  The situation assessors contacted and interviewed representatives of six leading environmental groups to solicit their interest in participation and issues they wanted to have addressed. While a number of environmental groups are very concerned about and interested in the focus of the regulatory negotiation and its potential outcome, they are under-resourced in terms of personnel, finances and time to engage in the negotiations.

It appears only a few representatives of the environmental community will be able to directly participate in negotiations and all meetings. To help assure that adequate input from the broader environmental community is secured, the mediators will assist Committee members representing environmental interests to maintain regular communication with a network of environmental groups that are not directly participating on the Committee. Periodic briefings on the work of the Committee will be conducted for this group with opportunities for participants to provide input that the Committee members representing environmental concerns can bring back to the full Committee.

- **Manufacturing Industry Associations and Companies** – There are a large number of industry associations and member companies that have concerns, questions and ideas about CDR reporting of inorganic byproducts resulting from their manufacturing processes. The situation assessment found that a larger number of industry representatives are needed to be able to represent the interests of diverse manufacturing processes and resulting inorganic byproducts and specific kinds of member companies (small and large). For the most part, each industry sector felt they needed to have a seat at the table in order to ensure buy-in from their unique constituents, as opposed to being represented by other industry members. The situation assessment found a high level of interest and commitment to participate.

- **Recycling Industry Associations and Companies** – This category of stakeholders includes both manufacturing companies that engage in internal recycling of inorganic byproducts, either on-site inside the "fence line" of a plant or at another company facility, and independent recycling companies that process these chemical substances.

  Recyclers, depending on the chemical substances being processed, use a combination of chemical reactions and physical procedures to separate out inorganic chemical substances from byproducts for future commercial sale and use. Recyclers are either paid by manufacturing companies to perform recycling services or purchase the chemical substances with inorganic chemical substances from the manufacturers for separation and later commercial sale. Products that result from recycling depend on various potential uses of inorganic chemical substances and the market for these products, which may vary over time.

IV. INTERESTS AND ISSUES

Interests

During stakeholder interviews, participants explicitly or implicitly noted a number of broad interests that they wanted to have met as a result of participation in the negotiated rulemaking.

- **Protection of human health and the environment** – Ensure that chemical substances manufactured, processed, or used for commercial purposes in the United States do not adversely impact the environment, human health or worker safety.

- **Adequacy, accuracy, and integrity of information** – Ensure that basic use and exposure-related data on chemical substances in commerce in the United States, including byproduct chemical substances, are available, accurate, and of legitimate quality so that EPA, states, and other users have information needed for screening-level assessments and risk evaluations of TSCA chemicals.

- **Cost effectiveness and efficiency** – Ensure that industry, companies and the EPA benefit from a clear and well-organized reporting process and do not incur unnecessary labor or financial burdens.

- **Predictability** – Ensure predictability for industry and companies that they are meeting their regulatory responsibilities and are not incurring regulatory risk, and that EPA is confident that industry and companies are meeting their reporting requirements.

- **Consistency** –Ensure that guidance is consistent and does not frequently change, and if it does, adequate lead-time is provided to be informed of shifts and make changes in reporting requirements.

- **Recycling** – Ensure and promote the use of recycling, and other pollution prevention and source reduction activities, for appropriate inorganic byproducts, which are not better handled by burning, landfilling or other disposal mechanisms.

- **Consistent enforcement** – Ensure that there is consistent enforcement by EPA so that all parties are following the same rules.

- **Avoidance of unintended consequences** – Ensure that any regulatory changes to CDR reporting do not establish precedents that may have unintended consequences for reporting other byproducts covered under TSCA, CDR and other EPA Programs.

- **Close and prevent loopholes** – Ensure that any changes in reporting inorganic byproducts are specific enough that that in the future there will not be room for diverse interpretations that will inhibit accurate reporting.

Issues

The situation assessment identifies three categories of issues that should be considered for discussions and deliberations by the Committee. Listed below are ones identified by interviews and in written documents. Additional issues will, no doubt, be identified and raised in the course of the Committee's deliberations.

1) **Topics to be addressed by information exchange, briefings or education** – Correspondence between stakeholders and EPA and interviews conducted by the situation assessors indicate that there is lack of clarity regarding a number of aspects of inorganic byproduct identification and reporting. It will be important at the beginning of the negotiation process to have an information exchange session, with adequate time for all participants to ask and get answers to their questions, so that everyone has the same information and common understandings. Doing so will help minimize unnecessary differences or disagreements due to lack of accurate information. It will also help identify refined topics for discussion. Some of the topics for which information needs to be exchanged include:

    A. History of reporting inorganic byproducts under TSCA/IUR/CDR
        a. Logic and rationale for regulatory changes that led to CDR reporting requirements for inorganic byproducts, including changes in 2006.

    B. Overview of EPA and others' information needs concerning inorganic byproducts, including levels of detail needed or desired in reporting.
        a. How do EPA, the states and others use CDR data including on inorganic byproducts? What types of questions do the data help answer?
        b. Data on inorganic chemical substances were collected in 2006, 2012, and 2016. How have these data been used? What analyses on inorganic byproduct data have EPA or others conducted? What risks have been identified or conclusions reached? What was

missing from the data collection that limited the usefulness of the CDR data? How do the requirements of the revised TSCA affect how the data will be used?

C. Industry activities, including the costs/burdens to companies in terms of level of effort (LOE) and other financial expenditures, for CDR reporting specifically of inorganic byproducts, independent of other TSCA reporting requirements. This should include a description by each of the stakeholder industry sectors of how they determine downstream uses of their byproducts streams.

D. Descriptions of how potentially relevant programs define and regulate 'inorganic byproducts'.
   a. EPA programs: CDR, RCRA, and TRI, including the data reported under each program.
   b. International: the Basel Convention in Europe.
   c. Other potentially relevant definitions, such as from third-party standards (e.g., ASTM, ISO).

E. Requirements under CDR:
   a. Description of what constitutes a 'commercial purpose' and who reports.
      i. How to determine if imported chemical substances constitute a commercial purpose?
      ii. If a manufacturer does not directly use its inorganic byproduct, but sells it to a recycler to process, is this a commercial use? Who reports?
      iii. If a manufacturer recycles its own inorganic byproduct and reuses it in its manufacturing process (i.e., byproduct serving as feedstock), is this a commercial purpose? Does this need to be reported?
      iv. If a manufacturer keeps ownership of an inorganic byproduct, sends it to a recycler to process and gets back a chemical that is used in one of its manufacturing processes, is this a commercial purpose? Who reports it?
      v. Is research and development considered a commercial purpose? If so, how is reporting impacted (e.g., are the same volume thresholds applicable)?

   b. Guidance on if/how reporting is impacted when inorganic byproducts are exported outside of the U.S. for recycling or other uses.
   c. How to define 'reasonably ascertainable' in relation to manufacturers obtaining information from downstream recyclers/users on the products produced and procedures used (physical or chemical) to recycle inorganic byproducts.

F. Overview of the byproduct exemption at 720.30(g)(3) (referenced by 711.10(c)): 'extract a component chemical substance from the byproduct for commercial purposes'.

G. How to name byproducts.
   a. How does industry name products, and what are the specs (QA/testing protocols) for its products?
   b. How to identify inorganic byproducts on the TSCA Inventory, including describing available guidance.
   c. When should an inorganic byproduct be identified as a Chemical Substance of Unknown or Variable Composition, Complex Reaction Product, or Biological Material (UVCB)? When can it not be identified as an UVCB substance?
   d. How should companies determine whether to identify an inorganic byproduct as a UVCB substance or the main chemical component(s) in the UVCB substance?

e. How should companies identify inorganic byproducts when it is hard to identify components of their byproduct waste stream (e.g., washes or sludge that change due to where starting material is received from (geographically) or minor differences in processes)?

2) **Initial issues for discussion and negotiation** – These are topics that are expected to be the major focus of negotiations. Some specific topics include:

A. How to reduce disincentives and increase incentives for recycling.
   a. Are there potential disincentives for recycling that may result from reporting requirements?
   b. How significant are the disincentives, and how do they compare to potential human health and environmental protection benefits and the statutory obligation to identify conditions of use?
   c. How might incentives be maximized and disincentives be minimized? Consider factors outside of CDR and TSCA that make it undesirable/unprofitable to not recycle (or compelling to do recycling)?

B. Avoid duplication by aligning EPA programs (CDR, TRI, RCRA):
   a. Are there differences in how programs define and describe 'inorganic byproducts'?
   b. Are there differences among programs concerning "commercial products" and "wastes," related to inorganic byproducts?
   c. Should CDR consider different reporting requirements for inorganic byproducts that EPA has exempted from requirements under other programs (e.g., fly ash and synthetic gypsum reviewed through a RCRA process)?
   d. Are there gaps or opportunities across these programs for reporting on inorganic byproducts?
   e. Are there differences with how inorganic byproducts are treated under The Basel Convention in Europe?
   f. Are there opportunities to better align reporting across EPA programs, including standardization and harmonization of terminology and use codes related to inorganic byproducts? This may also be relevant for international reporting – Organisation for Economic Co-operation and Development (OECD) and Basel Convention.

C. CDR "need to report" determination. What can be done to make this determination easier to make?
   a. What level of information about the recycling process is needed to determine if the byproduct exemption can be applied?
   b. How do byproduct manufacturers obtain information from downstream recyclers/users on the products produced and procedures used (physical or chemical) to recycle inorganic byproducts?
   c. What should be done in these example situations that may impact the need to report determination?
      i. Multiple potential, future uses of inorganic byproducts (e.g., slag from steel industry could be used by DOTs for road aggregate or by farmers).
      ii. Changing market conditions (i.e., recyclers may process inorganic byproducts differently and produce different products based on changing markets).
      iii. Having difficulty or not able to obtain data from recyclers due to the recyclers' claims of proprietary information.

D. Streamline reporting. What opportunities are available? Some examples include:
    a. Does the byproduct exemption at 720.30(g) (3) need to be modified for CDR purposes to better reflect current recycling practices?
    b. Should the process for identifying byproducts for reporting be simplified? For example, what would be the impact, pros and cons of broadening the definition of 'component chemical substance' into categories (i.e., lead oxide same as lead, copper sulfide same as copper).
    c. Should reporting of ranges for production values (as opposed to coming up with specific numbers) be considered?
    d. Should reporting associated with byproducts being recycled onsite (i.e., within a facility's fence line) be considered and treated differently than off-site recycling?

E. Clarify reporting for subsets of inorganic byproducts:
    a. What might be done to clarify reporting for naturally occurring chemicals/ products compared to those resulting from manufacturing? For example, why is the use of a naturally occurring inorganic product used in a manufacturing process, such as mined gypsum for wall board, not reported, and the same inorganic byproduct produced in a manufacturing process is not exempt from reporting? More detail on specific processes will be needed for this discussion.
    b. Are 'heels' in return cylinders (i.e., tiny bit of residue left at the end) a byproduct or an unused starting product that is returned?

F. Compliance issues:
    a. How to increase compliance for reporting of inorganic byproducts?
    b. What facts should EPA consider before taking actions for past violations? Legacy violations would be very fact dependent.

G. Potential changes to communication between EPA and industry:
    a. What can be done to ensure industry has adequate time to setup automatic reporting tools for any reporting modifications?
    b. What are best practices for EPA to share guidance updates, interpretation changes, secure input and answer questions etc.?

3) **Issues outside of the scope for the negotiated rulemaking** – There are a number of issues that are beyond the mandate for the regulatory negotiation as defined in the Chemical Safety for the 21st Century Act. They are being addressed by other agencies or procedures or are not an appropriate topic for these negotiations. Some specific topics that at this time are currently considered to be outside of the scope of this regulatory negotiation include:

A. Guidelines for adding inorganic byproducts to TSCA Inventory via the Pre-manufacture Notice (PMN) Process.
    a. What are guidelines for defining UVCBs? For example, are process-oriented descriptions appropriate as they may be too narrow for long-term use? This type of characterization may make it difficult to innovate with updated processes.
    b. Are there ways to streamline the PMN process?

B. Fairness and equity within an industry – How to ensure that all companies, such as those mining a natural chemical substance or producing the same or similar chemical substance as an inorganic byproduct, are regulated in the same way by EPA, and have the same reporting requirements.

C. Modification of the lower volume threshold (currently 2,500 lbs. instead of 25,000 lbs.) for chemical substances that are the subject of certain TSCA actions.

D. Consideration of possible changes to or re-interpretations of existing CDR reporting exemptions other than the byproduct exemption. The other exemptions, such as for non-isolated intermediates, small businesses, and naturally occurring chemical substances, have a broad impact on chemical substances other than inorganic byproducts.

E. Consideration of possible changes to or re-interpretations of the concept of mixture for overall TSCA purposes, or to the TSCA policies with respect to chemical nomenclature, chemical representation, or listing substances on the TSCA Inventory. Such changes would have a much broader impact than just CDR.

F. Considerations of changes related to PMN reporting.

G. Industry- specific issues. Examples:
   a. Pulp/paper industry Kraft process - A manufacturing process that involves multiple chemical substances, only some of which could be considered byproducts.
   b. Import of scrap metal.

H. Broader reporting issues.
   a. How can EPA's electronic reporting system be improved? Some industry representatives said it is challenging, especially for small companies that do not have highly trained staff.
   b. What challenges for reporting on Form U need to be resolved?

I. Challenges related to confidential business information (CBI).
   a. Are there ways to streamline the process for substantiating CBI?
   b. How can EPA ensure as much information is publically available as possible (i.e., how to ensure CBI is being used appropriately)?

J. Consideration of possible changes or re-interpretations of other EPA rules, including TRI and RCRA regulations.

V. PROCEDURAL AND DECISION-MAKING ISSUES RELATED TO THE NEGOTIATED RULEMAKING

The Negotiated Rulemaking Act of 1996 (NRA) and Federal Advisory Committee Act of 1972 (FACA) Requirements for Regulatory Negotiations

Negotiated rulemaking is a process in U.S. administrative law that authorizes representatives of federal agencies, other government entities and interested stakeholders to engage in negotiations to develop recommendations for a proposed rule. If participants in a regulatory negotiation reach agreements on recommendations, the agency may incorporate them into a proposed rule that is published in the Federal Register. In developing the rule, the Agency follows all of its normal and required rulemaking procedures. Because negotiated rulemaking committees are federal advisory committees, their formation and operation are governed by the Federal Advisory Committee Act of 1972, P.L. 92-463, 86 Stat. 770 (FACA).

Decisions in regulatory negotiations are to be made by consensus, which the NRA defines as the unanimous concurrence among interests represented on a Negotiated Rulemaking Committee, unless the

Committee unanimously agrees to define consensus in another way. The forms of consensus and consensus decision-making procedures to be used in this regulatory negotiation are described below.

Consensus Decision Making

Described below is the definition of consensus that the situation assessors propose be used in the regulatory negotiation, procedures by which it can be reached, and steps that may be taken if a consensus is not possible. These will be discussed at the first meeting of the regulatory negotiation and approved or revised as appropriate.

Consensus

Consensus decision-making is a process by which a group makes a collective decision without voting, which all members can accept. A decision of this type, a consensus, is the strongest form of agreement a group can reach. A consensus decision indicates a greater level of acceptance and support of an outcome than a majority vote of 51% or even a super majority vote of 2/3 of group members.

Consensus is the most common method for decision-making in negotiations. This is especially the case when parties differ regarding their organizational structures (such as those of governmental agencies, companies in the private sector and public interest groups), the number and kinds of constituents they represent, and the issues and diverse interests they want to address. When these characteristics are present, win-lose decision-making processes – such as administrative decisions, litigation, or voting – are often inappropriate or ineffective for addressing or resolving issues where a broad level of support is desirable or necessary, or the issues involved are complex and require the development of integrative solutions.

For the purpose of this regulatory negotiation, three types of agreements will be considered to be a consensus on an individual, cluster or a total package of issues that will be the focus of the regulatory negotiation:

1) The first is an agreement on a solution to an issue or problem that all negotiators unanimously *concur with* and *support with identical levels of enthusiasm, dedication and, commitment.*

2) The second is an agreement on a solution to an issue or problem that negotiators generally prefer or like, but which does not perfectly address all of their interests. An agreement is reached by negotiators making trades or compromises on issues or interests they value differently so that all concerned can *"accept" or "live with"* the outcome.[2]

3) The third is an agreement on a solution to an issue or problem that a majority of negotiators accept, but about which one or more disagree with or oppose. An agreement, however, is still reached because the negotiator(s) opposed to the solution voluntarily decide to *"stand aside"* and *"not block"* other negotiators from reaching an accord. Parties may select this approach for agreement-making for a variety of reasons such as not having a more viable procedural alternative away from negotiations that would likely better satisfy their interests, or their opposition to the potential agreement in question is not a matter of principle or it is not of major importance to them.

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[2] Group participants often see this outcome as the best that can be achieved at a specific time given the relationships they have with each other, information currently available, time and resource constraints or perceptions of their Best Alternative(s) to a Negotiated Agreement (BATNAs), both substantively and procedurally, if a satisfactory negotiated accord cannot be reached. For more about BATNAs, see: R. Fisher and W. Ury *Getting to Yes: Negotiating Agreement without Giving in.* New York: Penguin Books, 1991.

The Consensus Decision-Making Process

Reaching a consensus requires all group members to educate each other about their important needs, interests and concerns, and develop integrative solutions or agreements that address and satisfy both individual and group interests to the greatest extent possible. A consensus agreement will be considered to have been reached when either a facilitator or a group member states a proposal for an agreement and all Committee Members verbally affirm their support for it, or, at a minimum, agree not to actively oppose it.

All negotiators are free to oppose a proposal for agreement and block consensus if the matter in question is of significant importance to them or a matter of principle. Blocking, however, should not be initiated lightly.

EPA's Responsibilities and Commitments to Implement Recommendations by the Committee and its Members

Any proposed regulation resulting from the negotiated rulemaking process will be developed under the authority of TSCA section 8 (15 U.S.C. 2607), as amended by the Lautenberg Act (Pub. L. 114-182).

EPA will participate as a negotiator in the negotiated rulemaking and will represent the interests of the public, the Agency and other federal concerns. The Agency commits to participate in good faith and will make best efforts to help concerned stakeholders and the Committee as a whole reach consensus. The Agency commits to incorporate consensus recommendations in a potential proposed rule to the extent that they are authorized by Section 8(a) of TSCA, comply with applicable statutes and executive orders, and fulfill the Agency's mandate.

EPA's negotiators will maintain constant contact and communications with senior Agency leadership and other appropriate federal entities that may be affected by the rulemaking to assure they are apprised of the focus and progress of the talks and concur with the agreements on recommendations that are being reached by the Committee. EPA's negotiators will also voice any concerns they have in a timely manner.

EPA, in the consultation with regulatory negotiation Committee members, will determine the scope of negotiations and issues to be discussed. The Agency, however, has ultimate authority to determine issues for discussion, and when appropriate, refer those issues not addressed to other forums for input, deliberations or decision-making.

The Committee may reach consensus agreements and make recommendations on all issues raised and discussed in the regulatory negotiation, or only some of them. The Committee does not have to reach a consensus on all issues raised and discussed in the negotiations for EPA to include recommendations reached on more limited issues into a revised or new rule.

EPA has discretion to determine the threshold for the number and detail provided on issues raised and agreed upon as recommendations in the regulatory negotiation, and how they will be included in the proposed rule. EPA may also decide that some components of the Committee's deliberations should be incorporated as part of the Agency's guidance instead of a proposed rule. For example, there may be many situations in which it is determined that clarification is all that is needed. In that event, EPA staff will author any guidance updates and may request a review from Committee members.

If a consensus is not reached on any issues raised or discussed in the regulatory negotiation EPA is not under any statutory obligation to make any revisions to the CDR rule. Some stakeholders, however,

interpreted the Lautenberg Act requirement differently. They believe that regardless of the outcome of the negotiated rulemaking, the agency is obligated to publish a final rule.

If no agreements are reached on issues raised and discussed in the regulatory negotiation, EPA has the discretion to incorporate any information obtained during the talks to revise the rule for CDR reporting of recycled inorganic byproducts using its normal rulemaking authority and procedures and/or to revise its guidance.

VI. PARTICIPATION

A "Balanced Table"

An effective and successful regulatory negotiation is dependent on the active involvement of a broad spectrum of representative stakeholders and stakeholder groups concerned about the issues in question that can effectively represent and advocate for their groups' issues and interests. Ideally, every key stakeholder group would be directly represented. This, however, is not always possible if there are such a large number of concerned parties that efficient negotiations and consensus decision-making will be difficult.

Fortunately, the situation assessment identified that the number of stakeholder groups that want to participate in the regulatory negotiations on reporting of inorganic byproducts – from government agencies at the Federal and state levels, industry and environmental groups – is not so large that they cannot all be represented in some form.

A second issue beyond assuring the involvement of a broad spectrum of representative stakeholder groups is how to create balanced representation so that no one group or coalition will dominate the process by virtue of their numbers, either at the table or the number of their constituents. If a process of voting were to be used to make decisions, the number of stakeholder groups would be critical to prevent those with larger numbers "out-voting" stakeholders with fewer ones. Although the number of participants at the table from stakeholder groups representing common or similar views impacts committee dynamics, because a consensus decision making process is mandated by the NRA, stakeholder groups with larger numbers cannot "out-vote" smaller stakeholder groups. All stakeholders will have both a place at the table, and opportunities to share their views and engage in agreement making.

Regulatory negotiations on issues of concern to multiple industries almost automatically assure that many industry associations and companies will want to participate. Commonly, however, there may not be as many stakeholders from other groups, such as states or environmental organizations, with a specific programmatic concern or focus on the topic to be negotiated, or the personnel, expertise or financial resources to fully engage in the process. When this happens, significant efforts need to be made to assure that there are multiple stakeholder representatives from different non-industry groups with at least some interests in common, so that those with larger numbers do not dominate parties with a smaller numbers of representatives.

As noted above, the situation assessment identified five stakeholder groups with a keen interest in the focus of this regulatory negotiation – the U.S. Environmental Protection Agency, states, environmental organizations, manufacturing industry associations and companies, and recycling companies. All of these entities need to be engaged in the negotiated rulemaking to produce an informed, wise and broadly supported outcome.

There are a large number of industries and manufacturing companies that want to engage, and a smaller

number of stakeholders with explicit environmental and health concerns, and representatives of independent recyclers. Many manufacturing companies, however, conduct extensive recycling. The situation assessors hope that additional recyclers can be identified and encouraged to participate in the negotiated rulemaking process.

While the above factors may make a totally balanced table difficult, the situation assessors believe that a relatively balanced one is possible if participants identify stakeholders with similar interests and informally form coalitions to advocate for them.

Qualifications for Stakeholder Representatives

During interviews, the situation assessors asked interviewees to recommend people they wanted to represent them in the negotiated rulemaking. To facilitate representative selection, the situation assessors often made suggestions on the kinds of qualifications, knowledge and skills that should be possessed by representatives, which would help promote productive deliberations. These included:

- Knowledge of technical issues related to inorganic byproducts;
- Experience with CDR and inorganic byproduct reporting;
- Have a constituency whom they directly represent, a stakeholder group as a whole, such as an industry, or as component parts, such as large or small companies;
- Are not external technical consultants or legal counsel without constituents;
- Authority to reach agreements and make commitments for their stakeholder group;
- Willingness and flexibility to discuss issues that will be the focus of the dialogue with parties that may have different views or interests;
- Willingness to engage in productive interest-based negotiations and avoid adversarial or legal argumentation; and
- A commitment to negotiate in good faith and strive to find solutions that will meet all parties' interests to the greatest extent possible.

Numbers of Representatives for each Stakeholder Group

Regarding numbers of representatives for each stakeholder group, the situation assessors recommend that, whenever possible, each stakeholder group have two. We recommend two representatives rather than one for the following reasons:

- Rarely will one representative have the knowledge and expertise to discuss in depth all of the issues that will be the focus of negotiations.
- Representatives are needed that can speak and advocate for the interests of their stakeholder group as a whole as well as having specific technical expertise on chemical byproducts and reporting.
- Two representatives are needed in case one cannot attend a meeting. The two-person model for representation assures that the stakeholder group's views will be presented at the meeting, and that deliberations and decision making by the Committee will not be delayed by the absence of a member.

If two stakeholder representatives cannot be identified from a specific stakeholder group, such as may be the case for environmental organizations, that group will be encouraged to work or form a coalition with stakeholder representatives that have interests identical or similar to theirs, and discuss how their views, interests and potential options for recommendations can best be presented and advocated.

A caveat should be noted regarding stakeholder groups that have two representatives. Members of these

groups will be free to have and share different opinions during Committee discussion and deliberations to help develop wise and informed agreements that satisfy as many interests as possible. However, when the Committee is making decisions, stakeholder groups with two members will be expected to hold and present a common view and speak with only one voice. In the event that specific stakeholder teams cannot internally reach a unified decision regarding their views on an issue or proposal for agreement, they should abstain from participation in making the decision, and not block the whole group from reaching a consensus.

Representatives

EPA

- Lynn Vendinello, Deputy Director, Chemical Control Division, Office of Pollution Prevention and Toxics
- Susan Sharkey, Existing Chemicals Branch, Chemical Control Division, Office of Pollution Prevention and Toxics

States and Tribes

Massachusetts Department of Environmental Protection and Environmental Council of the States (ECOS)

- Mark Smith, Director, Office of Research and Standards, Massachusetts Department of Environmental Protection

Minnesota Pollution Control Agency and ECOS

- John Gilkeson, Resource Management and Assistance Division, Minnesota Pollution Control Agency

National Pollution Prevention Roundtable (NPPR)

- Rick Reibstein, Board Member, National Pollution Prevention Roundtable

National Tribal Toxic Council

- Larry Dunn, Toxic Chemical Cleanup Manager, Lower Elwha Klallam Tribe, Port Angeles, WA
- Kristin K'eit, Senior Environmental Scientist, Zender Environmental Health and Research Group

Environmental Organizations

Earthworks

- Aaron Mintzes, Policy Advocate, Earthworks
- Lauren Pagel, Policy Director, Earthworks

Natural Resources Defense Council (NRDC)

- David Lennett, Senior Attorney, NRDC

Sierra Club and CA Communities Against Toxic

- Amy Kyle, Retired Adjunct Professor from UC Berkeley School of Public Health and designated representative

WE ACT for Environmental Justice

- Dr. Adrienne L. Hollis, Esq., Director of Federal Policy, WE ACT for Environmental Justice

Manufacturing and Recycling Industry Associations and Companies

American Chemistry Council (ACC)
- Karyn Schmidt, Senior Director, Regulatory & Technical Affairs, ACC
- Schuyler Pulley, Regulatory Specialist, Chemours Company FC, LLC

American Coal Ash Association
- Rafic Minkara, PhD., PE, Vice President – Research & Development, Headwaters Resources, Inc.
- Danny, L. Gray, P.E., Executive Vice President- Governmental & Environmental Affairs, Charah, Inc.

American Fuel & Petrochemical Manufacturers
- Jim Cooper, American Fuel & Petrochemical Manufacturers
- David D. Dunlap, Koch Companies Public Sector, LLC

American Petroleum Institute (API)
- Derek Swick, Manager Regulatory and Scientific Affairs, API
- Uni Blake, Scientific Advisor, API

Association Connecting Electronics Industries (IPC)
- Fern Abrams, Director Regulatory Affairs, IPC
- Bret Bruhn, Environmental Operations Manager – Oregon, TTM Technologies

Guardian Industries
- Mark N. Duvall, Principal, Beveridge & Diamond, P.C.
- James Riley, Environmental Program Manager, Guardian Industries Corp.

Institute of Scrap Recycling Industries
- David Wagger, Chief Scientist and Director of Environmental Management, Institute of Scrap Recycling Industries

International Precious Metals Institute (IPMI)
- Gus Ruggiero, Group Industrial Hygiene Manager, Johnson Matthey Inc.
- JP Rosso, President, IPMI

North American Metals Council (NAMC)
- Kathleen M. Roberts, Executive Director, North American Metals Council
- Martin Jones, Senior Counsel, Fremont-McMoRan Copper and Gold

Phibro-Tech
- William Dwight Glover. President, Phibro-Tech

Portland Cement Association
- Michael B. Schon, Vice President & Counsel, Government Affairs, Portland Cement Association
- James S. Willis, III, P.E., P.G., Director Corporate Environmental, Titan America, LLC

Steel Industry – Representing American Iron and Steel Institute, Steel Manufacturers Association, Specialty Steel Industry of North America, and Copper & Brass Fabricators Council
- Joseph Green, Kelley Drye & Warren LLP

Utility Solid Waste Activities Group

- Jim Roewer, Executive Director, Utility Solid Waste Activities Group
- Douglas Green, Attorney at Law, Venable, LLP

VII. PROCESS DESIGN

Convening the Negotiated Rulemaking

The first meeting will be an organizational planning meeting. All prospective Committee Members are expected to attend and others are welcome to attend. The organizational planning meeting will be an opportunity for information exchange to clarify a number of aspects of inorganic byproduct identification and reporting. It will ensure that everyone has the same information and common understandings, clarify the mandate and scope for future discussions, and discuss operating protocol and the decision-making process for developing recommendations on a new proposed rule or changes in EPA's Guidance on CDR.

Several interviewees were very interested in components of expected Committee discussions, but declined serving as Committee Members because they did not have a significant enough stake in the overall scope and potential outcome of the negotiations, adequate expertise on issues that would be discussed or time and personnel resources to participate. The first meeting will explore other means to secure their input into the deliberations of the Committee, such as through interest group caucuses or periodic briefings.

The first meeting will be an opportunity for prospective Committee members to confirm their interest in participating. To begin the negotiated rulemaking process, EPA will need to establish a formal advisory committee in accordance with the Federal Advisory Committee Act (FACA). The FACA process and formal appointment of Committee Members will be finalized shortly after the first organizational planning meeting and prior to the first formal session of the Committee. This includes scheduling initial meetings of the negotiated rulemaking committee and publishing notices of those meetings in the Federal Register. Fifteen days after the Federal Register notice, the Agency can convene the first formal meeting. As required under FACA, all meetings of the negotiating committee will be announced in the Federal Register with at least 15 days' notice and will be open to the public.

The Negotiated Rulemaking Structure

The negotiated rulemaking structure will involve of a series of in-person plenary meetings attended by all stakeholder representatives. Meetings will involve information exchange, interest-based negotiations, agreement making and drafting recommendations.

EPA expects up to six meetings of one-and-a half days in duration will be held every month to month-and-a-half with the final session approximately six months after the first session. This includes the first organizational planning meeting. It is expected that within this timeframe the Committee will have developed recommendations on the proposed rule that will be submitted to EPA.

It is expected that all meetings will be held in Washington D.C., unless stakeholders decide otherwise.

Smaller multi-stakeholder working group meetings, or meetings between EPA and specific stakeholders, may also be held as long as they conform to requirements in FACA and the NRA. The purpose of these meetings may be to explore issues in more depth, develop proposals to bring to plenary sessions for consideration by all stakeholders or overcome any impasses that may develop. If small group meetings are

required, provisions will be made for remote participation to minimize costs for travel.

Plenary meetings of all stakeholders will be facilitated by neutral and impartial facilitators/mediators who will manage the overall process and facilitate all deliberations. The facilitators will be accountable to all stakeholders and not to any one entity or group of stakeholders.

All meetings will be open to the public. An opportunity will be provided at an appropriate time during each meeting for public comment. Other opportunities for colleagues of stakeholders to engage or participate in the process may include participation in subcommittees or working groups, reading meeting notes posted on EPA's website, forming and meeting in a caucus with stakeholder representatives who share common interests and concerns, and commenting in writing on the proposed rule or in any public meetings conducted by EPA.

The First Meeting

The draft agenda for the first organizational planning meeting will be prepared by the facilitators/ mediators in consultation with the EPA, and will be refined based on feedback received from Committee Members. Subsequent meeting agendas will be prepared by the facilitators and a small Process Design Task group composed of members selected at the first meeting by all stakeholders. The first formal FACA meeting will include a FACA Committee member orientation required by EPA's Office of General Counsel (OGC).

The agenda for the first organizational planning meeting will include:

Process Issues and Decisions

- Clarification of the mandate, scope and participant goals and expectations for a successful negotiated rulemaking on CDR reporting
- Clarification of how the outcome of the negotiated rulemaking will be drafted and submitted to EPA
- A presentation and discussion of a draft protocol and meeting guidelines prepared by the facilitators/mediators, which will be approved at the first formal meeting
- An introduction to interest-based negotiation
- Selection of members of a Process Design Task Group to develop agendas for future meetings
- Agreement on a schedule for meetings and timeframe for each one

Substantive Issues and Decisions

- An overview of issues to be discussed
- Information exchange, questions and answers on topics identified in this situation assessment report (See Section IV: Interests and Issues on page 8).
- Scoping additional information needs required for productive future talks
- Group development of subsequent general agendas and areas of focus for future meetings
- An opportunity for public comment

Subsequent Meetings

Subsequent meetings will address issues identified by the Committee and Process Design Task Group. Facilitators/mediators will facilitate the meetings, and develop meeting summaries of discussions and agreement reached, which will be circulated to all Committee members for their review and comments. Final approved meeting summaries and relevant documents related to the negotiated rulemaking will be posted by EPA on its website as required by FACA.

The process for each meeting will be designed to address the specific issues the Committee has determined to address. They may involve information exchange, presentations by Committee members or others with expertise on the topics under discussion that they designate, identification and confirmation of agreements in principle, and discussion and problem solving on specific issues.

Agreement Making and Drafting of Recommendations

As the Committee reaches agreements on individual elements of issues discussed, they will be recognized as either "tentative", if final agreement is conditional on reaching agreements on other issues, or final. Both levels of agreement will be recorded in meeting notes.

Close to the end of the negotiated rulemaking, both tentative and final agreements reached will be compiled in one document by the facilitators, a drafting committee composed of stakeholder representatives or their designees or EPA. This document, will be used as a "single-text negotiating document" and will be circulated, discussed and refined during deliberations at one or more later meetings of the Committee.

Ultimately, Committee members will be asked to affirm their acceptance and support for both recommendations to address individual issues, and the text for recommendations for the potential rule as a whole.

VIII. PROTOCOL AND PROCEDURES

Meeting Guidelines

Effective meetings and deliberations are often expedited by a mutually agreed upon protocol or set of meeting guidelines. Prior to the organizational planning meeting, the facilitators will prepare drafts of these documents that will be discussed and approved by all stakeholders as guidance for how the negotiated rulemaking will be conducted. Some of the issues that may be covered in the document(s) include:

- Background on the negotiated rulemaking
- The mission and purpose of the negotiating Committee
- The schedule for the negotiated rulemaking
- EPA's role, responsibilities and commitments
- The stakeholder representation structure and Committee members
- Responsibilities of Committee members
- Involvement of stakeholders' constituents
- Roles and responsibilities of the facilitators/mediators
- Requirements for notification of meetings and that they are open to the public
- A definition of consensus
- The consensus decision making process that will be used
- How decisions will be made
- Procedures to be used if a consensus cannot be reached
- How recommendations will be recognized and recorded
- How recommendations will be incorporated into a rule
- Relations with the press

The Final Operating Protocol and Meeting Guidelines will be publicly available and posted on the EPA's website.

IX. CONCLUSION

The Frank. R. Lautenberg Chemical Safety for the 21st Century Act mandates the U.S. Environmental Protection Agency to convene a negotiated rulemaking to *Negotiate a Proposed Rule to limit Chemical Data Reporting Requirements for Certain Inorganic Byproducts under Section 8(a) of the Toxic Substances Control Act (TSCA).* Dr. Christopher Moore of CDR Associates and Ms. Laura Sneeringer of the Consensus Building Institute, the independent situation assessors for the convening process, find that there is adequate interest and commitment on the part of diverse parties – EPA and state government agencies, various manufacturing industries and recyclers, and environmental organizations – for EPA to proceed to form and convene a Federal Advisory Committee, chartered under FACA, to explore and develop recommendations for a new rule.

Discussions with stakeholders interviewed for the situation assessment indicated a positive attitude toward the initiative. The parties affirmed that they are willing to share information and negotiate in good-faith to identify proposals for recommendations for components of the new rule, which to the greatest extent possible will address and meet the interests of all concerned. Stakeholders noted that they would like to identify proposed recommendations that will respond to cross-cutting concerns of multiple parties as well as explore how issues of specific groups can be addressed. The success of the regulatory negotiation will, however, depend on all participants' flexibility in seeking and developing mutually acceptable interest-based and integrative solutions.

EPA should make all efforts to convene the process by as early as possible, so that Committee recommendations for the new rule can be developed and submitted to the Agency by the Fall of 2017.

APPENDIX A: LIST OF INTERVIEWEES

Aluminum Association

- Curt Wells, Director, Regulatory Affairs, Aluminum Association

American Chemistry Council

- Christina Franz, Senior Director, American Chemistry Council
- Karyn Schmidt, Senior Director, Regulatory & Technical Affairs, American Chemistry Council
- Schuyler Pulley, Regulatory Specialist, The Chemours Company FC, LLC

American Coal Ash Association

- Thomas Adams, Executive Director, American Coal Ash Association
- Maryann Sanders, Senior Toxicologist/Microbiologist/Regulatory Compliance Specialist, Haley & Aldrich

American Fuel and Petrochemical

- Jim Cooper, American Fuel and Petrochemical

American Petroleum Institute (API)

- Derek Swick, Manager, Regulatory and Scientific Affairs, American Petroleum Institute
- Jill Cooper, Anadarko
- Steve Bowes, Consultant to ExxonMobil
- Rosalie Tibaldi, ExxonMobil

Association Connecting Electronics Industries (IPC)

- Fern Abrams, Director Regulatory Affairs, IPC
- John Hasselmann, VP Government Relations, IPC
- Bret Bruhn, Environmental Operations Manager, Oregon, TTM Technologies
- Chris Mitchell, Director, Prime Policy Group
- Gabe Rozsa, Prime Policy Group

Battery Council

- Saskia Mooney, Wiley Rein

Earth Justice

- Khushi Desai, Earth Justice
- Lisa Evans, Earth Justice
- Eve Gartner, Earth Justice

Earthworks

- Aaron Mintzes, Policy Advocate, Earthworks
- Lauren Pagel, Policy Director, Earthworks

Environmental Council of the States (ECOS)

- Alexandra Dunn, Executive Director and General Counsel, Environmental Council of the States (ECOS)
- Sarah Grace Longsworth, Project Associate, Environmental Council of the States (ECOS)
- Mark Smith, Director, Office of Research and Standards, Massachusetts Department of Environmental Protection
- John Gilkeson, Resource Management and Assistance Division, Minnesota Pollution Control Agency
- Ken Zarker, Pollution Prevention & Regulatory Assistance Section Manager, Washington Department of Ecology

Environmental Defense Fund (EDF)

- Richard Denison, Environmental Defense Fund (EDF)
- Lindsay McCormick, Environmental Defense Fund (EDF)

Environmental Working Group

- David Andrews, Environmental Working Group

Guardian Industries

- Mark Duvall, Principal, Beveridge & Diamond, PC
- Pamela Beilke, Global EH&S Director, Guardian Industries Corp
- Michael Metz, Assistant General Counsel, Guardian Industries Corp
- James Riley, Environmental Program Manager, Guardian Industries Corp
- Luke Contos, Senior Director, Environmental Health, SRG Global, Inc.

Honda North America

- Stephen Fogle, Honda North America

Institute of Scrap Recycling Industries

- David Wagger, Chief Scientist and Director of Environmental Management, Institute of Scrap Recycling Industries

International Precious Metals Institute (IPMI)

- Barbara Curtis, Manager, EHS Affairs North America, Johnson Matthey Inc.
- Gus Ruggiero, Group Industrial Hygiene Manager, Johnson Matthey Inc.
- JP Rosso, President-CEO, International Precious Metals Institute (IPMI)
- Stephen Gardner, IPMI General Counsel, Kalbian Hagerty LLP
- Mike Riess, Owner-Managing Director, Materials Management Corp.
- Larry Drummond, Retired CEO, Metalor North America

National Tribal Toxics Council (NTTC)

- Dianne Barton, Chair of NTTC, Columbia River Inter-Tribal Fish Commission, Portland, OR
- Larry Dunn, NTTC Member, Lower Elwha Klallam Tribe, Port Angeles, WA
- Kristin K'eit, Senior Environmental Scientist, Zender Environmental Health and Research Group
- Dr. Lynn Zender, Executive Director, Zender Environmental Health and Research Group

Natural Resources Defense Council (NRDC)

- Dave Lennett, Senior Attorney, Natural Resources Defense Council (NRDC)

Northeast Waste Management Officials' Association (NEWMOA)

- Terri Goldberg, Executive Director, NEWMOA

National Waste & Recycling Association

- Anne Germain, Director, Waste and Recycling Technology, National Waste & Recycling Association

North American Metals Council (NAMC)

- Martin Jones, Senior Counsel, Fremont
- Tawny Bridgeford, Deputy General Counsel, National Mining Association (NMA)
- Kathleen Roberts, Director, North American Metals Council (NAMC)

Phibro-Tech

- William Dwight Glover. President, Phibro-Tech

Portland Cement Association

- Desirea Haggard, Environmental Director, Cal Portland Company
- Gary Elliot, Environmental Director, Lafarge Holcim
- Elizabeth Horner, Director and Assistant Counsel, Government Affairs, Portland Cement Association
- Michael Schon, Vice President and Counsel for Government Affairs, Portland Cement Association
- Jay Willis, Corporate Environmental Director, Titan America LLC

Pulp and Paper Industry

- Stewart Holm, Chief Scientist, American Forest and Paper Association
- Ken Joerger, Global Manager, Industrial Hygiene, International Paper
- Arun Someshwar, National Council for Air and Stream Improvement (NCASI)
- Paul Weigard, Vice President, Water Resources & Director, Northern and Western Regions National Council for Air and Stream Improvement (NCASI)
- Richard Gardner, Packaging Corp of America
- Wayne Huttle, Director, Global Product Stewardship, Westrock

Sierra Club and CA Communities Against Toxic

- Amy Kyle, Retired Adjunct Professor from UC Berkeley School of Public Health
- Jane Williams, Executive Director California Communities Against Toxics and Chair of Sierra Club

Steel Industry

- Joseph Green, Kelley Drye & Warren LLP

US Environmental Protection Agency (EPA)

- Kent Anapolle, Industrial Chemistry Branch, Chemistry, Economics and Sustainable Strategies Division (CESSD); Office of Pollution Prevention and Toxics; US EPA
- David Berol, Office of General Counsel, US EPA
- Mark Garvey, Office of Enforcement and Compliance Assurance, US EPA
- Doyoung Lee, Industrial Chemistry Branch, CESSD; Office of Pollution Prevention and Toxics; US EPA
- Jonah Richmond, Regulatory Coordination Staff, Office of Chemical Safety and Pollution Prevention, US EPA
- Susan Sharkey, Existing Chemicals Branch, Chemical Control Division, Office of Pollution Prevention and Toxics, US EPA
- Tom Smith, Existing Chemicals Branch, Chemical Control Division, Office of Pollution Prevention and Toxics, US EPA
- Amelia Valberg, Region 5, US EPA
- Lynn Vendinello, Deputy Director, Chemical Control Division, Office of Pollution Prevention and Toxics, US EPA

US Steelworkers (USW)

- Anna Fendley, Legislative Representative, US Steel Workers

Utility Solid Waste Activities Group

- Jim Roewer, Executive Director, Utility Solid Waste Activities Group
- Doug Green, Attorney at Law, Venable, LLP

WE ACT for Environmental Justice

- Dr. Adrienne L. Hollis, Esq., Director of Federal Policy, WE ACT for Environmental Justice

Organizations that Declined an Interview

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) - Rebecca Reindel

- Association of State and Territorial Solid Waste Management Officials (ASTWAMO) - Kerry Callahan
- Environmental Technology Council – David Case
- International Chemicals Workers Union Council - John Morawetz and Darrell Hornback
- NORA – An Association of Responsible Recyclers – Jack Waggener
- Safer Chemicals, Healthy Families - Bob Sussman
- Tribes: On January 24, OPPT's Tribal Liaison circulated a notice to EPA's Tribal Partnership Group, with a summary of the December 15, 2016, Federal Register Notice of Intent to Establish a Negotiated Rulemaking Committee, as well as information on how interested Tribal entities could request participation in the Negotiated Rulemaking. EPA requested responses by February 6.