p 703.358.2960
f 703.894.4936
Suite 430
1400 Crystal Drive
Arlington, Virginia 22202
www.aluminum.org

The Aluminum Association

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Docket No. EPA-HQ-OA-2017-0190
Office of Regulatory Policy and Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OA-2017-0190 Evaluation of Existing Regulations

Dear Sir or Madam –

The Aluminum Association (the "Association") thanks the Environmental Protection Agency for the opportunity to provide comment on its *Evaluation of Existing Regulations* noticed at 82 FR 17793. The Aluminum Association, based in Arlington, VA, represents US and foreign-based primary producers of aluminum, aluminum recyclers and producers of fabricated aluminum products, as well as industry suppliers. Association member companies operate over 180 aluminum manufacturing locations across the US and the U.S. aluminum industry is a key element of the nation's manufacturing base. Strong, lightweight and recyclable, aluminum is a material uniquely suited to meet the needs and challenges of the 21st century. From increasing vehicle fuel efficiency to green building products to sustainable packaging, aluminum is well-positioned in the U.S. and global markets. A recent study highlights the importance of the aluminum industry to the U.S. economy. Today, the U.S. aluminum industry:

- Directly employs 161,000 workers and indirectly employs an additional 551,000 workers.
- Directly generates $75 billion in economic output and indirectly generates an additional $111 billion in economic output.
- In total, the U.S. aluminum industry supports nearly 713,000 jobs and $186 billion in economic output, more than 1 percent of Gross Domestic Product.
- Aluminum industry jobs are high quality, advanced manufacturing jobs. Workers in the industry earn an average salary far exceeding the national average.

More specific information regarding the economic and geographic footprint of the US aluminum industry can be found at http://www.aluminum.org/advocacy/jobs-economy.

Additionally, since 2013 the US aluminum industry has invested over $3 billion in new and expanded manufacturing facilities to support growth in aluminum demand, primarily in the automobile and light truck market.

The ongoing operation and expansion of facilities in a major manufacturing industry such as aluminum presents regulatory challenges that are worthy of further discussion in response to the EPA's request for comment on its *Evaluation of Existing Regulations*. Toward that end, the Association has the following comments on the EPA's request for comment on its *Evaluation of Existing Regulations*:

Air Permitting – National Emission Standards for Hazardous Air Pollutants (NESHAP)

EPA's lack of responsiveness to manufacturing's real world permitting needs results in a reduced rate of capital investment. As an example, as part of the Risk and Technology Review (RTR) process, in 2016 EPA updated the requirements in 40 CFR Part 63, Subpart RRR – National Emissions Standards for Hazardous Air Pollutants for Secondary Aluminum Production which went into effect in September 2016. The updated regulations require round top furnaces that are constructed after February 14, 2012, to either install hooding that meets the rule's guidelines, petition the permitting authority that such hoods are impracticable, or assume a 20% increase from measured furnace emissions. Although the rule exempted existing round top furnaces from these burdensome requirements, the rule unnecessarily required that new round top furnaces either pursue an impracticability determination or accept a 20% diminished capacity. However, neither existing or new round top furnaces can be designed to operate with hooding. This is because the inherent charging method for round top furnaces require the operation of overhead cranes and removal of the lid to load the furnace which prevents hood installation. Requiring an impracticability determination for new round top furnaces thus far has proven to be unpredictable and untimely with the resulting undefined timing of approvals adversely impacts the capital investment plans for future aluminum industry projects involving these furnaces.

Air Permitting – New Source Review/Prevention of Significant Deterioration (NSR/PSD) Reform

The Association believes that the following revisions that would remove significant barriers to air emissions permitting under the NSR/PSD program.

- Revision of the NSR SER for PM2.5 to 15 tons per year to align it with the PM SER.

- Development and implementation of standardized, regional BACT emission rate/control efficiency factors for common units. Allow flexibility for override if site specific data is available.

- In modeling, eliminate the double counting of impacts to ambient pollutant concentrations caused by the adding of measured regional background concentrations to modeled concentrations that include emissions from existing sources. Existing sources are already accounted for in the measured ambient regional background levels, and should not also be added to the required modeling result.

- Revise the definition of 'begin actual construction' contained in 40 CFR 52.21 (b)(11) to provide for greater ability for conducting certain construction activities that are of a permanent nature in advance of obtaining a permit. Facilities should, at their own risk, be able to conduct time-consuming construction activities, e.g. installing foundations and running underground utilities, in advance of obtaining a NSR/PSD construction permit where it remains obvious that the source for which a permit is being sought cannot operate. As a reference for how this can work, many states have already incorporated such common-sense allowances in their minor source permitting programs.

Air Permitting – National Ambient Air Quality Standards (NAAQS) Implementation and Modeling

Below are some revisions that the Association believes are needed relative to improving the constraints placed on manufacturing facility permitting under the NAAQS program.

- Determining attainment/non-attainment areas for the purposes of NAAQS compliance designations using physical measurement data, not speculative dispersion modeling as experience indicates that dispersion models are consistently inaccurate and routinely produce results unverifiable in the real world.

- Maintaining a designation of 'attainment/unclassifiable' for those areas where measurement data is not available.

- Restructuring the time interval perspective of the SO2 NAAQS standard compliance methodology to reflect a multiple-hour averaging interval that provides the same level of public health protection as a one-hour interval but increases the viability of an attainment demonstration. In 2010, the primary NAAQS for sulfur dioxide were changed from a 24-hour and annual standard to a short-term, one-hour standard at 75 ppb. Modeling or ambient air monitoring are used to determine attainment with the 2010 standard. Where monitoring is used, the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is used to determine attainment. Using the 99th percentile approach, the day with the fourth highest hourly value in a year is the data point that is used to represent that year in the 3-year average. Ambient air monitoring station placement decisions are based on the results of models showing sites of maximum anticipated impacts, but the monitoring data is often used to determine attainment for a very large area. The problem is that this short-term NAAQS limit and attainment evaluations are based on conservative modeling demonstrations or ambient air monitoring at locations of maximum anticipated impacts using the 99th percentile approach. This makes attainment demonstrations difficult. Therefore, suggested improvements are to reeform the primary SO2 NAAQS by returning to a longer-time interval standard, raising the one-hour standard from 75 ppb, reconsidering monitoring station placement to be more representative of impacts across the area being classified, and/or by using a lower percentile, such as 90th percentile. Some of the studies referenced in the 2010 rule preamble suggest that public human health would be adequately protected by a higher standard, such that the changes suggested here would provide continued public health protection while enabling more realistic attainment.

  Another related issue is that the monitoring/modeling actions required for the ambient 1-hour SO2 NAAQS are triggered primarily by annual emissions from a facility or "nearby" facilities.

What is considered a "nearby" facility is extremely vague yet can have significant consequences for individual facilities working to maintain compliance with the standard. Therefore, the Association requests that specific guidelines be provided to ensure monitoring/modeling is accurate.

- Allowing emissions trading in attainment areas to show overall net emission reductions in an area (e.g., county level) as an alternative to conducting modeling. This would be similar to what is done in nonattainment NSR.

Air Permitting – Regional Haze Requirements

The Association believes that the existing Regional Haze requirements are not realistic given that it is not possible to achieve natural conditions by 2064 with current industrial and human activity. Therefore, these requirements need to be revised and accompanied by a logical explanation for any change proposed.

Air Permitting - Startup, Shutdown, and Malfunction (SSM) Provisions and Interpretations

Since the inception of the Clean Air Act, EPA through its implementing regulations has recognized that it is unreasonable to require air emissions sources to meet technology-based emission standards that were developed during periods of normal operation during periods of startup, shutdown, and malfunction. See 40 CFR 60.8(c). Further, the existence of such allowances for SSM events has been an important element of long-standing court decisions concluding that EPA established reasonable emission standards for particular source categories. There is also significant precedent for EPA recognizing that it may not be appropriate to penalize a source for failure to meet technology-based emission limitations during SSM events. However, all these considerations have recently been subject to significant interpretive revision by EPA in favor of emission limit applicability during all times of facility operation without consideration for periods of SSM events that in many cases can be out of the control of the regulated facility. Most recently, on June 14, 2016, EPA proposed in the Federal Register at 81 FR 38645 to remove Title V SSM Affirmative Defense provisions from State operating permit and Federal operating permit programs. These revised interpretations can present multiple compliance and litigation exposures to facilities managing air emission sources under technology based requirements and the Association

encourages the EPA to fully evaluate the current permitting and compliance burdens presented by the re-interpretations being implemented in this area. In terms of opportunities for correcting deficiencies with revised interpretations, the Association suggests considering the development of alternates such as a judicially sound affirmative defense concept, a broadly applicable work practices or compliance exclusion concept, and/or re-promulgating technology based emissions standards sufficient to cover emissions associated with SSM events.

Water Permitting – Aluminum Water Quality Criteria

The current criteria for aluminum water quality was implemented in 1988, is only applicable within a narrow pH range, and is not reflective of the current state of the science on aluminum toxicity in water. This situation has resulted in significant challenges in the water discharge permitting for the ongoing operation and expansion of aluminum manufacturing facilities with no commensurate environmental benefit. From discussions with EPA Office of Water staff, the Association believes that significant improvements in the aluminum water quality criteria are forthcoming and the Association would like to emphasize the reasons for and importance of the improvement efforts listed below.

EPA has worked to update its database on aluminum toxicity using data developed both by EPA and as supplied by the aluminum industry from testing performed in the US. Based on these new data, the Association is shortly expecting an updated draft Ambient Water Quality Criteria Document to be issued by EPA and noticed in the Federal Register for public comment. As understood by the Association, the new draft criteria document may include the use of a Biotic Ligand Model (BLM) similar in concept to what EPA implemented for copper in 2007 or a simpler Multi-Linear Regression (MLR) model which would yield essentially similar results to the BLM but with less calculation complexity. The Association and the broader aluminum industry await with interest the public notice on the draft criteria and use of these models as we believe that they will be a step forward in modeling the actual impact of aluminum present across varying concentrations in US waterbodies. The benefit derived from the models is that they allow for water quality standards to be set by the States that are protective for different water chemistries across the US.

A related effort being supported by the Association is for EPA to modify the current analytical test method for aluminum content in water to accurately represent only the bioavailable fraction of the total aluminum present. Present test methods measure either total aluminum in a water sample,

including a significant fraction derived from suspended solids, which is not bioavailable, or only the dissolved fraction, which may under-represent the amount actually bioavailable. Developing a bioavailable aluminum test method is an important step in obtaining appropriate data for input into the EPA models and for regulatory compliance in effluent permits. Dirt typically contains around 8% aluminum and as stormwater runoff and other discharges flow into waterbodies the aluminum in that dirt is considered a pollutant for bioavailability modeling purposes even though it will not affect aquatic life. The fundamental permitting concern related to the current situation is that use of the total aluminum test method, which captures all the aluminum present in dirt, results in inaccurate characterization of waterbodies as 'impaired waters' on state Clean Water Act Section 303(d) lists of impaired waters. Once a waterbody is on the 303(d) list, anti-degradation requirements make it difficult, if not impossible, to obtain permits for new facilities or expand existing facilities. Impaired waters listing also often results in protracted litigation related to new or expanded facility permitting so it is important that the underlying technical basis for impaired waters listing be sound.

Water Permitting – NPDES, Pretreatment, and Effluent Guidelines Regulations

An underlying issue with NPDES (40 CFR 122) and Pretreatment (40 CFR 403) permitting regulations is that they both were developed when the need for rapid permit response was not considered a priority. Today, the antiquated permitting timeline embedded in these regulations costs business money and lost opportunities for growth.

Related to the Effluent Guidelines, specifically the Guidelines for Nonferrous Metals Manufacturing, Subparts A, B, and C (40 CFR 421) and Aluminum Forming (40 CFR 467), these guidelines have not been updated in over 30 years. New and revised manufacturing processes have been developed in the interim, and if these new processes and technologies could be incorporated into the regulations a more efficient and timely permitting process would result. Therefore, the Association proposes that in the case of all these regulations that they be revised to ensure quick permit responses along with requiring the provision of adequate resource staff in the states to process and act on permit applications.

Water Permitting – Fish Consumption Rates

In late 2016, EPA Region 10 disapproved a significant number of Washington State's human health water quality standards. It appears that this action was driven by EPA Region 10 not accepting

Washington State's views about acceptable risk levels for various fish consuming populations within the state. The impact of EPA Region 10's action in this case has caused some human health water quality standards to be reduced by a factor of approximately 24 below the state's assessment of what it believes are proper standards. In response to this EPA Region 10 rulemaking, various groups within Washington State have filed a Petition for Reconsideration with EPA Headquarters and the Association understands that other states in addition to Washington State are facing similar issues.

Water Permitting – Stormwater

EPA issued the first general permit for industrial storm water discharges in 1992 and subsequently revised it to the multi-sector general permit (MSGP) utilized as a model by many delegated states. However, there is not agreement on what constitutes appropriate water quality based limits for storm water discharges; thus, EPA and most delegated states have defaulted to the water quality criterion value for the benchmark values without regard to the size of the receiving stream that the industrial facility is discharging into. Therefore, the Association suggests that the EPA modify the general storm water permit to develop alternate parameters for monitoring and allow the development of alternate benchmark values.

Permitting - General

The Association suggests that the EPA define options and opportunities to improve the environmental permitting process in situations where multiple regulatory agencies assert jurisdiction and their objectives and review timelines/criteria conflict. This results from the statutory requirements and enabling legislation of different agencies not being unified and ultimately would require major change in the underlying statutes. However, until that occurs, opportunities for improved coordination should be implemented.

Another area suitable for EPA evaluation is the revision of permitting requirements and related interpretive guidance to invalidate antiquated policy determinations that provide no environmental benefit and defy common sense. One recent example provided by a member company is the classification of a waste heat boiler proposed to be added adjunct to an existing manufacturing process as subject to electricity generating unit (EGU) air permitting requirements. This is the case

if it generates saleable electricity for potential distribution in commerce even if no new emissions will result and the existing manufacturing process is unrelated to electricity generation.

The Association also notes that air Title V and water NPDES permits typically have a 5-year permit term, creating extensive and burdensome permitting processes to routinely re-issue them that yield little to no environmental benefits. The Association believes that a permit term of at least 10 years would be more appropriate with permit modifications or updates available to be used as needed only when significant changes to a facility are made.

Permitting processes make it difficult to maintain, repair, and replace existing manufacturing operations as a normal course of business as it often requires new or additional permitting. Industry should be able to extend the useful life of existing manufacturing assets without requiring new or additional permitting to sustain the operation.

EPA methodology for sampling and analytical techniques has led to numerous disagreements between industry and regulators. As sampling techniques are refined that detect substances to ever-lower levels, the regulatory benefit of imposing those techniques in permits needs to be carefully evaluated. To that end, the Association suggests that EPA evaluate sampling and analytical methodologies with that evaluation focusing on direct impact to human health and the environment with the case for changing a methodology requiring convincing analytical data to prove why a change is necessary.

TSCA Chemical Data Reporting

The Association has found the quadrennial TSCA Chemical Data Reporting (CDR) process to be a particularly egregious example of the benefits of a regulatory activity not outweighing the costly burden it places on covered entities. The Association's suggestion would be to eliminate the program entirely or at least restrict its scope back to organic chemicals as was in place prior to the previous administration's expansion of the program in 2010 from the "TSCA Inventory Update Rule (IUR) into the "TSCA CDR Rule". If this is not feasible due to statutory or other significant constraints, the Association suggests the following changes in order to better align this regulatory program's costs with its benefits –

As allowed in the existing regulations, provide a partial exemption from TSCA CDR reporting of aluminum consistent previous requests made by the Association in this regard. The previous response from EPA on this issue was to note that EPA wanted to review the data provided from the reporting process before making a partial exemption decision. Data from the 2012 and 2016 reporting cycle is now available for review and from the Association's review of this data it reflects markets, consumers, and uses of aluminum that are well established, well known, and predicted by the Association in its previous partial exemption request.

Expand the inorganic byproduct reporting exemption of the TSCA CDR to include not only the byproduct but also any component substances extracted from the byproduct. Revise the interpretation of manufacturing such that existing component substance extraction from byproducts is not considered to create 'newly manufactured' chemical substances. The Association is aware of and providing input into the EPA's ongoing negotiated rulemaking on this topic and eagerly awaits the outcome of the negotiations.

Revise the TSCA article exemption interpretation to reflect that the shape of aluminum billet has implications for the shape and design and of the end product such that aluminum billet importation into the US is not subject to TSCA CDR reporting requirements.

Regulations - General

The most onerous part of dealing with the regulatory compliance process is the uncertainty associated with agency inconsistency, contradictory policy determinations and guidance, unclear regulations, and no precise target. This is often caused by overlapping regulations between different federal agencies (Ex. Department of Interior and EPA), and between federal and state and local regulators. Additionally, as new regulations have been introduced and revisions to previously promulgated regulations have been made, agencies, have failed to ensure that inconsistencies between rule specific requirements and generally applicable requirements have been eliminated. Thus, the Association believes that there should be a review of the existing body of federal regulations and revisions should be made where necessary to harmonize the various regulatory requirements and ensure singularity and consistency. In addition, regulations should be crafted in "plain English," with clear guidelines on how to comply.

There also needs to be more certainty that there will not be new regulatory requirements that make long term investment difficult due to uncertainty about what the regulations will be in the future. (the Clean Power Plan is a good example of this). Additionally, many federal environmental regulations require periodic reviews, which can be too short a time-frame, or simply not needed. Therefore, a long term regulatory plan should be developed that deters new issues from surfacing. In general, timelines within that regulatory plan should be extended to allow time for compliance or changed to state that a second review will occur once a significant portion of the country has met the existing applicable standard.

In general, updating regulations on a regular basis to incorporate new manufacturing technologies would also be a valuable step in reducing regulatory burden. Replacing antiquated regulatory requirements that are artifacts of historical regulatory programs that have been replaced by more recent regulations would also be beneficial.

The best regulatory experience is with agencies with knowledgeable and experienced environmental professionals on their staffs. The aspect most appreciated is an agency that is open minded, flexible, and behaves in a professional manner. Agency staff that is knowledgeable of regulatory requirements, technically competent, understands the details and the subtleties associated with the regulation's implementation, and who are open to debate are the agencies that are most effective.

The Association would again like to note its appreciation for the opportunity to provide comments on this rulemaking. If you have any questions regarding them or would like to discuss any portion of them in greater detail, please contact me at Ex. 6 or cwells@aluminum.org.

Sincerely,

Curt Wells
Director, Regulatory Affairs
The Aluminum Association