

June 21, 2005

Lorraine Hunt
OIRA, OMB
NEOB Room 10202
725 17th Street, NW
Washington, DC 20503

RE: Draft 2005 Report to Congress on the Cost and Benefits of Federal Regulations; Notice of Availability and Request for Comments

Dear Ms. Hunt:

The National Paint and Coatings Association (NPCA) submits these comments on the Office of Management and Budget's (OMB) Report to Congress on the Costs and Benefits of Federal Regulations. NPCA is a voluntary, nonprofit trade association representing some 350 manufacturers of paints, coatings, adhesives, sealants, and caulks, as well as raw materials suppliers to the industry and product distributors. NPCA membership companies collectively produce some 90% of the total dollar volume of architectural paints and industrial coatings produced in the United States. As the preeminent organization representing the coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on legislative, regulatory and judicial issues at the federal, state, and local levels. In addition, NPCA provides members with such services as research and technical information, statistical management information, legal guidance, and community service project support.

The paint and coatings industry is heavily regulated by the Federal Agencies, particularly the Environmental Protection Agency. As many of our members are small businesses - over 50% by Small Business Administration definition - with limited staff and resources, they are particularly disadvantaged by many of the administrative requirements under EPA regulations. In addition, whether small or large, companies are able to better focus resources and activities on substantive environmental improvements when regulatory administrative burdens are lessened. Therefore, NPCA supports OMB's efforts to identify reforms to regulations where the costs to administer such outweigh any associated benefit. NPCA suggests four such regulations under EPA's authority, namely, the Area Source Standards under the Clean Air Act; the Spill Prevention, Control, and Countermeasures (SPCC) regulations under the Oil Pollution Prevention section of the Clean Water Act; the Toxic Release Inventory (TRI) under the Emergency Planning and Community Right-to-Know Act; and the Hazardous Waste (Subtitle C) provisions under the Resource Conservation and Recovery Act.

Area Source Standards

The Area Source standards will regulate minor sources of air emissions under the Clean Air Act - those with the potential to emit less than 10 tpy of any hazardous air pollutant (HAP) or less than 25 tpy of aggregate HAPs, which are typically small businesses. These regulations will place stringent and costly air pollution control requirements on these small businesses that EPA has yet to demonstrate warrant such or would produce the environmental benefit envisioned. For example, the National Emission Inventory (NEI) database that EPA used to develop the source category list is fraught with errors, thus, EPA's determination, mandated by the Clean Air Act, that this list accounts for 90% of the emissions of the 33 listed air toxics is suspect. Furthermore, even though EPA has started preliminary analyses for many of the source categories, it has not articulated a rational approach to the rulemakings. EPA may select Generally Available Control Technology or Maximum Achievable Control Technology standards under the area source rules, but has not identified which it will use. In addition, EPA may regulate just the 33 listed urban air toxic chemicals under the rule, or all 188 HAPs listed in the Clean Air Act, but again have not identified what list it will use. Lastly, EPA has stated that alternative voluntary standards may be available, as well as flexible approaches, which most stakeholders support, however, pending litigation, as discussed below, may force arbitrary time constraints on the Agency, thereby negating these efforts.

These are considerable issues that must be resolved before EPA continues with these rulemakings. As stated, the area source rules will primarily regulate small minor source facilities, so the impact will be focused on small business. But because EPA is currently in litigation over the timeline for these rules, it is likely that EPA will be forced to push through these rulemakings, arbitrarily regulating sources without proper justification and taking emission reduction credit where little or no environmental benefit actually exists. The cost associated with these regulations, however, will be significant. For comparison, similar standards recently promulgated for major sources in our industry will cost individual facilities up to \$1 million over the next three years. Therefore, NPCA recommends at the very least, that EPA take comment on its source category listing determinations and convene Small Business Administration panels (under the Small Business Regulatory Enforcement and Fairness Act) to ensure that any subsequent rules are technically sound and fair. NPCA believes that OMB can appropriately recommend this in its Report to Congress.

Spill Prevention, Control, and Countermeasures

On Wednesday, July 17, 2002,[1] the EPA promulgated a final rule with various new requirements under the SPCC program. Over the past three years, through stakeholder meeting, correspondence and litigation, industry has worked with EPA to correct several significant problems with the rule and its ultimate implementation. Amendments to the rule as well as guidance is expected this summer, the timing of which is significant giving the looming compliance date of winter 2006. Facilities must be given ample time, after the regulations are finalized, within which to implement compliance. As EPA is still addressing key provisions of the 2002 rule, the current compliance date may need to be further extended.

One issue that remains is new SPCC program's expensive and burdensome integrity testing provisions with regard to small storage tanks. In addition, while a Professional Engineer can certify that certain systems are "environmentally equivalent" to the mandated integrity testing, EPA's intent has yet to be clarified by appropriate guidance.

NPCA has consistently commented in the past that the new integrity testing requirements for shop built tanks will have a great economic impact on industry - especially small business. As stated, NPCA has estimated the new requirements could exceed \$20 million dollars for our industry alone. In addition, the current integrity testing requirements will increase waste generation - approximately 10 drums of waste per tank. Thus, one company alone will generate millions of pounds of additional hazardous waste complying with the rule. This requirement will also actually increase the likelihood of spills from temporary tanker/tanks used while main tanks are out of service during cleanout and inspection. Additional spills could also occur during waste transportation. Lastly, EPA has not accounted for the additional health/safety threats to workers from entering tanks for cleaning/inspection purposes. Considering these impacts, which are not commensurate with the impact to human health and the environment, NPCA urges OMB to review this rulemaking for the costs and burdens associated with it but not commensurate to its environmental benefit and include such in its Report to Congress.

Toxic Release Inventory

NPCA and its member companies have commented on various TRI rulemakings in the past as well as on the Phase I and Phase II dialogue EPA has held for reducing the burden TRI reporting places on industry. To date, however, little has changed. NPCA member companies have historically complied with the Toxic Release Inventory (TRI) and submitted the subject reports to EPA. Many more were mandated to do so recently with EPA's final rule lowering the TRI reporting for lead and lead compounds and eliminating the de minimus exemption levels (hereinafter referred to as the "TRI Lead Rule").^[2] Many of these newly impacted companies are small businesses, disproportionately burdened with completing the TRI program's Form R.

NPCA appreciates the need for EPA to balance the regulatory burden on industry from the TRI with the need for collecting and reporting chemical releases and other waste management methods utilized by industry. However, NPCA does not believe EPA's current program appropriately strikes this balance. NPCA believes that the options outlined and discussed in EPA's Phase II Dialogue begin to rectify the inequities of the program. Thus, NPCA urges OMB to review the TRI program and the numerous comments EPA has received on burden reduction initiatives over the last three years and include them in its Report to Congress the significant opportunities for burden reduction without loss to human health or environment that have yet to be implemented by EPA.

Subtitle C Hazardous Waste Requirements

EPA published a proposed rule that would decrease the regulatory burden of treating hazardous secondary materials as waste, necessitating costly and resource intensive hazardous waste tracking and disposal instead of environmentally beneficial recycling and reclamation. The proposal titled, Revisions to the Definition of Solid Waste,^[3] would revise the definition of solid

waste to define certain recyclable hazardous secondary materials as not discarded and thus no longer "waste" subject to regulation under Subtitle C of RCRA. NPCA supports reducing the costs and burdens associated with Subtitle C regulations and providing greater incentive and certainty for recovery and reuse of beneficial materials. NPCA therefore encouraged EPA in our comments to the proposed rule to adopt the broad based reform outlined in the Proposed Rule's Preamble, defining legitimate recycling within the RCRA regulatory framework to exclude those materials legitimately recycled or reclaimed from Subtitle C RCRA jurisdiction. NPCA provided comment on how this can be done without impacting human health or the environment. Promoting the legitimate recovery and reuse of secondary materials in lieu of disposal is inherent to RCRA and part of EPA's long-standing pollution prevention and waste minimization policy mandates. Providing the requisite criteria by which to do so provides for the safeguards dictated by RCRA while preserving the life-cycle benefits of resource recovery. NPCA believes OMB should review this attempt at true RCRA reform and provide information on the proposal in its Report to Congress. EPA has a very real opportunity with this rulemaking to lessen the burdens associated with one of the most complex and costly regulations impacting industry today while demonstrating its commitment to increasing environmentally beneficial recycling and promoting materials reuse and recovery over land disposal.

In advance, thank you for considering NPCA's comments on OMB's 2005 Report to Congress. NPCA appreciates the opportunity to comment and to provide OMB with additional opportunities for regulatory reform. Please do not hesitate to contact us should you have any questions or need additional information.

Sincerely,

/s/

/s/

Alison A. Keane, Esq.
David F. Darling, P.E.

Counsel, Government Affairs
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** Sent electronically and in hard-copy **

[1] 67 Fed. Reg. 47042 (July 17, 2002).
[2] 66 Federal Register 4499 (January 17, 2001).
[3] 68 Fed. Reg. 61558 (October 28, 2003).