May 11, 2017

*Via Electronic Submission*

Ms. Samantha K. Dravis  
Regulatory Reform Officer and Associate Administrator  
Office of Policy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Mail Code 1803A  
Washington, DC 20460

**RE: Executive Order 13777, Enforcing the Regulatory Reform Agenda, Regulations for Repeal, Replacement, or Modification, EPA-HQ-OA-2017-0190**

Dear Ms. Dravis:

The Independent Lubricant Manufacturers Association ("ILMA" or "Association") submits these comments in response to the Environmental Protection Agency’s ("EPA" or "Agency") *Federal Register* Notice, "Evaluation of Existing Regulations." The Notice is intended to assist the Agency in responding to President Trump’s February 24, 2017 Executive Order ("EO") 13777, "Enforcing the Regulatory Reform Agenda."

ILMA is committed to environmental protection, and the Association’s enforceable Code of Ethics requires applicants to “protect and enhance the environment and the health and safety of their employees” as a condition of ILMA membership. However, there are rules administered by the Agency that can be amended or repealed without compromising EPA’s mission to protect all Americans from significant risks to human health and/or the environment.

ILMA conducted a survey of its manufacturing members in preparing this submission and similar request for comments from the Commerce Department. In their responses, the membership identified EPA regulations that impose financial and paperwork burdens and restrict their abilities to grow their businesses and create jobs. The Association anticipates that other commenters will address many of these same regulations, so ILMA’s comments focus on those regulations with a substantial or excessive impact on independent lubricant manufacturers.
Introduction to ILM

ILMA is a national trade association with 338 member companies that is headquartered in Alexandria, Virginia. ILMA’s manufacturing members blend, compound, and sell over 25 percent of the United States’ lubricant needs (e.g., passenger car motor oils, gear oils, and hydraulic fluids) and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country. The overwhelming majority of ILMA’s manufacturing members are “small businesses” based on the Small Business Administration’s size standards. ILMA members, as manufacturers, are classified at NAICS 324191.

Independent lubricant manufacturers are neither owned nor controlled by the companies that explore for or refine crude oil to produce lubricant base stocks or that produce chemical additives. Base oils are purchased from refiners and re-refiners, who are also direct competitors in the sale of finished products. Additives are purchased from suppliers, who also may be direct competitors in the sale of finished products. ILMA members succeed over their suppliers/competitors by manufacturing and distributing high-quality, often specialized, lubricants accompanied by localized, allied services to their customers.

A. Clean Water Act Issues

ILMA members embrace the national goal of a healthy environment, including clean air and water, while at the same time promoting America’s ability to innovate and create jobs. The elements of this goal are not mutually exclusive. However, some of the EPA’s regulations use heavy-handed regulatory approaches, impose “green tape,” and create costs and competitive disadvantages for U.S. companies, including ILMA members.¹

1. The WOTUS Rule Must be Withdrawn and Replaced

ILMA applauds President Trump’s efforts to rescind and replace the Waters of the U.S. (“WOTUS”) rule that were initiated by his February 28, 2017 Executive Order (“EO”), “Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The final WOTUS rule, promulgated by EPA and the U.S. Army Corps of Engineers’ (“Corps”) (80 Fed. Reg. 37054 (June 29, 2015)), significantly expanded EPA’s authority under Section 311 of the Clean Water Act (“CWA”) to regulate waterways in the U.S. that were previously outside of its clean water jurisdiction. ILMA encourages EPA to follow the direction from the

¹ Although not addressed in these comments, several ILMA members identified EPA’s fuel additive reporting requirements at 40 C.F.R. Part 79 as burdensome and in need of reform.
EO by reviewing the WOTUS rule and subsequently promulgating a new proposed rule that reasonably and lawful outlines the scope of EPA and the Corps’ jurisdiction.

2. EPA’s SPCC Program Periodic Integrity Testing is Unnecessarily Burdensome and Costly

EPA’s Spill Prevention, Control and Countermeasure ("SPCC") program, also promulgated under Section 311 of the CWA, is applicable to any manufacturing entity that stores 1,320 gallons or more of “oil” (if stored in above-ground storage tanks) or 42,000 gallons (if stored in underground storage tanks) that could potentially be discharged into or on the “navigable waters of the U.S.” Facilities subject to the SPCC regulations must write and implement a plan certified by a registered professional engineer that effectively lays out how the facility operator will keep an oil spill from leaving the “four corners” of the facility.

As part of the SPCC technical requirements, all storage tanks must undergo periodic integrity testing. Examples of these integrity tests include, but are not limited to, visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions integrity testing, or other systems of non-destructive testing. Integrity testing usually requires hiring specialized contractors who follow industry consensus standards for test protocols. ILMA members estimate that the cost per tank for the inspection of smaller tanks exceed $2,500. Most ILMA members’ facilities have numerous above-ground storage tanks for raw materials and finished products. For members with large “tank farms,” these integrity-testing costs are onerous.

While ILMA members understand the preventative nature of this regulatory requirement, the testing is burdensome and expensive. Many of these storage tanks are inside buildings or are in areas with properly-sized secondary containment, such as dikes and berms, and have impervious liners under them. Overall, the costs from the periodic integrity testing do not provide a corresponding increase in environmental protection and therefore should be rescinded or amended to allow for less costly and time-consuming compliance requirements.

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2 EPA recently sent several letters to governors requesting input on a revised rule. ILMA commends that effort and requests that EPA incorporate that input into the draft regulation.
3 The WOTUS rule, if allowed to stand, would increase the number facilities, including those operated by ILMA members, subject to the SPCC regulations.
4 See 40 CFR 112.8(c)(6) and 40 CFR 112.7 (d).
5 Members indicate that the cost for larger tanks is even more burdensome, particularly those requiring robotic testing. Those costs are estimated to be in excess of $1,000 per diameter foot.
3. **EPA’s SPCC Program Expansion to “Hazardous Substances” Must be Undertaken with Extensive Stakeholder Involvement**

Under the settlement terms of a “sue-to-settle” lawsuit, EPA has agreed to promulgate a rule expanding the above-mentioned SPCC program to include tanks storing “hazardous substances.” The court-approved settlement includes an aggressive rulemaking schedule, with a final rule to be promulgated in 2019. A majority of the manufacturing community will be affected by this rulemaking and currently are largely unaware of this new regulation.

ILMA believes that the rule, if promulgated as a “drop in” to the existing SPCC regulations, would result in annual cost impacts exceeding $100 million. If EPA proceeds to develop a proposed rule, the Agency must include extensive outreach to the regulated community to ensure that it proposes a rule that satisfies the terms of the settlement and that minimizes regulatory compliance costs.

Further, this regulation should trigger the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) panel review process, requiring the Agency to solicit input from affected small entities before the proposed rule is published. ILMA encourages EPA to work collaboratively with their colleagues at the Office of Management and Budget and the Small Business Administration’s Office of Advocacy along with the small entity representatives to craft a thoughtful rule that is responsive to the settlement terms, but that does not needlessly impose regulatory obligations on small businesses. EPA must not undertake this as a “check-the-box” exercise, but rather legitimately consider industry’s input throughout development of the proposed rule.

**B. Hazardous Waste Generator Rule**

EPA issued its Hazardous Waste Generator Improvements (“HWGR”) final rule on November 28, 2016, making some 60 revisions and adding new provisions affecting virtually every industry that generates hazardous waste. According to the Agency, the final rule will impact between 400,000 and 700,000 industrial entities and estimates that it will cost industry between $5 million and $13 million annually to comply with the rule although it asserts that the rule will ultimately yield between $1 million and $2.5 million in benefits to industry despite the cost due to the new flexibility afforded to generators.

EPA did several positive things within the rule, such as allowing Very Small Quantity Generators (“VSQGs”) and Small Quantity Generators (“SQGs”) to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event (e.g., a one-time event in which hazardous waste is generated in excess of the production volume limit for that category within a 60-day period), provided they comply with specific conditions. Further, allowing VSQGs to send their hazardous waste to Large Quantity Generators (“LQGs”) under the control of the same person or entity to allow consolidation and improved management of their hazardous waste is sensible.
However, there are issues with other aspects of the rule. For example, EPA discusses the distinction between the “condition for exemption” and “independent requirements.” A violation of the independent requirements results in a traditional penalty or enforcement measure. However, a business who violates a condition for exemption may be held liable for dozens of violations since the penalty is forfeiture of its generator status as noted in the text of the rule below:

The primary legal consequence of *not* complying with the condition for exemption is that the generator who accumulates waste on site can be charged with operating a non-exempt storage facility (unless it is meeting the conditions for exemption of a larger generator category). A generator operating a storage facility without any exemption is subject to, and potentially in violation of, many storage permit and operations requirements in parts 124, 264 through 268, and 270.\(^6\)

As a result, a SQG could completely forfeit its status for a simple error in container labeling, even if the business acted in good faith to comply. Further, that forfeiture could result in liability for dozens of violations since it not longer enjoys the protection of SQG status. That result is unduly punitive. EPA should appropriately consider the facts and circumstances of each case and not automatically trigger a revocation of generator status for simple and unintentional missteps. A revision of this provision is essential.

C. **Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act ("SBREFA") requires certain agencies, including EPA, to conduct a Small Business Advocacy Review panel prior to publication of a proposed rule.\(^7\) The process was envisioned as a mechanism to alleviate the regulatory burdens on small businesses by encouraging their participation in the rulemaking process, along with the representatives from the Small Business Administration’s Office of Advocacy, the Office of Management and Budget’s Office of Information and Regulatory Affairs, and EPA. It is supposed to be a collaborative process that allows for the free flow and exchange of ideas, including alternatives, to ensure that the burdens are minimized on small entities while still allowing for appropriate environmental protection efforts.

Unfortunately, many times the SBREFA requirements become more of a “check-the-box” exercise as opposed to a legitimate opportunity for small entities to provide recommendations that the Agency would actually consider as it crafts a proposed rule. Inviting stakeholders to participate in the process and then effectively ignoring the input is counter to the purpose of the statute. EPA should effectuate the original intent of Congress and restore the SBREFA process to what it was designed to be – a legitimate forum to discuss regulations, their impacts on small businesses, and their alternatives.

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\(^7\) Additionally, it must contain an initial regulatory flexibility analysis.
Conclusion

ILMA appreciates this opportunity to submit these comments. Reducing regulatory burdens is imperative for U.S. businesses to remain competitive in an increasingly complex and globalized market. This comment period is an appropriate first step as the Agency undergoes a review of its regulations in response to the president’s EO.

Sincerely,

Holly Alfano
CEO

CC:  ILMA Board of Directors
      ILMA SHERA and MWF Committees
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