U.S. CHAMBER OF COMMERCE

NATIONAL ASSOCIATION OF Manufacturers

December 4, 2015

U.S. Environmental Protection Agency
Attention: Docket ID No. EPA-HQ-OAR-2010-0505
Mr. Bruce Moore
Office of Air Quality Planning and Standards
Sector Policies and Programs Division (E143-05)
Research Triangle Park, NC 27711

RE: Docket No. EPA-HQ-OAR-2013-0685: Source Determination for Certain Emission Units in the Oil and Natural Gas Sector; 80 Fed. Reg. 56,579 (Friday, September 18, 2015)

Dear Mr. Moore:

The National Association of Manufacturers and the U.S. Chamber of Commerce (collectively, "the Associations") submit the following comments in response to the Environmental Protection Agency's (EPA's) proposed rule on Source Determination for Certain Emission Units in the Oil and Natural Gas Sector (Proposed Rule).

The **National Association of Manufacturers ("NAM")** is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes $2.09 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The **U.S. Chamber of Commerce ("the Chamber")** is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry

associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

Comments

The Associations represent the nation's leading industrial sectors that form the backbone of the nation's ability to grow the economy and provide jobs in an environmentally-sustainable and energy-efficient manner. The Associations both represent companies that produce, process, transport and consume oil and natural gas. The Associations are key and necessary stakeholders regarding any regulation that impacts the availability or cost of energy and which may impact manufacturers directly or indirectly in the future.

There are abundant oil and natural gas resources in the United States and the Associations support policies that promote the leasing, exploration and development of the nation's oil and natural gas resources in a responsible manner, balancing environmental protection and economic impacts. Major advances in hydraulic fracturing and horizontal drilling technologies have made the extraction of shale gas and oil more cost-effective and technically feasible. Development of these massive new deposits of oil and gas has greatly improved the current and future outlook for energy in the U.S. and has made the nation more energy secure.

The impacts of regulations like the Proposed Rule do not occur in a vacuum for the Associations' members, but rather are felt collectively in the form of higher energy prices, greater challenges in obtaining necessary environmental permits and threats to international competitiveness from higher operating costs. Often, the negative impacts of overly burdensome regulations compound each other. For example, and in the context of the Proposed Rule, an overly expansive definition of "adjacent" in determining what constitutes a single oil and gas source, combined with the expansion of nonattainment areas from the recently lowered ozone standard could delay, increase the costs of, or even prevent the development of new oil and gas wells—many of which are located in parts of the country where emissions offsets would not be available. Taking this example a step further, curtailment of new oil and gas development would limit the supply of these resources for end use, such as fuel for electric power plants and manufacturing facilities. Such a scenario would create greater challenges and likely increase compliance costs associated with other major EPA rules, such as the Boiler MACT (which is causing manufacturers to switch to gas-fired boilers) and the recently-finalized greenhouse gas rules for existing power plants (the Clean Power Plan).[1]

For these reasons, it is critically important that EPA remain within the bounds of its authority under the Clean Air Act (CAA) and not adopt a definition for "adjacent" that is overreaching, both in terms of its practical effects and adherence to statutory limits.

[1] Nothing in these comments shall constitute a waiver of any arguments the Associations have made or will make in the context of any litigation involving the EPA's greenhouse gas regulations for existing and new power plants.

The Associations note that a plain reading of the CAA, the agency's existing regulations and the clear legal guidance provided in *Summit Petroleum Corp. v. EPA,*[2] make the Proposed Rule unnecessary. To the extent EPA elects to adopt a final rule in this proceeding, the Associations urge the agency to reject its "functional interrelatedness" alternate option, which is not supported by statute and would create undue burdens on the Associations' members. As other commenters have noted,[3] a plain reading of the term "adjacent" in the CAA cannot be interpreted as including a test of "functional interrelatedness." The word adjacent in its plain definition,[4] as it has been interpreted by the EPA historically[5] and in the ruling by the *Summit* court,[6] can only refer to physical proximity.

While the Associations view EPA's preferred quarter-of-a-mile approach as more defensible and practically sound among the two proposed options, and to the extent EPA plans to issue a final rule in this proceeding, modifications to EPA's preferred approach should be made to allow state regulatory agencies more flexibility in defining on a case-by-case basis, a "building, structure, facility, or installation" in accordance with a "common sense notion of a plant." 80 FR at 56,586. While the Associations agree with EPA that activities outside a quarter-mile radius should not be treated as adjacent, it is inappropriate to declare that in all instances activities *inside* a quarter-mile *must* be considered to be adjacent. States and EPA should have the flexibility to make case-by-case source determinations within a quarter-mile that focus on proximity and whether the activities, considered together, conform to a common sense notion of a plant.

Thank you for your consideration of the above comments in this important matter. If you have any further questions, please feel free to contact Greg Bertelsen, Director, Energy and Resources Policy at the National Association of Manufacturers at (202) 637-3174 or by e-mail at gbertelsen@nam.org.

Respectfully submitted,

National Association of Manufacturers
U.S. Chamber of Commerce

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[2] *Summit Petroleum Corp. v. EPA*, 690 F.3d 733, 742 (6th Cir. 2012).

[3] See Comments from the Gas Processors Association and the American Petroleum Institute.

[4] Merriam-Webster defines "adjacent" as, "not distant; having a common endpoint or border; immediately preceding or following."

[5] In EPA's 1980 PSD Rule, it applied a three-part test that included same industrial grouping, location on contiguous or adjacent property, and under common control. The agency did not apply a fourth factor, of functional interrelationship. 45 Fed. Reg. 52695. (Aug. 7, 1980).

[6] *See Summit*, 690 F.3d 733 (6th Cir. 2012).