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Economic Guidelines Review Panel
Science Advisory Board
U.S. Environmental Protection Agency
EPA Docket Centers
Mail Code 1400R
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: *Guidelines for Preparing Economic Analyses*

As the panel embarks on its review of EPA's revisions of the agency's *Guidelines for Preparing Economic Analyses*, there is a particular issue on which the agency has made recent strides forward that deserves the time and expertise of the panel to support EPA's work. EPA's pursuit of its statutory responsibilities has the potential to result in plant shutdowns and layoffs, and it is critical that EPA identify and evaluate situations where these consequences may result from its administration and enforcement of federal environmental laws. From its earliest days EPA has proven its ability to do so, and it is important the revised *Guidelines* support and facilitate EPA's economic analyses of potential worker dislocations that may result from EPA's regulations in the years to come. Accordingly, these comments urge the panel to thoroughly consider and comment on the aspects of EPA's draft revised Chapter 9 that concern analysis of potential plant shutdowns and layoffs. To that end, these comments are intended to provide the panel with perspective and background to aid the review of this aspect of EPA's draft.

At the outset, we want to thank and recognize EPA, NCEE, and Dr. McGartland for the improvements reflected both in the agency's Economic Impact Analyses issued in the past few years and in the draft revised Chapter 9. It is evident that the agency has made considerable efforts to improve in this area, and as a result the panel is well positioned to review EPA's draft and support further progress.

I. Putting the Problem of Worker Dislocation in Perspective

A worker dislocation is an involuntary loss of an individual's employment or a shift in the location of an individual's employment. In certain circumstances, worker dislocations can result in significant long term negative economic and health outcomes for individuals, families, and their communities. Identifying and evaluating these particular worker dislocations is important because these long term negative economic and health outcomes should be avoided when possible and mitigated when they do occur, especially when they result from regulations aimed at achieving health and economic benefits.

Significant worker dislocations do not always result from reductions in the demand for labor in an industry or the number of employees working at a particular business.

First, industries and businesses can reduce employment levels without layoffs as long as the size and pace of the employment reduction does not outstrip natural labor force attrition. Every year, employees quit, retire, and die. Accordingly, a modest reduction in employment levels in a given year can simply be offset by attrition without layoffs. Even large reductions in employment levels can be offset by attrition provided that they occur over a sufficiently long period of time. When concerns over "job losses" are raised, some ask why worry about job losses because if we worried about them too much then we would still be driving horses and buggies. The problem with this way of thinking is that it fails to distinguish between a slow transition over decades that is primarily addressed through natural attrition and the sudden economy-wide imposition of a regulatory mandate that results in layoffs which, in certain circumstances, lead to significant long term negative economic and health outcomes.

Second, while every worker dislocation results in short term costs for individuals and their families, the long term impacts in reduced lifetime employment, compensation, health, and welfare of family members occur far more often when there are certain aggravating circumstances. In general, if workers are positioned to quickly obtain suitable replacement employment where they live, the frictional short term costs are moderate and there are not significant long term negative consequences.

It is vitally important, therefore, to focus particularly on identifying regulatory actions that have the potential to result in worker dislocations in circumstances that are likely to lead to long term negative health and economic outcomes for worker and their families and communities.

Identifying potentially significant worker dislocations is not a theoretical exercise because when threatened layoffs are identified early they can often either be avoided or at the very least substantially mitigated with timely interventions.

As long experience has proved, in many instances EPA can tailor its regulations consistent with its statutory obligations to avoid significant worker dislocations. And when all else fails, federal, state, and local governments can assist workers who face layoffs that are due to environmental regulations in order to mitigate and lessen negative long term economic and health outcomes. When identification of potential significant worker dislocations occurs in time to allow them to either be avoided or mitigated, the cost of environmental regulation can be greatly reduced.

It is critical to keep the scope of the task in view when assessing methods of identifying and evaluating potential worker dislocations. The goal is to identify situations where efforts to avoid or mitigate especially concerning dislocations are potentially warranted. This task is almost always manageable, and the more likely and more concerning potential worker dislocations are in a particular situation, the easier it will be for the agency to gather the relevant information to identify and evaluate them. Happily, that means that the task is easier when it is most required.

Finally, EPA's 2010 *Guidelines* improperly cautioned against evaluating impacts on employment unless the analyses can "quantify all of the employment impacts, positive and negative, to present a complete picture." 2010 *Guidelines* § 9.2.3.3. While it is appropriate to avoid an imbalanced presentation of macroeconomic employment impacts, the inability to identify economic winners is never a valid justification for failing to identify and evaluate significant worker dislocations that could be either avoided with a more tailored regulatory approach or mitigated with early involvement of federal, state, and local resources. This admonition, which was not contained in the draft of the 2010 *Guidelines* that was reviewed by the SAB, has appropriately been dropped in the draft revision of the *Guidelines*.

II. Background on EPA's Identification and Evaluation of Threatened Worker Dislocations

In 1971, Congress held hearings chaired by Senator Edmund Muskie on the problem of "economic dislocation, plant shutdowns, and worker layoffs resulting from" EPA's administration and enforcement of federal environmental laws. *Economic Dislocation Resulting from Environmental Controls: Hearings Before the Subcomm. on Air & Water Pollution of the S. Comm. on Public Works*, 92d Cong. 1 (1971) ("*Economic Dislocation Hearings*"). The hearings considered key questions posed by Senator Muskie. First: "If people, workers, communities, industrial plants are to be affected because we have resolved to protect the environment, how and by what means shall their interest, their personal health and welfare, also be protected?" *Id.* Second: "How do we determine, for example, that a worker layoff or plant shutdown does, indeed, result from an environmental control order?" *Id.* Third: "What kind of information should a company be required to provide in order to justify [claims] a plant shutdown [is due to environmental regulation]?" *Id.*

One of the most prominent champions of environmental protection, Ralph Nader, testified in response to these questions that it would be foolhardy to simply ignore the problem of economic dislocation resulting from environmental regulation:

One view of this problem of environmental layoffs or closings is to ignore it and simply enforce the pollution laws. This would be too narrow a policy and a cruel one at that for workers with no means of coping with such company forces.

A regime of fear and economic insecurity will spread through the blue-collar labor force, that will reflect itself in alienation from or antagonism to the cause of a de-lethalized environment.

In a Kafkaesque way, it could put the workers against their children's and grandchildren's health during future decades. . . .

And finally, such a regime could erode the public support and prodding so necessary to successful antipollution programs.

Id. at 6. Accordingly, since “macro-economic studies do not answer the question which a worker has about his or her family’s macro-economy,” Nader proposed “requiring the Administrator of the Environmental Protection Agency to investigate every plant closing or threat of plant closing involving 25 or more workers, which he has reason to believe results from an order or standard for the protection of environmental quality.” *Id.* at 7–8. He elaborated on his proposal as follows:

This would apply to actual or proposed orders issued by his agency, other Federal agencies, or State and municipal agencies pursuant to approved implementation plans.

To the extent possible, the Administrator should try to anticipate problems and investigate them before anyone is actually laid off. In order to give citizens and workers the right to be heard and consulted on the subject of environmental unemployment, the Administrator, as part of his investigation, should be required to hold public hearings in the community affected by the actual or threatened shutdown.

After the investigation and hearing, the Administrator should issue a report on the matter detailing the causes of the dislocation, the ways in which it might be avoided and the effects on the community and the workforce.

The report and the materials upon which it is based should be open to public inspection. In order to conduct the investigation the Administrator must have access to company records on technology, profitability, costs, employment, and so forth

Id. at 8. Spurred by the concerns of Senator Muskie and Mr. Nader's proposal, Congress enacted provisions as part of each of the five major federal statutes requiring EPA to continuously evaluate threatened plant closures and layoffs resulting from the administration and enforcement of these statutes:

- Section 507(e) of the Clean Water Act (33 U.S.C. § 1367(e));
- Section 24 of the Toxic Substances Control Act (15 U.S.C. § 2623);
- Section 7001(e) of the Solid Waste Disposal Act (42 U.S.C. § 6971(e));
- Section 321 of the Clean Air Act (42 U.S.C. § 7621); and
- Section 110(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9610(e)).

During floor debate on adoption of the first of these provisions requiring EPA to conduct continuing evaluations of threatened worker dislocations, Representative Abzug observed that EPA's continuing evaluation of threatened worker dislocations would "allow the Congress to get a close look at the effects on employment . . . and will thus place us in a position to consider such remedial legislation as may be necessary to ameliorate those effects." 118 Cong. Rec. 10,767 (1972). Representative Meeds stated that when plant shutdowns are potentially resulting from environmental requirements "workers and other people of the community have the right to know the truth" and that "[i]f indeed the closure is caused by pollution controls, there should be no difficulty in establishing that fact." *Id.*

In responses to Congress's concerns and the mandates in these statutes, EPA established and carried out the Economic Dislocation Early Warning System which attempted to identify and evaluate on a continuing basis potential or actual industrial plant closings or curtailments and employment dislocations resulting from federal environmental regulations. This program was specifically "intended to bring into play any government programs available to provide financial assistance which would prevent plant closings or production curtailments or to assist workers and communities impacted by closings and curtailments." *SBA Assistance for Agric. Concerns & to Meet Pollution Standards: Hearings Before the Subcomm. on SBA & SBIC Legislation of the H. Comm. on Small Bus.*, 94th Cong. 163 (1975). To carry out this program, EPA maintained "a system of contacts with Federal, State, and local enforcement offices," EDEWS Union Prepaid Mailer, Form GPO-822-828, and EPA routinely published notices in the Federal Register asking that "any firm which has closed or plans to close a facility where inability to meet pollution control requirements is a substantial factor" and asking that anyone with "any information regarding such situations" to "mail or phone the firm's name to EPA regional representatives. 41 Fed. Reg. 54214 (Dec. 13, 1976); 42 Fed. Reg. 45945 (Sept. 13, 1977); 43 Fed. Reg. 50244 (Oct. 27, 1978); 44 Fed. Reg. 45751 (Aug. 3, 1979). EPA also obtained OMB approval

under the Paperwork Reduction Act of forms EPA used to “collect information . . . on actual/threatened plant closings and production curtailments” to “evaluate the effects of these requirements on potential loss/shifts of employment.” 48 Fed. Reg. 20,796 (May 9, 1983); 48 Fed. Reg. 47,059 (Oct. 17, 1983).

Roy Gamse, as EPA’s Deputy Assistant Administrator for Planning and Evaluation, detailed the Economic Dislocation Early Warning System and its important function in testimony before Congress in 1979:

We maintain channels of communication with the SBA, the Economic Development Administration, and the Department of Labor. In the event a plant threatens to close, we notify those agencies so that their assistance programs and expertise can be used to aid the firms, workers, and communities which may be affected. This arrangement, which we call the Economic Dislocation Early Warning System has been functioning since 1971. It seeks to identify at the earliest possible time plants which may be forced to close due to environmental regulations. In practice, the definition of an environmentally-caused plant closure is administered in a broad manner and EPA often errs on the side of including firms as casualties when the actual cause of closure may have little environmental basis.

H.R. 7739 and H.R. 10632, Small Business Impact Bill (Part 2): Hearings Before the Subcomm. on Special. Small Bus. Problems of the H. Comm. on Small Bus., 95th Cong. 254.

Mr. Gamse also detailed EPA’s economic analyses conducted during rulemakings to identify potential worker dislocations and the important part of the regulatory process these economic analyses played at that time:

Before proposal and promulgation of regulations, we examine the expected economic impacts of each regulatory action on all affected segments of the economy, paying particular attention to small businesses. In these analyses, we examine the costs to industry of pollution control and how these costs will affect, factors such as prices, capacity, and financial performance. The analyses also estimate the number of plants that might close due to environmental regulations. As a result of these examinations, we have made a number of our individual regulations less stringent for small businesses in order to relieve them of what would otherwise be an economic disadvantage.

One recent example of revisions to regulations to ease the burden upon small firms is the exemption of small fruit and vegetable processing plants from the 1977 and 1984 cleanup requirements of the Clean Water Act. This revision would allow the 64 small plants in the industry which we project would have closed down to continue operations. Another example is our recently proposed action to reconsider 1984 water pollution

requirements for 36 industry categories which will save business, including small business, up to \$200 million in water pollution control costs. Both of these modifications came about as a result of EPA's consideration of its economic analyses.

Id. at 222. In 1980, the Science Advisory Board reviewed and summarized EPA's EDEWS program:

[D]ue to the costs of environmental regulation are a very sensitive issue and have prompted EPA to develop an early warning system. Every quarter, based upon a review of the early warning system, OPE sends a comprehensive information report to the U.S. Secretary of Labor detailing possible unemployment problems in affected areas. To date, only twenty plants, fifteen percent of the total 136 which have been reviewed, have actually closed due to environmental regulations. In many cases, OPE also investigates whether measures can be taken to allow plants to stay open."

Sci. Advisory Bd., U.S. EPA, *Economics in EPA*, at 7–8 (1980).

The SAB specifically reviewed and approved EPA's methodology for identifying potential worker dislocations in the agency's 2000 *Guidelines*. However, EPA made substantial changes in the 2010 *Guidelines* to this SAB-approved portion of the *Guidelines* but the changes were unfortunately made on the eve of finalization after SAB review was completed and the changes were never reviewed by or even submitted to the SAB. The panel should be mindful of this fact during this review.

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We very much appreciate the panel's consideration of these comments and look forward to the panel's work supporting EPA in its economic analyses of potential worker dislocations resulting from federal environmental regulations.

Respectfully,

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