



May 4, 2007

U.S. Environmental Protection Agency
EPA West (Air Docket)
Room 3334, Mail code: 6102T
Attention E-Docket ID No. EPA-HQ-OAR-2004-0094
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Proposed Rule

To Whom It May Concern:

The Synthetic Organic Chemical Manufacturers Association (SOCMA) is submitting comments on the National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP): General Provisions (72 Federal Register 69 (January 3, 2007), hereinafter referred to as the “Proposed Rule”). SOCMA appreciates the opportunity to comment on this important rule and supports EPA’s proposal that would replace the policy described in the May 16, 1995 EPA memorandum entitled, “Potential to Emit for MACT Standards – Guidance on Timing Issues,” from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to Regional Air Division Directors (the “1995 Guidance”, also known as the “once in always in policy”). The proposed amendments provide that a major source may become an area source by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. Thus, under the proposed amendments, a major source can become an area source at any time, including after the first substantive compliance date of an applicable MACT standard, so long as it limits its potential to emit to below the major source thresholds.

Background on SOCMA and its Members

SOCMA is the leading trade organization that represents batch manufacturers of specialty and custom chemicals, including many of the key ingredients found in pharmaceuticals, soaps, cosmetics, plastics, and many other industrial and construction products. SOCMA has over 275 members, and 80% of these members are small businesses.

Batch manufacturing is a manufacturing method in which two or more chemicals are reacted in a system to yield a specific chemical compound. This is a single reaction that has a distinct beginning and end. Batch processing allows different products to be made in the same reactor or system. Because the products and the processes change, the process operating conditions and even the configuration of the equipment can change as well. A single piece of



equipment can be put to multiple uses and may well contain a range of different materials over the course of a year. Unlike the burdens on facilities with static product lines, batch manufacturers may become subject to multiple and frequently changing layers of emission control, monitoring, recordkeeping and reporting requirements. Batch manufacturers face a continuous challenge to try to maintain operational flexibility while incorporating new government policies and regulations.

A number of the specialty batch manufacturing facilities of SOCMA members are major sources subject to various air toxics rules, including the Hazardous Organic NESHAP; the Pharmaceuticals Production NESHAP; the Pesticide Active Ingredient NESHAP; the Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP; and the Miscellaneous Organic NESHAP. Under the 1995 Guidance, such facilities would continue to be subject to the major source rules *ad infinitum*, even if they were to reduce emissions to well below the major source thresholds.

SOCMA Supports the Proposed Rule and Revocation of the 1995 Guidance

The proposed rule is long overdue, and SOCMA supports it. The 1995 Guidance is counterproductive in that it has long inhibited industry emissions reduction initiatives. With the ongoing development of area source standards and other regulatory and permitting developments, any value that the policy arguably might have had at its issuance has long since expired.

The Clean Air Act does not compel the outcome specified in the 1995 Guidance. Section 112 simply specifies that EPA is to develop standards for major sources and for area sources. It does not specify “once a major source, always a major source.” In addition, the 1995 Guidance does not have the force and effect of a rule – it did not undergo notice and comment and it was explicitly designated an interim policy. It is not entitled to any deference.

The 1995 Guidance is flawed policy. It does not provide facilities any incentive to implement material substitutions, process modifications, or other pollution prevention activities (P2) after the compliance date of a major source standard that would reduce HAP emissions below major source thresholds. The proposed rule would grant proper recognition to valuable P2 activities. It would encourage facilities to develop, manufacture, purchase and use lower HAP content products (for example low HAP solvents or coatings) or to take other steps, such as process changes, to reduce HAP emissions. Achieving HAP reductions via pollution prevention is a win-win for both industry and the environment – facilities would be able to reduce HAP emissions by measures not imposing the expensive annual operation and maintenance costs of add-on pollution controls. Side benefits to such P2 activities frequently will include reduced electricity and natural gas consumption and reduced emissions of carbon dioxide, carbon monoxide, nitrogen oxides and sulfur dioxide.

The proposed rule’s incentives for adoption of efficient P2 activities would be especially beneficial for relatively small facilities and will achieve a net emissions reduction. To give several examples:

1. Plants with relatively large process units will not be able to take advantage of the



proposed rule because of their size. As an example, consider a plant with a large process unit that emits >10 tpy of a single HAP after incineration in a thermal oxidizer that has a DRE of 99.96%. This process unit will always be subject to the MON rule, and the plant will always require a Title V permit. The proposed rule will have no impact on plants such as this one.

2. Facilities of more modest size, whose HAP emissions are closer to the major source threshold, will have an incentive under the proposed rule to implement P2 activities that further reduce emissions beyond that required by the MACT standards. Provided these sources lower their potential to emit HAPs below the major source threshold, they can become area sources with reduced monitoring, recordkeeping and reporting obligations.
3. A few plants may operate Group 1 point sources that are permitted exactly at 98% DRE, but actually achieve much better than 98%. These plants may decide to repermit their Group 1 sources if they can drop below major source HAP thresholds. This repermitting may not result in an actual change in emissions but it might allow some plants to reduce their administrative burden by dropping out of Title V permitting. The repermitting, which would be necessary to cap potential to emit, will ensure that there is no significant emissions increase.
4. There are a few process units that were originally part of larger chemical complexes and were later spun off and sold after the effective MACT compliance dates. Such plants will benefit from the proposed rule. However, they still will control emissions to meet state permit limits and other applicable emissions limitations. For example, one SOCMA member facility in this situation also is subject to several NSPS rules that require 98% TOC DRE because it was constructed in 2000. The facility has always over controlled TOC destruction (e.g., always emitted <3 tpy of total HAPs and always maintained DRE of 99.1% for HAP #1 and a DRE of 99.6% for HAP #2.) If EPA promulgates the proposed rule, it will still over-control to meet the 98% NSPS DRE requirement.

Another beneficial effect of the proposed rule would be elimination of the disparate treatment of HAP sources based solely on when the source achieved a potential to emit less than the major source threshold. Under the 1995 Guidance, sources which achieve the threshold prior to their first substantive compliance date are designated area sources, while sources that achieve such reduction after that date are designated major sources. As such, two different sources with the same potential to emit may be subject to different regulatory regimes, based solely on the timing of emissions reductions. The proposed rule would eliminate this differential treatment by allowing a major source to become an area source following a sufficient reduction in potential to emit HAPs.



EPA Should Extend The Proposed Rule to Cover All Title V Emissions

Given the importance of P2 and EPA's mandate to promote its use, SOCMA recommends that EPA extend the ability of a source to change to minor source status to other air emissions regulations, specifically including the National Ambient Air Quality Standards (NAAQS). Many of the facilities achieving reductions under Section 112 also are Title V facilities under the NAAQS. A myriad of industry sectors would benefit from such recognition of P2 activities under the NAAQS, providing added incentives for facilities to reduce not just HAPs, but other pollution emission sources under the CAA.

The Proposed Rule Would Not Result in “Backsliding”

SOCMA understand that a theoretical objection to the proposed rule is that facilities with add-on controls might “turn-down” their add-on controls to reduce emissions just below the major source threshold. Under such a theory, for example, a facility that had total HAP emissions of 40 tpy controlled to 10 tpy under a major source rule might instead become a minor source but alter its controls to increase emission to just the 25 total HAP major source threshold. SOCMA does not believe that this is a real risk. Most add-on controls cannot be “turned down”. Thermal oxidation units, for example, are very complicated and highly engineered systems that are typically designed to operate within a narrow band of conditions. As such, these systems cannot be modified significantly to run via a different set of conditions. Moreover, such facilities will continue to be subject to other emissions limitations such state permit limits pursuant to state implementation plans and other authorities as well as other federal limits such as new source performance standards and area source standards that will establish conditions of use of control technologies.

Given that backsliding is not a real issue, the efforts of sources to reduce their potential to emit to less than the major source thresholds will result in the proposed rule achieving a net reduction in overall emissions.

Conclusion

SOCMA greatly appreciates the opportunity to comment on this proposal. We firmly believe that the Proposed Rule is a practical approach that is a win/win for industry and the environment. This proposal if finalized as written would encourage the development, manufacture, purchase and use of lower HAP content products, reduce operating expenses, energy consumption and greenhouse gas emissions.

Respectfully Submitted,

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