

**Testimony of  
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National Association of Clean Air Agencies**

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**U.S. Environmental Protection Agency (EPA) Hearing on EPA Proposals for Regulation of Hazardous Air Pollutants (HAPs) from Industrial, Commercial and Institutional (ICI) Boilers under Section 112(j) of the Clean Air Act and for Regulation of Toxic and Criteria Air Pollutants from Commercial Industrial Solid Waste Incineration (CISWI) Units under Section 129 of the CAA**

**Docket Nos. EPA-OAR-2006-0173; EPA-HQ-OAR-2002-0058;  
EPA-HQ-OAR-2003-0119; EPA-HQ-OAR-2008-0329  
June 15, 2010**

My name is Mary Sullivan Douglas and I am a Senior Staff Associate with NACAA – the National Association of Clean Air Agencies, which is the association of state and local air pollution control agencies in 53 states and territories and over 165 metropolitan areas across the country. On behalf of NACAA, thank you for this opportunity to testify on four related regulations EPA has proposed under Sections 112 and 129 of the Clean Air Act. The proposed rules will substantially reduce emissions of hazardous air pollutants (HAPs) and criteria pollutants from a broad sector of industrial, commercial and institutional boilers and from commercial solid waste incinerators. After coal-fired power plants, these combustion units are among the largest emitters of toxic and criteria pollutants in the country. Accordingly, the benefits to public health and welfare that will result from a well-considered rule are substantial.

NACAA strongly supports adoption of timely final regulations for each of these sectors that meet both the letter and the intent of the law. If EPA fails to adopt a standard in a timely fashion, or fails to adhere to the statute and the rule is overturned again, the public health benefits will be delayed. In addition, state and local agencies could be faced with the significant burden of developing MACT for several thousand permits on a case-by-case basis.

After analyzing the proposals more thoroughly, NACAA will submit detailed written comments. However, we appreciate this opportunity to provide EPA with our initial impressions of the proposal. Overall, NACAA is pleased that the recent proposals are a vast improvement over earlier efforts and that EPA is generally on the right track. However, there are several critical areas that appear to be unworkable or unsupportable on the rulemaking record.

## **BACKGROUND**

When the court vacated the earlier ICI Boiler MACT rule and state and local permit authorities were faced with developing case-by-case MACT permits, NACAA collected existing test data from state and local permitting agencies. Over 40 agencies provided hundreds of data points that NACAA used to calculate MACT floors, which were substantially lower than those adopted by EPA in its earlier rule. The NACAA database was provided to EPA in June of 2009.

### **“DESIGNED TO COMBUST” TEST FOR APPLICABILITY OF EMISSION LIMITS**

Many units combust mixtures of fuels. No clear correlation has been established to evaluate the emissions performance of different units combusting different mixtures of fuels – and indeed, when switching fuels, emissions of one HAP may increase while those of another HAP may decrease. In its model permit guidance, NACAA considered only those results where a source was burning 100 percent of one category of fuel during the test. Under NACAA’s recommended approach, sources would be separately tested for compliance with each applicable limit. NACAA also noted that during compliance testing, sources may be able to establish unit-specific correlations for operation of different fuels.

EPA apparently did not use any of the testing in the NACAA database to establish the MACT floors. The EPA data includes numerous entries where a source was combusting different fuel mixes, which NACAA believes will be difficult to translate into enforceable MACT limitations. While the NACAA and EPA data sets often produce generally consistent results, EPA cannot exclude from the calculation of the top performing 12 percent the testing conducted for other compliance purposes as required by state and local permit officials.

EPA’s approach is to categorize sources according to fuels that they are “designed to combust,” and allow sources to comply with what EPA apparently considers the “least stringent” standard for any of the fuels that it may combust. NACAA believes that this approach is likely to be unworkable for many sources and may not be legal.

### **SPARSE OR NO JUSTIFICATION FOR PROPOSED OPTIONS**

Several options have been proposed for which EPA offered little or no justification and analysis. Some are also of doubtful legality – in particular the clearly erroneous suggestion that EPA could establish risk-based exemptions at levels less stringent than the MACT floor. NACAA recommends that EPA avoid options that carry a substantial risk of a lawsuit that delays implementation of these important public health protections. The proposal to not set a MACT floor or MACT emission limit for large gas-fired boilers is another example. EPA’s principal argument for it is that imposing MACT limits on gas-fired boilers doubles the anticipated cost of the rule. However, unlike the “beyond-the-floor” analysis, there is no cost test for the MACT floor. Moreover, EPA has apparently not considered or provided information in its proposal that would enable the

public to evaluate whether excluding natural gas units from numeric MACT limits is in the public interest. Further, while the discussion of cost to the industry is extensive, EPA fails to analyze or calculate the full benefits of these rules to the public.

With respect to variability, without any justification EPA applies a statistical test that requires 99 percent confidence that a standard has been exceeded before a violation is established. EPA also appears to calculate this factor on the basis of variability of individual test runs, even though the applicable standard requires averaging three individual test runs to reduce the variability that would be present in individual runs. In other rules EPA has used a 90-percent confidence factor, applied to the average of three runs to calculate variability. The general result of requiring a higher confidence level is that the standard is higher than it otherwise would have been.

## **CONCLUSION**

In conclusion, the proposals are a marked improvement over EPA's earlier efforts. If the agency follows the law and simply bases its decisions on the available data, very significant reductions of both toxic and criteria pollutants will result at costs that appear to be reasonable and manageable. NACAA urges EPA to complete these rules in a timely, thoughtful and lawful manner. Thank you for the opportunity to testify.