

February 20, 2003

Office of Air and Radiation Docket and Information Center (6102T)
Attention Docket Number A-2001-22
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sir or Madam:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for this opportunity to comment on the proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) for Surface Coating of Automobiles and Light-Duty Trucks, which were published in the *Federal Register* on December 24, 2002 (67 *Federal Register* 78612). We are specifically commenting on the risk-based exemptions that are discussed in the preamble to the proposal (“Can We Achieve the Goals of the Proposed Rule in a Less Costly Manner?”).

First, STAPPA and ALAPCO believe that the proposal is an inappropriate forum for bringing forward such a significant change in the way that Maximum Achievable Control Technology (MACT) standards are established under Section 112(d) of the Clean Air Act. While we support focusing our efforts on the greatest risks, the approaches referenced in the proposal are not the appropriate vehicles to accomplish that goal. Furthermore, a precedent-setting change of the magnitude that EPA has raised should be discussed openly and carefully with all affected parties, rather than being buried in the preambles of several individual proposed standards.

Additionally, the exemptions that have been suggested in the *Federal Register* notice are critically flawed for a number of reasons, which will be enumerated below. Because of these flaws, STAPPA and ALAPCO oppose the adoption of these risk-based exemptions to MACT.

1. The approaches in the proposal are contrary to the intent of the Clean Air Act as amended in 1990, which explicitly calls for a general reduction in hazardous air pollutant (HAP) emissions from all major sources nationwide through the establishment of MACT standards based on technology, *rather than risk*, as a first step. Congress did recognize the need for a risk-based program, however, and

incorporated the residual risk program under Section 112(f) to *follow* the MACT standards (not to replace them). Congress clearly intended the risk-based approach to be used separately to augment and improve a technology-based MACT standard that does not adequately provide protection for the public. The need for the technology-based approach has been recently reinforced by the results of the National Air Toxics Assessment (NATA). The NATA information indicates that exposure to air toxics is very high throughout the entire country in both densely populated urban areas and remote rural locations.

2. The proposed approaches would take the national air toxics program back to the time-consuming NESHAP process that existed prior to the Clean Air Act Amendments of 1990. Under that process, which began with a risk-assessment step, only eight NESHAPs were promulgated during a 20-year period. If the approaches outlined in the proposal were to be inserted into the standards, we fear that similar difficulties would delay the MACT-development program, which is extremely behind schedule already.
3. The proposed options would remove the benefit of the “level-playing field” that would result from the proper implementation of technology-based MACT standards. The establishment of a baseline level of control is essential to prevent industry from moving to areas of the country that have the least stringent air toxics programs in order to avoid achieving the emission levels that are already met by the best-performing 12 percent of sources in their source category. Also, as noted above, the NATA data show that virtually no area of the country has escaped measurable concentrations of toxic air pollution.
4. The options in the proposal would place a very intensive resource demand on state and local agencies to review risk assessments prepared by sources trying to exempt themselves from MACT. Review of these risk assessments will require expertise in risk assessment methodology that many state and local agencies may not possess. In addition, it will be necessary for agencies to verify extensive emissions information and stack parameters that will be used in the risk assessments to ensure that the assessments have been done properly. Many state and local agencies simply do not have the resources or expertise to accomplish those tasks.
5. These proposed options do not address ecological risks that may result from uncontrolled HAP emissions, including in those areas where few people currently live, but sensitive habitats exist.

In addition to these critical concerns, it is evident that the proposed approaches for risk-based exemptions, which are still untried and would require extensive debate and review in order to launch, will jeopardize the expeditious promulgation of the remaining MACT standards. The tools needed to identify sources eligible for the risk-based exemption would be the same tools necessary for a Section 112(f) Residual Risk

assessment. It is our understanding that these tools are not yet ready for use and may not be ready for several months *at the earliest*. Therefore, we strongly believe that it is much too late in the Section 112(d) standard-setting process to convert to this new risk-based exemption approach.

As it is, EPA is already extremely late in promulgating the remaining MACT rules. According to a recently proposed EPA rule regarding the Section 112(j) “hammer” provisions, the regulated community and state and local agencies must proceed with Part 2 permit applications, followed by case-by-case MACT, if EPA misses the newly agreed-upon MACT deadlines by as little as two months. There is no room in the schedule for additional delay, such as what would surely result if EPA were to attempt to determine what constitutes a risk that is not “significant.” This delay could be further exacerbated by any litigation following legal challenges to the rules. Were these delays to occur, state and local agencies could be required to establish case-by-case MACT, which would be inefficient, time-consuming and unnecessarily burdensome to state and local agencies, as well as to the regulated community. Obviously, further delay in the issuance of the MACT standards is unacceptable. Yet, the options referenced in the proposal, we believe, can only result in additional delay.

For all of these reasons, STAPPA and ALAPCO are opposed to the risk-based exemption options referenced in the *Federal Register* notice, and we call upon EPA to instead expeditiously propose and promulgate the remaining technology-based MACT standards without such exemptions.

Sincerely,

Lloyd Eagan
Chair
STAPPA Air Toxics Committee

Robert Colby
Chair
ALAPCO Air Toxics Committee