

September 24, 2002

Timothy D. Backstrom  
Air and Radiation Law Office (2344A)  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Mr. Backstrom:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), we wish to submit comments on the proposed settlement agreement related to the regulations for Section 112(j) of the Clean Air Act. This proposed settlement was published in the *Federal Register* on August 26, 2002 (67 *Federal Register* 54804).

As we have indicated in the past, we are extremely troubled that EPA has not established Maximum Achievable Control Technology (MACT) standards to control emissions of hazardous air pollutants (HAPs) from a number of source categories listed pursuant to the Clean Air Act. We realize that setting standards is costly and difficult and that resources are constrained across the government. Nevertheless, we believe that establishing these MACT standards should be one of EPA's highest priorities.

Our greatest concern is that the delay in issuing the MACT rules increases the risks to public health resulting from exposure to HAPs that should have been controlled under the Clean Air Act. These delays in protecting public health are further exacerbated because the risk reductions that would result from the residual risk program under Section 112(f) of the Clean Air Act are also delayed for those source categories. Accordingly, we strongly urge EPA, as we have in the past, to establish the remaining MACT standards as soon as possible, even if it requires reprogramming EPA funds from other EPA activities to do so.

As the agencies that are responsible under the Clean Air Act for implementing our air quality regulations, the members of STAPPA and ALAPCO are obviously very concerned about the impact of the Section 112(j) regulation. The MACT "hammer" takes effect when EPA delays the establishment of MACT standards beyond 18 months, which has happened for a number of source categories. The hammer provisions call for state and local air agencies to establish regulations individually for those affected source categories. This will be inefficient, time-consuming, unnecessarily burdensome to state and local agencies, costly and confusing to the regulated community. In addition, this may jeopardize certainty for industry as case-by-case

determinations will surely differ among the states within an industrial category, potentially causing inconsistencies in the way MACT is implemented nationally. Furthermore, it would require us to devote scarce resources to developing standards that EPA should already have completed, thereby merely shifting the costs and burden of setting standards from the federal government to state and local agencies. Since this shift in responsibility would likely not be accompanied by sufficient additional federal resources, state and local budgets would be further strained. So, in addition to reducing risks to public health, EPA should establish MACTs as soon as possible to avoid the MACT hammer and the need for state and local agencies to establish case-by-case MACT.

We understand that EPA is currently discussing the schedule for issuing the remaining MACTs with litigants in a separate lawsuit. We strongly believe that, in order to avoid both the delay in setting standards and the need for case-by-case MACT, the deadline for sources to submit the Part 2 application contained in this settlement agreement (and subsequent rulemaking) should coincide with the date by which EPA will be required to promulgate the final MACT standards and *both of them should be expeditious*.

We wish to raise one final reason for EPA to complete these actions as soon as possible. We are concerned about the uncertainty that this settlement process has caused. More than one-third of the 12 months between the Parts 1 and 2 applications have already elapsed and the matter is still not settled. According to the schedule in the proposed agreement, it may not be settled for several months. We urge you to act as quickly as possible on this matter to provide state and local agencies, as well as the regulated community, with certainty on this issue and as much time as possible to prepare for the Part 2 application deadline.

In addition to our concerns about the provisions of the proposed settlement (related to both the timing and the start-up, shutdown and malfunction plan requirements), we wish to express our dismay and disappointment that state and local air agencies were not consulted prior to the decision. Since state and local air agencies are potentially the entities most affected by the provisions in the settlement, it would have been prudent for the parties involved in the lawsuit to have sought our recommendations.

In closing, we ask that EPA provide as much assistance as possible to state and local air agencies as we go through the Section 112(j) process. Clear communication and support are critical, as we share the same ultimate goal: protecting the public from exposure to HAPs in a timely and efficient manner.

Thank you for your attention to this matter.

Sincerely,

S. William Becker

cc: Jeffrey Holmstead, Assistant Administrator, OAR