

DRAFT

August 11, 2005

Attention Docket ID No. OAR-2002-0058
Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode: 6102T
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 Notice of Reconsideration of Final Rule for the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters, which was published in the *Federal Register* on June 27, 2005 (70 *Federal Register* 36907).

STAPPA and ALAPCO are opposed to the “health-based compliance alternatives” included in the final NESHAP for boilers and process heaters, which EPA published on September 13, 2004 (69 *Federal Register* 55218). We are gravely concerned about the concept of the risk-based exemptions, as we expressed in our comments to the proposed rule (STAPPA/ALAPCO letter dated March 6, 2003), and disturbed by the specific manner in which EPA plans to implement them. We recommend that EPA completely eliminate the “health-based compliance alternatives” from the final rule.

Section 112(d) of the Clean Air Act is clear in articulating a two-step process for addressing emissions of hazardous air pollutants through the Maximum Achievable Control Technology (MACT) and Residual Risk processes. It 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 risk-based

exemptions contained in the Boiler MACT clearly are contrary to the provisions of the Clean Air Act.

The exemptions would remove the benefit of the “level-playing field” resulting 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, the need for a nationwide technology-based approach has been 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.

These exemptions also 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.

As stated, we are opposed to the inclusion of the risk-based exemptions in the rule and believe they should be eliminated. Further, we have significant concerns with the specific manner in which EPA intends to implement the exemptions and believe there are many flaws in the agency’s approach.

State and Local Agency Resources

Although the rule allows sources to submit self-certifications of their low-risk determinations, many state and local agencies would not be comfortable allowing an exemption without a thorough review of the risk assessment that the source has prepared. As the entity issuing the permit, a state or local agency may feel it is its duty to verify the provisions of the permit. Therefore, the risk-exemption procedure could place a very intensive resource demand on state and local air agencies that must verify extensive emissions and stack information and review the risk assessments to ensure that they have been done properly. The review of these risk assessments will require expertise in risk assessment methodology that state and local agencies may not possess. Many state and local agencies simply do not have the resources or expertise to accomplish those tasks.

Simply relying on the self-certification procedures EPA has laid out would be problematic for several reasons. The final rule suggests that an eligibility demonstration need only be submitted in order for a facility to begin complying with the alternative limits. However, as a permitting authority, state or local agencies should have the right to disapprove a risk-based compliance demonstration if it is incomplete or incorrect. Yet the rule is not clear that permitting authorities can review and reject improper use of the look-up tables to establish eligibility for the health-based alternatives and that, if the exemption is not approved, the source must comply with the emission limits and requirements of the NESHAP.

The ability to certify compliance relies on a Title V permit that has enforceable conditions. The final rule requires that the parameters defining the affected facility as eligible for the health-based compliance alternative be included for incorporation in the Title V permit. However, a Title V permit requires conditions that include not just process parameters, but also the key inputs used in the eligibility demonstration (including, but not limited to, identification of reference concentrations used, look-up table values, emission rates, etc.). Those would all have to be enforceable conditions as well.

Scope of Emissions

The risk-based exemptions in the final rule do not include a comprehensive consideration of the plants' impacts. For example, the final rule limits the analysis of risk to the impact of selected emissions units. However, the major-source status of a source is based on facility-wide emissions. In considering only a portion of the facility's emissions, the determination of low-risk reflects a distorted and unrealistic view of the facility's impact. Further, the EPA rule ignores the cumulative risk and persistent and background concentrations that come from exposure to multiple air toxics sources outside of the facility. Although many sources may each pose a "low" risk, the accumulation of emissions from those sources, when taken together, can be quite significant. NATA data indicate that background concentrations of pollutants can be high. We believe it is important that those concentrations be incorporated when evaluating risk.

We disagree with EPA's decision to allow sources to obtain an exemption even when their impacts approach the Reference Concentration. This approach ignores other emissions, both on- and off-site. We believe risk assessments should incorporate all the other emissions of these pollutants at the facility and should consider nearby sources as well. Although the rule discusses considering these other emissions during the Residual Risk evaluation, we are not comfortable waiting until then and relying on that program. The Residual Risk evaluations we have reviewed thus far are not generally as thorough as we would like, nor does it seem that future evaluations can be relied upon to include a full risk screening that accounts for other on-site and off-site sources. For example, background concentrations were not incorporated into the Coke Oven Residual Risk report published in March 2005 for benzene or any other HAP.

Also with respect to Residual Risk, we believe it is unclear how the risk-based exemptions will affect EPA's future Section 112(f) Residual Risk determinations? Will hydrochloric acid and manganese be exempted from risk assessments for Residual Risk?

Deficiencies in Look-Up Tables

We are concerned that the values in the look-up tables will not be health-protective under worst-case conditions. This is a critical point, since it is the worst-case scenario that should be used during this screening level of risk assessment. Even with more stringent values, the look-up table would be flawed in that it uses an average stack

height based on the assumption that most stack heights are generally similar. The use of the table should have been limited to conditions in which the stack heights are similar to the average. If they are not, then the more refined analysis should be required. Further, the look-up table should be disallowed for facilities in areas with complex terrain, since the assumptions used to develop the look-up table could not possibly account for this scenario. We are also concerned that the look-up table has not accounted for the common use of rain caps and for the likely event of building downwash.

Site-Specific Risk Assessment

The rule allows facilities performing a site specific risk assessment to use any “scientifically accepted peer reviewed risk assessment methodology” and provides the Air Toxics Risk Assessment Reference Library Volume 2 as an example. It does not require that the risk assessment methodology be approved by any regulatory agency as scientifically acceptable or applicable. Instead, the final rule specifically allows any methodology, and there is not even standardization of basic methods or parameters such as the years of exposure to an individual. Under the final rule, it appears the risk screening could be based on even a one-year exposure instead of the normal lifetime exposure. Without specific parameters and methods or consideration of all the emission sources at the facility, the "refined" risk screening is meaningless and provides no real measure of health impact. Risk assessment is a changing field and this provision does not provide clear guidance either for the sources or for regulatory agencies.

Reassessment of Exemptions

The rule identifies conditions that would require a facility to resubmit a demonstration for a risk-based exemption. These conditions relate to parameters that could result in a change in emissions, but do not include changes in parameters that could affect dispersion, such as stack height, exit gas temperature, and distance to the plant property line. The rule also fails to include in this list of parameters any change in the Reference Concentrations used to demonstrate low risk or changes in the proximity of the population (e.g., if development takes place nearer to the facility’s property line).

“Correction” to the Health-based Compliance Alternatives

EPA’s reconsideration announcement indicates that the original rule erroneously stated that the health-based compliance alternatives were only for the large solid fuel subcategory and proposes to correct this error. We oppose this change because we believe this is not a mere correction, but a significant expansion of the applicability of the health-based exemptions. If this change is made, smaller sources with shorter stacks, shorter distances to their property lines and, very likely, greater exposure to more individuals will be eligible for the risk-based exemptions. Since smaller facilities tend to be located closer to populations and to one another, we believe they have combined impacts that will not be adequately considered in the exemption requirements. We do not believe the health-based exemption should include additional sources.

Manganese

EPA discusses compliance alternatives for manganese, which we do not believe reflect a conservative approach. Further, EPA's modeling is flawed with respect to plume downwash. EPA has not provided a sound explanation of why manganese should be excluded from the calculation of Total Selected Metals (TSM) and allowed its own exclusion under Table 3. The basis of the argument to exclude manganese from the calculation of total TSM is that EPA's MACT floor analysis showed no difference between including or excluding manganese. With this finding it is just as simple to conclude that manganese should be included. Further, in expanding the exemptions to include all units, not just those in the large solid fuel subcategory, EPA's analysis on TSM in the docket was based upon large solid fuel units and not all units. We recommend that the risk-based exemption be eliminated for manganese, due to the inconsistencies found in the docket and the incorrect usage of a hazard index for multi-pathway pollutants.

Thank you for your consideration of our comments. Please do not hesitate to contact us if we can provide additional information or if you have any questions.

Sincerely,

Lloyd Eagan
Chair
STAPPA Air Toxics Committee

Robert Colby
Chair
ALAPCO Air Toxics Committee