

December 4, 2013

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EPA Docket Center
EPA West (Air Docket)
Attention Docket ID Number EPA-HQ-OAR-2012-0510
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to comment on the proposed “National Emissions Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production,” which were published in the *Federal Register* on November 4, 2013 (78 *Federal Register* 66108). NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 43 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in this document do not necessarily represent the positions of every state and local air pollution control agency in the country.

Eight years after the establishment of the Maximum Achievable Control Technology (MACT) standard for a source category, EPA is required to assess the residual risk that remains from emissions from the source category, as well as examine whether advancements in control technology warrant additional requirements. Because of the adverse health effects associated with exposure to Hazardous Air Pollutants (HAPs), NACAA is pleased that EPA is proposing to prohibit the use of HAP or HAP-based auxiliary blowing agents for slabstock foam production facilities within this source category.¹ Notwithstanding that positive element of the proposal, NACAA is concerned about deficiencies in the risk assessment methodology upon which EPA based its proposal and recommends that the agency address them prior to issuing a final standard. The following are our concerns.

Allowable Emissions – NACAA recommends that EPA consider, to the extent possible, potential or allowable emissions, rather than actual emissions, in evaluating residual risk. Since facility emissions contributing to adverse

¹ 78 *Federal Register* 66125.

impacts could increase over time for a variety of reasons, the use of potential or allowable emissions is more appropriate. We believe an analysis based on actual emissions from a single point in time could underestimate the residual risk from a source category. Further, the major source HAP thresholds are based on maximum potential-to-emit, as opposed to actual emissions, and air pollution control agencies issue permits based on potential emissions. Limiting the scope of a risk evaluation to actual emissions would be inconsistent with the applicability section of Part 63 rules. We were pleased to see that EPA used allowable emissions in some areas of the rulemaking, but were concerned that EPA used actual emissions in parts of its risk analysis.² NACAA encourages the agency to use allowable emissions in the future, including in assessing acute health risks.

Property-line Concentrations – In assessing the cancer risks related to the source category, EPA used long-term concentrations affecting the most highly exposed census block for each facility.³ This analysis dilutes the effect of sources' emissions by estimating the impact at the centroid of the census block instead of at the property line or wherever the maximum exposed individual is. Census blocks can be large geographically, depending on the population density, so the maximum point of impact can be far from the centroid, including at or near the property line where people may live or work. EPA itself alludes to this problem in the preamble to the proposed rule.⁴ Further, even if the area near the property line is not developed, over time homes and businesses could locate closer to the facility. While it is possible that population distribution is homogenous over a census block, this assumption is not necessarily accurate in considering the predicted impacts from the location of a source. Using the Human Exposure Model-3 (HEM-3), EPA can identify the maximum individual risk at any point in a census block that is within a 50-kilometer radius from the center of the modeled facility. Based on HEM-3's power and ability, NACAA suggests that EPA abandon its use of the predicted chronic exposures at the census block centroid as surrogates for the exposure concentrations for all people living in that block. Rather, we recommend that EPA use the truly maximum individual risk, irrespective of its location in the census block, in its section 112(f)(2) risk assessments. With respect to the development of screening estimates of acute exposures and risk for non-cancer health effects, we are pleased that EPA did not focus on the centroid of the census blocks.⁵

Environmental Justice – We commend EPA for considering environmental justice issues by expressing concern about the disproportionate impacts of HAP emissions on certain social, demographic and economic groups.⁶ However, we believe improvements are needed in EPA's methods of evaluating environmental justice and encourage EPA to continue to consider these factors in developing the final rule and subsequent regulations.

NACAA recommends that EPA conduct the demographic analysis on individuals projected to experience a facility-wide risk greater than 1-in-1-million and *also* on individuals living within five kilometers of the facility, regardless of projected risk, consistent with the approach used for the Hard and Decorative Chromium Electroplating and Chromium Anodizing

² 78 *Federal Register* 66114 and 66122-66123.

³ 78 *Federal Register* 66114.

⁴ 78 *Federal Register* 66118.

⁵ 78 *Federal Register* 66115.

⁶ 78 *Federal Register* 66133.

Tanks source category.⁷ We note that EPA determined that the ratio of African Americans living within three miles (4.8 kilometers) of any source affected by this rule is 48 percent higher than the national average.⁸ It appears that EPA failed to address the disproportionate impact on African Americans even though the agency's *Interim Guidance on Considering Environmental Justice During the Development of an Action*, states that the agency should consider addressing existing disproportionate impacts on minority, low-income, or indigenous populations during Rulemaking.⁹ Therefore, conducting an analysis within five kilometers would be an important piece of the environmental justice consideration. NACAA also recommends that the rule writers work with the EPA Office of Environmental Justice to develop criteria and specific guidance on how to interpret and apply the outcome of these types of analyses in the rulemaking process.

Acute Exposure – We have expressed our concerns in the past with EPA's use of Acute Exposure Guideline Levels (AEGLs) or Emergency Response Planning Guidelines (ERPGs) values to address acute exposures in the residual risk assessments. These limits were developed for accident release emergency planning and are not appropriate for assessing daily human exposure scenarios. In the December 2002 EPA document, "A Review of the Reference Dose and Reference Concentration Processes," EPA stated that the primary purpose of the AEGL program is to develop guidelines for once-in-a-lifetime short-term exposures to airborne concentrations of acutely toxic chemicals. They are not meant to evaluate the acute impacts from routine emissions that occur over the life of a facility. Unlike the reference concentrations (RfCs) for chronic exposures, the AEGLs and ERPGs do not include adequate safety and uncertainty factors and cannot be relied upon to protect the public from the adverse effects of exposure to toxic air pollutants. The use of AEGLs or ERPGs in residual risk assessments is not appropriate and does not ensure that public health is adequately protected from the acute impacts of HAP exposure. We are gratified to see that EPA has increased its reliance on the California Reference Exposure Levels (RELs) to address acute exposures in the residual risk assessments and we continue to urge EPA to use the RELs for these assessments.¹⁰

Thank you for this opportunity to comment on the proposal. Please contact us if we can provide additional information.

Sincerely,



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Michigan
Co-Chair
NACAA Air Toxics Committee



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Chattanooga, Tennessee
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⁷ 75 *Federal Register* 65089.

⁸ 78 *Federal Register* 66133. We note that traditionally, EPA has used 5 kilometers, which is roughly 3.1 miles. For the sake of consistency, we recommend that EPA continue to use that distance, rather than 3 miles.

⁹ *Interim Guidance on Considering Environmental Justice During the Development of an Action*. USEPA Office of Policy, Economics and Innovation. July 2010. Available online at: <http://www.epa.gov/environmentaljustice/resources/policy/ej-rulemaking.html>.

¹⁰ 78 *Federal Register* 66115.