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S. William Becker

July 14, 2011

Attention Docket Numbers:

EPA-HQ-OAR-2002-0058;
EPA-HQ-OAR-2006-0790; and
EPA-HQ-OAR-2003-0119

EPA Docket Center
EPA West Building
Room 3334
1301 Constitution Avenue, NW
Washington, DC 20005

Dear Sir or Madam:

On behalf of the National Association of Clean Air Agencies (NACAA), we are writing to you regarding EPA's National Emission Standards for Hazardous Air Pollutants for Institutional/Commercial/Industrial Boilers and Process Heaters (Boilers) and Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial/Institutional Solid Waste Incinerators (CISWI). Along with the publication of the final rules in the *Federal Register* on March 21, 2011, EPA also announced the commencement of a process to reconsider 14 topics relating to the regulations. While the agency did not solicit public comment on the scope of any additional issues that should be reconsidered, it did indicate that it was still evaluating whether to reconsider additional issues and that it would review any petitions for reconsideration filed with respect to the final rules before making its decision on the scope of the reconsideration. On May 18, 2011, EPA published in the *Federal Register* a delay of effective dates of the Boiler and CISWI standards and solicited additional data and information from the public. The deadline for any additional data and information is July 15, 2011, while the delay of effective dates "will remain in place until the proceedings for judicial review are completed or the EPA completes its reconsideration of the rules, whichever is earlier." On June 24, 2011, EPA filed a Reply in Further Support with the DC Circuit Court of Appeals that advised the public that it anticipated issuing proposed revisions to the published rules by the end of October 2011 and final rules by the end of April 2012.

NACAA has an interest in the development of rules governing toxic emissions from Boilers that protect public health as well as the timely and effective implementation of these rules. In addition to the paramount importance of public health protection, section 112(j) of the Clean Air Act (CAA) provides that where EPA fails to implement a Maximum Achievable Control Technology (MACT)

standard in a timely manner, state and local permitting authorities must develop and implement equivalent limitations on a case-by-case basis. Since the Boiler MACT was overturned and vacated by the courts, EPA has already missed the relevant statutory deadline. Further delay resulting from the stay issued by EPA or occasioned by a second adverse ruling by the courts could substantially increase the likelihood that state and local permitting authorities would be required to respond to a greatly increased workload at a time when state and local government budgets are severely constrained. For these reasons NACAA urges EPA to conduct its reconsideration in a scientifically-defensible manner with the impact on public health as its highest consideration. The reconsideration should be conducted in a manner that minimizes the risk of significant delays that would occur if the rule is overturned for procedural or substantive deficiencies. Finally, the reconsideration should be conducted in a timely and efficient manner.

NACAA believes that EPA should include in its reconsideration any final MACT emission limitation determinations that are substantially different from the proposed limitations, irrespective of the reason for the change. A thorough examination of test data and defensible emission limitation determinations are mandatory in these cases. This step is necessary and appropriate to ensure that the final rules are not overturned on procedural grounds and to provide the highest level of confidence that the final emission limitations are protective of public health and compliant with the requirements of the CAA. By way of example we note that EPA's final carbon monoxide emission limit for biomass "fuel cell" units is set at 690 ppm, a large increase from the proposed 270 ppm limit, and that the final dioxin/furan limit is set at 4 ng/dscm, 400 times greater than the proposed limit. Based on the record at the time of proposal, reviewers could not have foreseen such large changes in the final rule and would tend not to closely examine emission levels that were in the same range as other subcategories or comment thereon.

Similarly, the data associated with the recently published electric generating unit (EGU) MACT, which was not readily available to the public during the comment period for the Boiler MACT rule, demonstrate the significant adverse impact on calculated MACT floor levels of EPA's inconsistent decisions with respect to determining the performance level achieved by the "best performing units." NACAA also notes that EPA used a different approach in calculating variability in the EGU MACT proposal than in the Boiler MACT proposal. NACAA believes that EPA should reconsider its procedures for determining variability factors assigned to the best performing units. EPA should recalculate MACT floors for Boilers by developing a variability factor that does not include inter-unit variability. Differences in performance between units in the best performing 12 percent of a subcategory are addressed by the CAA's obligation to average the performance of the best performing 12 percent in establishing MACT floors. This factor should not be included a second time in the calculation of the variability factor.

NACAA is generally concerned that the proposed approach of only reconsidering portions of the rule will increase the possibility that the rule may be overturned on procedural grounds. Since EPA anticipates that its reconsideration will take more than 13 months, we suggest that EPA announce that it is reconsidering all aspects of the rule and accept comments on all relevant issues.

Thank you for this opportunity to provide you with our initial comments regarding the reconsideration of the Boiler and CISWI rules. We look forward to submitting additional comments as the reconsideration process progresses.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. William Becker', with a horizontal line extending to the right.

S. William Becker