NACAA
national association of clean air agencies

January 2, 2008

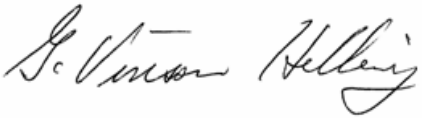
Docket ID No. EPA-HQ-OAR-2002-0038
U.S. Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket and Information Center
1200 Pennsylvania Avenue, NW
Mail Code 2822T
Washington, DC 20460

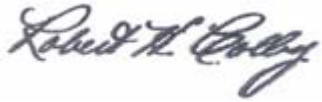
Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies, thank you for this opportunity to comment on the "Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)," which was published in the *Federal Register* on November 2, 2007 (72 *Federal Register* 62226). The National Association of Clean Air Agencies (NACAA) is the national association of air pollution control agencies in 53 states and territories and over 165 metropolitan areas across the country.

NACAA has reviewed the proposed Information Collection Request and has prepared the attached comments. Please contact us if we can provide additional information.

Sincerely,





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Attachments

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Comments of the National Association of Clean Air Agencies on EPA's Proposed Collection Comment Request; Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act, Sections 112(g) and (j); EPA ICR No. 1648.06, OMB Control No. 2060-0266

January 2, 2008

Pursuant to the solicitation for public comment published in the *Federal Register* by the U.S. Environmental Protection Agency (EPA) on November 2, 2007 (72 FR 62226), the National Association of Clean Air Agencies (NACAA) is pleased to provide the following comments on the proposed request to reinstate and expand the Information Collection Request (ICR) approval for permit applications required to be submitted under Sections 112 (g) and (j) of the Clean Air Act, 42 U.S.C. 7412(g), 7412(j), including the MACT categories for polyvinyl chloride and copolymers production; brick and structural clay products manufacturing; clay ceramics manufacturing; and industrial, commercial, and institutional boilers and process heaters[1].

SUMMARY

NACAA supports the goals and purposes of the Paperwork Reduction Act (PRA) and is committed, along with its members, to ensuring that collection of information by or for the federal government from the public, industry or state and local governments is limited to that needed to perform lawful agency functions and is conducted as efficiently as practicable. However, this issue was triggered more than three years ago with the vacatur of the polyvinyl chloride and copolymers production MACT standard and reinforced in early 2007 with the vacatur of the brick and clay and industrial boiler MACT standards. Only now, in an act that has the effect of delaying reduction of toxic air pollution, has EPA raised the PRA issue. The PRA is intended to reduce unnecessary paperwork. It should not be allowed to generate additional paperwork – in the form of a lengthy ICR review - and used as a vehicle to further delay prompt progress toward reducing toxic air emissions as required by Congress more than 17 years ago.

EPA and the Office of Management and Budget (OMB) could have resolved this issue within one week of becoming aware of it - and still can. First, OMB and/or EPA can confirm that the PRA does not authorize any person to violate the CAA and/or state law by failing to submit a permit application to state or local permitting authorities. Failing that, OMB has the authority to grant a temporary clearance number, on an emergency basis, under section 3607(j)(1) of the PRA. We understand that EPA requested such a temporary clearance on October 4, 2007 and that such clearances have been obtained in the past where lapsed OMB clearance numbers threatened enforcement of environmental statutes.

Under present circumstances the agency should first consider the threshold question of what act the PRA applies to. The PRA is a federal statute that applies to

[1] For convenience we refer to these categories as "PVC", "brick", "clay" and "industrial boiler," respectively.

information collection *activities* conducted *by* or *for* federal agencies. Here, the submission of permit applications to state and local authorities is not an information collection *activity* by or for the EPA. The act of "requiring" the submission of information occurred with the passage of the 1990 CAA Amendments. EPA and OMB participated in the rulemaking that developed the Congressionally-mandated standardized application form.

Congress has determined that where EPA has failed to meet a statutory responsibility to promulgate a MACT standard, the states must issue permits on a case-by-case basis. EPA has neither the authority nor the obligation to issue case-by-case MACT permits and has no independent authority to require sources to submit permit applications. Since the CAA assigns the permitting obligation directly to the states rather than by delegation of authority assigned to EPA, the submission of application forms to state and local permitting authorities is not being conducted on EPA's behalf. Indeed, while states have the authority to call for the submission of applications from specific sources, the underlying obligation is self-implementing. Permit applications are required by operation of law without an act of any federal, state or local authority. EPA should also examine the question of whether the submission of application forms under state laws that have been approved and implemented under Section 112(l) of the CAA is subject to the requirements of the PRA. Having done so, EPA should correct the misimpression created by its *Federal Register* notice that suggests that sources do not have to comply with state permitting requirements until OMB acts on its request.

The regulations do require that sources submit a copy of their state and local applications to EPA so that EPA may audit the performance of state and local permitting authorities. Accordingly, submission of that copy may well be considered subject to the requirements of the PRA, and it may be that under federal law sources may not be subject to civil penalties for failing to provide a copy of their applications to EPA. However, this is a separate information collection activity with a substantially different "burden" under the PRA. Moreover, suspending collection of the copy of the application while an ICR request is processed will not have the substantial adverse public health impact associated with the further delay in reducing toxic air emissions that will occur if submission of applications to state and local permitting authorities is deferred.

NACAA believes that authority to require submission of permit applications under Sections 112(g) and 112(j) is essential to implement the requirements of the federal statute. To the extent EPA has an oversight role in the Section 112(j) process, timely permitting is essential for EPA to conduct its business. Further, operation of major sources subject to the requirements of Section 112 after the statutory deadline is a violation of the CAA. NACAA also believes that the application forms approved by EPA and required by state law minimize the burden on sources, while providing information needed by permitting authorities to carry out their obligations under the Clean Air Act. As we understand it, (1) because the application forms were developed through a rulemaking process conducted with OMB input and in full compliance with the Paperwork Reduction Act, and (2) because denial of the request would interfere with the substantive requirements of a statute, OMB does not have discretion to deny the request and we fully anticipate either a prompt determination that these activities are not subject to the PRA or a prompt approval by OMB of EPA's proposed ICR.

EPA's estimate of the burden on industry is substantially in excess of that which will actually be imposed by this ICR. EPA acknowledges that its estimate of the number of affected sources is too high, but suggests that it does not know of a better estimate. In this comment, we offer hard data, provided by the state and local agencies to assist EPA in correcting its acknowledged overestimate. In addition, EPA has included activities beyond the PRA's definition of "burden" in its burden estimate and otherwise overestimated the costs of filling out the relatively straightforward applications required by the CAA. Our judgment is that the "burden" as defined by the PRA will be less than 3 per cent of that suggested by EPA.

We also believe that, in order to facilitate state permitting actions required by the CAA, the ICR should continue to apply to all "at-risk" MACT categories, specifically the electric utility category. Finally, the EPA burden estimate misstates the role of the state and local permitting authorities and improperly infers that the federal government, through the Office of Management and Budget, has ongoing veto authority on the operation of state permitting programs.

ROLE OF STATE AND LOCAL AUTHORITIES IN THE SECTIONS 112(j) AND 112(g) PERMITTING PROCESSES

Section 112 of the Clean Air Act (CAA) requires the EPA to promulgate a National Emission Standard for Hazardous Air Pollutants,[2] often referred to as a "MACT Standard," for each identified category and subcategory of sources of emissions of a lengthy list of hazardous air pollutants (HAPs) in accordance with schedules developed pursuant to Section 112(e)[3] of the Act. The U.S. Court of Appeals for the District of Columbia has "vacated" several MACT standards promulgated by EPA. EPA has determined that the Court's decision to vacate these standards triggers the obligations under Section 112(j) of the CAA[4]. EPA's November 2, 2007, notice soliciting comment on the reinstitution of the ICR under the Paperwork Reduction Act is a further acknowledgement of the applicability of Sections 112(j) and (g) to these sectors.

Under Section 112(j) sources within the category must obtain Title V permits[5] issued by state permitting authorities on a case-by-case basis incorporating emission limits that the state determines are "the equivalent emission limitation" that would have applied if EPA had issued the MACT standard in a timely manner. Such permits must be issued within 18 months of receipt of a permit application from the source and must be based on "all available information." In addition, within 60 days of submittal of a Part 2 application, the permitting authority must notify the source operator in writing of its determination as to whether the application is complete. Under Section 112(g) sources

[2] Such standards are required to be based on the application of "maximum achievable control technology" and are colloquially known as "MACT standards."
[3] 42 U.S.C. 7412(e)
[4] In a pleading filed with the Court of Appeals on May 4, 2007, seeking vacatur of the standard, the U.S. Department of Justice asserted on behalf of EPA that "EPA recognizes that vacatur of the standards will trigger the requirements of Clean Air Act sections 112(g) for new sources and 112(j) for existing sources."
[5] This includes modifications to existing Title V permits as well as new Title V permits for sources.

must obtain a preconstruction permit from the permitting authority before commencing construction of a new, modified or reconstructed major source of HAPs.

NACAA'S INVOLVEMENT IN THE SECTIONS 112(g) and 112(j) PROCESSES

In response to the earlier vacatur of the polyvinyl chloride MACT rule, in July of 2006 NACAA developed a model rule setting out presumptive MACT determinations for use by state and local permitting authorities developing Section 112(j) and 112(g) permits in that sector. More recently, because of the potentially significant workload associated with the vacatur of the industrial boiler MACT, the large number of potentially affected sources and the relatively short deadlines for state action imposed by the CAA, the Board of Directors of NACAA have invested resources to assist the states in developing MACT permits for the Industrial Boiler and Process Heater category. This category, with approximately 3,000 sources, is far larger than either of the other categories to which Sections 112(g) and (j) apply. A technical workgroup, with representatives from approximately 15 state and local air pollution control agencies, has been formed to review available information and provide recommendations for case-by-case MACT determinations and development of new and existing source MACT floors. A consultant has also been retained to assist the workgroup in gathering relevant information, collating this information in a usable format and drafting a "model rule" that individual states may draw from as they see fit.

EPA has been and will continue to be involved in this process. NACAA representatives have met with EPA senior managers and technical staff on several occasions and have received excellent cooperation to date. EPA staff has been quite helpful in identifying existing sources of information. NACAA's intent throughout this process is to work with EPA to gather information in a manner that avoids duplication of effort and inconsistent data-gathering formats[6]. However, as set out in the CAA, where EPA has failed to meet a statutory deadline for promulgation of MACT standard, case-by-case MACT permit determinations are state functions, not an EPA function. NACAA has neither sought nor obtained the consent of EPA for its efforts. NACAA's efforts were neither requested by nor directed by EPA. These efforts are by and for the states that are required by the CAA to issue permits within very tight time frames.

EPA'S NOTICE AND THE PAPERWORK REDUCTION ACT

EPA's November 2, 2007, *Federal Register* Notice indicated that EPA was proposing to reinstate an ICR control number for Sections 112(g) and 112(j) permit applications and stated:

> *ICR status:* The previous ICR expired on May 31, 2005. An Agency may not conduct or sponsor, and a person is not required to respond to, a

[6] EPA's MACT rulemaking data is quite limited and much of it is more than a decade old. As a consequence, EPA is contemplating a multi-tiered data gathering exercise as part of its future rulemaking efforts. This information will not be available to the states in a timeframe consistent with Section 112(g) and (j) requirements.

collection of information, unless it displays a currently valid OMB control number.

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Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) or examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

PAPERWORK REDUCTION ACT ISSUES CANNOT ALTER CONGRESSIONALLY MANDATED DEADLINES FOR SUBMITTING PERMIT APPLICATIONS OR AFFECT LIABILITY UNDER STATE LAW

The PRA appears to contain contradictory provisions respecting the current obligation of sources to submit applications under Section 112(j). Section 3512 (a) of the PRA provides that, absent OMB approval of an ICR

"notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter…."

However, section 3518(e) provides

"nothing in this subchapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices…"

Section 112(j) of the CAA specifically requires operators of sources to "file an application for a permit" by a date certain. That date has passed. Section 112(j)(3) required EPA to develop a standardized permit application form through notice and comment rulemaking. EPA did so, thus completing its obligation with respect to this issue. The form that resulted from that process (which included OMB) cannot now be changed by OMB under the guise of an ICR review. It can only be revised through an additional notice and comment rulemaking conducted by EPA.

EPA and OMB have the authority to confirm that the PRA does not apply to permit applications submitted directly to state and local permitting authorities under Sections 112(g) and 112(j), especially where those permits are required by state programs approved in lieu of the federal program under Section 112(l). The fact that the CAA authorizes and encourages the development of equivalent state programs establishes that the federal statute is not intended to preempt those state laws. Enforcement of state law is a state right under our federal system and may not be limited by acts or omissions of Executive Branch employees. EPA and OMB should make this point clear so that industry sources do not mistakenly believe that the pendency of an EPA information collection request before OMB somehow creates immunity from state and local requirements to submit permit applications.

OMB does not have the authority to alter the CAA deadlines established by Congress. Instead, if it is unwilling to confirm that the PRA does not apply, OMB should immediately exercise its authority to grant a temporary approval of an ICR.

AN IMMEDIATE, TEMPORARY APPROVAL OF EPA'S ICR REQUEST IS WARRANTED IN THIS CIRCUMSTANCE

Section 3507(j)(1) provides OMB with authority to immediately authorize an information collection where:

> (A) a collection of information –
>
> > (i) is needed prior to the expiration of time periods established under this subchapter; and
> > (ii) is essential to the mission of the agency; and
>
> (B) the agency cannot reasonably comply with the provisions of this subchapter because –
>
> > (i) public harm is reasonably likely to result if normal clearance procedures are followed;
> > (ii) an unanticipated event has occurred; or
> > (iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

Here, (1) the statutorily established deadline for submission of these permit applications at existing sources has passed, (2) OMB has no discretion to deny the request or to change either the Federal application form or the forms employed by

states with approved substitute programs and (3) businesses that wish to install new boilers or expand existing boilers need a permit prior to commencing construction. Under these facts, it is hard to anticipate a basis for denying a request for immediate action and yet, OMB has not responded to such a request from EPA made on October 4, 2007. At the very least OMB should grant EPA's request for a temporary approval while the agency is soliciting comments and preparing a request for approval under normal OMB processing procedures.

EPA'S PROPOSED ICR REQUEST GREATLY OVERSTATES THE BURDEN OF SUBMITTING APPLICATIONS UNDER SECTIONS 112(g) AND 112(j)

In its *Federal Register* notice and supporting documentation EPA estimated the "burden" of its proposed request – 20,000 sources would be required to submit permit applications and the burden of submitting and processing those applications would total 3,381,999 man-hours at a cost of $196,908,600. This estimate is greatly overstated. EPA seems to concede this point by suggesting that "as many as" 20,000 sources would be affected and that it knew that there were fewer than that number of sources.

EPA is required to provide its best estimate of the "burden" under the statute. EPA's estimate (1) includes far more sources than are known to be subject to the vacated MACT rules, (2) includes excessive and unsupported estimates for the time to prepare each application form, (3) includes estimates for activities outside of the definition of "burden" and the purview of the PRA and (4) fails to include an industry sector still at risk for submitting applications pursuant to Sections 112(g) and 112(j).

EPA'S ESTIMATE INCLUDES FAR MORE SOURCES THAN ARE KNOWN TO BE SUBJECT TO THE VACATED MACT RULES.

EPA's estimate assumed that at the time of promulgation there were 104 sources within the PVC, brick and clay categories and 58,000 boilers (approximately 19,000 facilities) within the industrial boiler and process heater category. EPA further assumed that over the next three years this latter category would grow to 60,400 boilers (approximately 20,000 facilities).

NACAA has not examined the population estimates for the brick and clay categories, but has gained extensive knowledge in the course of developing a model rule under Section 112(j) for polyvinyl chloride and the industrial boiler and process heater categories. The EPA rulemaking docket for the industrial boiler category identifies a large electronic file as EPA's list of facilities within the category. NACAA representatives visited the appropriate EPA officials and obtained a copy of this file, which identified approximately 15,000 sources.[7] We then forwarded this information to NACAA's members – state and local permitting authorities who are most knowledgeable about these matters – as a starting point for developing information that will be helpful in issuing case-by-case permits. We asked these officials to review EPA's list and to provide available emissions data on sources known to be subject to regulation within this category. Our review is ongoing. However, the uniform response from our

[7] We are unaware of any document supporting an estimate of 19,000 sources.

members is that EPA's list greatly overstates the number of sources in their jurisdiction. We provide here data from four jurisdictions, selected as "representative" of the information being provided rather than "worst case."

Jurisdiction	**# of sources on EPA's list**	**# of sources on permitting authority's list**	**Percent overstatement**
Jurisdiction "A"	115	16	718
Jurisdiction "B"	250	80	312
Jurisdiction "C"	411	57	720
Jurisdiction "D"	53	8	662
Total	829	161	515

Applying the ratio of the number of confirmed sources to the number on EPA's list (161/839) to the 15,000 sources on EPA's list suggests that the most accurate estimate of sources within the industrial boiler category is 2,913. This is in no way surprising since EPA's data is 20 years old and many sources have either closed or moved. A detailed review conducted by one permitting authority suggests that the most common reason for the reduction in the number of sources subject to the rule is that sources reduced HAP emissions and/or secured synthetic minor permits so that they are no longer "major sources" of HAP emissions and therefore not subject to MACT requirements. This is a rational and anticipated response to the regulatory scheme and, again, is in no way surprising. What would be surprising is if the industry did not seek out the lowest-cost approach to compliance with a regulatory scheme. In contrast, EPA's estimate assumes an irrational industry response – that none of the major sources of HAPs in existence 20 years ago chose to reduce their HAP emissions below the regulatory threshold, preferring to meet a MACT standard instead.

EPA'S ESTIMATE INCLUDES EXCESSIVE AND UNSUPPORTED ESTIMATES FOR THE TIME TO PREPARE EACH APPLICATION FORM

Table 2 of EPA's support document sets out EPA's estimate of the burden imposed on industry to submit the Part 1 and 2 application forms. EPA's estimate is 86.7 man hours and $5,614 per source. No support is provided for this estimate and a review of the details of EPA's estimate demonstrates that this estimate is far larger than the experience of our members and common sense would dictate[8]. We have attached exemplar application forms, see Attachments A and B, to illustrate the relatively straightforward nature of the applications at issue. The Part 1 form asks for little more

[8]Indeed, EPA concedes that the burden is likely to be light – according to the ICR supporting document "[m]ost, if not all, of the information required in the Part 2 application will have already been submitted to the permitting authority in previous permit submittals; we expect the burden to be relatively low for this activity".

than the name and address of the facility; while the Part 2 forms asks for an identification of emission points and submission of *existing* emissions data. For the most part this information has been provided on other forms – such as the source's Title V permit application and may have already been provided to permitting authorities under the TRI or other CAA programs.

Here we illustrate several of the clearly exaggerated estimates of burden[9].

(1) The estimate assumes that it will take nine hours of combined management, technical and clerical time to "collect information required by 63.53(b)(2) and fulfill any state or local information requirements as set forth by 63.53(b)(2)(iii). As will be demonstrated below, we believe this estimate to be high.

(2) EPA compounds its initial error by asserting that, having spent nine hours collecting basic data, sources will on average then spend 11 hours to "process, compile and review Part 2 application for accuracy and appropriateness" – we do not understand the distinction between collecting and compiling the basic information required and cannot discern any separate "processing" required.

(3) EPA further inflates its estimate by asserting that sources will then spend another seven hours to "complete and submit the application" – however, the applications require no activity other than to submit the information collected under item (1) above.

(4) EPA asserts that it will then require an additional 2.5 hours of effort – by management, technical and clerical staff – to "store, file and maintain application information. Again, EPA does not define its terms, but we assume that most major sources of emissions of hazardous air pollutants have access to computers. Our assumption is that the technical person responsible for development of the application will "save" the file to the appropriate location in the source's computer system, which will be backed up either manually or automatically with a burden of less than five minutes – and no expenditure of effort by company management.

To provide EPA with a more objective and realistic estimate of the burden associated with preparing Part 1 and 2 applications, NACAA members have taken two steps: (1) we have inquired of a consultant for industry who has prepared and submitted a Part 1 and Part 2 for one of the MACT industry categories at issue here as to how long it took him to prepare and submit the applications and (2) two NACAA members undertook to fill out a Part 1 and Part 2 application for a source chosen at random within their jurisdictions

The industry consultant reported that it took him four hours to complete and submit both applications. This is consistent with the time expended by NACAA's

[9] EPA's overstatement of burden is also revealed by comparing the current estimate with EPA's past estimates. In 2002, EPA estimated that 84,000 sources were in the in 59 MACT categories that were at risk for Section 112(j) permitting. The ICR estimate for submitting Part 1 applications for these sources was $9 million (or about $107 per source). The current estimate for Part 1 applications for 20,000 sources in three MACT categories is $376 per source (for a total or $7.4 million).

members; one member reported that completing the form took four hours[10] while the other member reported a completion, review and submission time of two hours and five minutes. We recognize that some complex sources with a large number of applicable units, such as refineries, may expend substantially greater time filling out these applications, but such sources are relatively few in number and can be expected to maintain databases with the relevant information. We believe that four hours is a reasonable estimate for the time that will be expended by the typical source subject to the industrial boiler and process heater MACT.

EPA'S "BURDEN" INCLUDES ESTIMATES FOR ACTIVITIES OUTSIDE OF THE DEFINITION OF "BURDEN" AND THE PURVIEW OF THE PRA.

EPA then includes estimates of "burden" of over 1,000,000 man-hours[11] for what can best be described as the consequences that might flow from submitting the application, including responding to facility-specific questions not contained in the application, negotiating a permit and attending a public hearing. EPA even suggests that compliance costs would appropriately be considered part of the burden if a source is required to meet the terms of a case-by-case MACT permit before it promulgates a MACT standard. However, the PRA is only concerned with the costs of providing the required information – not the downstream effects of providing the information. By way of analogy, as a consequence of filing a tax return, an individual may have to pay taxes, may have to work many hours to earn enough money to pay those taxes and may even be audited by the IRS. However, as the ICR for IRS's Form 1040 makes clear, those costs are not part of the "burden" that the PRA is concerned with. Under the PRA, the burden of submitting these applications is limited to the cost of preparing and submitting the applications and responding to questions about the information submitted – not facility-specific questions seeking additional information. Such subsequent facility-specific information gathering by state permitting authorities would not be by way of identical questions submitted to 10 or more persons and so is not subject to the PRA. Moreover, including Title V permitting burden in the Section 112(j) application ICR constitutes double counting, since the Title V permit program includes its own ICR.

For reasons set out above, EPA's estimate that no burden should be assigned for Section 112(j) permit compliance costs is correct, but, as set out above, it is because such costs are not part of the information collection burden, not because there will be no such costs EPA asserts that no burden should be assigned because it will promulgate MACT standards before compliance under case-by-case MACT permitting is required. This is incorrect. EPA's estimate anticipates that that several hundred new emission units within the affected categories will be constructed each year. These units will require permitting under Section 112(g) long before EPA promulgates a MACT standard. Additionally, states are taking their responsibility under Section 112(j) seriously. For some sources, the 18-month period for issuance of Section 112(j)

[10] Actual time expended was 2.5 hours; the permitting authority estimated that one could reasonably add an additional 1.5 hours for supervisory review and digitizing the form for electronic submission. A substantial portion of the 2.5 hours was expended in providing "optional" information.

[11] EPA includes yet another 2.5 hours per source – 50,000 man hours to file, store and maintain the final permit.

permits has commenced and while EPA assumes that each and every source will be provided three years after permit issuance to comply, this is not necessarily the case. The CAA does not require a minimum compliance period; rather, it states that compliance must be required "as expeditiously as practicable, but not later than the date three years after the permit is issued." Since many sources have achieved compliance with the now vacated MACT standards, and have Title V permits that incorporate those limits it would not be surprising if occasions arose where permitting authorities determined that compliance should be achieved either immediately upon permit issuance or in a relatively short time frame thereafter.

Moreover, while we appreciate EPA's present intent to expeditiously promulgate standards to replace the vacated standard, we note that EPA has not accomplished a great deal in the three years since the polyvinyl chloride MACT was vacated. We are hopeful that EPA will promulgate the required MACT standards expeditiously, but are concerned that EPA may be overly optimistic in its assumed timeframes given its intent to conduct a multi-tiered information gathering exercise that may involve stack testing hundreds of sources before developing a proposal for an industrial boiler MACT standard.

Left uncorrected, EPA's inference could lead some to argue that until and unless a subsequent ICR that includes a "burden" estimate including compliance costs is approved, sources are under no obligation to comply with the substantive requirements of state and local permits. Having opened the door to the potential of such mischief, EPA should clarify that compliance costs are not part of a PRA burden calculation and that no separate ICR will be required.

EPA's burden estimate then includes another 1,565,600 hours for state review of permit applications[12] and 19,160 hours for EPA oversight. NACAA believes that, much as the source "burden" estimates were overstated, these figures are greatly exaggerated (although EPA graciously asserts that it only takes state authorities two hours – not 2.5 hours – to save a file). We will not comment on the specific deficiencies in this estimate, however, since the PRA makes clear that "burden" includes only the burden on the member of the public being asked to provide the requested information. The amount of effort expended by the agencies requesting the information is of no concern under the PRA.

ANY INFORMATION COLLECTION REQUEST SHOULD INCLUDE ALL AT-RISK MACT CATEGORIES

In its 2002 ICR EPA included all 59 MACT categories which were "at risk" of being subject to the Section 112(j) permitting process. For at least three of those categories, EPA and OMB erred in prematurely terminating the ICR, thus leading to the

[12]Over time State and local permitting authorities have developed a number of streamlined permitting procedures that greatly reduce the burden on sources and on the permitting agencies. We fully intend to utilize all available streamlining techniques in developing the NACAA model rule on Boiler MACT permitting. In this context we note that many of the boilers in the MACT category, especially natural gas fired boilers that dominate the category, have similar operational and emissions profiles that will allow permitting to go forward with far fewer resources than assumed by EPA.

present situation, which involves yet additional paperwork from the federal government, industry and the public and a delay in ensuring public health benefits mandated by Congress. Recently, oral argument was heard in a challenge to EPA's decision under the MACT program with respect to a fourth industry category – electric utilities. It is reasonable to expect that a decision with respect to this matter will be rendered while the EPA proposed ICR is pending before OMB. While the court's decision cannot be assumed or predicted, neither could it be assumed or predicted that EPA would fail to meet the MACT deadlines for all 59 MACT categories that were then "at risk." Under these circumstances we believe that it is prudent to minimize overall burden associated with compliance with the PRA that any EPA information collection request include all activities needed to implement Sections 112(g) and 112(j) for all MACT categories for which there are unresolved legal issues, specifically including the utility MACT category. Should EPA prevail in the challenge to the utility MACT determination, no harm will flow from including this category in EPA's request. If, however, EPA is not successful, the public and the states will once again face the prospect of unnecessary delay in achieving public health benefits and uncertainty within the regulated community occasioned by the PRA.

CONCLUSION

EPA and OMB should make it clear to the regulated community that issues associated with the PRA do not affect the ability of the state and local permitting authorities to enforce state and local law. The PRA should not be allowed to act as a vehicle to effect a delay in reduction of toxic air pollution. To protect the public health and avoid any confusion on this issue OMB should immediately grant a temporary approval for these applications. For its part, EPA should produce accurate estimates for the burden to industry, constrain its estimates to those matters properly subject to the PRA and clarify[13] that Part 1 and Part 2 applications under Sections 112(g) and 112(j) are currently required in the three affected categories without further action by EPA or state/local permitting authorities.

[13] Several industry trade associations and law firms are publicly asserting that applications are not due until further action by EPA to set a deadline.

DEQ Michigan Department Of Environmental Quality - Air Quality Division

National Emission Standards for Hazardous Air Pollutants
40 CFR Part 63 Section 112(j) Affected Sources
Part 1 Notification

Submittal of the completed form to the Michigan Department of Environmental Quality, Air Quality Division (AQD) will fulfill the 40 CFR Part 63 Part 1 application requirement for implementation of Section 112(j) of the federal Clean Air Act. Failure to submit information required by Article II, Chapter 1, Part 55 (Air Pollution Control) of P.A. 451 of 1994, as amended, and the Federal Clean Air Act may result in civil or criminal penalties.

1. Stationary Source Name			2. SRN
3a. ROP No.	3b. ROP Section No.	4. Primary SIC Code	5. Secondary SIC Code
6a. Address (Street Number and Name)			
6b. Address Continued			
6c. City		6d. Zip Code	6e. County
7. Location if street address is not available	a. Section	b. Township	c. Range
8. Contact Name and Title			
9. Contact Phone Number		10. Contact E-mail Address	

11. This Stationary Source has emission units subject to the following MACT Source Category or Categories:

☐ **G1**	Automobile & Light Duty Truck Manufacturing	☐ **C1**	Chlorine Production	☐ **T1**	Asphalt Roofing & Processing
☐ **G2**	Brick, Structural Clay Prod. & Clay Ceramics Mfg.	☐ **C2**	Flexible Polyurethane Foam Fabrication Operations	☐ **T2**	Coke Ovens: Pushing, Quenching & Battery Stacks
☐ **G3**	Fabric Printing, Coating & Dyeing	☐ **C3**	Hydrochloric Acid Production/Fumed Silica	☐ **T3**	Combustion Turbines
☐ **G4**	Friction Products Manufacturing	☐ **C4**	Municipal Solid Waste Landfills	☐ **T4**	Engine Test Cells/Stands
☐ **G5**	Lime Manufacturing	☐ **C5**	Organic Liquids Distribution (non-gas)	☐ **T5**	Integrated Iron and Steel Manufacturing
☐ **G6**	Metal Can (Surface Coating)	☐ **C6**	Reinforced Plastic Composites Production	☐ **T6**	Iron and Steel Foundries
☐ **G7**	Metal Furniture (Surface Coating)	☐ **C7**	Semiconductor Production	☐ **T7**	Plywood & Composite Wood Products
☐ **G8**	Misc. Metal Parts & Products Coating	☐ **C8**	Site Remediation	☐ **T8**	Primary Magnesium Refining
☐ **G9**	Plastic Parts & Products Coating	☐ **C9**	Haz. Waste Combustors Phase II: Boilers & HCl Production Furnaces	☐ **T10**	Industrial, Commercial & Institutional Boilers & Process Heaters
☐ **G10**	Refractories Manufacturing	☐ **C10**	Miscellaneous Organic NESHAP (Note: 23 individual source categories are included in this grouping - see instructions for further information)	☐ **T9**	Reciprocating Internal Combustion Engines
☐ **G11**	Taconite Iron Ore Processing			☐ **O1**	Other
☐ **G12**	Wood Building Products (surface coating)			☐ **O2**	Other

Note: If requesting a determination of MACT applicability in accordance with 40 CFR 63.52(d), Item 11 may remain blank. Sufficient information should be provided in Item 12 and/or an AI-001 form for the AQD to make the determination. (See instructions.)

12. Identify the types of emission points belonging to each relevant source category by providing the associated ROP/ MAERS/ PTI Emission Unit ID(s) for the MACT standard code(s) checked in Item 11.

13. Section 112(g) affected sources - Identify any affected sources for which a Section 112(g) MACT determination has previously been made by providing the associated ROP/ MAERS/ PTI Emission Unit ID(s).

14. Additional Information ID - *Create an Additional Information (AI) ID that is used to provide any supplemental information on AI-001 regarding this submittal*.

AI

This form must be signed and dated by a Responsible Official.

15. Name and Title of the Responsible Official. *Print or type.*

As a Responsible Official, I certify that, based on information and belief formed after reasonable inquiry, the statements and information in this submittal are true, accurate and complete.

_____ _____

Signature of Responsible Official Date

INSTRUCTIONS FOR COMPLETING THE PART I NOTIFICATION FORM

National Emission Standards for Hazardous Air Pollutants
40 CFR Part 63 Section 112(j) Affected Sources

"40 CFR 63.53 Application content for case-by-case MACT determinations.

(a) Part 1 MACT Application. The Part 1 application for a MACT determination shall contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of emission points belonging to the relevant source category.

(4) An identification of any affected sources for which a Section 112(g) MACT determination has been made."

AQD staff may request submission of additional information and the applicant must respond to such requests in a timely fashion. See 40 CFR 63.52 and 63.53 for further information on the federal requirements for application content, the approval process and time frames for action.

Please print or type clearly when completing this application.

1. **Stationary Source Name –** Provide the specific name that identifies the Stationary Source of the application.

2. **SRN –** Enter the State Registration Number assigned to the Stationary Source.

3a. **ROP No. –** Enter the Renewable Operating Permit (ROP) Number if the Stationary Source has been issued an ROP.

3b. **ROP Section No.** - Enter the Section Number from the ROP if the Stationary Source has been issued an ROP that has more than one Section.

4. **Primary SIC Code –** Provide the primary Standard Industrial Classification (SIC) Code for this Stationary Source. The primary SIC Code is that which results in the most actual emissions of air contaminants from the Stationary Source. See Appendix D of "RO Permit Application Form Instructions" for a list of SIC Codes.

5. **Secondary SIC Code** - If applicable, provide the secondary SIC Code for this Stationary Source. The secondary SIC Code is that which results in the second most actual emissions of air contaminants from the Stationary Source. See Appendix D of "RO Permit Application Form Instructions" for a list of SIC Codes.

6a-e. **Address –** Provide the address for the physical location of the Stationary Source identified above. A list of County names is available in Appendix C of "RO Permit Application Form Instructions."

7. **Location** - Provide the following information only if a street address is unavailable.
   a. Section: Provide the USGS geographic section code. This is a two digit number.
   b. Township: Provide the USGS geographic township code. This is a number followed by N or S.
   c. Range: Provide the USGS geographic range code. This is a number followed by E or W.

8. **Contact Name and Title. –** Provide the name and the professional title of the contact person (e.g., Plant Manager, Shift Supervisor, or Consultant).

9. **Contact Phone Number.** Provide the telephone number and extension, if applicable, of the contact.

INSTRUCTIONS FOR COMPLETING THE PART I NOTIFICATION FORM

10. **Contact E-mail Address.** Provide the e-mail address of the contact.

If the applicant is requesting that the AQD make the MACT applicability determination, Item 11 may be left blank; however, detailed information must be provided in Item 12 and/or on an AI-001 form. (See Item 12 and Item 14 instructions.)

11. **This Stationary Source has emission units subject to the following MACT Source Category or Categories:**
The source categories listed are those for which a National Emission Standard for Hazardous Air Pollutants (NESHAPS) was not promulgated by the United States Environmental Protection Agency (U.S. EPA) before an applicable Section 112(j) deadline. Information about NESHAPS applicability and the Section 112(j) implementation process may be found at the U.S. EPA Air Toxics Website at http://www.epa.gov/ttn/atw. Information about implementation of Section 112(j) provisions in Michigan is available at http://www.deq.state.mi.us/aps.

Indicate which Maximum Achievable Control Technology (MACT) source category or categories may apply to emission units at this Stationary Source by checking the associated box. Note that the Miscellaneous Organic (MON) NESHAP covers 23 source categories*. Check the MON NESHAPS box if any of these categories may apply to emission units at the Stationary Source.

* Alkyd Resins Production; Ammonium Sulfate Production; Benzyltrimethylammonium Chloride Production; Carbonyl Sulfide Production; Chelating Agents Production; Chlorinated Paraffins Production; Ethyllidene Norbomene Production; Explosives Production; Hydrazine Production; Maleic Anhydride Copolymers Production; Manufacture of Paints, Coatings, & Adhesives; OBPA/1, 3-diisocyanate Production; Photographic Chemicals Production; Phthalate Plasticizers Production; Polyester Resins Production; Polymerized Vinylidene Chloride Production; Polymethyl Methacrylate Resins Production; Polyvinyl Acetate Emulsions Production; Polyvinyl Alcohol Production; Polyvinyl Butyral Production; Quaternary Ammonium Compounds Production; Rubber Chemicals Production; and Symmetrical Tetrachloropyridine Production.

Section 112(d) MACT standards may not be promulgated by May 15, 2002, for the following additional source categories: PVC & Copolymer Production (Subpart J); Primary Copper Smelting (Subpart QQQ); Petroleum Refineries (Subpart UUU); Paper & Other Web Coating (Subpart JJJJ); Large Appliance Surface Coating (Subpart NNNN); Metal Coil Coating (Subpart SSSS); Cellulose Products Manufacturing (Subpart UUUU); and Rubber Tire Manufacturing (Subpart XXXX). In this event, if emission points at this stationary source may belong to any of these categories, the "Other" box(es) in Item 11 must be checked and the name of the source category provided. Refer to U.S. EPA Region 5's Air Toxics Website http://www.epa.gov/region5/air/toxics/mact-fr3.htm for current information on the status of MACT standards promulgation.

12. **Identify the types of emission points belonging to each relevant source category by providing the associated ROP/ MAERS/ PTI Emission Unit ID(s) for the MACT standard code(s) checked in Item 11.** - In Michigan, emission points are commonly described as "emission units" and will be allowed to be identified accordingly. However, the emission points may be described below the emission unit level if necessary to adequately describe the emission point(s).

For each source category checked in Item 11, provide the Emission Unit ID(s) from the Stationary Source's current ROP, Permit to Install (PTI) or Michigan Air Emission Reporting System (MAERS) report for all emission units that may be subject to that MACT standard. If more than one source category is checked, associate the Emission Unit ID(s) with the code that is given under the checkbox in Item 11 (e.g., EUBOILER1 & EUBOILER2 = T2; EUREACTOR1 through EUREACTOR9 = C9). Further information on which emission units are associated with each of the checked categories may be provided with this submittal on an AI-001 form.

If a determination of MACT applicability by the AQD is being requested for this stationary source, sufficient information must be provided to the AQD to make the determination. The following information must be included in Item 12 (or on an AI-001 form if additional space is needed) for all applicability determination requests:

- a statement that determination of MACT applicability is being requested
- an identification of each point of emission for each hazardous air pollutant or, if a definitive identification is not yet possible, a brief description of the nature, size, design and method of operation of the source.

13. **Section 112(g) Affected Sources - Identify any affected sources for which a Section 112(g) MACT determination has previously been made by providing the associated ROP/ MAERS/ PTI Emission Unit ID(s)**. If a New Source Review Permit to Install (PTI) was previously issued by the AQD that included a Section 112(g) MACT determination, provide the associated Emission Unit ID(s) from the Stationary Source's current ROP or MAERS report. If the applicable requirements from the PTI have not yet been incorporated into the ROP, provide the PTI Number and the associated Emission Unit ID(s).

14. **Additional Information ID –** Create an Additional Information (AI) ID for any additional information or attachments being provided on AI-001. Refer to AI-001 instructions to create the ID. If the additional information or attachment is more than one page, label each page to show the relationship between pages.

    If a determination of MACT applicability by the AQD is being requested for this stationary source, sufficient information must be provided to the AQD to make the determination. If not provided in Item 12, the following information must be provided on an AI-001 form for all applicability determination requests:

    - a statement that determination of MACT applicability is being requested
    - an identification of each point of emission for each hazardous air pollutant or, if a definitive identification is not yet possible, a brief description of the nature, size, design and method of operation of the source.

15. **Responsible Official -** This form must be signed by a Responsible Official authorized pursuant to R 336.1118(j) (Rule 118(j)). Print or type the name of the Responsible Official, followed by the professional title of the Responsible Official (e.g., President, Secretary, Treasurer, or Vice President). Provide signature and date where indicated.

The completed Section 112(j) Part 1 Notification and any attachments must be submitted to the attention of the appropriate Air Quality Division District Supervisor by May 15, 2002. The submittal must also be copied to U.S. EPA, Compliance and Enforcement - Michigan (AE-17J), 77 West Jackson Boulevard, Chicago, IL 60604.

STATE OF DELAWARE
Department of Natural Resources and Environmental Control
Application for a 112(j) MACT Determination

AQM - J

Part 2

1. Name of plant or establishment

Date of application

For Section Use Only

I.D. Number

Date Received

2. Physical location of source (Street)

City

3. If constructing, reconstructing or modifying, provide following dates

Estimated commencement date **Estimated completion date** **Estimated start-up date**

4. HAPs emission rates

Annual emission rate
(At maximum capacity)

HAPs emitted	Uncontrolled	With controls
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year

If additional space is required, complete on blank page and attach

5. HAPs emission rates

Annual emission rate
(At expected utilization)

HAPs emitted	Uncontrolled	With controls
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year
	Tons/year	Tons/year

If additional space is required, complete on blank page and attach

6. List any applicable Federal, State or Local limitations or requirements

If additional space is required, complete on blank page and attach

STATE OF DELAWARE Department of Natural Resources and Environmental Control Application for a 112(j) MACT Determination	AQM - J Part 2

7. Name of plant or establishment

8. Describe the current control technology in use for each emission source within the affected 112(j) source category

Emission source	Control technology	Manufacturer

9. Attach relevant information to assist in development of the MACT floors for existing and new affected 112(j) sources

For example:

*** Identify other similar facilities in the applicable 112(j) source category**
*** Identify other similar facilities in other source categories**
*** Identify, if known, the capacity of these similar sources**
*** Identify, if known, the control technology in use for the emission sources at these similar sources**
*** Identify, if known, the HAPs emitted at these similar sources**
*** Identify, if known, the controlled and uncontrolled HAPs emissions at these similar sources**
*** Identify, if appropriate, any trade association that is developing industry-wide recommendations for MACT floor determinations and MACT requirements**

10. I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

By: _____ **Title:** _____

_____ **Date:** _____

Typed or Printed Name of Signatory