August 23, 2010

OHIO CHAMBER OF COMMERCE
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Environmental Protection Agency
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Ohio Chamber Champions
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Re: Proposed Rule – National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters

The Ohio Chamber of Commerce would like to take this opportunity to express our strong concerns with the U.S. Environmental Protection Agency's (EPA) proposed rule setting National Emission Standards for Hazardous Air Pollutants (NESHAPs) for industrial, commercial and institutional boilers and process heaters that are major sources of emissions of those pollutants. The "Boiler MACT" rule, as it is commonly known, proposes an industry-wide set of limitations far more costly and stringent than are needed to assure protection of health and the environment.

The Ohio Chamber of Commerce is the state's largest and most diverse statewide business association. Our nearly 4,500 members come from every major industry sector, every county of our state, and range in size from one employee to thousands of employees. These rules could affect boilers used in manufacturing, processing, mining, refining and other industries; stores/malls, laundries, apartments, restaurants, hotels/motels and other commercial facilities; medical centers; educational and religious facilities; and municipal buildings. Therefore, the proposed rules would have a significant impact on many of our members and Ohio's economy.

Our comments are broad in nature and summarize our concern that the proposed rule revisions are unnecessarily stringent, unduly cumbersome and will have incredible negative ramifications on our members. The U.S. Chamber of Commerce and the American Forest and Paper Association (AF&PA) have filed more extensive comments that provide significant scientific reference materials to support those comments. We ask that you review our statewide concerns in conjunction with the national concerns they present.

Background

On June 4, 2010, EPA released new rules to replace the NESHAPs that were established in 2004 and subsequently vacated by the D.C. Circuit Court in 2007. The court ruling requires EPA to have new rules in place by December 16, 2010. The proposed rules include NESHAPs for HAPs for Major Sources – Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler MACT), NESHAPs for Area Sources – Industrial, Commercial, and Institutional Boilers

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and Process Heaters (Area Source Boiler MACT) and Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources – Commercial and Industrial Solid Waste Incineration Units (CISWI Rule).

Comments on the Proposed Revisions

1. Inaccurate Cost Estimates

Clean Air Act (CAA) section 112(d) requires EPA to set emissions standards for new and existing sources of HAPs that achieves the maximum degree of reduction while taking into account the costs of achieving such reductions, any non-air quality health and environmental impacts, and energy requirements. The Boiler MACT standards proposed in this rule are significantly more stringent, and more expensive, than the earlier version of this Boiler MACT rule proposed by EPA in 2004.

Although EPA's estimates indicate that the total capital cost will be $9.5 billion, AF&PA has estimated that the total capital cost of the rule will be over $20 billion. Based on AF&PA's review, EPA used incomplete and old data or information to derive their cost estimates. In addition, many of EPA's assumptions are not based on real world applications. Below are a few items that clearly show why EPA's cost analysis is grossly inaccurate.

- EPA used the outdated Control Cost Manual and AF&PA based their cost estimates on more recent information, including actual vendor cost estimates, actual project costs, BACT and BART analyses, industry control cost studies, etc.
- AF&PA used a CO catalyst cost 4 times higher than EPA's. AF&PA's is based on a recent quote from BASF and EPA's is based on the 1998 Control Cost Manual section on catalytic oxidizers for VOC control.
- AF&PA's CO control capital costs are $1.2 billion for liquid and gas 2 and $1.5 billion for coal and biomass, where EPA's total estimate for CO control capital costs is only 13.9 million, mostly because they have assumed that tune-ups and replacement burners will be adequate for the vast majority of boilers to comply.
- EPA has estimated that activated carbon injection will only be required on 155 existing boilers because installation of a fabric filter is expected to achieve the mercury emission limits, except in cases where a unit already has a fabric filter and does not meet the limits. AF&PA does not agree that fabric filters will be sufficient to reduce mercury emissions to the ultra low levels proposed in this rule. EPA's estimated industry-wide capital cost for activated carbon injection is only $9.5 million. AF&PA estimates for carbon injection required for mercury and dioxin/furan control is $1.7 billion.
- AF&PA has estimated a PM control cost of $7 billion versus EPA's estimated PM control cost of $6.1 billion.
- AF&PA has estimated capital costs for HCl control of $9.3 billion, while EPA's capital cost estimate for wet scrubbers is $3.3 billion.

2. Lack or Misuse of Data

EPA appears to use limited data when developing the rules. For example, the rule shows that the biomass subcategory includes 420 sources, yet EPA has emissions testing data on 192 units for PM, 91 units for mercury, and 92 units for HCl. Of the 826 liquid fuel units, EPA has data for

only 91 of the units for PM, 177 for mercury and 190 for HCl. This relative lack of data presents a real problem because EPA is using the top-performing 12% of the units to set the "MACT floor." Less data obviously means the pool from which the top 12% is drawn is smaller and, therefore, the actual number of sources used to determine the "MACT floor" is smaller.

The statute does allow EPA to determine the "MACT floor" based on sources "for which the Administrator has emissions information." EPA has had well over 15 years to collect more comprehensive emissions information and has not done so. The agency has an obligation to ensure comprehensive data is used to develop a rule that is based on sound science. Failure to account for 50 to, in some cases, almost 90 percent of the sources in a subcategory when setting a "MACT floor" suggests an obvious lack of knowledge and accuracy in establishing the rule.

Additionally, the data EPA did have and used in setting emission limits is heavily biased given the way it was collected and sorted. EPA required the best performing units, the top 12 percent, to test and then took the best of that small data set. What this really represents is the top one percent of performers and not actually the top 12 percent. This is evident by the fact that only a handful of existing units can meet all the limits when you would expect 12 percent of the thousands of boilers to achieve the limit.

3. Establish Health-Based Emissions Limitations for Acid Gases and Manganese

Clean Air Act (CAA) section 112(d)(4) authorizes EPA to set health-based emissions limitations when establishing standards for HAPs. This tool enables EPA to match the stringency of a HAP emissions limitation to the level determined necessary to fully protect human health. Therefore, the standard should be no more stringent and no less stringent than needed to protect human health. However, in the proposed rules, EPA proposes not to establish any health-based emissions limitations. EPA should utilize its authority in the CAA to set health-based emission limits to avoid unnecessary controls where emissions of threshold pollutants, like acid gases and manganese, are low enough to be safe.

4. Abandon the Pollutant-By-Pollutant Approach to Determining MACT

The proposed standards are based on a pollutant-by-pollutant analyses that rely on a different set of best performing sources for each separate HAP standard. What this means is, EPA has chosen the best data in setting each standard, without regard for the sources from which the data comes. The result is a set of standards that reflect the performance of a hypothetical set of best performing sources that simultaneously achieve the greatest emission reductions for each and every HAP rather than the actual performance of one or more real sources. The statute is clear that standards must be based on actual sources, and cannot be the product of pollutant-by-pollutant parsing that results in a set of composite standards that do not necessarily reflect the overall performance of any actual source.

5. Adjust Subcategories to Accommodate Combination Boilers

Within certain industry sectors, boilers are commonly used that co-fire coal in an amount greater than 10 percent heat input basis with at least 10 percent biomass. These "combination boilers" that simultaneously burn coal and biomass have different emission profiles than units that burn only coal or units that burn only biomass. As a result, combination boilers do not fit cleanly into either the coal-fired boiler subcategory or the biomass-fired boiler subcategory. To better

accommodate the actual performance of combination boilers, EPA should adjust the proposed subcategory for combination boilers so that they belong to the coal subcategory for purposes of regulating the fuel-based HAP and the biomass subcategory for purposes of regulating the combustion-based HAP.

6. Account for Variability in Top Performing Sources

EPA has improperly developed a CO standard that boilers must meet at all times, based on 3-run stack tests that fail to properly characterize the highly variable nature of CO emissions in solid-fueled boilers. CO emissions from boilers can be highly variable, especially when fuel mix and load change. Facilities are typically required to conduct stack tests at least 90 percent of full load during normal operating conditions. Therefore, a CO stack test is going to represent the best operation of any boiler. EPA has used only 3-run stack test data, which represents only a small and unrepresentative snapshot in time captured during the best operating conditions, to set emission limits for a pollutant that is highly variable.

Data included in EPA's database for top performing units in each of the solid fuel subcategories reveals that even the top performing sources would not be able to meet the proposed CO standards that are based on the performance of those very units. Further analysis of record data also clearly shows that EPA is mistaken in its suggestion that CO emissions do not vary with load.

7. Biomass Boilers

Instead of prescribing numeric HAP emissions limitations on boilers burning clean gas fuels (the "Gas 1" subcategory), EPA proposes to adopt work practices requiring an annual tune-up of the boiler. For units larger than 100 mmBtu/hr, EPA explains that "the capital costs estimated for installing controls on these boilers and process heaters to comply with MACT limits for the five HAP groups is over $14 billion." EPA therefore proposed that work practice standards are appropriate and justified for units in the Gas 1 subcategory out of concern for the cost of complying with numeric emissions limitations and based on the adverse policy incentives that would be created.

The rationale that supports the proposed approach for the Gas 1 subcategory applies equally well to biomass boilers and, therefore, provides ample support for adopting work practices instead of numeric emissions limitation for biomass boilers. For example, in the forest products industry alone, the estimated cost of complying with the proposed HAP emissions limitations for biomass boilers is $3.3 billion. This is an extraordinary cost that, in the context of the forest products industry, equals or exceeds the magnitude of the economic burden that EPA predicts for the Gas 1 subcategory. Similarly severe economic impacts are expected in other industry sectors where biomass boilers are widely used, such as the furniture, sugar, and agricultural products industries. Thus, there is strong economic justification for prescribing work practice standards for biomass boilers in lieu of numeric emissions limitations.

In addition, biomass is a "clean" fuel in many of the same respects as the Gas 1 fuels. Perhaps more importantly, biomass-fired boilers produce no net GHG emissions, making the combustion of biomass an important tool in managing and reducing the nation's carbon footprint. Similarly, biomass is an abundant, renewable domestically-produced fuel that can help reduce reliance on

foreign sources of fossil fuel and, thus, improve the nation's energy security. Prescribing stringent HAP emissions limitations on biomass boilers will create a significant barrier to the continued use and expansion of biomass fuels.

8. Extend the Deadline for Compliance

Owners and operators will undoubtedly be required to retrofit countless industrial boilers and process heaters in order to meet the final rule. The current proposal sets a three-year compliance deadline for existing affected sources. This is an exceedingly short time given the extensive nature of the needed retrofits and the limited technical resources available to accomplish the retrofits. To solve this problem, EPA should adopt a significantly longer compliance deadline.

Conclusion

As Ohio's leading business group, it is the Chamber's duty to protect and represent the interests of its member companies. The proposed revised standards would seriously impede the ability of Ohio businesses to remain economically competitive. Air quality in Ohio has and will continue to improve as a result of numerous programs and regulations that have already been placed upon the business community. The Chamber believes EPA has significant discretion in the Boiler MACT program to protect public health while avoiding the unnecessary burdens these proposed rules will impose.

The Ohio Chamber of Commerce appreciates the opportunity to comment on EPA's Proposed Boiler MACT Rules. Our comments are in no way exhaustive and cannot even begin to detail the negative impact the rules would have on Ohio's businesses and industry if significant changes are not made. Please feel free to contact me if you have any questions or require additional information.

Sincerely,

Jennifer Klein
Director, Energy and Environmental Policy