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May 4, 2007**

Office of Waste, Air and Radiation Management

717-772-2724

U.S. Environmental Protection Agency, EPA West (Air Docket)
Attn: E-Docket ID No. EPA-HQ-OAR 2004-0094
Room: 3334, Mail Code: 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on EPA's Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants: General Provisions. *72 Fed. Reg.* 69, January 3, 2007.

Dear Sir or Madam:

The Pennsylvania Department of Environmental Protection (PADEP) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) proposed amendments to the National Emission Standards for Hazardous Air Pollutants: General Provisions. *72 Fed. Reg.* 69, January 3, 2007. The proposed amendments would eliminate the longstanding "Once In, Always In" ("OIAI") policy applicable to maximum achievable control technology ("MACT") standards for the control of hazardous air pollutants (HAPs). The proposed amendments would allow a major source to become an area source at any time (even after the first substantive compliance date of an applicable MACT standard) by limiting its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) for single HAP or 25 tpy of any combination of HAPs.

PADEP strongly opposes the proposed rule since it is contrary to the federal Clean Air Act ("CAA"), and it would not adequately protect the health of the citizens of the Commonwealth from the effects of HAPs. In the alternative, the PADEP urges EPA to finalize the Pollution Prevention provisions related to the 40 CFR Part 63, General Provisions. See *68 Fed. Reg.* 26249, May 15, 2003.

I. The Proposed Rule is Contrary to the CAA and is Detrimental to Public Health and the Environment

Section 112(d)(2) of the federal CAA requires the maximum degree of emission reductions of HAPs from sources subject to the MACT standards. 42 U.S.C. §7412(d)(2). PADEP's major concern with the proposed rule is that it would exempt major sources from MACT requirements if HAP emissions were reduced below the major source thresholds--10 tons per year of a single HAP or 25 tons per year of any combination of HAPs. Under EPA's proposed rule to eliminate the OIAI Policy, facility owners and operators could obtain "synthetic minor" permits after the MACT standard compliance date that would allow the owners and

operators to be subject to potentially less protective requirements than the MACT standard would require them to install. As a result, the proposed rule would be detrimental to the environment and undermines the intent of the MACT program, which is to control HAP emissions from major sources to the maximum extent possible.

The proposed rule would reverse EPA's reasoned OIAI policy without adequate legal or technical justification. In a May 16, 1995 memorandum written by John Seitz, then Director of the Office of Air Quality Planning and Standards, regarding the potential to emit ("PTE") for MACT standards, EPA took the position that the latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard. Furthermore, in the memorandum enunciated, the EPA position that once a source was required to comply with a MACT standard, (i.e., once the first substantive compliance date had passed without the source limiting its PTE) it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds. Finally, the memorandum provided a source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the potential to emit HAP emissions were reduced to below major source levels by complying with the first MACT standard.

In the 1995 memorandum, EPA correctly concluded in analyzing the PTE for MACT standards that the OIAI policy follows most naturally from the language and structure of Section 112 of the CAA. As EPA noted in this memorandum, "[i]n many cases, application of MACT standards will reduce a major emitter's emissions to levels substantially below the major thresholds. Without an OIAI policy, these facilities could backslide from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major source threshold. Thus, the maximum achievable emission reductions that Congress mandated for major sources would not be achieved. An [OIAI] policy ensures that MACT emission reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined." PADEP believes the existing OIAI Policy sets forth the correct legal interpretation and EPA's proposed rule is contrary to the language and structure of the CAA, and contrary to the intent of Congress, which is to control HAP emissions from major sources to maximum extent possible.

Additionally, the existing OIAI policy provides the owners and operators the flexibilities that the proposed rule purportedly seeks to achieve without subjecting the public to increased HAP emissions. For instance, the OIAI policy specifies that the owners and operators of facilities can switch over to area source status any time before first compliance date of the MACT standard by obtaining federally enforceable limits. Moreover, the printing and publishing MACT standard allows facility owners and operators to switch to area source status at any time by complying with the provisions specified in the standards. See 40 CFR Part 63, Subpart KK. Consequently, EPA already has policy and regulatory provisions available that balance operational flexibility and environmental and public health protections. Moreover, these

current provisions are not contrary to the CAA and adequately protect public health and the environment.

Many MACT standards require the owners and operators of affected facilities to reduce their HAP emissions to a control efficiency of 95 percent or greater. Consequently, compliance with the MACT requirements could lead to greater reductions when compared to sources accepting synthetic minor limits of 24.9 tpy for a combination of HAPs and 9.9 tpy for a single HAP. Under the proposed rule, the reductions that are achievable through compliance with MACT standards would be offset by synthetic minor limits that would allow sources to emit HAPs at higher levels than those allowed by the MACT standards. There are two problems with this result. First, such an approach is contrary to the intent of Congress, which is to reduce HAP emission to the maximum extent feasible and not just to area source level. Second, the cost of the increased HAP emissions would be borne by the communities that surround these facilities. EPA's proposed rule to eliminate the "once in, always in" policy also does not address how to treat a facility seeking synthetic minor status after failing to comply with the MACT standard requirements by the initial compliance date. Furthermore, the proposed rule does not sufficiently address the permitting process that a source must go through in order to have MACT requirements removed from its Title V permit once it takes synthetic minor limits.

EPA's proposed rule allows certain sources to increase harmful emissions of HAPs. This proposal relaxes the provision for HAPs and would allow a major source to become an area source at any time by limiting its PTE to below major source thresholds. If facilities that become area sources under MACT are no longer subject to the emission standards that were originally applicable when they were a major source, then there will be a likely increase in emissions when a facility no longer complies with the MACT standards. While this increase in emissions is a concern for all MACT standards, it is particularly a concern for MACT standards where work practices standards are primarily responsible for the emission reductions. Once those work practices are no longer required, the emission reductions associated with those work practices will be lost. For example, the WXP facility in Greenville, Mercer County, Pennsylvania, is a secondary aluminum melting facility subject to the aluminum melting National Emission Standards for Hazardous Air Pollutants ("NESHAP"). As a part of that NESHAP, the facility is currently required to comply with several work practice standards such as sorting scrap and limiting the amount of labels, paint, plastics, etc. that are melted in the furnace when scrap or defective products are re-melted. In the past, this Mercer County facility was considered to be a major HAP source because it had a reinforced plastic products pultrusion operation that was co-located on the same property as the aluminum melting furnaces. Thus, the facility was a major HAP source when the aluminum NESHAP was promulgated and was required to comply with the regulation. The fiberglass pultrusion operation at this facility has since been shut down. As a result, the facility's potential HAP emissions are now below major source thresholds, however, emissions from the aluminum melt shop continued to be controlled because of the OIAI policy currently in effect. By eliminating the OIAI policy, an increase in HAP emissions at the facility

would occur as a result of not having to comply with the work practice and emission limitations currently in place.

The proposed rule also provides no adequate remedy for the potential impacts on enforcement of HAP requirements should the proposed rule become final. EPA mentions that the benefits to the sources would include reduced monitoring, recordkeeping, or reporting requirements. However, Pennsylvania is concerned that these “benefits” are really ways to allow facilities to escape the MACT standards mandated by Congress. For instance, practical enforceability would be obviated since there may no longer be a need for a technically-accurate limitation or a time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits) and for a the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. The evasion of these compliance requirements is of great concern to PADEP since the ease of enforceability and the environmental benefits that are achieved by the comprehensive monitoring and reporting requirements of the MACT standards would be lost if the proposal is finalized.

EPA asserts that if the proposed rule becomes final it is unlikely that major sources of HAPs would, in becoming area sources, increase their current emissions to a level just below major source threshold levels. See *72 Fed. Reg.* at 73. While EPA bases this conclusion on a number of narrative factors, it did not develop a quantitative analysis to support its conclusion. In fact, EPA admits that it cannot develop a quantitative analysis on the impacts of its proposal without knowing which sources would avail themselves to the provisions of the proposal. See *72 Fed. Reg.* at 77. Pennsylvania currently has approximately 227 major sources statewide that are subject to at least one MACT standard. Moreover, many of these sources are located in population centers where less stringent area MACT standards would have adverse public health effects. It is just as likely, if not more likely, that these sources would increase their emissions just below major source thresholds to escape regulation as a major source. A review of Pennsylvania enforcement actions shows that, until enforcement proceedings were initiated, a number of sources statewide were not in compliance with major source MACTs. These facts defy EPA’s unsupported assertions that facilities would voluntarily comply with major source threshold limits. Based on this proposal, EPA intends to abdicate its responsibilities to ensure that the public health and environment are protected.

II. EPA Should Finalize Its May 15, 2003 Pollution Prevention Rule

The preamble of the proposed rule mentions the proposed pollution prevention (“P2”) rule amendments of Part 63 to General Provisions (68 *Fed. Reg.* 26249; May 15, 2003), which were intended to provide regulatory relief to facilities that use P2 in two options to achieve and maintain HAP emission reductions equivalent to, or better than, the MACT level of control required under the MACT standards. First, if a facility completely eliminates all HAP emissions from all of its emission sources regulated by the MACT standard, then it could request to no longer be subject to that MACT standard. Second, if a facility that is subject to a MACT

standard uses pollution prevention to reduce its HAP levels to less than the emission levels required by the MACT standard, then that facility could request alternative compliance requirements that would give some regulatory relief. This proposed rule would grant some of the regulatory relief missing in the current OIAI policy. Moreover, the P2 proposal is consistent with the language and intent of the CAA and adequately protects public health and the environment.

For example, if a facility was a major source of HAPs as of the first compliance date for wood furniture MACT under 40 CFR part 63, Subpart JJ, and the facility at a later date switched to coatings that do not contain HAPs, under EPA's "OIAI" policy the facility is still subject to wood furniture MACT provisions because it was major for HAPs on the first compliance date. The P2 proposal would allow an exemption for such sources that were major for HAPs on the first compliance date who use P2 measures to eliminate completely all HAP emissions regulated under a given subpart. This P2 proposal encourages sources to explore the use of different control techniques, pollution prevention, or new or emerging technologies that would result in lower emissions.

In addition to providing regulatory flexibility, Pennsylvania supports this P2 proposal for other reasons. First, the proposal requires a clear and comprehensive description of the P2 measures the facility has implemented and a demonstration these measures meet the definition of "pollution prevention" in the proposal. See 68 *Fed. Reg.* at 26262. Another key component of the proposal is a demonstration that the P2 measures have achieved, and will maintain, HAP emissions reductions equivalent to or better than the MACT level of control. Because of the uniqueness of each situation, the facility would describe operations before and after implementation of the P2 measures so as to demonstrate that the P2 measures obtain equivalent (or better) results. The P2 proposal requires documented demonstrations of emissions reductions and operational flexibility. Therefore, EPA should finalize the proposed P2 rule amendments in lieu of the January 3, 2007 proposal to the General Provisions of Part 63 to provide regulatory relief to facilities that use P2.

If you have questions or need additional information regarding our comments, please contact Joyce E. Epps, Director of the Bureau of Air Quality, by e-mail at jeepps@state.pa.us or by telephone at 717-787-9702.

Sincerely,



Thomas K. Fidler
Deputy Secretary