CEEC

Corporate Environmental Enforcement Council, Inc.

March 8, 2007

HAND DELIVERY

Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
1301 Constitution Ave., NW
Room: 3334, Mail Code 6102T
Washington, DC 20460
ATTENTION: Docket ID EPA-HQ-OAR-2004-0094

RE: Corporate Environmental Enforcement Council Comments on Proposed Amendments to the General Provisions to the National Emission Standards for Hazardous Air Pollutants, 72 Fed.Reg. 69 (January 3, 2007)

Dear Docket Clerk:

The members of the Corporate Environmental Enforcement Council (CEEC) appreciate the opportunity to present our comments on the U.S. Environmental Protection Agency's (EPA or the Agency) Proposed Rule amending the General Provisions of the National Emission Standards for Hazardous Air Pollutants ("Proposed Rule"), 72 Fed. Reg. 69 (January 3, 2007).

Founded in 1995 and currently composed of 28 major companies, CEEC is the only cross-industry business coalition where legal, environmental and governmental affairs professionals work together to address regulatory, legislative and judicial activities relating to civil and criminal environmental compliance and enforcement matters.

CEEC generally supports the Agency's Proposed Rule, which would replace the May 16, 1995 EPA "Once-in-always-in" (OIAI) guidance ("Potential to Emit for MACT Standards-Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Directors). CEEC recognizes and commends the Agency for this proposal that would provide a regulatory mechanism for companies to use to establish the applicability or inapplicability of major source MACT standards based on the current status of its regulated facilities. CEEC is concerned, however, that the Proposed Rule does not contain sufficient flexibility in the context of the time period within which a facility is required to comply with newly applicable requirements, and we recommend that the Agency add a regulatory mechanism that provides such flexibility in a manner that is described below.

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The Agency's 1995 OIAI guidance memo contained guidance for the regulated community and permitting authorities regarding the applicability of maximum achievable control technology (MACT) standards during the initial implementation process. The guidance described how facilities required to implement MACT standards could opt out of MACT standards by reducing the facility-wide potential to emit (PTE) hazardous air pollutants (HAP) below major source thresholds before the initial MACT compliance date to avoid MACT applicability. CEEC supports EPA's timely replacement of the OIAI guidance with this revision to the MACT General Provisions regulations that removes regulatory disincentives to projects that are designed to reduce emissions of HAPs.

CEEC believes that EPA correctly concludes that neither the Clean Air Act statutory nor the Agency's regulatory definitions of major and area source include any provision specifying when a facility is required to evaluate major/area source status. EPA also correctly anticipates that facilities will evolve over time, and facility emissions will reflect those changes. Facilities evolve for many reasons, including process optimization and expansion projects, mandated emission reduction projects, pollution prevention projects, sale of portions of an existing facility to another owner, installation of new equipment, and retirement of process units. In many of these cases, the MACT status of a facility could change from a major source of HAP (10 tons per year of any single HAP, 25 TPY of all HAP) to an area source (less than major source PTE), or from an area source to a major source. Unfortunately, the Agency's 1995 OIAI guidance does not allow the MACT status of a facility to change to reflect the evolution of that facility, which in numerous instances serves as a regulatory disincentive for implementing optional changes that would reduce HAP emissions.

As a practical matter, when a facility operator optimizes operations at a facility, the opportunity may exist to extend or upgrade emission controls or redesign the unit to reduce emissions so that the facility is no longer a major source of HAP. Pollution prevention projects could also reduce emissions below major source thresholds. Even if these projects are not identified as compliance options under an applicable subpart of 40 CFR Part 63, CEEC believes that EPA should encourage design decisions that lead to lower emissions by providing, as an incentive, the ability to eliminate major source MACT compliance obligations.

Many CEEC members have bought or sold portions of existing manufacturing facilities associated with specific business units, without involving the remainder of the existing location in the transaction. Once the business transaction that transfers specific operations to new owners closes, a newly formed affected source must determine its compliance obligations for all Clean Air Act programs, including any applicable MACT standard. The remainder of the facility that the seller retained no longer has any bearing on the major source status of the newly formed source. However, some permitting authorities have determined that the major source status (MACT applicability)

determination made at the initial MACT compliance date (and that was based upon the different configuration and circumstances) continues to apply to the newly formed facility.

CEEC submits that the Agency's existing rules should be interpreted to allow the new facility to make a current PTE determination and to define major source status (MACT applicability) upon issuance of a permit authorizing operation. CEEC also suggests that the Agency clarify that this proposal similarly authorizes that the MACT applicability determination be made based on the current PTE determination and memorialized in a permit accordingly.

Closure is also a part of the business cycle. When part of a facility ceases operations, the remainder of the facility may no longer have a PTE above major source thresholds. Once an owner or operator removes a portion of the facility from the Title V operating permit, CEEC believes that the facility owners should have the opportunity to review MACT applicability based on the PTE of the portion of the facility that remain in operation. Should that remaining PTE not exceed major source thresholds, the facility should be permitted to opt out of MACT.

In each of the above cases, the permitting authority will have the opportunity to memorialize in the Title V permit existing emission control systems. It is clear that the Proposed Rule does not seek to eliminate or remove emission control requirements that apply pursuant to other regulatory programs such as existing reasonably available control technology (RACT) regulations, state or local control regulations, including State air toxics programs, or prevention of significant deterioration (PSD) best available control technology (BACT) control determinations, that often overlap with many MACT requirements. CEEC anticipates, based on experience, that facilities seeking to avail themselves of the mechanism set forth in the Proposed Rule will be looking to eliminate or remove the regulatory burdens associated with MACT compliance, and will not be seeking to eliminate cost effective emission controls that will likely be necessary to remain below the major source threshold.

CEEC is concerned, however, about the issue of the timing of compliance obligations in the Proposed Rule at 40 CFR 63.1(c)(6)(i.), specifically with respect to a major source that becomes an area sources and later again becomes a major source. Events that may trigger a change in the source's status include the addition to or modification of existing emission sources, issuance of a permit with conditions that restrict operations or emissions, installation of emission controls, starting or stopping a specific activity, a change in the §112(b) HAP list, or other events that neither CEEC companies nor EPA can anticipate.

EPA's Proposed Rule would require that any source returning to major source status from area source status comply with the MACT standard immediately, except if the MACT

standard changed during the time the source was an area source **and** the source must undergo a physical change, install additional controls, and/or implement new control measures to comply with the changed standard.

In the Preamble to the Proposed Rule EPA declares that providing additional time to comply with the MACT standard is appropriate in the scenario described above in which a MACT standard had changed. CEEC concurs with EPA's judgment regarding this specific scenario, but also submits that there may be other circumstances or scenarios, some of which may be currently unknown and unanticipated, where additional time to comply may also be warranted. In addition, as a point of clarification, CEEC also requests that the Agency confirm that a change in the HAP list (for example, to include or exclude a HAP emitted by a facility) be considered a change in the MACT standard for purposes of this evaluation.

One example where additional time may be warranted even in the absence of a change to the underlying MACT standard is in the context of the sale of a portion of a major source that is subject to a MACT standard, where the major source complied with applicable MACT requirements through a facility-wide averaging compliance option provided in the MACT standard. The portion of the facility that was sold may qualify for area source status based on potential emissions, and pursuant to the Proposed Rule the portion of the facility that was sold could therefore become an area source. If that source were to expand in the future in a manner that caused PTE to exceed the major source threshold, and therefore caused the source to become subject to the relevant MACT requirements once again, it may be required to install controls to meet those requirements (where it could not comply using the facility-wide averaging that was used prior to the sale). In this context the limited exception provided for in the Proposed Rule for additional time would not be available (assuming that there was no change in the MACT standard during the time the source was an area source), and the source would have to meet MACT immediately, despite the need to install control equipment to comply.

CEEC submits that an exception to the immediate compliance requirement would be warranted in this scenario, and that there are likely other currently unanticipated scenarios that would similarly warrant an exception. We strongly encourage that the Agency consider amending the Proposed Rule to give permitting authorities the authority to grant limited additional time for compliance, but only upon a specific showing of need for such additional time, similar to the provision in the Proposed Rule at 40 CFR 63.1(c)(6)(ii) for major sources that become area sources. Permitting authorities should be given the ability to designate, in Title V or other appropriate practically enforceable permits, how a facility will transition from major source to area source, or from area source back to major source, including allowing compliance extensions where appropriate. CEEC supports a maximum time extension of 3 years, documented in a Title V or operating permit, to complete a transition. We emphasize that this time period is consistent with existing federal CAA regulations and practice.

CEEC commends the Agency for undertaking this important regulatory initiative that will result in the elimination of existing regulatory disincentives to HAP-reduction projects; we appreciate the opportunity to submit these comments to the Agency and look forward to working with EPA to finalize and implement these regulatory amendments.

Sincerely,

Steven B. Hellem, Exec. Director
Corporate Environmental Enforcement Council