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STATE AND TERRITORIAL  
AIR POLLUTION PROGRAM  
ADMINISTRATORS

ASSOCIATION OF  
LOCAL AIR POLLUTION  
CONTROL OFFICIALS

October 7, 2004

S. WILLIAM BECKER  
EXECUTIVE DIRECTOR

Docket ID No., OAR-2003-0051  
National Emission Standards for Coke Oven Batteries Docket  
U.S. Environmental Protection Agency  
Mailcode: 6102T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Sir/Madam:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for this opportunity to comment on the proposed National Emission Standards for Coke Oven Batteries, which were published in the *Federal Register* on August 9, 2004 (69 *Federal Register* 48338). We believe this proposal is especially important because it is the first standard EPA has developed pursuant to Section 112(f) (Residual Risk) of the Clean Air Act and, as such, could contain significant precedent-setting provisions.

Section 112(f) clearly states: “[i]f standards promulgated pursuant to subsection (d)...do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.” EPA’s risk assessment shows that this threshold has been exceeded, and therefore EPA must promulgate a standard. Congress’ intent for the Residual Risk program was quite clear. Unfortunately, EPA’s proposed Residual Risk standard for Coke Oven Batteries does not comply with the requirements of Section 112(f) or the intent of Congress. Specifically, the proposal does not set a standard that will “provide an ample margin of safety to protect public health”, as is required by Section 112(f).

We do not believe that EPA has properly applied Section 112(f). As the proposal illustrates, EPA believes it must follow the interpretation for setting an ample margin of safety as provided in the 1989 Benzene National Emission Standard for Hazardous Air Pollutants (NESHAP) (54 *Federal Register* 38044, September 14, 1989). In the proposed Residual Risk standard for Coke Oven Batteries, EPA cites “A Legislative

History of the Clean Air Act Amendments of 1990”, vol. 1 (Senate Debate on Conference Report) on this issue that states: “...the managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the Administrator’s benzene regulations...” The intent of this language is to establish a *minimum* level of protection for public health. The language clearly allows the Administrator to be *more protective* of public health than the policy set forth in the 1989 Benzene NESHAP. We do not believe that the finding of a maximum individual risk of  $2 \times 10^{-4}$  and 300,000 people exposed to risks greater than  $1 \times 10^{-6}$  meets the intent of this section.

Additionally, even under the policy set forth in the 1989 benzene regulations, the baseline emissions in the proposal should not be considered acceptable. The baseline emissions result in a risk double the presumptive maximum of  $1 \times 10^{-4}$ . Approximately 8 percent of the population within 50 kilometers of the sources is exposed at a risk greater than  $1 \times 10^{-6}$ . The finding that these risks are acceptable has not adequately weighed all factors that should be considered as stated in the 1989 Benzene NESHAP. EPA has given weight to factors that might lessen the concern for the estimated risks, but has not equally considered other factors that increase the concern. For example, benzene is a known human carcinogen with risks quantified from human epidemiological data. The use of such data provides significantly more scientific evidence for the health effects and certainty in the risk assessment compared to other carcinogens where only data in animals are available. Furthermore, under the proposed standard, the maximum individual risk is reduced by a miniscule amount to  $1.8 \times 10^{-4}$ , and there are still 200,000 people exposed to risks greater than  $1 \times 10^{-6}$ . How can EPA state that this token improvement provides an ample margin of safety?

Additionally, EPA’s finding of acceptability does not consider the risk from all hazardous air pollutants (HAPs) emitted from these facilities. For example, while non-carcinogenic effects of naphthalene were assessed, carcinogenic effects of this compound were not included in the risk assessment. EPA has established a draft cancer potency value for this compound that has undergone external peer review and the State of California has also established a carcinogenic potency value that has been peer reviewed through its process. Not including the carcinogenic risk from naphthalene underestimates the risk from coke oven emissions. Likewise, EPA did not include assessment of the carcinogenic risks from 1,3-butadiene, although potential non-carcinogenic effects from emissions of this compound were determined. The risk assessment upon which the residual risk standards are based should include all carcinogenic HAPS that are emitted from this source category.

This proposal and EPA’s method of determining what reductions are needed are of concern to us with respect to emissions from coke oven batteries, but also because they establish a very worrisome precedent for future Residual Risk standards. We recommend that EPA use its authority under Section 112(f) to develop a more health-protective standard for this and other source categories.

The following are additional comments about specific elements of the proposal:

*Facility-wide Approach (page 48341)*

We believe that it is appropriate, in general, to use a facility-wide approach – that is, to consider the risks from the facility as a whole, rather than merely examining one source category at a time. That way, the cumulative effects of numerous source categories can be taken into consideration. However, we are concerned that reliance on a facility-wide approach will also allow EPA to postpone action on an individual source category by stating an intention to reduce risks when regulating future source categories. We urge EPA to consider the facility as a whole, but also to call for stringent controls on each source category to ensure that the goals of the residual risk provisions are realized on a facility-wide basis in an expeditious manner.

Because coke ovens are few and far between, there are not likely to be areas in which the risks from several different facilities within the same source category overlap. However, in developing future residual risk standards, EPA must ensure health protection in cases in which there are multiple facilities in the same source category in close proximity. In those cases EPA should calculate the cumulative effects of several closely located facilities within the same source category and establish a health-protective standard accordingly.

*Use of Allowable Rather than Actual Rates (page 48343)*

We support EPA's approach to modeling facility emissions using the allowable facility emissions under the standards. We believe the Clean Air Act requires this more conservative approach to determining impacts from a category under review. We do not support modeling based on actual emissions because there is nothing in the residual risk standards to guarantee that these emissions would not increase over time.

*Atmospheric Dispersion (page 48344)*

EPA described the use of several models to estimate dispersion, including the Buoyant Line and Point Source dispersion model and the Industrial Source Complex Short Term model. We are concerned that these models do not sufficiently examine the emissions close to the facility, including fugitive emissions. We recommend that fugitive emissions be included in the calculation of risk.

*Use of a 50-Kilometer Exposure Radius for Risk Management Purposes (page 48345)*

We do not agree with EPA's use of a 50-kilometer exposure radius around facilities as a standard in all cases for use in determining the percent of the population that is exposed to risks greater than certain benchmarks, such as a  $1 \times 10^{-6}$  risk level. While the use of 50 kilometers may be appropriate to consider for modeling purposes to ensure that the modeling will go out far enough to identify distances where levels will be below any health benchmark values, it is not appropriate to use as a *standard* for risk

management decisions. Depending on the type of facility, emission release characteristics, etc., the potential health impacts may occur close in to the facility, or be fairly widely dispersed. For some facilities, the use of such a wide radius can incorporate large numbers of people who are not really considered the “exposed” population, thus diluting actual impacts when considering percent of the population at certain risk levels.

*Consideration of Costs in Establishing Standard (page 48349)*

We do not believe that EPA has the statutory authority to include the cost of controls in its consideration of health-protective standards. The language of Section 112(f) clearly calls for costs to be considered only in the area of adverse environmental effects.

*MACT Analysis (page 48351)*

EPA indicates that the agency does not believe the Act requires additional analyses of MACT floors every eight years and sees "no indication that 112(d)(6) was to have this inexorable downward ratcheting effect" with respect to MACT standards. We strongly disagree with this conclusion. In fact, Section 112(d)(6) is very clear in requiring EPA to review and revise as necessary emissions standards at least every eight years. If Congress had believed that a one-time consideration of MACT was sufficient, it would not have written the law to call for reevaluations. We believe the review and revision of MACT are especially necessary for new sources. Otherwise, new sources would not be required to implement the latest technology. If Section 112(d)(6) is not applied to new sources, then they would merely be required to comply with increasingly antiquated controls. EPA should consider a new MACT requirement, especially for new sources, at least every eight years, as the Clean Air Act requires.

Thank you again for this opportunity to comment on this important proposal. Please do not hesitate to contact us for additional information.

Sincerely,



Lloyd Eagan  
Chair  
STAPPA Air Toxics Committee



Robert Colby  
Chair  
ALAPCO Air Toxics Committee