

August 23, 2010

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Mail Code 2822 T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention Docket ID No: EPA-HQ-OAR-2003-0119

Re: Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Proposed Rule

Dear Administrator Jackson:

The Northeast States for Coordinated Air Use Management (NESCAUM) offer the following comments on the U.S. Environmental Protection Agency's (EPA's) Notice of Proposed Rulemaking, published on June 4, 2010 in the Federal Register, entitled *Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Proposed Rule* (75 FR 31938 – 32004). NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

NESCAUM strongly supports EPA's efforts to develop new source performance standards (NSPS) for commercial and industrial solid waste incineration (CISWI) units. Such a rule will substantially reduce emissions of hazardous air pollutants (HAPs) from this sector, and will directly limit emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter (PM). NESCAUM's comments focus on specific areas where improvements could assist in developing a clear and comprehensive regulatory framework.

Variation in Emission Limits

NESCAUM is concerned by the widely varying proposed emission limits across this rule and the rules for boilers for similar units under section 112 of the Clean Air Act. In the past, where large differences in cost and protectiveness were associated with definitions in the regulations, litigation has resulted, as well as uncertainty over the meaning and application of those definitions in specific circumstances. Sections 112 and 129 of the Clean Air Act mandate that the emission limitation for covered units be "the maximum degree of reduction that is achievable," and not merely the MACT "floor." Accordingly, where feasible, EPA should adopt MACT limitations of similar stringency for similar units, irrespective of whether the source is

regulated as an industrial, commercial, and institutional (ICI) boiler under CAA section 112 or a CISWI unit under section 129.

Emission Limits

NESCAUM is concerned with the proposed CISWI emission limits. The proposed numbers, based on statistical analysis of the 99% confidence levels, may not be reasonable to implement. In addition, many of the emission limits are too close to the detection limits of the reference test methods, and do not include an adequate compliance margin that accounts for either test method or fuel variability. NESCAUM supports EPA efforts to establish a compliance margin such that “complying” units within the “best performing units” group are not in jeopardy of failing a replicate compliance test when operating as they did when their test results were used to form the basis of the MACT floor. NESCAUM concurs with comments by the National Association of Clean Air Agencies (NACAA), and supports analysis of the variability of the units that currently meet the proposed emissions limits. Moreover, NESCAUM requests that emission limits be provided in pounds per million Btu and pounds per hours because many states require emissions to be reported in both manners.

Clarification on Affected Facilities

NESCAUM requests that EPA provide a clearer definition of facilities that would be subject to the CISWI rule. We have identified three facility types for which it is unclear whether or not they would be subject to the rule. They include:

- Units that “roast” soil for remediation purposes.
- Asphalt plants utilizing recycled asphalt.
- Burn-off ovens – The proposed definition covers three potential types of these ovens, but does not provide clear definitions for certain process types. We have identified two distinct types of “burn-off” ovens. The first type takes metal parts (e.g., wire, automotive parts) and burns off insulation, paint, and coatings with the goal of recovering the metal. Under the proposed regulation, these units would be classified as incinerators because they are collecting waste materials and combusting the material to collect the metal “residuals” for profit. The second type is for coating operations that apply a coating (typically paint) to various products on an automated line. The material for coating is suspended from a hook or rack, which inevitably is coated with over-spray. Once finished products are removed from the line, the hook or rack is put in a “burn-off” oven to remove the over-sprayed material. Does EPA intend to include this second type of unit in the “burn-off” oven category as an incinerator? If so, what does EPA propose as an alternative to this operation?

Exemption for Small Power Generation Units Burning Homogeneous Waste

The proposed rule provides a statutory exemption for small power generating facilities that burn a homogeneous fuel, but the exemption lacks specificity. As such, NESCAUM has concerns with the exemption. The three most critical issues are: 1) determining what is a homogeneous

fuel, 2) identifying appropriate emission limits if the exemption applies, and 3) proper notification of regulatory authorities.

Homogeneous Fuel

Significant questions arise about determining what constitutes a homogeneous fuel. NESCAUM provides the following examples of facilities that could potentially use this exemption:

- Waste tire-fired incinerators/boilers: In Connecticut, there is a facility that has three reciprocating grates, rated at 181 mmBtu/hr. Each boiler fires No. 2 fuel oil, propane, and shredded or whole tires. The facility processes and incinerates approximately 10 million tires per year. The recovered heat energy is used to generate a maximum of 26 MWh of electricity.
- Construction and demolition debris (CDD): Several facilities in the region burn CDD wood for power generation. These facilities have requirements for fuel specifications and chip management procedures in place.

NESCAUM recommends that EPA provide clear guidance as to whether or not the above facility types will qualify for the exemption from the CISWI rule.

Emission Limits

If a facility can use the section 129 exemption, NESCAUM believes that the proposed rule does not provide clear language that would ensure that “129 exempt” facilities would still be subject to CAA section 112 requirements. NESCAUM recommends that EPA clearly articulate that a facility using the section 129 exemption is subject to emission limits under section 112. Additionally, NESCAUM recommends that EPA develop a fuel bin for this source category under the section 112 rulemaking because the proposed rule contains no emission limits for the source category.

Notification

NESCAUM recommends that EPA require facilities to notify appropriate regulatory agencies once they have determined that they comply with the requirements of the exemption. Notifications should include information on how the determination of a homogenous fuel was made, and what methods will be employed to ensure that the fuel used will continue to comply with the “homogeneous” requirements. Clear recordkeeping and reporting requirements must be put in place to ensure that enforcement staff can determine compliance status.

Compliance Assurance

This section provides NESCAUM's detailed comments on proposed compliance assurance issues.

Opacity Requirements

EPA proposes opacity standards for new and existing CISWI units as a surrogate for particulate matter (PM) emissions. While opacity is important to characterize, and may be an indicator of

proper operation, NESCAUM does not agree that opacity alone should serve as a surrogate measurement for PM emissions. This is particularly problematic in situations where a large percentage of emissions are in the condensable form, or when fuel is inconsistent and proper boiler operations are not maintained. An example of this was found in Connecticut at a 326 mmBtu/hour municipal waste combustor. The facility had reported continuous compliance with its opacity limit, as indicated by its continuous opacity monitoring system (COMS) and the pressure drop (delta-P) across the baghouse. However, during a compliance test for PM emissions, the facility was found to be in violation of its PM emission limit. Analysis indicated that the facility had nearly 50 compromised fabric filter bags out of 2,000. In this case, neither opacity nor pressure drop measurements served as adequate indicators for ensuring compliance with the PM emissions permit limit.

EPA proposes opacity emission limits at 1 to 4 percent. It is widely known that opacity measurements for low values (<10 percent) are highly uncertain and may not be representative of actual emissions performance. This is due to design and performance factors, including cross-stack (mis)alignment, allowable tolerances provided in *40 CFR Part 60, Appendix B, PS-1* for calibration error, zero, and span drift, and compensation for protective window dust accumulation as well as the lack of reliable calibration/audit filters below 6 percent. Thus, while low standards may be attainable, they may not be feasible or practical to maintain below 10 percent opacity. NESCAUM recommends that EPA maintain opacity limits at a level of 10 percent as an indicator of proper boiler performance, but not as a substitute for PM emissions testing or PM continuous emission monitoring systems (CEMS).

CEMS

NESCAUM supports EPA's requirement to use CEMS, where feasible, provided EPA promulgates appropriate performance and quality assurance specifications where necessary before requiring such CEMS. NESCAUM supports the use of CO CEMS at CISWI facilities larger than 100 mmBtu/hr, and PM CEMS at facilities larger than 250 mmBtu/hr. EPA proposes the optional use of NO_x CEMS, SO₂ CEMS, hydrochloric acid CEMS, multi-metals CEMS, mercury CEMS, integrated sorbent trap mercury monitoring, and integrated sorbent trap dioxin monitoring as alternatives to the existing monitoring methods for demonstrating compliance with the NO_x, SO₂, hydrochloric acid, metals (lead, cadmium and mercury), and dioxin/furans emissions limits. While we support the use of these monitoring methods, we do not believe it is appropriate to use CEMS data in lieu of an initial performance test. We further urge EPA not to remove any of the parametric monitoring requirements in lieu of CEMS.

Use of Existing Stack Test Data

EPA proposes to allow facilities to use the results of emissions tests conducted within the previous two years to demonstrate initial compliance with the revised emission limits, provided that the sources certify that the previous test results are representative of current operations. NESCAUM would support this provision, provided that the *previously conducted performance tests* meet with all the requirements of the permitting authorities regarding data acquisition, load

conditions, and review of test protocol and test report. In addition, in areas where witnessing of a stack test is required, notice to the appropriate authorities must be have been made.

New CISWI Facilities

EPA has suggested that it does not anticipate that any new CISWI units will be constructed. NESCAUM is concerned that this conclusion may be premature, especially given the complex landscape for fuels today. New programs to encourage use of waste materials, such as a low carbon fuel standard, may provide incentives to use fuels that would place facilities in the CISWI category. Currently, operators of existing boilers are expressing a willingness to switch to discarded materials. Given the current possibilities for alternative fuels and the potential impacts of the proposed solid waste definition, it is yet to be seen whether or not new CISWI units will be put in place after promulgation of this rule.

Summary

We urge EPA to adopt this rule in a timely manner. Failure to adopt in a timely fashion or further litigation will delay the emission reductions needed to ensure the public health benefits of this rule. We look forward to working with EPA to ensure that the CISWI NSPS can be implemented by states in an efficient manner that achieves our public health protection goals.

If you or your staff has any questions regarding the issues raised in these comments, please contact Lisa Rector of NESCAUM at 802-899-5306.

Sincerely,



Arthur N. Marin
Executive Director