



February 21, 2012

EPA Docket Center  
Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Ave., NW.  
Washington, DC 20460

**RE: Docket ID No. EPA-HQ-OAR-2006-0790, National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (76 Fed. Reg. 80532, Dec. 23, 2011)**

The American Chemistry Council<sup>1</sup> (ACC) appreciates the opportunity to submit comments to the Environmental Protection Agency (EPA) on the Agency's National Emission Standards for Hazardous Air Pollutants (NESHAP) for Area Sources: Industrial, Commercial, and Industrial Boilers (Reconsideration Proposal) (76 Fed. Reg. 80532, Dec. 23, 2011), which reconsiders and proposes to modify certain portions of the Agency's March 21, 2011 final NESHAP for these area sources (Final Rule). EPA's modifications are based on the Agency's May 18, 2011 Notice of Reconsideration (Docket No. EPA-HQ-OAR-2006-0790). ACC submitted extensive comments to EPA on the June 4, 2010 proposed NESHAP for Area Sources (2010 Proposed Rule). Additionally, pursuant to § 307 of the Clean Air Act, on May 20, 2011, ACC submitted a petition for reconsideration of various provisions in the Final Rule.

ACC represents the leading companies engaged in the business of chemistry and its member companies own and operate many boilers and process heaters that will be subject to the Proposed Rule. We appreciate that EPA has incorporated several of our recommended changes from our prior comments and our administrative petition into the Proposed Rule. If made final as proposed, these changes would help maximize emissions reduction while minimizing regulatory burden. We believe that EPA could further improve the implementation and the efficacy of this rule by incorporating the recommendations described in our comments below.

---

<sup>1</sup> *The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care<sup>®</sup>, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$720 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.*



Docket EPA-HQ-OAR-2006-0790  
Comments by the American Chemistry Council

We hope that you will find useful. Please do not hesitate to contact me if you have questions or need more information. I can be reached by phone at (201) 249-6411 or by e-mail at [lorraine\\_gershman@americanchemistry.com](mailto:lorraine_gershman@americanchemistry.com).

Sincerely,



Lorraine Krupa Gershman  
Director, American Chemistry Council

Attachment



Comments on  
EPA's Proposed Reconsidered Rule  
National Emission Standards for  
Hazardous Air Pollutants for Area Sources:  
Industrial, Commercial, and Institutional Boilers  
76 Fed. Reg. 80532, Dec. 23, 2011  
Docket EPA-HQ-OAR-2006-0790

Submitted by  
The American Chemistry Council

## I. EXECUTIVE SUMMARY

The American Chemistry Council (ACC) appreciates the opportunity to submit comments to the Environmental Protection Agency (EPA) on the Agency's National Emission Standards for Hazardous Air Pollutants (NESHAP) for Area Sources: Industrial, Commercial, and Industrial Boilers (Reconsideration Proposal). (76 Fed. Reg. 80532, Dec. 23, 2011.) ACC is pleased that EPA took into consideration the various sizes, frequency of use, fuel/feed variability and operational characteristics of the boilers used at area sources when it modified certain provisions in the rule. These provisions include those for creation of a subcategory for seasonally operated boilers; exemption for temporary boilers, monitoring carbon monoxide; averaging times; tune-up work practices and Title V permit requirements.

ACC is also pleased with EPA's approach to establishing emission limits for biomass- and oil-fired boilers at area sources, and EPA's request for comment on extending the initial tune-up compliance deadline to three years from promulgation of the March 21, 2011 Final Rule.

ACC strongly supports EPA's rationale for establishing Generally Available Control Technology (GACT) emission limits for biomass and oil-fired boilers as it is clearly based on the provisions in the Clean Air Act. In addition, EPA has acknowledged that only coal-fired area source boilers are needed to account for the 90 percent requirement set forth in § 112(c)(6) for polycyclic organic matter and mercury, and therefore, it is not reasonable or necessary to regulate biomass or oil-fired boilers based on Maximum Achievable Control Technology (MACT). (76 Fed. Reg. 80537.)

Regarding extending the initial tune-up compliance deadline to three years from promulgation of the Final Rule, ACC believes that extension would allow companies sufficient time to complete the initial tune-ups and to harmonize rule compliance dates for existing sources. As EPA has noted in this Reconsideration Proposal, there are companies (especially those with many boilers or boilers that operate only on certain schedules) that will not be able to meet the one year compliance time. In addition, because EPA has also proposed revisions to the Non-Hazardous Secondary Materials (NHSM) rule,<sup>2</sup> many sources are not yet sure how their secondary materials will be classified, and therefore whether the combustion unit will be regulated under this rule or the Commercial/Industrial Solid Waste Incineration (CISWI) rule.<sup>3</sup> Since resolving this issue will effectively amend the work practice standard by revising the scope of its applicability, ACC believes that there will be a substantial number of affected units for which the waste/fuel determination will need to be made and the work practice requirements completed. ACC urges EPA to adopt this extension.

ACC recommends that EPA modify the definition of natural gas curtailment as the current definition could be read to include only periods when the utility completely stops the entire supply of gas to a facility. Many ACC member companies that use natural gas fired boilers and process heaters operate under contract supply agreements with local utilities, often at reduced cost to the company in exchange for either the utility's ability to curtail the supply or a facility's

---

<sup>2</sup> 76 Fed. Reg. 80452

<sup>3</sup> 76 Fed. Reg. 80452

commitment to switch fuels when regional demand by residential or other critical users is high. However, most gas suppliers do not have automatic shutoff capability so they rely on such contracts to reduce gas use when needed. We recommend that EPA indicate in the definition that it will allow the use of backup liquid fuel firing when the supply of natural gas to affected facilities is restricted due to a purchase contract arrangement. Otherwise natural gas suppliers would impose a significant cost or penalty on such facilities for having to maintain natural gas supplies at non-restriction levels.

ACC believes that EPA should abandon the approach it is taking to addressing malfunctions, that is, offering an affirmative defense, and instead should use its statutory authority in §112(h) to establish a work practice or operational standard that would reduce emissions during a malfunction event. Alternatively, because this rule regulates area sources, EPA could use its authority in § 112(d)(5) to establish a management practice to reduce emissions during a malfunction event.

ACC supports EPA's decision to re-evaluate the carbon monoxide (CO) emission limit based on the best available data; however, we do not agree with EPA's rationale for reverting to a 99 percent confidence interval for the sake of consistency. Carbon monoxide emissions have a much greater degree of variability than other pollutants and a source must certify compliance with the CO limit under all operating conditions except startup and shutdown. Therefore, EPA's CO MACT floor should account for variability to the maximum extent possible. EPA's analysis is not representative of the range of expected operations and variability that should be expected from even the best performers. The emissions data is based on stack testing performed during maximum steady state load conditions, only providing a snapshot of the day-to-day operations of each source. The reasons for using a 99.9 UPL for setting the CO MACT floor cited in the preamble to the Final Rule remain valid.

For area sources with an affected boiler with heat input of 10 MMBtu/hr or greater, EPA appears to have proposed a beyond-the-floor "energy assessment" standard. ACC believes that since EPA's authority is limited to setting emission limits for the affected source as defined in the rule, any energy assessment requirements beyond the scope of that definition are beyond the floor requirements. ACC urges EPA to limit the scope of the energy assessment to the boiler and its immediate auxiliaries.

## TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY .....</b>	<b>i</b>
<b>II. ISSUES FOR RECONSIDERATION .....</b>	<b>1</b>
A. SUBCATEGORY FOR SEASONALLY OPERATED BOILERS .....	1
B. EXEMPTION FOR TEMPORARY BOILERS .....	1
C. INITIAL COMPLIANCE SCHEDULE FOR EXISTING BOILERS .....	2
D. DEFINITION OF NATURAL GAS CURTAILMENT .....	3
E. MONITORING CARBON MONOXIDE (CO) EMISSIONS .....	4
F. AVERAGING TIMES .....	7
1. ACC Recommends a 30-day Averaging Period for Table 3 Operating Load Requirements. ....	7
2. EPA Should Provide for Variable Operating Parameter Limits Because of Variable Operating Conditions. ....	7
G. AFFIRMATIVE DEFENSE PROVISIONS .....	8
1. EPA’s Approach to Malfunctions Is Not Required by Sierra Club v. EPA and Is Contrary to the Requirements of Section 112 of the Clean Air Act. ....	8
2. EPA Misinterprets the Holding In Sierra Club. ....	8
3. EPA Failed to Consider Malfunctions In Establishing MACT Numeric Emission Standards for Mercury (Hg) and CO. ....	9
4. EPA Failed to Present Any Rationale or Justification for its Decision to Apply the Same Numeric Emission Standards Established for Normal Operations for an Abnormal Event, i.e., A Malfunction. ....	10
5. EPA’s Inclusion of an Affirmative Defense is Not a Substitute for Establishing a § 112-Compliant Standard for Malfunction Events. ....	10
6. EPA’s Affirmative Defense Requirements Are Unreasonable and Not Consistent with § 112. ....	11
H. TUNE-UP WORK PRACTICES .....	15
I. USING THE UPPER PREDICTION LIMIT (UPL) FOR SETTING CARBON MONOXIDE EMISSION LIMITS .....	15
J. ESTABLISHING GACT EMISSION LIMITS FOR BIOMASS AND OIL-FIRED BOILERS .....	16
K. ENERGY ASSESSMENT .....	18
1. The Definition of Energy Assessment Is Too Broad as it Includes Units That Are Not “Affected Sources.” .....	18
2. EPA Does Not Have the Authority to Include Non-Affected Sources in the Energy Assessment. ....	18
L. SETTING PM STANDARDS UNDER GENERALLY AVAILABLE CONTROL TECHNOLOGY FOR OIL-FIRED AREA SOURCE BOILERS .....	20
M. TITLE V PERMITTING REQUIRMENTS .....	21

**III. TECHNICAL CORRECTIONS AND CLARIFICATIONS ..... 23**

A. EPA SHOULD CLARIFY THAT THE OPERATING LIMITS IN TABLE 3 DO NOT APPLY DURING STARTUP AND SHUTDOWN ..... 23

B. EPA SHOULD CLARIFY THE DEFINITION OF LIQUID FUEL ..... 24

C. EPA SHOULD NOT REQUIRE 30 DAYS ADVANCE NOTICE FOR FUEL SWITCHING TO NATURAL GAS ..... 24

D. THERE ARE DISCREPANCIES BETWEEN PREAMBLE TABLE 1 AND THE RULE ..... 25

## II. ISSUES FOR RECONSIDERATION

### A. SUBCATEGORY FOR SEASONALLY OPERATED BOILERS

EPA is proposing to create a new subcategory for seasonally operated boilers. For these seasonally operated boilers, EPA is proposing to require a tune-up every five years (following the initial tune-up). Seasonally operated boilers would be defined as follows:

*Seasonal boiler means a boiler that undergoes a shutdown for a period of at least 7 consecutive months (or 210 consecutive days) due to seasonal market conditions. This definition only applies to boilers that would otherwise be included in the biomass subcategory or the oil subcategory. (76 Fed. Reg. 80535)*

ACC supports the addition of a seasonal boiler subcategory. These boilers are used in seasonal agricultural operations or for occasional indoor heat. They typically operate only about 100 days per year, so the number of hours operated over a 5-year period is much less than that for a boiler in normal operation. However, requiring the same tune-up frequency, every five years, for these units as that required for units that operate continuously is not appropriate. In addition, an allowance should be made for those seasonal units to conduct maintenance and test firing during the 7 month period to ensure the unit is in good operating condition for the upcoming seasonal operations.

### B. EXEMPTION FOR TEMPORARY BOILERS

ACC supports EPA's decision to exempt temporary boilers from the requirements of this area source rule. EPA properly exempted these units from the requirements of the final major source boiler rule.<sup>4</sup> EPA defines a temporary boiler as follows:

*...any gaseous or liquid fuel boiler that is designed to, and is capable of, being carried or moved from one location to another by means of, for example, wheels, skids, carrying handles, dollies, trailers, or platforms. A boiler is not a temporary boiler if any one of the following conditions exists:*

- (1) The equipment is attached to a foundation.*
- (2) The boiler or a replacement remains at a location for more than 12 consecutive months. Any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function will be included in calculating the consecutive time period.*
- (3) The equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least 2 years, and operates at that facility for at least 3 months each year.*
- (4) The equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition. (76 Fed. Reg. 80548)*

---

<sup>4</sup> See Section 63.7491(j), 76 Fed. Reg. 15665, March 21, 2011.



ACC member companies periodically use portable/transportable boilers to supply and/or supplement existing site steam supplies. These boilers, which are typically rented and used on a temporary basis, are portable shop-fabricated package design units. They are typically used when an existing onsite boiler is out of service for a period of time for maintenance, or if needed during emergencies. Because temporary boilers are used on a limited time basis, portable units are typically not fully integrated with site control systems.

Most portable/transportable boilers are owned by a rental company, not the stationary source. Rented boilers may or may not be operated by the facility owner/operator. These temporary boilers will typically only fire gas or liquid fossil fuels (natural gas or distillate oil) and may have hourly emission rates lower than that for the boiler(s) they are temporarily replacing, based on either the boiler size or fuel fired. In addition, these units often do not have exhaust stacks that meet EPA Method 1 requirements for application of test methods.

From a technical standpoint, since portable/transportable boilers are used temporarily, ACC believes that it is not necessary or practical to apply the area source rule requirements for permanent fixed boilers to these boilers. In addition, EPA did not consider HAP emissions data from these units in establishing the area source standards and therefore should not make the requirements applicable to these units. ACC therefore supports EPA's proposal to exclude temporary boilers from the industrial boiler area source category.

### **C. INITIAL COMPLIANCE SCHEDULE FOR EXISTING BOILERS**

EPA has proposed to extend the deadline from one year to two years from the original promulgation date of March 21, 2011 for sources to complete the tune-up requirements applicable to existing boilers for demonstrating initial compliance. However, EPA has requested comment on whether this compliance requirement deadline should be extended to three years from the original promulgation date of March 21, 2011. In regard to the proposed extension to the initial compliance period, EPA states:

*Even though existing boilers that are subject to emission limits have three years to demonstrate initial compliance, we believe the proposed change to the tune-up initial compliance period is appropriate because compliance with the tune-up requirement does not involve the installation of control equipment. Providing the amended compliance schedule would eliminate the potential need to approve alternative compliance schedules for facilities with multiple boilers or seasonal boilers that could not comply with the one-year compliance requirement. (76 Fed. Reg. 80535)*

ACC recommends that EPA extend the initial tune-up compliance deadline to three years from March 21, 2011, the date of promulgation of the Final Rule. This extension would allow companies sufficient time to complete the initial tune-ups and to harmonize rule compliance dates for existing sources. EPA did not provide adequate justification in the Final Rule for shortening the compliance time that it had originally proposed for units requiring a tune-up. As EPA has noted in this Reconsideration Proposal, there are companies (especially those with many boilers or boilers that operate only on certain schedules) that will not be able to meet the one year compliance time.

EPA estimated that there are 183,000 existing area source boilers (76 Fed. Reg. 15579, Table 4). Affected sources will have to develop procedures and train personnel or engage contractors for the tune-ups required by this rule, and will also be required to set up recordkeeping practices and compliance assurance. For many companies, one additional year would not be enough time to complete these initial compliance requirements.

In addition, because EPA has also proposed revisions to the Non-Hazardous Secondary Materials (NHSM) rule,<sup>5</sup> many sources are uncertain as to how their secondary materials will be classified, and therefore whether the combustion unit will be regulated under the boiler area source rule or the Commercial/Industrial Solid Waste Incineration (CISWI) rule.<sup>6</sup> Since resolving this issue will effectively amend the work practice standard by revising the scope of its applicability, ACC believes that there will be a substantial number of affected units for which the waste/fuel determination will need to be made and the work practice requirements completed. ACC urges EPA to set the compliance deadline at three years from March 21, 2011, the promulgation date of the Final Rule.

#### **D. DEFINITION OF NATURAL GAS CURTAILMENT**

EPA has proposed to amend the definition of “period of gas curtailment or supply interruption” to clarify that it does not include normal market fluctuations in the price of gas that are not associated with periods of supplier delivery restrictions. The revised definition would also clarify that supply interruption can include on-site natural gas system emergencies and equipment failures. ACC supports both of these clarifications. The proposed definition is as follows:

*Period of gas curtailment or supply interruption means a period of time during which the supply of gaseous fuel to an affected facility is halted for reasons beyond the control of the facility. The act of entering into a contractual agreement with a supplier of natural gas established for curtailment purposes does not constitute a reason that is under the control of a facility for the purposes of this definition. An increase in the cost or unit price of natural gas due to normal market fluctuations not during periods of supplier delivery restriction does not constitute a period of natural gas curtailment or supply interruption. On-site gaseous fuel system emergencies or equipment failures may qualify as periods of supply interruption when the emergency or failure is beyond the control of the facility. (76 Fed. Reg. 80536)*

This definition nevertheless presents a major concern for industry because the term “halted” may be interpreted to interfere with existing contractual obligations and therefore would be too restrictive.

Many ACC member companies that use natural gas fired boilers operate under contract supply agreements with local utilities, often at reduced cost to the company in exchange for either the utility’s ability to curtail the supply or a facility’s commitment to switch fuels when regional demand by residential or other critical users (e.g., hospitals) is high. Critical regional demand is frequently a function of inclement weather when residential and medical facilities require more gas than normal, thus limiting the amount of gas available to industrial customers. However,

---

<sup>5</sup> 76 Fed. Reg. 80452

<sup>6</sup> 76 Fed. Reg. 80452

most gas suppliers do not have automatic shutoff capability so they rely on industrial customers to reduce gas use when needed.

The current definition can be read to penalize facilities that contract for interruptible natural gas, which is the most common method of industrial gas curtailment. Interpreted literally, the current definition of curtailment includes only periods when the utility completely stops the supply of gas to a facility. As discussed above, this is not even possible for most gas suppliers.

Given the many possible contractual arrangements, ACC recommends that EPA modify the definition in the final reconsidered rule so that it does not restrict the ability of natural gas consumers to obtain the most appropriate gas purchasing contract arrangement for their purposes. Specifically, EPA should indicate that it will allow the use of backup liquid fuel firing when the supply of natural gas to affected facilities is restricted due to a purchase contract arrangement. Otherwise natural gas suppliers would impose a significant cost or penalty on such facilities for having to maintain natural gas supplies at non-restriction levels.

ACC also notes that there is a lack of consistency in the definition of “natural gas curtailment” in the reconsidered proposed boiler major source rule<sup>7</sup> and in this rule. Specifically, the last sentence of the definition differs in the two rules.

We recommend that EPA adopt the following revisions to the definition of natural gas curtailment or supply interruption:

*Period of gas curtailment or supply interruption means a period of time during which the supply of gaseous fuel to an affected facility is halted or restricted for reasons beyond the control of the facility or due to the terms of a contractual agreement with a supplier of natural gas that allows gas curtailment or supply interruption. An increase in the cost or unit price of natural gas due to normal market fluctuations that does not occur during periods of supplier delivery restriction does not constitute a period of natural gas curtailment or supply interruption. Restriction of supply by a natural gas supplier under a contractual order (e.g., operational flow order under a user’s interruptible supply contract) does constitute a period of natural gas curtailment. On-site gaseous fuel system emergencies or equipment failures may qualify as periods of supply interruption when the emergency or failure is beyond the control of the facility.*

## **E. MONITORING CARBON MONOXIDE (CO) EMISSIONS**

ACC supports EPA’s proposed changes to oxygen (O<sub>2</sub>) monitoring requirements. In the Final Rule, EPA included continuous oxygen monitoring with a continuous emission monitoring system (CEMS) as the compliance method for sources with a CO limit, instead of mandating the use of CO CEMS. In the Reconsideration Proposal, EPA is proposing to amend the oxygen monitoring requirements to allow use of continuous oxygen trim analyzer systems instead of oxygen CEMS. 76 Fed. Reg. 80536. EPA also proposes to remove the requirement that the oxygen monitor be located at the outlet of the boiler, so that it can be located at a more representative location, i.e., either within the combustion zone or at the outlet as a flue gas

---

<sup>7</sup> 76 Fed. Reg. 80598, 80653

oxygen monitor. ACC supports these proposed changes because they allow facilities to utilize existing oxygen trim systems rather than having to install CEMS. This approach is technically sound, adds flexibility and is less costly and burdensome than the continuous oxygen monitoring requirements using CEMS.

Many existing boilers already utilize flue gas oxygen analyzers for indication, alarm, and O<sub>2</sub> trim control, where the fuel/air ratio is automatically controlled for optimum combustion conditions. The sensing location for existing O<sub>2</sub> monitors is typically in the optimum location to sense flue gas composition as reliably as possible, because sensing of oxygen in these cases maintains proper excess air levels and helps prevent unsafe operating conditions. For many types of combustion units, that location is near the boiler furnace outlet in a position upstream of any potential air in leakage points to avoid erroneous excess air indications which would drive controls in an erroneous direction. This location is also upstream of air preheaters where utilized, thus avoiding the erroneous (high O<sub>2</sub>) indications due to inherent leakage across regenerative air preheater seals or potential tube leakage in recuperative air preheaters. For those units equipped with existing O<sub>2</sub> sensors and O<sub>2</sub> trim control systems, flue gas composition at those locations would already be used for combustion tuning and control characterization. Therefore, if O<sub>2</sub> monitoring is desired for continuous compliance under this rule, sensing O<sub>2</sub> at that current location would be technologically sound.

ACC recommends the following changes to the regulatory language to enhance clarity and ensure no negative impact to operations.

Oxygen sensing location

The Oxygen analyzer system is defined in §63.11237 of the Reconsideration Proposal in part as follows:

*Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler flue gas or firebox.*

The optimum location of the sensor or sampling point is dependent on the specific boiler design. In different applications, that location might be at the furnace exit, in the convection pass, at the boiler outlet or at another downstream location. ACC recommends that this definition be modified as follows to accommodate the boiler-specific location of the sensing point:

*Oxygen analyzer system means all equipment required to determine the oxygen content of a gas stream and used to monitor oxygen in the boiler flue gas, boiler ~~or~~ firebox, or other appropriate intermediate location.*

Oxygen trim system set point

Paragraph 7 of the Reconsideration Proposal § 63.11224(a) states the following:

*You must operate the oxygen analyzer system with the oxygen level set at the minimum percent oxygen by volume that is established as the operating limit for oxygen according to Table 4 to this subpart.*

The above paragraph references Table 4, but ACC believes that the correct reference is Table 6, as that is the table containing requirements for establishing operating limits, including oxygen as the operating limit for CO (#3 in Table 6).

The wording of §63.11224(a)(7) is more restrictive than the wording of the requirement for “continuous oxygen monitoring” in Table 3, #8, which is as follows:

*“Maintain the 30-day rolling average oxygen level at or above the lowest 1-hour average oxygen level measured during the most recent CO performance stack test.”*

The requirement in Table 3 allows operation with the 30-day rolling average oxygen level at or above (no lower than) the lowest 1-hour average oxygen level measured in the most recent performance test, whereas §63.11224(a)(7) requires operation at the minimum oxygen percent established during the prior test. Inherent boiler operating characteristics require operation with higher excess air (higher oxygen) at lower operating rates simply due to their lower fuel and air velocities, degraded mixing of fuel and air as those flow rates decrease, and lower furnace temperatures. Therefore, it is necessary for the actual oxygen trim system set point to vary with load level, with the lowest set point typically occurring at or near full load operation. The Table 3, #8 requirements account for the variability of actual boiler operations; therefore, §63.11224(a)(7) should be revised to account for this variability as well.

In addition, §63.11224(a)(7) should be modified to incorporate a safety component associated with the operation of oxygen trim system. Coal fired boilers subject to the CO limits in this rule may also be equipped to fire other fuels such as natural gas and fuel oil that may be lower emitting and able to operate at lower oxygen levels for improved boiler efficiency. Operators may also need to modify the oxygen set point or trim system to accommodate fuel quality issues. Oxygen trim systems not only provide a means for energy efficiency, but they also are integral to furnace combustion control and furnace safety. Therefore, while this system promotes energy efficiency and use of a 30-day rolling average basis for the system does provide some operating flexibility, use of such systems should also consider safety. ACC recommends that §63.11224(a)(7) be revised as follows:

*You must operate the oxygen analyzer system with the oxygen level set at or above the minimum percent oxygen by volume that is established as the operating limit for oxygen according to Table 64 to this subpart when firing the fuel or fuel mixture utilized during the most recent CO performance stack test. Operation of oxygen trim control systems to meet these requirements shall not be done in a manner which compromises furnace safety.*

Finally, EPA is proposing to amend the monitoring requirements in §63.11224(a) to allow sources subject to a carbon monoxide emission limit the option to install, operate and maintain a carbon monoxide and oxygen CEMS. 76 Fed. Reg. 80536. This will allow facilities to choose

between compliance using CO CEMS and compliance using an O<sub>2</sub> CEMS in combination with CO stack testing. We support EPA's decision to allow this flexibility in the CO monitoring requirements and allow facilities that already have CO CEMS to use their existing systems.

## **F. AVERAGING TIMES**

ACC supports EPA's determination that a 30-day rolling average for parameter monitoring and compliance with operating limits is appropriate for this rule. EPA is correct in pointing out that variability outside the operator's control such as fuel content, seasonal factors, load cycling and infrequent hours of needed operation provides a basis for using a longer averaging period. 76 Fed. Reg. 80536. Operating conditions for industrial boilers are especially variable when changes to fuel mixes and loads occur. Since the operating parameter ranges will be established using test data obtained at one steady state operating condition, a 30-day averaging period would account for fluctuations that may occur over the range of operating conditions.

### ***1. ACC recommends a 30-day averaging period for Table 3 operating load requirements.***

ACC recommends that EPA also add a 30-day averaging period for the operating load requirement in Table 3 to be consistent with the load monitoring requirement in Table 7 of the rule. Table 3 requires operators to maintain the operating load of each unit such that it does not exceed 110 percent of the average operating load recorded during the most recent performance test. For the same reasons provided above for the other operating parameters, EPA should allow a 30-day averaging period for operating load so that short term high load periods that are more than 10 percent above the tested load, either individually or in combination, do not result in deviations. Facilities make every attempt to schedule stack tests during periods of high utilization, but sometimes need to operate at more than 100 percent of the load achieved during the stack test for short periods of time in order to meet operational demands. The provisions in the current requirement imply that the 110 percent load limitation is for an instantaneous event; however, lesser events in total could exceed the load limitation due to normal variability over time.

### ***2. EPA should provide for variable operating parameter limits because of variable operating conditions.***

ACC also recommends that EPA allow for operating parameter limits to vary with unit load fraction as applicable to the operating parameter and specific affected source, and recognize that those operating parameters do not necessarily vary in a linear relationship with load, e.g., pressure drop typically varies with the (flow)<sup>2</sup>. In Table 6, EPA only allows for operating parameter limit variation due to boiler load fraction to be applied to activated carbon injection rates. However, variations with load and other operating conditions also occur for the other operating parameters- wet scrubber pressure drop and liquid flow rate, ESP secondary power. Flue gas flow rate and characteristics vary over load and with other operating variables such as fuel quality, to the extent that the single hourly average value determined during the high load steady state performance test will not apply to other conditions if overall performance is optimized.

## G. AFFIRMATIVE DEFENSE PROVISIONS

EPA is soliciting comments on the inclusion of the affirmative defense provisions for malfunctions in the Final Rule. The affirmative defense provisions appear in § 63.11226 of the Final Rule and require an owner/operator of an area source boiler to prove by a preponderance of evidence that it has met each and every requirement in order to avail itself of the affirmative defense to a claim for civil penalties. For the reasons discussed below, ACC believes that EPA should abandon the approach it is taking to addressing malfunctions, that is, offering an affirmative defense, and instead should use its statutory authority in § 112(h) to establish a work practice or operational standard that would reduce emissions during a malfunction event. Alternatively, because this rule regulates area sources, EPA could use its authority in § 112(d)(5) to establish a management practice to reduce emissions during a malfunction event.

### ***1. EPA's Approach to Malfunctions Is Not Required by Sierra Club v. EPA and Is Contrary to the Requirements of Section 112 of the Clean Air Act.***

EPA states that, "consistent with" the holding in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), cert. denied, 130 S. Ct. 1735 (2010) ("*Sierra Club*"), it has established emission standards that apply at all times, even during a period of malfunction. ACC believes that there are a number of flaws in this statement and in EPA's approach to malfunctions experienced by area sources rendering it contrary to the requirements of § 112 of the Clean Air Act (CAA). More specifically:

- EPA misinterprets the holding of *Sierra Club*;
- EPA failed to consider malfunctions in establishing MACT numeric emission standards for mercury (Hg) and carbon monoxide (CO);
- EPA failed to present any rationale or justification for its decision to apply the same numeric emission standard established for normal operations during an abnormal event, i.e., a malfunction;
- EPA's inclusion of an affirmative defense is not a substitute for establishing a § 112-compliant standard for malfunction events; and
- EPA's affirmative defense requirements are potentially unconstitutional, but certainly unreasonable and not consistent with § 112.

### ***2. EPA Misinterprets the Holding In Sierra Club.***

The Final Rule presents nothing more than a single sentence as justification for requiring that sources meet numeric emission standards established for normal operations during a malfunction event: "Consistent with *Sierra Club v. EPA*, EPA has established standards in this rule that apply at all times."<sup>8</sup> The D.C. Circuit's *Sierra Club* decision does not, however, compel or even support EPA's position that the same numeric standards established for normal operations must also apply during a malfunction event.

---

<sup>8</sup> *Id.* at 15565

The *Sierra Club* ruling vacated the exemption for excess emissions during periods of startup, shutdown and malfunction (SSM) contained in the General Provisions, 40 C.F.R. part 63 subpart A, for emission standards for hazardous air pollutants regulated under CAA § 112. At issue was EPA's determination that excess emissions during periods of SSM experienced by major sources are not violations as long as the owner/operator has prepared a startup, shutdown and malfunction plan and complies with a "general duty" to minimize emissions. The court concluded that the "general duty" was not a "section 112-compliant standard". However, the court did not state nor even imply that the same emission limits that EPA establishes for normal operations must apply during SSM events.

In fact, the court clearly indicated that section 302(k)'s "inclusion of [the] broad phrase" "any requirement relating to the operation or maintenance of a source to assure continuous emission reduction" in the definition of "emission standard" suggests that EPA can establish maximum achievable control technology (MACT) standards consistent with CAA section 112 "without necessarily continuously applying a single standard." The court accepted that "continuous" for purposes of § 302(k) "does not mean unchanging..." *Id.* at 1027. The court also highlighted the fact that Congress recognized that it might not be feasible in all cases to prescribe or enforce a numeric emission standard. Congress therefore provided in § 112(h) for the establishment of a "work practice" or "operational standard". *Id.* at 1028.

Turning to this area source rulemaking, EPA has clear statutory authority to regulate emissions from area sources less stringently than emissions from major sources. In regulating HAP emissions from *area sources* EPA may forgo establishing MACT standards pursuant to § 112(d)(2) and instead "promulgate standards *or requirements* ... which provide for the use of generally available control technology *or management practices*...to reduce emissions of hazardous air pollutants". *See*, § 112(d)(5) (emphasis added). However, in this rule EPA used its authority under § 112(d)(2) to establish MACT numeric emissions standards for mercury (Hg) and CO.

EPA is now soliciting comments on its determination in the Final Rule that area sources must meet the numeric emission standards established for steady-state operations at all times, including periods of malfunction, and that the only enforcement relief that may be available in the event of a malfunction is an "affirmative defense" to civil penalties. EPA is completely silent on why it is not exercising the discretion and authority provided by Congress in § 112(h) and § 112(d)(5) to address area source malfunctions; in fact, it does not even mention these statutory authorities. If EPA wants to act "consistent with" the court's decision in *Sierra Club*, it should promulgate standards for periods of malfunction pursuant to its § 112(h) or § 112(d)(5) authority. If EPA chooses to reject the flexibility that Congress clearly intended the Agency to use when it is not feasible to prescribe or enforce a numeric emission standard, it needs to explain its legal authority for these affirmative defense requirements and why each of the requirements is reasonable and justified, taking into consideration alternative solutions.

### ***3. EPA Failed to Consider Malfunctions In Establishing MACT Numeric Emission Standards for Hg and CO.***

Under CAA section 112(d)(2), MACT emission standards must be "achievable." Moreover, when EPA establishes emission standards for existing sources based on the "best performing 12% of units in the category" (the "MACT floor"), those emission standards must on average be



“achieved” by the best performers. *See*, § 112(d)(3). If EPA is going to require sources to meet a numeric standard at “all times” then the Agency must demonstrate that the standard accommodates the variability in emissions experienced, i.e., “achieved”, by best performing sources “at all times”, which would have to take into account, among other things, a potential malfunction.

Based on our review of documents in the docket for this rulemaking it appears that EPA did not consider any data identifying the level of Hg or CO emissions that may result when a best performing source experiences a malfunction. EPA therefore has failed to show that the Hg and CO emission levels that apply at all times reflect the reductions that are “achieved” by best performing sources during a malfunction.

Despite the fact that EPA historically has recognized the inherent limits of technology based standards in promulgating standards under both the Clean Air Act and the Clean Water Act, in this rule EPA chooses to ignore the fact that, despite an owner/operator’s best efforts, technology sometimes fails and that even a best performing source could experience a malfunction. Because EPA failed to consider the level of emissions that may result from a malfunction and incorporate that consideration in the numeric standard for Hg and CO, emission standards that apply at all times, EPA’s actions are arbitrary and capricious and not in accordance with law.

Furthermore, EPA’s failure to establish emissions standards consistent with § 112 of the CAA also raises the issue of denial of due process. By establishing standards that are not attainable “at all times”, EPA is subjecting roughly 183,000 area sources to potential penalties and worse for failing to comply with numeric emission standards that are unattainable during a malfunction.

**4. *EPA Failed to Present Any Rationale or Justification for its Decision to Apply the Same Numeric Emission Standards Established for Normal Operations for an Abnormal Event, i.e., A Malfunction.***

As highlighted above, the court in *Sierra Club* did not state that EPA must apply the same standards it establishes for normal operations during periods of SSM. The court’s holding is clear that “some” § 112 standard must “govern” SSM events but it did not specify which section 112 standard. In this rulemaking, EPA concluded that the Hg and CO standards set for normal operations also must be attained during a malfunction event. However, EPA has provided no explanation as to why it believes that area source boilers reasonably could be expected to meet the emissions standards applicable to steady-state operations during a malfunction event.

In failing to articulate the basis for its decision, the Agency also ignores the comments submitted by ACC and others encouraging EPA to establish a work practice standard for malfunction events. This is not reasoned decision-making and we hope that the Agency’s “reconsideration” of its affirmative defense approach will prompt EPA to give reasonable consideration to the fact that a boiler that has a malfunction is not likely to be able to achieve the same level of emission reductions that it achieved and can achieve while operating at steady-state.

**5. *EPA’s Inclusion of an Affirmative Defense is Not a Substitute for Establishing a § 112-Compliant Standard for Malfunction Events.***

ACC believes that EPA should either revise the numeric standards for Hg and CO to account for malfunction events, or use its statutory authority to establish a §112 work practice or

management standard applicable during a malfunction event. There is no language in § 112 that authorizes EPA to offer an owner/operator an “affirmative defense” to civil penalties to cure the fact that it has finalized numeric emission standards that do not represent the emission levels actually “achieved” by the best performing sources “at all times”. Moreover, EPA’s offering of an affirmative defense does not bear a reasonable relationship to the purpose of § 112 or its requirement to establish standards that consider and address the reality of a potential malfunction of technology. If EPA chooses to reject the flexibility that Congress clearly intended the Agency to use when it is not feasible to prescribe or enforce a numeric emission standard, it needs to explain why its affirmative defense approach is a better alternative than using the statutory authority provided in § 112(h) and § 112(d)(5) to establish a work or management practice for a malfunction period.

**6. EPA’s affirmative defense requirements are unreasonable and not consistent with § 112.**

In the preamble to the final area source boiler rule, EPA presents the affirmative defense as a potential “response” an owner/operator may take to “an action to enforce the standards set forth in 40 CFR 63.11201.” *See* 76 Fed. Reg. 15554, 15565. The regulatory language in § 63.11226 also opens with the words “*In response to an action to enforce the standards set forth in...*” and repeats this thought in paragraph (a) of the section: “To establish the affirmative defense *in any action to enforce* such a limit...” (emphasis added). This opening language leaves a regulated party to believe that *if* any action is taken against that party to enforce an emission limit exceeded during a malfunction, the party may avail itself of an affirmative defense if it meets various criteria. However, this is not the way EPA’s affirmative defense would play out.

In § 63.11226 (b) EPA establishes strict notification requirements that must be followed for the owner/operator to be able even to raise an affirmative defense if and when an enforcement action is brought. First, the owner/operator must notify EPA by phone or FAX as soon as possible, but no later than two business days after the “initial occurrence of the malfunction.” Then, within 45 days of the “initial occurrence of the exceedance of the standard”, the owner/operator must submit a written report accompanied by all necessary supporting documentation to show that it has met each and every requirement set forth in paragraph (a) of § 63,11226. Because of these short time frames, the reality is that EPA is requiring the facility to present its entire detailed defense in writing to EPA before EPA has even decided whether to take any enforcement action. To require a party to lay out its entire defense to a *potential* future enforcement action *before* that action may be taken is wholly inappropriate and unacceptable.

EPA has cited no legal authority for its use of affirmative defense requirements that inappropriately and unlawfully shift the burden to the facility to prove by a preponderance of the evidence that any excess emissions were caused by a true malfunction *and* that the facility meets all of the other specified factors in § 63.11226. EPA’s affirmative defense places the facility in the position of proving its innocence, rather than EPA or other regulatory authority bearing the burden to prove that the facility violated the CAA.

EPA states that the affirmative defense may be raised to a “claim for civil penalties” but does not define “civil penalties”. For example, are these meant to include a “civil administrative penalty” imposed by EPA under § 113(d) of the CAA? A “noncompliance” penalty sought under § 120 of the CAA? A “civil penalty” imposed by a court?

It is also unclear how the affirmative defense would apply to enforcement actions by state and local governments, or to private citizen enforcement actions brought under § 304 of the CAA. While in no way endorsing EPA's affirmative defense provision, ACC believes that if retained by the Agency after reconsideration, the provisions should clearly state that it is applicable to any enforcement action.

Section 63.11226 states: "The affirmative defense shall not be available for claims for injunctive relief." The preamble is silent as to why the affirmative defense would not apply to injunctive relief. If the facility meets the requirements of the affirmative defense provision, why may it not be raised as a defense to a claim for injunctive relief? EPA's assertion to the contrary is unsupported by any explanation.

Turning to the individual requirements in § 63.11226(a)(1) through (9) that a facility must meet to be allowed to raise an affirmative defense, a number of these requirements are not relevant to whether a malfunction, as defined in § 63.2 occurred.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Most of the conditions for establishing an affirmative defense in § 63.11226 may be relevant to determining whether the facility undertook appropriate and necessary measures to mitigate any excess emissions resulting from the specific malfunction, but do not in any way inform a determination of whether a piece of equipment has met the definition of a malfunction. For example, § 63.11226(a)(2) requires that "off-shift and overtime labor, to the extent practicable" were used to make the repairs needed. ACC fails to understand how this requirement relevant to determining whether a piece of equipment has "malfunctioned". See also (a)(3), (a)(5), (a)(6), (a)(7), (a)(8) and (a)(9).

A number of the requirements are extremely subjective and fail to allow for consideration of reasonableness or cost-effectiveness. For example, § 63.11226(a)(1)(ii) requires the owner/operator to show that the malfunction could not have been prevented through "careful planning", "proper design" or "better operation and maintenance practices". This subjective requirement leaves open the possibility that an enforcement official could always find actions that "could" have been taken without any consideration of costs, resources or feasibility. Moreover, it fails to consider that an owner/operator may have chosen to redesign a process or equipment configuration, or make other adjustments to achieve the emission reductions necessary to comply with the standard. In so doing, the owner/operator would have evaluated various options to determine which one was the most cost-effective approach to achieve the emission standard, keeping in mind that cost-effectiveness would include long-term safe and proper operation of the equipment or process. If a malfunction were to occur, it could be difficult if not impossible for the owner/operator to prove that the malfunction "could not have been prevented" if cost and resources were never an issue.

Another subjective and particularly problematic requirement is (a)(8) which requires that: "At all times, the *facility* was operated in a manner consistent with good practices for minimizing

emissions.” ACC strongly objects to EPA reaching beyond the *equipment* that malfunctioned to require a party to prove by a preponderance of the evidence that “at all times, the *facility* was operated in a manner consistent with good practices for minimizing emissions.” (Emphasis added.) First, EPA does not define “facility” or “affected facility” in the final area source boiler rule, nor is it included in the definitions at 40 CFR 63.2; common usage of the term facility suggests that it means the entire plant.<sup>9</sup> . Second, and more importantly, EPA is requiring a party to comply with a requirement that is ambiguous, highly subjective, and impossible. This is not reasoned decision-making. We note that in its proposed reconsideration of various provisions of the Chemical Manufacturing Area Source Rule (“CMAS”), EPA has revised this requirement and changed the word “facility” to “affected source.” (77 Fed. Reg. 4522 January 30, 2012) If these affirmative defense provisions are included in the final reconsidered boiler area source rule, EPA should follow what it has done in CMAS and change “facility” to “affected source.”

Requirement (a)(4) would disallow the affirmative defense if a malfunction involved bypassing control equipment or a process, and the bypass was not taken “to prevent loss of life, severe personal injury, or severe property damage.” This language is both unyielding and subjective. It is unyielding in that it fails to allow any consideration of the fact that bypassing the control equipment or the process may have been an appropriate exercise of good air pollution control practices. For example, a bypass can constitute the best air pollution control practice in response to an upset in order to prevent excess emissions, e.g., to avoid fouling of pollution control equipment media that in turn would result in reduced pollution control equipment efficiency or increased pollution control equipment downtime. Additionally, in some cases the air emissions from a venting event are lower than if the facility had an uncontrolled shutdown to avoid venting. An uncontrolled shutdown could also impact other media, e.g., a wastewater dump from scrubbers, solid waste, etc. And, a shutdown would necessitate additional startup emissions. Arguably, venting for a short period due to malfunction could result in lower emission levels than a non-orderly shutdown and subsequent restart. Yet, as worded, this requirement would discourage an owner/operator from taking the less-impactful option because it would mean that he could not avail himself of an affirmative defense for the malfunction.

This requirement is subjective in its use of the word “severe.” Reasonable minds could disagree on what constitutes “severe” property damage, or “severe” personal injury. Lastly, this requirement is not supported by any explanation as to why “bypassing” control equipment or a process is absolutely unacceptable except when an owner/operator is faced with these dire consequences.

Requirement (a)(5) demands a party to prove that: “All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health.” Again, the subjectivity of “all possible steps” is problematic in that it establishes a potentially unattainable standard with no clear direction as to how a party is to meet it.

---

<sup>9</sup> The term “affected facility” is used in NSPS and is defined in the NSPS General Provisions at 40 CFR 60.2, but the MACT standards in Part 63 use the term “affected source,” and the definition of affected source in 40 CFR 63.2 states “Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively.” EPA does define the “affected source” in § 63.11194 (“the collection of all existing industrial, commercial, and institutional boilers within a subcategory” or “each new or reconstructed industrial, commercial, or institutional boiler within a subcategory”).

Requirement (a)(9) is problematic in that it requires a party to prepare a “written root cause analysis to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue.” This directive assumes that any and all malfunctions can be determined, corrected and eliminated. If a malfunction by definition is unavoidable, unforeseeable, and not reasonably preventable, it may be that the first time it happens its primary cause cannot be determined. If the cause cannot be determined, it cannot be corrected. So unless a party can figure out why something malfunctioned, it cannot claim to have had a “malfunction.” Not only is this nonsensical, it is a significant departure in EPA policy with no justification provided. For example, in the General Provisions applicable to New Source Performance Standards (NSPS), EPA recognizes that the cause of a malfunction cannot always be known. *See* 40 CFR 60.7(b)(2) which requires that written reports of excess emissions include the “nature and cause of any malfunction, *if known*....” (Emphasis added.) Lastly, requiring a party to eliminate the primary causes of the malfunction, without regard to “taking into consideration the cost of achieving such” elimination and the “non-air quality health and environmental impacts and energy requirements” associated with its elimination is unreasonable and entirely inconsistent with the criteria for standards established under § 112(d) of the CAA.<sup>10</sup>

Turning to the 2-day notification requirement in § 63.11226(b), ACC notes that EPA recently proposed almost identical affirmative defense requirements in the 2-day notification. It is ACC’s understanding that the Agency has been persuaded by comments submitted by ACC and others in industry that the 2-day notification requirement is onerous and burdensome. We also understand that EPA may be revisiting some of the other requirements in the affirmative defense provisions in order to further reduce the burden on facilities. We therefore request that in its reconsideration EPA abandon it in the final provisions for area source boilers.

Unlike the 2-day notification which is triggered by the “initial occurrence of the malfunction”, the 45-day period for submitting a written report demonstrating that the party qualifies for the affirmative defense commences on the date of “the initial occurrence of the exceedance of the standards.” Complying with this timeframe presents several challenges, specifically because most of the content of the report may not be able to be created until the malfunction has ended, which in some cases could be a number of days.

While there is an allowance for requesting and obtaining an extension of the reporting deadline of up to 30 additional days, the owner/operator must comply with the original 45-day requirement unless and until he hears back from EPA that the extension request is approved. However, there is no requirement for EPA to act timely in granting or denying an extension request. At a minimum, the rule should provide a timeframe within which EPA must act on a request and if it fails to do so, the request would be considered granted.

---

<sup>10</sup> For example, it might be theoretically possible to eliminate the excess emissions associated with the malfunction by installing totally redundant pollution control equipment, or pollution control equipment with far more capacity than needed for normal operations. But this would not reflect the performance of the best performers on which the MACT “floor” is to be based, nor would it appear to take cost and other factors into consideration as the statute requires for beyond-the-floor MACT standards. Moreover, the proposed requirement to eliminate “the primary causes of the malfunction” and not just to eliminate “the excess emissions resulting from the malfunction event” lies entirely outside of EPA’s authority under the CAA, which is limited to establishing and enforcing emission limitations, not dictating plant operations.

For all of the reasons above, and in keeping with the court’s holding in *Sierra Club*, we strongly encourage the Agency to abandon its affirmative defense approach for malfunctions. We believe that the Agency instead should use its authority in either § 112(d)(5) or § 112(h) to establish a management practice, work practice or operational standard to address a malfunction event that may be experienced by an area source boiler.

## **H. TUNE-UP WORK PRACTICES**

EPA has proposed to change the frequency for tune-ups (following the initial tune-up) for oil-fired boilers that are equal to or less than 5 MMBtu/hr to once every five years. 76 Fed. Reg. 80536. For new units, EPA has proposed to remove the requirement for the initial tune-up, since new units will likely be tuned during the initial startup process as part of commissioning. For facilities with a large number of small oil-fired units, completion of tune-ups on a biennial basis can quickly become a significant logistical challenge, since periods of shut down for tune-ups would have to be scheduled without undue disruption to the operation of the facility. For area source boilers, we believe that a tune-up every five years is appropriate, as emissions from these boilers are relatively small, and allowing a reduced tuning frequency will reduce the cost of the rule. Therefore, ACC supports these changes, as they minimize the regulatory burden on small sources with minimal emissions impact.

## **I. USING THE UPPER PREDICTION LIMIT (UPL) FOR SETTING CARBON MONOXIDE EMISSION LIMITS**

EPA is proposing to amend the carbon monoxide emission limit for new and existing coal-fired boilers from 400 parts per million (ppm) by volume on a dry basis, corrected to 3 percent oxygen, to 420 ppm by volume on a dry basis, corrected to 3 percent oxygen. 76 Fed. Reg. 80536. This change has occurred for the following reasons:

- EPA is proposing to remove the test data from the CO MACT floor analysis from a boiler for which only two test runs were completed.
- EPA is proposing to revise the CO MACT floor analysis to use a 99 percent confidence interval as opposed to a 99.9 percent confidence interval to determine the UPL.

ACC supports EPA’s decision to re-evaluate the CO emission limit based on the best available data. ACC agrees with EPA’s rationale to remove the data for the boiler with only two test runs as the required number of test runs for demonstrating compliance is three, and EPA should include data that best demonstrate variability.

However, ACC does not agree with EPA’s rationale for reverting to a 99 percent confidence interval. EPA states in the Reconsideration Proposal:

*In the final rule, the EPA selected the use of a 99.9 percent confidence interval for calculating the MACT floor for CO emissions. A petitioner requested reconsideration of this selection given the fact that the EPA used a 99 percent confidence interval for all of the other emission limits in the final rule. The petitioner pointed out that if the data are highly variable, the 99 percent confidence interval should adequately reflect the variability of emissions as well as for the data sets for other pollutants. In the development of the final rule, the 99.9 percent confidence interval was selected in part*

*because the standards covered periods of startup and shutdown, while the data did not reflect CO emissions during those periods. While the EPA finalized work practice standards for startup and shutdown periods, the selection of the confidence interval was not revisited due to time constraints. The EPA is now proposing to use a 99 percent confidence interval in order to maintain a consistent methodology with the development of the MACT floors for other pollutants, and because optional CO CEMS-based limits are being proposed that would allow sources additional flexibility in meeting the requirements of the rule. (76 Fed. Reg. 80536)*

ACC does not agree that a 99 percent confidence interval must be used for the sake of consistency. Carbon monoxide emissions have a much greater degree of variability than other pollutants and a source must certify compliance with the CO limit under all operating conditions except startup and shutdown; therefore, EPA's CO MACT floor should account for variability to the maximum extent possible. The small data set used in EPA's analysis is not representative of the range of expected operations and variability that should be expected from even the best performers. The emissions data is based on stack testing performed during maximum steady state load conditions, only providing a snapshot of the day-to-day operations of each source. As shown below, the reasons for using a 99.9 UPL for setting the CO MACT floor cited in the preamble to the Final Rule remain valid and EPA should not adopt the 99 percent confidence interval to determine the UPL in the reconsidered final rule.

*For CO, EPA considered several comments from industry and States, which provided both quantitative and qualitative comments on how CO emissions vary with load, fuel mixes and other routine operating conditions. After considering these comments EPA determined that a 99.9 percent confidence level for CO would better account for some of these fluctuations. While a good deal of CO data are available, at least for some of the subcategories, the data show highly variable emissions that can result from situations beyond the control of the operator, such as fuel moisture content after a rain event, elevated moisture in the air, and fuel feed issues or inconsistency in the fuel. The higher confidence level selected for CO is intended to reflect the high degree of variability in the emissions. (76 Fed. Reg. 15628)*

#### **J. ESTABLISHING GACT EMISSION LIMITS FOR BIOMASS AND OIL-FIRED BOILERS**

EPA based the 2010 Proposed Rule standards for biomass and oil-fired area source boilers on maximum achievable control technology (MACT). EPA is now requesting comment on basing these standards on generally available control technology (GACT) instead. We support EPA's decision to regulate biomass and oil-fired boilers based on GACT and not MACT.

EPA stated in the Reconsideration Proposal:

*We stated in the preamble (75 Fed. Reg. 31904) to the proposed rule, that both industrial boilers and institutional/ commercial boilers were on the list of CAA section 112(c)(6) source categories for mercury and POM. Section 112(c)(6) requires MACT standards for each of the pollutants needed to achieve regulation of 90 percent of the emissions of the relevant pollutant. In contrast, CAA section 112(c)(3) allows the EPA to establish standards under GACT instead of MACT*

*for urban HAP. At proposal, we believed that we had to regulate POM from coal-fired, biomass-fired, and oil-fired area source boilers and mercury from coal-fired area source boilers in order to meet the requirement in section 112(c)(6). As such, we proposed MACT based limits for POM for all subcategories and mercury for the coal subcategory. However, based on the information we received after proposal in developing standards for various other source categories, such as major source boilers, gold mines, commercial and industrial solid waste incinerators, and other categories, we determined only coal-fired area source boilers were necessary to meet the 90 percent requirement set forth in section 112(c)(6) for POM and mercury in the final rule. (76 Fed. Reg. 80537)*

ACC supports EPA’s rationale to regulate biomass and oil-fired boilers based on GACT. Section 112(d)(5) expressly states that EPA is authorized to use GACT “[w]ith respect to categories and subcategories of area sources listed pursuant to [§ 112(c)].” We believe that this is an appropriate use of its authority.

The CAA provides only two ways for EPA to list an area source category for purposes of regulating HAP emissions from that category. First, §112(c)(3), entitled “Area Sources”, states that EPA “shall list” area source categories “which the Administrator finds presents a threat of adverse effects to human health or the environment ... warranting regulation under this section.” Second, §112(c)(6) requires EPA to “list categories and subcategories of sources”, which arguably would include area sources, as needed to meet the specified not less than 90% aggregate control requirement for the seven listed HAPs.

Since all area source categories, including those listed under §112(c)(6), are listed “pursuant to § 112(c),” EPA has authority under the express terms of §112(d)(5) to use GACT in regulating area source categories listed and regulated under §112(c)(6).

Section 112(d)(5) authorizes EPA to use the GACT method “in lieu of” the §112(d)(2) MACT procedure. EPA itself has observed that the phrase “in lieu of” is commonly understood to mean “in place of” and, thus, has correctly concluded that, “CAA section 112(d)(5) authorizes EPA to promulgate standards under CAA §112(d)(5) that provide for the use of generally available control technologies or management practices (GACT), instead of issuing MACT standards pursuant to CAA section 112(d)(2) and (d)(3).” 73 Fed. Reg. 1920-1921. In short, the statute plainly states that the requirement to set a standard under §112(d)(2) can be satisfied by using the alternative GACT procedure specified in §112(d)(5). As a result, setting GACT under §112(d)(5) meets the §112(c)(6) requirement to regulate under §112(d)(2).

In addition to the above arguments, EPA has acknowledged that only coal fired area source boilers are needed to account for the 90 percent requirement set forth in § 112(c)(6) for POM and mercury (76 Fed. Reg. 80537), therefore, it is not necessary to regulate biomass or oil-fired boilers based on MACT.



## **K. ENERGY ASSESSMENT**

### ***1. The Definition of Energy Assessment Is Too Broad as it Includes Units That Are Not "Affected Sources."***

For area sources with an affected boiler with heat input of 10 MMBtu/hr or greater, EPA appears to have proposed a beyond-the-floor "energy assessment" standard. The definition of energy assessment at §63.11237 states that the assessment must include an evaluation of "the boiler system and on-site energy use system... to identify energy savings opportunities..." 76 Fed. Reg. 80547. Specifically, the assessment must include the following requirements:

- (1) A visual inspection of the boiler system.*
- (2) An evaluation of operating characteristics of the facility, specifications of energy using systems, operating and maintenance procedures, and unusual operating constraints.*
- (3) Inventory of major systems consuming energy from affected boiler(s).*
- (4) A review of available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage.*
- (5) A list of major energy conservation measures that are within the facility's control.*
- (6) A list of the energy savings potential of the energy conservation measures identified.*
- (7) A comprehensive report detailing the ways to improve efficiency, the cost of specific improvements, benefits, and the time frame for recouping those investments. (Fed. Reg. 80549)*

The definition of "energy use system" appears to be too broad because it establishes obligations beyond the boiler source. The requirements listed above imply that facilities must look beyond air emissions and into other media such as solid waste and water consumption, which is beyond the scope of the Final Rule.

In the list of requirements above, affected sources must assess the "boiler system," and the "major systems consuming energy from affected boiler(s)," which are unregulated sources and non-sources at the facility. In addition, sources would have to review of "available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage." See Table 2 to Subpart JJJJJ at 76 Fed. Reg. 80549. Regulated entities would be required to subject not only the affected source itself, but also other non-covered units at the covered source to an examination, potentially by a third party.

### ***2. EPA Does not have the Authority to Include Non-Affected Sources in the Energy Assessment.***

EPA's authority under CAA §112 is to establish HAP emission standards for the source categories specified elsewhere in the Act; in this case, industrial, commercial and institutional (ICI) boilers. The Final Rule defines "affected sources" as all existing and new ICI boilers located at an area source. The "affected source" regulated by this NESHAP is the specified emission unit in this case, a boiler unit and not the facility where the emission unit is located.

Limiting the regulation to the affected source is also consistent with Congress's general statutory scheme, under which EPA is to publish a list of all categories and subcategories of major sources

and area sources of the listed HAP. §112(c)(1). EPA’s published list of source categories groups every conceivable type of industrial process and process unit into a category, each of which is regulated by its own NESHAP, each published as a separate Subpart to 40 C.F.R. Part 63. Therefore, any §112 source other than the boiler affected units for this rule is covered separately by another NESHAP. The statutory scheme does not assign duplicative source category regulations for the same unit.

Since 1992, the sources to be regulated relevant to this rule have been “industrial boilers” and “commercial/institutional boilers.” 57 Fed. Reg. 31591. In this rule, EPA defines each of these sources. An industrial boiler is “a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.” A commercial boiler is “a boiler used in commercial establishments such as hotels, restaurants, and laundries to provide electricity, steam, and/or hot water.” 76 Fed. Reg. 15599.

However, the energy assessment requirements associated with the “source” actually apply to the facility in which the source is located. ACC believes that the assessment should be made on the “boiler system,” which EPA defines as “the boiler and associated components, such as, the feedwater system, combustion air system, boiler fuel system (including burners), blowdown system, combustion control system, steam system, and condensate return system.” 76 Fed. Reg. 80547.

Energy usage within most manufacturing facilities is directly and inextricably related to the processes being used and the qualities of the specific products being produced. The sweeping language EPA has included for assessing manufacturing processes out of concern for HAP and non-HAP emissions could lead to EPA requiring redesign of proprietary and confidential manufacturing systems at industrial sites across the country. The assessment might require many industrial facilities to grant third-party auditors and EPA (through a CAA §114 request) access to highly Confidential Business Information. This access could put at risk competitive advantages that many manufacturers have secured for their products through careful technical and commercial analysis. Neither third-party auditors nor EPA fully understand the myriad technical and commercial analyses developed over years, or in some cases decades, by companies to optimize energy consumption, product performance and quality, and safety. This would paradoxically create a regulatory vehicle that would allow EPA the ability to mandate changes in energy-consuming manufacturing processes without first developing the in-house expertise to understand the full breadth of the processes, and with it the impact of potential changes to the safety of employees, competitive advantage of the product, or upstream and downstream processing activities at integrated sites.

ACC believes that since EPA’s authority is limited to setting emission limits for the affected source as defined in the rule, and that any energy assessment requirements beyond the scope of that definition are beyond the floor requirements. ACC urges EPA to limit the scope of the energy assessment to the boiler and its immediate auxiliaries. However, if EPA continues with this broad scope of coverage for the energy assessment, clarification would be needed to limit the scope of the percent of affected boiler(s) energy output for different size facilities. Specifically, it is unclear how the percentages in the energy assessment definition are to be applied. ACC believes that EPA’s intentions are to limit the scope of assessment based on energy use by discrete segments of a facility, and not by a total aggregation of all individual energy using elements of a facility, because the latter would be disjointed and unwieldy at best. The applicable

discrete segments of a facility could vary significantly depending on the site and its complexity. However, ACC believes that addition of the following text to the energy assessment definition in §63.11237 would help resolve the issues described above, thereby facilitating a more streamlined assessment:

*“... (4) The on-site energy use systems serving as the basis for the percent of affected boiler(s) energy output in (1), (2), and (3) above may be segmented by production area or energy use area as most logical and applicable to the specific facility being assessed (e.g., product X manufacturing area; product Y drying area; Building Z).”*

#### **L. SETTING PM STANDARDS UNDER GENERALLY AVAILABLE CONTROL TECHNOLOGY FOR OIL-FIRED AREA SOURCE BOILERS**

EPA finalized a particulate matter (PM) emission limit based on GACT for new oil-fired area source boilers and is soliciting comment on the level at which the limit was set. 76 Fed. Reg. 15574. In the Reconsideration Proposal Rule, EPA states:

*For the purposes of regulating PM from new boilers, we concluded that the GACT standards should consist of numeric emission limits for units with heat input capacities greater than 10 million Btu per hour or greater because these new units will be subject to the new source performance standard (NSPS) emission limits for PM, and the NSPS will require PM emissions testing. For units with capacity less than 10 million Btu per hour, GACT does not include a numerical emission limit because of technical limitations of testing PM emissions from boilers with small diameter stacks. (76 Fed. Reg. 80537)*

First, we agree with EPA's rationale to base these limits on GACT rather than MACT (please refer to comments in Section II above). We agree that PM GACT standards for new oil-fired units should consist of numeric emission limits based on the NSPS for larger units (>10 MMBtu/hr). Basing the limit on NSPS Subpart Dc is justified, as EPA has recently reviewed the small industrial boiler NSPS (changes were published in 2007 at 72 Fed. Reg. 32759 and in 2009 at 74 Fed. Reg. 5091) and determined that a PM limit of 0.030 lb/MMBtu (see 40 CFR 60.43c(c)) was appropriate for new small boilers. However, the NSPS provides an exemption from the PM limit for units burning low-sulfur fuel at § 60.43c (e)(4):

*an owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.50 weight percent sulfur or a mixture of 0.50 weight percent sulfur oil with other fuels not subject to a PM standard under §60.43c and not using a post-combustion technology (except a wet scrubber) to reduce PM or SO<sub>2</sub> emissions is not subject to the PM limit in this section.*

Therefore, EPA should include an alternate compliance approach of using low-sulfur fuel for consistency with recently reviewed NSPS requirements for oil-fired units.

Second, we support the decision to forego a numerical emission limit for smaller sources (<10MMBtu/hr). As EPA has acknowledged, it is not appropriate to set a numerical emission limit for small units because of technical limitations of testing PM emissions from boilers with

small diameter stacks. The installation of ports into small diameter vents may interfere with the functionality of exhaust systems for new and existing boilers. Many existing area source boilers with a capacity below 10 MMBtu/hr have stacks with diameters less than 12 inches, and many area source boilers do not currently have sampling ports or a platform for accessing the exhaust stack. Furthermore, very small boilers (less than 5 MMBtu/hr) typically exhaust through vents and not stacks which would cause further complications to meet testing requirements. (See 75 Fed. Reg. 15568.) EPA determined that the testing and monitoring costs that area source boiler facilities would incur to demonstrate compliance with numerical emission limits would present an excessive burden for smaller sources. Thus, ACC supports EPA's decision to establish work practice standards for these smaller sources.

### **M. TITLE V PERMITTING REQUIREMENTS**

In the 2010 Proposed Rule, EPA proposed to exempt area sources from the requirement to obtain a Title V permit, if they were not an area source as a result of installing a control device on a boiler after November 15, 1990. 75 Fed. Reg. 31896, at 31910-13, 31925. This exemption would have only applied to "natural" area sources and would not have applied to "synthetic" area sources that would otherwise have been major sources but for the control device. ACC submitted comments urging EPA to adopt the same Title V permitting exemption for all affected area sources, including synthetic minor area sources.<sup>11</sup>

In the Final Rule, EPA extended the exemption to all area sources, including major sources that became synthetic area sources by voluntarily reducing their emissions to below major source thresholds through the installation of air pollution controls. After promulgation of the Final Rule, EPA received a petition to reconsider the decision not to require Title V permits for area source boilers in the final rule, and to reconsider the decision to extend the exemption to include synthetic area sources. The petition was from the Sierra Club and is discussed in the preamble to the Reconsideration Proposal as follows:

The petition disputes our conclusion that title V permitting is unnecessarily burdensome; discusses the benefits of permitting, including compliance benefits; contests our estimation of the costs of permitting; and challenges our determination to extend the proposed exemption from title V permitting to include synthetic area sources. (76 Fed. Reg. 80538)

ACC supports EPA's final determination exempting all affected area sources from Title V permitting, whether natural or synthetic. We believe that this exemption is consistent with the Clean Air Act, supported by the record and environmentally protective.

Section 502(a) of the CAA grants EPA the authority to exempt § 112 area sources from Title V permitting requirements if EPA "finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories." EPA has developed a four-factor test to assess whether Title V permitting would be unnecessarily burdensome for a particular area source category. Initially, EPA performed a detailed evaluation of these factors as applied to area source boilers and proposed to conclude that Title V permitting for natural areas sources would

---

<sup>11</sup>ACC Area Source Boiler Comments at 54 (EPA-HQ-OAR-2006-0790-1925)

be unnecessarily burdensome. 75 Fed. Reg. 31896, 31910-13. However, after considering comments and other information, EPA stated in the Final Rule that it could not find a reason to distinguish between natural and synthetic minor area sources for the boiler category, and therefore the detailed rationale for exempting natural area sources also supported exempting synthetic minor area source boilers. 76 Fed. Reg. 15578. In this Proposed Rule, EPA noted that it made the above determination "... in response to comments and after a full review of the record..." 76 Fed. Reg. 80538.

EPA further noted in the Reconsideration Proposal that the number of synthetic area sources in question here is a very small percentage of the total population of area source boilers, only 48 out of 137,000 total area sources.<sup>12</sup> *Id.* EPA further noted that some synthetic minor area source boilers might already have Title V permits because they could, for example, be major for criteria pollutants or be subject to NSPS that would require a Title V permit.

EPA also states that even if synthetic area source boilers are not subject to Title V, they "would likely be subject to more stringent permitting and monitoring requirements than natural sources. In order for a facility to be treated as a synthetic area source due to the installation of controls, the facility still has a legal duty to use the control equipment because the control equipment must be Federally enforceable. The use of the control is not optional and must be continued." *Id.* EPA is clearly correct here, for the essence of what makes a source a "synthetic" minor source is a restriction on the potential to emit to area source levels that is "synthetically" taken – meaning a limit that is practically enforceable, and set forth in, for example, a state or local permit; a SIP approved state preconstruction or operating permit program, etc. Synthetic minor sources must have a federally enforceable permit to assure emissions remain below the major source thresholds. The federally enforceable permit serves to ensure, through monitoring, recordkeeping and reporting requirements, the source's compliance. An additional Title V requirement would not provide any further compliance assurance and no emission reductions. Therefore, it would be unreasonable to impose Title V permitting burdens on the sources or the permitting authorities for synthetic minor sources. Accordingly, there is no legitimate reason to treat synthetic area sources differently than natural area sources.

Finally, ACC believes the Sierra Club petition for reconsideration should be denied for the following reasons:

1. Sierra Club argues that the "text and legislative history of the Clean Air Act makes plain that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level."

After making this statement, Sierra Club proceeds to provide a paragraph of policy arguments, without a single citation to the text of the Clean Air Act or its legislative history. Moreover, even accepting that Congress, in adopting Title V, intended citizens to be able to get information about air toxics sources, Sierra Club ignores the fact that Congress also wrote into Title V specific provisions allowing EPA to exempt area sources where procuring a Title V permit would be impractical, infeasible, or unnecessarily burdensome. *See*, § 502(a).

---

<sup>12</sup> We note that Table 3 of the June 2010 proposed rule estimated there are 182,671 existing area source boilers. *Id.* at 31914. Regardless of the total number, synthetic area sources are a very small part of the total number of units.

2. Sierra Club also challenges EPA’s conclusions regarding the costs of compliance, and the Agency’s position that adequate programs are in place to assure compliance with the area source boiler rule standards.

We believe that these are not arguments that go to the specific action that is the subject of the reconsideration proposal, i.e., extension of the exemption for natural area sources to synthetic area sources, and as such, EPA should reject them. It is clear that Sierra Club is not specifically addressing the Final Rule, but rather to broader policy issues when it criticizes EPA’s justification for extending the exemption to synthetic area sources with the following, “Exempting any area source boilers from Title V permitting requires is unlawful and arbitrary for the reasons give above.” (Emphasis in original).

### III. TECHNICAL CORRECTIONS AND CLARIFICATIONS

#### A. EPA SHOULD CLARIFY THAT THE OPERATING LIMITS IN TABLE 3 DO NOT APPLY DURING STARTUP AND SHUTDOWN

EPA has clarified that the emission limits in Table 1 do not apply during periods of startup and shutdown. EPA also should clarify that the operating limits set forth in Table 3 do not apply during startup and shutdown. The right column header of Table 3 currently reads “You must meet these operating limits...”. Please revise this to read “You must meet these operating limits, **except during startup and shutdown...**”

##### *Startup and Shutdown Definitions*

EPA has proposed definitions for startup and shutdown that include a 25 percent load threshold for defining when startup ends and when shutdown begins. See 76 Fed. Reg. 80541. Some units have a minimum stable operating load that is higher than 25 percent (e.g., stable operation for a stoker boiler may not be reached until 60 percent load). Therefore, EPA should revise the startup definition to allow facilities to determine the minimum stable operating load on a unit-specific basis and include the minimum stable operating load that defines startup and shutdown and the proper procedures to follow during startup and shutdown in a site-specific plan. Establishment of the minimum stable operating load on a site-specific basis is analogous to setting other boiler and control device operating parameter limits on a site-specific basis.

We believe that the following types of concepts could be used as being indicative of a boiler reaching the end of a startup period (the beginning of a startup would occur with first introduction of fuel with combustion in the furnace):

- Boiler firing its primary fuel for a period of time adequate to provide stable and non-interrupted fuel flow, stable and controlled air flows, and adequate operating temperatures to allow proper fuel drying and air preheat as applicable.
- Emissions controls in service with operating parameters such as flow rates and temperatures being controlled and stable.
- Boiler supplying steam to a common header system or energy user(s) at normal operating conditions including pressure, temperature, and above minimum operational output flow rate, as applicable to the unit.

Similarly, we believe that the following types of concepts could be used as being indicative of a boiler beginning a shutdown period (the end of a shutdown would occur with the cessation of combustion of any fuel in the furnace):

- Cessation of introduction of the last remaining primary fuel to the furnace, whether or not a supplemental support fuel is being used.
- Cessation of emissions control system sorbent or other reagent injection.
- Lowering the fuel firing rate to the point that automatic control is no longer effective or possible.
- Lowering of operating rates to the point that emissions control systems no longer can be controlled or be effective due to low flow rates, low temperatures, or other issues.
- Lowering boiler output to the point that steam no longer meets operational required conditions of pressure, temperature, or flow.

Boiler owners/operators should establish specific operating conditions and parameters defining startup and shutdown in standard operating procedures for each affected unit so that it is clear when each unit is in either startup or shutdown mode. Procedures should also be used to guide operations purposely through startup or shutdown periods so that protracted periods in startup or shutdown mode beyond that envisioned in the procedures are avoided. Each startup and shutdown should be documented relative to elapsed time and timing of actions prescribed in the procedure so that problems are effectively identified and corrected in a timely manner.

#### **B. EPA SHOULD CLARIFY THE DEFINITION OF LIQUID FUEL**

The definition of “liquid fuel” at §63.11237 currently includes the words “on-spec used oil,” but “on-spec used oil” is not defined in the Final Rule. Congress recognized that in establishing air standards to meet requirements in the CAA and RCRA, there may be regulatory overlaps between the two statutes. Congress therefore intended for EPA to minimize, if not eliminate regulatory overlap to the maximum extent practicable and to harmonize requirements so that they are consistent. See, for example, § 112(n)(7) of the CAA and § 1006(b) of the Resource Conservation and Recovery Act (RCRA). Based on these Congressional directives, ACC believes that EPA should delete the term “on-spec” used oil and replace it with the term “used oil” which is a defined term in RCRA at 40 CFR 279.11.

#### **C. EPA SHOULD NOT REQUIRE 30 DAYS ADVANCE NOTICE FOR FUEL SWITCHING TO NATURAL GAS**

EPA has reworded §63.11225(f) from the Final Rule (re-numbering resulted in this requirement being § 63.11225(g) in the Reconsideration Proposal), which contains the requirement for 30 days prior notice before a unit can become a gaseous fuel fired unit and switch out of Subpart JJJJJ applicability. This advance notification requirement delays such a change if the owner/operator decides in a rapid fashion to cease combustion of other fuels. For example, if the owner/operator decides on March 1<sup>st</sup> to switch to 100% natural gas, the owner/operator must first provide 30 days advance notice of such change, thus delaying this type of change until early April. Instead of delaying the switch to combustion of 100 percent natural gas, which is the cleanest burning fossil fuel, we suggest that the owner/operator be allowed to make notification of this type of change within 30 days after the change has occurred. This type of notice will still

alert EPA or State/Local agencies in a timely manner that the source is no longer subject to 40 CFR 63 JJJJJJ.

We recommend the following revisions to the proposed regulatory text below

*(g) If you ~~intend to~~ have switched fuels or made a physical change to the boiler, and this fuel switch or change ~~may result~~ resulted in the applicability of a different subcategory or a switch out of subpart JJJJJJ due to a switch to 100 percent natural gas, you must provide ~~30 days prior~~ notice of the date upon which you switched fuels within 30 days of the change. The notification must identify:*

- (1) The name of the owner or operator of the affected source, the location of the source, the boiler(s) that have switched fuels or were modified, and the date of the notice.*
- (4) The date upon which the fuel switch occurred.*

There is no need for prior notice of this type of change since the boiler would no longer be subject to the Subpart JJJJJJ regulation and the owner/operator could have to delay such a change pending this notification requirement. This 30 day advance notice is a potential curtailment of flexibility in our manufacturing operations.

#### **D. THERE ARE DISCREPANCIES BETWEEN PREAMBLE TABLE 1 AND THE RULE**

For 40 CFR 63.11224, the preamble Table 1 at 76 Fed. Reg. 80539 shows that there will be changes to paragraph (b), but these are not in the Reconsideration Proposal language. The Reconsideration Proposal language also included changes to paragraph (a), which were not discussed in the preamble for Table 1.