NESCAUM
Northeast States for Coordinated Air Use Management

Connecticut Bureau of Air Management, Carmine DiBattista
Maine Bureau of Air Quality Control, James Brooks
Massachusetts Bureau of Waste Prevention, Barbara Kwetz
New Hampshire Air Resources Division, Robert Scott, Acting
New Jersey Division of Air Quality, William O'Sullivan
New York Division of Air Resources, Robert Warland
Rhode Island Office of Air Resources, Stephen Majkut
Vermont Air Pollution Control Division, Richard Valentinetti

March 10, 2003

Air and Radiation Docket and Information Center
U.S. EPA (MD-6102T)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention Docket ID No. A-98-44

The Northeast States for Coordinated Air Use Management (NESCAUM) appreciate the opportunity to comment on the proposed NESHAP for Plywood and Composite Wood Products (PCWP). The following comments focus on EPA's proposal to allow emissions averaging and risk-based exemptions in the rule. For the past 35 years, NESCAUM has been providing scientific, technical and policy support to our member states on air pollution issues of regional concern. The member states include the New England states, New York and New Jersey. In 1982, the NESCAUM Directors established the Air Quality and Public Health Committee to support the coordination and successful implementation of state risk-based air toxic control programs. This committee consists of toxicologists, public health experts, and air toxics regulatory staff from the Northeast states' air quality and public health agencies and the two regional EPA offices. Since the federal air toxics program was mandated by Congress in 1990, the Air Quality and Public Health Committee has taken an active role in working with EPA and the regulated community to integrate the federal air toxics program with our existing state risk-based air toxic programs. Therefore, the Air Quality and Public Health Committee possess a broad range of expertise and practical experience on the use of public health risk assessment and risk management practices in the regulation of hazardous air pollutants.

The Air Quality and Public Health Committee carefully reviewed and analyzed the proposal to include emissions averaging and risk-based exemptions in the PCWP NESHAP. We have also reviewed the American Forest and Paper Association (AF&PA) "white papers,"[1] and the comments submitted by the AF&PA law firm, Latham and Watkins, on this matter.[2] EPA utilized AF&PA "white papers" to propose risk-based exemptions in six out of the total of 174 source categories that are subject to regulation under the MACT program.

[1] AF&PA White Paper on Enforceable Agreement Allowing Risk-based Delisting of Sources in the Wood Products MACT, AF&PA White Paper on Risk-based DeMinimis Applicability Exemptions in the Wood Products MACT; and AF&PA White Paper on Concentrations-based DeMinimis Applicability Exemptions in the Wood Products MACT.

[2] To EPA docket on September 20, 2002 and November 5, 2002

Kenneth A. Colburn, Executive Director
101 Merrimac Street, 10th Floor
Boston, Massachusetts 02114
Phone (617) 367-8540
Fax (617) 742-9162
www.nescaum.org

Emissions Averaging

NESCAUM strongly objects to EPA's proposal to include emissions averaging as a compliance option in the proposed PCWP NESHAP for the following reason.

- Emissions trading based on the indiscriminate summing of HAP emissions to determine "required mass removal" (RMR) of total HAPs from debit-generating process units is not equivalent to reductions achieved from the production-based compliance or add-on control system compliance options.
- Emission trading of HAPs based on mass emissions is not health protective. The primary reason that this approach is not health protective is illustrated in Table 2 of the preamble, which provides the dose-response values for some of the HAPs emitted from the PCWP industry. This table shows that the dose-response values for the HAPs emitted from PCWP facilities range two orders of magnitude for carcinogens and five orders of magnitude for non-carcinogens. Since risk is the integration of exposure and dose-response values, this wide range of toxicity values shows that it is not possible to equitably trade total HAPs based on mass alone.
- There are no methodologies available for weighting the toxicity of the HAPs emitted from stationary sources. Such a methodology would require trading only between pollutants with similar toxic endpoints observed at the lowest adverse effect level as well as similar potencies and weight of evidence. In addition, the methodology would need to account for the effects from simultaneous exposure to several HAPs, which are not known.
- Given that EPA's own risk assessment data presented in the preamble shows that 80 percent of the PCWP facilities in the U.S. pose unacceptable risks to the populations living near these facilities,[3] EPA is proposing to potentially increase toxic emissions at certain process units through a flawed trading scheme rather than requiring emission reductions at these facilities, as required under the MACT program.

Therefore, EPA should remove emissions averaging as a compliance option in the PCWP proposal because it is scientifically unsound and poses unacceptable and inequitable risks to the populations living near PCWP facilities.

Risk-based Exemptions

In September 2002, NESCAUM commented extensively on EPA's risk-based exemption scheme that was proposed in the brick/clay/ceramic tile NESHAP. Since these comments address the same issues EPA is requesting comment on in the PCWP NESHAP proposal, we respectfully refer EPA to these comments, which are attached. In addition, we wish to supplement these comments with the following points.

[3] 148 out of 185 facilities pose cancer risks equal to or greater than one in one million to their surrounding population, 46 pose risks of 1 in 100,000 and two were found to pose risks greater than 1 in 10,000

First, we again applaud the staff at OAQPS for requesting comments on all aspects of the proposal, including the legality of risk-based exemptions in the MACT program. We recognize that the notion of risk-based exemptions is embedded in the ongoing debate as to whether public health benefits of reduced human exposures to air toxics have been significant enough to justify the significant expenditure of agency and industrial resources that has taken place. However, we believe that allowing risk-based exemptions requires changes to existing law. Debate regarding changes to the Clean Air Act should take place within our democratic legislative process and not in the MACT standard process.[4]

Second, we reiterate our strong belief that the inclusion of case-by-case risk-based exemptions in the MACT standard process will negate the legislative mandate of the federal MACT program in establishing a level-playing field of air pollution control across the U.S. We believe that EPA's historical interpretation of Section 112(d)(4) has been correctly applied up to now in that only categories of sources, not individual facilities, that emit only threshold pollutants would avoid further regulation if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[5] After careful examination of over a decade of documents, testimony, and comments on EPA's MACT program, we simply have been unable to substantiate the basis for EPA's support for the regulatory relief sought by AF&PA through risk-based exemptions. In fact, the use of risk assessment at this stage of the MACT program is antithetical to any reading of Title III of the CAA by state and federal agencies or affected industries as far back as 1990. (To illustrate this point, we have attached an EPA fact sheet, testimony by John D. Graham of Harvard Center for Risk Analysis (currently at OMB), and testimony by Lee P. Hughes on behalf of the American Chemistry Council.[6])

Third, we have identified critical flaws in the methods proposed by EPA for issuing risk-based exemptions in the PCWP proposal and the AF&PA "white papers." The most obvious is that the risk-based exemption scheme does not comport with EPA's

---

[4] For example, since 1997, certain members of Congress have attempted without success to pass the Regulatory Improvement Act, which would have required agencies to issue regulatory analyses for major rules including: (1) cost-benefit analyses, including for regulatory alternatives; (2) risk assessments; (3) scientific or economic information relied upon in cost-benefit analyses and risk assessments; and (4) any scientific information on substantive risks to health, safety, or the environment.

[5] We, therefore, object to EPA's scenarios exempting individual facilities that emit only threshold, emit threshold and non-threshold, or emit threshold and non-threshold below risk benchmarks from specific emission points.

[6] See EPA's Fact Sheet on Residual Risk; Statement of John D. Graham, Ph.D. Director, Center for Risk Analysis, Harvard School of Public Health, October 14, 1999 Senate *Committee on Environment and Public Works:* Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety ("EPA has made greater progress in regulation of air toxics through a technology-based approach that targets industry sectors ("source categories") rather than by determining acceptable risk on a pollutant-by-pollutant basis."); and excerpts from a statement of Lee P. Hughes, Vice President Corporate Environmental Control, Bayer Corporation on behalf of the American Chemistry Council before the Senate Environment and Public Works Committee on the Clean Air Act Residual Risk, October 3, 2000: "Our industry supports the Clean Air Act's approach for regulating air toxics, which first requires technology-based controls and then looks at any remaining or "residual" risks."

risk assessment and management guidelines and policies.[7] **This critical deficiency in the scheme reflects a fundamental misunderstanding of the use of public health and ecological risk assessments in the regulatory process**. The risk methods in the PCWP proposal do not reflect the long-standing and deliberative scientific process for conducting risk assessments that EPA has developed over the past decade.

The hallmark of the federal risk assessment guidelines is a series of policy memos that require EPA programs to conduct risk assessments consistently across all federal environmental programs with transparency, clarity, consistency, and reasonableness.[8] Of particular concern is that AF&PA's approach neglects to include such key tasks as risk characterization, which provides needed and appropriate information to decision-makers (see NAS report Understanding Risk: Informing Decisions in a Democratic Society.) The AF&PA scheme also fails to incorporate the critical recommendation of the Commission of Risk Assessment and Risk Management to establish a framework for stakeholder-based risk management decision-making. These recommendations are noteworthy since the Commission was established under the 1990 Amendments to provide guidance to EPA on risk assessment and management decisions for HAPs. The failure to abide by EPA guidelines and policies in the PCWP proposal will prevent regulatory agencies from demonstrating to the public that such a scheme is adequately protective of the public's health and the environment, as required by state public health and environmental statutes.

Fourth, we are deeply concerned that EPA has not considered the intensive resource demand on state programs to implement risk-based exemptions. Of particular concern is that the proposal does not address the critical need for qualified public health risk assessors to evaluate the hazard, exposure and risks associated with emissions from a HAP source. We believe that qualified scientists skilled in risk assessment methods are required to evaluate the scientific and technical basis for using risk methods to exempt facilities from federal regulations on a case-by-case basis. EPA supports this point by stating that "[w]hile these risk estimates assist in providing a broad picture of impacts across the source category, they should not be the basis for an exemption from the requirements of the proposed rule. Rather, facility-specific risks would require site-specific data and a more refined analysis."

It is, therefore, important that EPA consider the regulatory costs that are associated with implementing a risk-based exemption program within the current Title V permit program. These costs will be substantial because the Title V permit programs are

---

[7] We believe that these flaws are so extensive that it would be inappropriate to respond to specific requests for comments on various issues raised by EPA in the proposal. These include comments requested in the follow sections: Estimation of hazard quotients and hazard indices; Options for establishing an HI limit; Tiered analytical approach for predicting exposure; Accounting for dose-response relationships; and Subcategory Delisting under Section 112(c)(9)(B). We agree entirely with STAPPA and ALAPCO that it is unacceptable for EPA to defer to tools for conducting these risk-based exemptions that have not been available for review by anyone outside of the EPA to date and that are not likely to be available for some time in future. We believe that these methods must be available for review at the same time that EPA is proposing the use of risk-based exemptions in a particular NESHAP.

[8] These guideline memos are attached for the record.

currently focused exclusively on implementing control technology standards. For example, we estimate that if 1 FTE were required per state to review risk-based exemptions, the costs would be an additional $7.5 million (50 states x $150,000 per FTE).

Finally, in addition to the issues cited above, we have identified numerous examples in the proposal where EPA did not provide a sufficient explanation or justification for their statements or conclusions. These include:

- Inadequate information on the selection of HAPs of concern from PCWP sources, which was based on mass of emissions only. For example, the proposal does not provide information on why the HAPs selected for regulations include six out of at least 12 HAPs emitted from PCWP sources and excludes benzene, carbon tetrachloride, chloroform, and metals, including manganese compounds.

- Inappropriate uses of draft guidelines and toxicity profiles that have not been subject to public review and/or are not publicly available. We are also concerned with the proposal's reference to the use of non-linear carcinogenic risk values and toxicity profiles for HAPs that have not been finalized and are not available for review by the public. We note, for example, that EPA just closed the public review of the cancer risk guidelines on January 28, 2003. Therefore, these guidelines have not been finalized and should not be cited until the public comments have been appropriately addressed and EPA has issued final guidelines.

- Inadequate discussion of how environmental risks associated with PCWP sources will be conducted. The Clean Air Act requires that EPA considers and protects the environment as well as public health. At a minimum, the facility would be required to conduct an assessment based on EPA's Guidelines for Ecosystem Assessment (1998). We refer EPA to Appendix A of the document "Generic Assessment Endpoints for Ecological Risk Assessment" for a detailed discussion on the legal basis from "such statutes as the Clean Air Act…that require EPA to consider and protect organism-level attributes or various taxa of organisms including fish, birds, and plants and more generally, animals, wildlife, aquatic life, and living things." EPA also needs to consider the resources and time necessary to conduct adequate ecosystem risk assessments in their proposal.

EPA also has not considered the need to assess cumulative risks, aggregate exposures, and health impacts associated with exposure to chemical mixtures emitted from PCWP facilities. We refer EPA to the extensive progress that has been made in more completely addressing risks from exposure to multiple pollutants and the need for integrated decision making in such areas as children's risk issues, cumulative exposure ("Framework for Cumulative Risk Assessment" (EPA/630/P-02/001A, April 23, 2002), and chemical mixtures ("Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures (EPA/630/R-00/002). We believe that EPA must consider the costs associated with conducting state-of-the-science risk assessments to

support case-by-case exemptions before determining that, in fact, this controversial approach "achieves the goals of the proposed rule in a less costly manner."

Again, we sincerely appreciate your consideration of these comments. Please contact me if you have any questions or would like to discuss our comments.

Sincerely,

Margaret M. Round
Senior Air Toxics Program Analyst

Enclosures

cc: NESCAUM Board of Directors
Mary Douglas, STAPPA and ALAPCO Air Toxics Committee