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May 15, 2012

VIA E-DOCKET

U.S. Environmental Protection Agency
Air & Radiation Docket
1200 Pennsylvania Ave. NW, Mail Code 6102T
Washington, DC 20460

**Re: EPA–HQ–OAR–2003–0062
Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}): Amendment to the Definition of “Regulated NSR Pollutant” Concerning Condensable Particulate Matter.
77 Fed. Reg. 15656 (March 16, 2012).**

Dear Sir or Madam:

The Council of Industrial Boiler Owners (CIBO) appreciates the opportunity to comment on EPA’s proposed amendment to the definition of “regulated NSR pollutant” related to condensable particulate as a component of fine particulate matter.

CIBO is a broad-based association of industrial boiler owners, architect-engineers, related equipment manufacturers, and university affiliates with members representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information within the industry and between industry and government relating to energy and environmental equipment, technology, operations, policies, law and regulations affecting industrial boilers. Since its formation, CIBO has been active in the development of technically sound, reasonable, cost effective energy and environmental regulations for industrial boilers. CIBO supports regulatory programs that provide industry with enough flexibility to modernize – effectively and without penalty – the nation's aging energy infrastructure, as modernization is the key to cost-effective environmental protection.

CIBO members are directly affected by EPA’s policies and regulations regarding particulate matter, PM₁₀ and PM_{2.5} under NSR and other regulations.

OVERVIEW OF RULE

EPA proposes to revise the definition of “regulated NSR pollutant” as it relates to particulate matter emissions, PM_{2.5} and PM₁₀ contained in the regulations for PSD and in EPA’s Emission Offset Interpretive Ruling at 40 CFR part 51 Appendix S. This change is intended to correct an error that occurred when the PM_{2.5} regulations were revised in 2008 to reestablish the interpretation that for measurement of “particulate matter emissions” in the context of the PSD and NSR regulations there is no explicit requirement to include the measurement of condensable PM. However the condensable portion would continue to be required for emissions of PM_{2.5} and PM₁₀. The language change proposed clarifies that condensable PM_{2.5} and PM₁₀ emissions were not required to be included in PM_{2.5} and PM₁₀ emission limits prior to January 1, 2011 when the PM_{2.5} implementation rule transition period expired and improvements to condensable particulate test methods were to be completed.

COMMENTS

CIBO supports the proposed revisions to the definition of regulated NSR pollutant in 40 CFR 51.166 (b)(49), 40 CFR 52.21 (b)(50) and in Part 51, Appendix S which continues to clarify that:

1. Condensable particulate shall be included in PM_{2.5} and PM₁₀ only on or after January 1, 2011, which was the end of the transition period;
2. Applicability determinations made prior to the end of the transition period were not required to include condensable emissions and thus, failure to consider those emissions in applicability determinations prior to 2011 are not a violation of PSD applicability provisions; and
3. Compliance with PM_{2.5} and PM₁₀ emission limits issued prior to January 1, 2011 shall not be based on condensable particulate matter unless required by terms and conditions of the permit or the applicable state implementation plan.

When EPA established the PM_{2.5} transition policy in its final April 25, 2007 Clean Air Fine Particulate Implementation Rule, EPA provided for a transition period for developing emission limits and regulations for condensable PM 2.5. 72 Fed. Reg. 20586 (Apr. 25, 2007). EPA finalized a transition period to provide “time to resolve and adopt appropriate testing procedures for condensable PM emissions, to collect total (filterable and condensable) PM 2.5 emissions data that are more representative of the sources in their areas and develop effective regulations for control of direct PM 2.5 including condensable PM.” 72 Fed. Reg. 20655. EPA stated that during the transition period, EPA would “not require that the emission limits included in the 2008 submittals account for the condensable fraction of direct PM 2.5 or to establish limits for total direct PM_{2.5} including condensable PM.” 72 Fed. Reg. 20652. Finally EPA established a specific transitional timeframe stating that, “the period of transition for establishing limits for condensable direct PM_{2.5} will end January 1, 2011. We expect States to address the control of direct PM_{2.5} emissions, including condensable PM with any new actions taken after January 1, 2011.” 72 Fed. Reg. 20652.

It is critically important to maintain the language of the rule as EPA has proposed, clarifying that EPA did not require condensable particulate to be included in PM_{2.5} or PM₁₀ prior to the end of the transition period on January 1, 2011. Also, it is important to clarify that because condensable particulate emissions were not included in PM_{2.5} or PM₁₀ emissions prior to the end of the transition

period, applicability determinations that did not include condensable emissions are not a violation of PSD applicability provisions. Further, as EPA has proposed to clarify, compliance with PM_{2.5} and PM₁₀ emission limits that were issued prior to the end of the transition period and which were based on filterable particulate alone should continue to be measured and assessed on the same basis.

Thus, CIBO supports EPA's clarification of these important provisions in the regulatory language. This clarification is important because over time, the background of this transition period could be lost and facilities could inappropriately be faced with enforcement actions for comparing limits based on filterable emissions to test results that include filterable as well as condensable emissions. This would create a host of problems for regulated entities.

EPA should clarify that although the transition period is over and EPA has improved condensable particulate test methods, EPA has not yet established a reliable test method to measure particulate from wet stacks, so it is unrealistic for these sources to include condensable emissions in permit limitations and applicability determinations at the present time.

Because EPA has not fully addressed problems with Method 202 for wet stacks and the improvements to the method do not fully address interferences, EPA should continue efforts to improve the particulate matter test methodology. Method 202 as promulgated identifies the limitation that the method can be used "to measure emissions in stacks that have entrained droplets only when this method is combined with a filterable PM test method that operates at high enough temperatures to cause water droplets sampled through the probe to become vaporous." 75 Fed. Reg. 80118, 80161 (Dec. 21, 2010). EPA acknowledged the legitimate concerns in the final rule promulgating Method 201 and 202, stating EPA is "currently developing a method to measure PM in stacks with saturated water vapors and laboratory testing is ongoing. EPA has committed a significant budget and personnel to developing an acceptable method for sources with wet stacks and we plan to offer the method and protocol as soon as possible." 75 Fed. Reg. 80126. EPA has not yet proposed an acceptable method for wet stacks.

While EPA's predominant focus has been on improvements to the current Method 202, EPA should continue work toward development of the air dilution test methodology, which more accurately represents conditions of particulate formation from the stack.

In addition, because the transition period has expired without an accurate test measurement method for certain types of sources (e.g. those with wet stacks), sources that lack accurate test methods should not be penalized if particulate emissions data utilized for establishing permit limitations or applicability determinations prove later to be inaccurate. When sources rely on the best available data to estimate emissions in absence of an accurate test method, EPA should allow sources to update emission limits without penalty when better data becomes available after the establishment of better test methods. It is simply unrealistic for EPA to expect certain sources to accurately estimate specific particulate emissions from emission units when there are no reliable test methodologies on which to base those decisions.

Finally CIBO is concerned that the preamble to the proposed rule fails to highlight the transition period established in the Final April 25, 2007 Fine Particulate Implementation Rule, which lasted until January 1, 2011. During this transition period, condensable particulates were

not required to be included in PM2.5 or PM10 emissions while EPA was working to establish and improve test methodologies needed to accurately measure condensable particulate emissions. We ask EPA to include the background related to the transition period from EPA’s final April 25, 2007 Fine Particulate Implementation Rule in the preamble to this rule since it forms the basis for their regulatory language proposed for revisions to the definition of “regulated NSR pollutant”.

EPA’s March 16, 2012 historical account of handling of condensable emissions discusses the proposed fine particulate implementation rule in which EPA proposed to require inclusion of condensable emissions for all purposes, but the account fails to state that in the final rule of April 25, 2007, EPA established a substantial transition period to provide time to improve test methods and gather data on condensable particulate emissions using the new test methods before mandating their use. To remedy this omission, we ask that EPA include history on regulation of condensable particulate emissions contained in the April 25, 2007 final rule cited above, along with additional important discussion highlighted below in the final rule amending the definition of “regulated NSR pollutant” for PM2.5 and PM10 for accuracy.

The following point from the April 25, 2007 final rule should be included because it emphasizes an aspect that is critical to compliance.

“Commenters indicated that States must reassess and revise emission limits if States adopt methods for measuring direct PM 2.5 including condensable PM where not required previously. Commenters noted that most existing PM emission limits are not reflective of data collected with methods that measure condensable or filterable PM 2.5 and therefore are not enforceable using a new or different test method.”

“Response: We agree that coordinating the test method with the pollutant defined by the emissions limit is critical to an effective regulation. In the case of direct PM2.5 regulations, the methods for measuring filterable and condensable PM provide data that are significantly different than do methods often used in implementing many current regulations (i.e. filterable plus condensable vs filterable PM only). The existing PM emissions regulations implementing many current SIPs have focused almost exclusively on filterable PM at stack conditions or other elevated temperatures (e.g., 250 °F) with little or no measurement of condensable PM, let alone filterable PM2.5.

...

[I]t is important that *implementation of any new or revised rules and test methods should be prospective and clearly differentiated from existing regulations to avoid confusion over status of compliance relative to existing PM emissions limits.*”

72 Fed. Reg. 20653-654 (emphasis added).

Although the above was included in a discussion of RACT limits, the same very important principle applies here: if a limit is based on a specific test method, the same test method should be used to determine compliance with that method.

In that same April 25, 2007 final rule, EPA also highlighted that “In the proposed rule, we noted that EPA is in the process of developing detailed guidance on a new test method which quantifies and can be used to characterize the constituents of the PM2.5 emissions including both the filterable and condensable portion of the emissions stream. We also noted that when a source implements either of these test methods addressing condensable emissions, the State will likely need to revise the source’s emission limit to account for those emissions that were previously unregulated.” 72 Fed. Reg. 20586, 20632.

The above statement provides an alternate approach: if the test method is changed to include emissions that were previously unregulated, a second approach (though more complex to implement) would be to gather new emissions data on the source using the new method to quantify the previously unregulated emissions (i.e. condensable particulate) and to re-establish limits based on both filterable and condensable emissions.

Again, this is an important issue and EPA should clarify this distinction in the regulatory history of the preamble to the final rule.

CIBO appreciates the opportunity to comment on the proposed revisions. If you have any questions concerning our comments or require clarification, please contact me at 540.349.9043.

Sincerely yours,

/s/ Robert D. Bessette

Robert D. Bessette
President