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August 17, 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–2011–0817  
National Emission Standards for Hazardous Air Pollutants for the Portland  
Cement Manufacturing Industry and Standards of Performance for Portland  
Cement Plants; Proposed Rules on Reconsideration  
77 Fed. Reg. 42368 (July 18, 2012)**

Dear Sir or Madam:

The Council of Industrial Boiler Owners (CIBO) appreciates the opportunity to comment on EPA's proposed reconsideration for national emission standards for hazardous air pollutants from the Portland Cement Manufacturing Industry (PC MACT rule).

CIBO is a broad-based association of industrial boiler owners, architect-engineers, related equipment manufacturers, and university affiliates with over 100 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 interested in and will be affected by this rulemaking. EPA's legal and regulatory interpretations, floor-setting methodologies, legal and factual rationales and other elements of this MACT will affect EPA's handling of those elements in other MACT standards that directly regulate CIBO members' sources. Several of EPA's recent final MACT rules have been vacated or remanded by the D.C. Circuit, or voluntarily withdrawn by EPA. *See, e.g., Nat. Res. Def. Council v. EPA*, 489 F.3d 1250, 1254(D.C. Cir. 2007) (*Boiler MACT*); *Sierra Club v. EPA*, 479 F.3d 875, 877 (D.C. Cir. 2007) (*Brick MACT*). The various court decisions have addressed some fundamental aspects of MACT standard-setting, all tracing their origins to the same provisions of the Clean Air Act

and EPA regulations. Taken together, the decisions provide EPA with a new judicial framework for interpreting CAA § 112. Therefore, each MACT standard that EPA proposes reflects EPA's new interpretation of § 112, which has applicability to all MACT standards EPA develops.

## **A. Monitoring Requirements**

### 1. Bag leak detectors can provide continuous compliance demonstration

As an alternative to the exceedingly expensive particulate matter CEMS installation EPA proposes, EPA should allow the installation and operation of bag leak detection systems. The bag leak detection system provides ongoing monitoring of the bag house component performance and provides for continuous compliance demonstration in a manner similar to PM CPMS (if that actually worked reliably in the application) and at a much lower cost than PM CPMS.

### 2. Deviations

The presumption that more than four PM CPMS deviations in a 12-month operation period is a violation of PM standards is unreasonable. The proposed reconsideration provides that "PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period [are] presumed a violation of this standard." 77 Fed. Reg. 42,377. The only reason EPA provides for this is that EPA "believe[s]" that there should be few deviations from the limit because "the site-specific CPMS limit could represent an emissions level higher than the proposed numerical emissions limit since the PM CPMS operating limit corresponds to the highest of the three runs collected during the Method 5 performance test [and] the PM CPMS operating limit reflects a 30-day average that should represent an actual emissions level lower than the three test run numerical emissions limit since variability is mitigated over time." *Id.*

A belief alone is not a defensible basis for presuming a violation. Deviations are not violations, and EPA clearly distinguishes between these events. 77 Fed. Reg. 42,398 ("A deviation is not always a violation"). If EPA has data showing that a facility frequently deviates in ways that lead to emissions increases, EPA would likely not have difficulty supporting a violation. Instead, what EPA seeks to do here is skip collecting actual data and instead shift the burden of proof to facilities. And the only way for facilities to rebut the presumption is with "information about process and control device operations *in addition to* the [test results]." *Id.* (emphasis added). EPA should not shift its burden of evidentiary proof to facilities. EPA should not finalize this presumption.

## **B. Affirmative Defense for Malfunctions**

EPA should establish work practice standards for malfunctions. The rule as drafted is unreasonable because it subjects sources to the risk of noncompliance for malfunctions, which are unavoidable and unpredictable.

In developing an affirmative defense to malfunctions (rather than setting work practice standards for those periods), EPA has inappropriately placed the burden on the source to prove that excess emissions were caused by a malfunction. Malfunctions clearly meet the CAA definition for when work practice standards are appropriate and EPA's rationale for taking the affirmative defense

approach in this proposal should not foreclose the work practice approach in other MACT standards. CAA §112(h). EPA should establish a work practice standard that requires pre-determined malfunction plans with practices and procedures for potential malfunctions; require reasonable reporting of any malfunctions; address any malfunctions not contemplated and add to the plan and address as appropriate.

Alternatively, if EPA rejects such work practice standards and, instead, includes an affirmative defense for malfunctions, the terms of the defense need to be changed. First, a source should not have to prove it meets every criterion to successfully claim the affirmative defense. Rather, the different criteria should be factored in evaluating whether the excess emissions should be excused.

CIBO is concerned that the affirmative defense structure proposed and implemented by EPA is needlessly complex and difficult for individual facilities to follow. EPA proposes a streamlined reporting and notification requirement that eases the burden on facilities. The proposal requires that sources report affirmative defense claims as a part of a semi-annual report already required by the regulation. 77 Fed. Reg. 42,400. CIBO supports this approach and encourages EPA to adapt it to the Boiler MACT rules still under reconsideration. In those rules, facilities are required to submit a separate affirmative defense report that duplicates other required reports and notifications. 76 Fed. Reg. 80,629. CIBO supports any effort to reduce and eliminate duplicative reports and notifications.

### **C. New Source Status and Requirements**

#### **1. Modified Facilities Should be Able to Meet Existing Source NESHAP instead of NSPS**

CIBO supports EPA's approach that allows modified sources to comply with existing source NESHAP rather than NSPS. As EPA points out, applying the stringent new source standards to all modified sources would not be cost effective, imposing a \$21,000 per ton of PM removed on these sources. 77 Fed. Reg. 42,385. As EPA explains, existing sources "cannot be assumed to find ways to avoid triggering the NSPS modification criteria" due to the stringency of the new PM standards. 77 Fed. Reg. 42,385. There is no environmental justification for subjecting sources already meeting an environmentally protective limit to a more stringent NSPS limit merely due to modification.

#### **2. EPA Should Revise the New Source Status Trigger Date**

EPA proposes to retain the May 6, 2009 trigger date that defines new source status. 77 Fed. Reg. 42,387. This would mean that facilities constructed over five years prior to release of final standards would be subject to those standards. Sources making design and other decisions five years ago could not have anticipated the makeup of the final rules. In fact, until the NHSM rule is final, sources still cannot know with certainty what rules will govern their operations. Under these circumstances in particular, using the initial proposal date to define new source status is not rational.

EPA states that it is not opening this interpretation to comment. *Id.* But EPA should note that this large timespan makes an extended compliance date even more important – particularly if EPA finalizes any standards that vary from the 2009 proposal. EPA should adopt a more reasonable date for determining

new source status, and at the very least provide sources some relief by extending the compliance date beyond that proposed with the rule.

## **D. Compliance Date**

### 1. EPA Should Extend the Compliance Date

EPA proposes to set the compliance deadline for existing sources to September 10, 2015. 77 Fed. Reg. 42,370. CIBO supports extending the compliance date, but is concerned that this still provides an inadequate amount of time for affected sources to meet the new standards. Under no circumstances should EPA reduce the amount of the compliance period from that provided in the CAA.

As with other pending MACT and other rules, industry will face severe time and material constraints that will make it extremely difficult, if not impossible, for many facilities to meet even the extended compliance deadline. External factors will jeopardize compliance within three years. A large number of companies will be competing nationwide for limited resources and materials from engineering consultants, equipment vendors, construction contractors, skilled labor, financial institutions, and other critical suppliers. This competition for limited resources will be compounded by the promulgation of numerous other EPA regulations at roughly the same period of time, which will introduce competition from electric utilities in addition to competition from other industrial sectors. Much of the pollution control equipment may not even be available within EPA's proposed compliance timeframe.

The converging rules and demand for contractor resources ultimately will harm small businesses that must comply with the proposed standards within the timeline EPA provides. Industry anticipates higher cost than ordinary based in large part on excessive demand in a short period of time. The present sluggish economy simply does not provide the financial resources for many of these small companies to take on the additional costs to meet the proposed MACT standards in three years. More time is needed.

Rather than considering expanding the compliance timeframe, EPA is instead taking comment on shortening the compliance timeframe. 77 Fed. Reg. 42,386. CIBO strongly opposes setting this type of precedent for MACT compliance. As discussed above, industry will be hard pressed to meet all of the rule's requirements even with a compliance date at September 2015. Even though individual sources could apply for a one-year extension on a case-by-case basis, EPA should not rely on that process to provide industry the time it needs to meet the new standards. Instead, EPA should provide all of industry with an adequate amount of time to prevent a crush of individual facilities seeking a one-year compliance extension.

If you have any questions concerning our comments or require clarification, please contact me at 540-349-9043. Thank you for your consideration.

Sincerely yours,

*/s/ Robert D. Bessette*

Robert D. Bessette  
President