

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[EPA-HQ-OAR-2003-0146; FRL-8972-3]

RIN 2060-AO55

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Partial Withdrawal of Final Rule.

SUMMARY: EPA is proposing to withdraw the residual risk and technology review portions of the final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries, which was signed by then Administrator Stephen Johnson, on January 16, 2009.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION], unless a public hearing is requested by [INSERT DATE 10 DAYS FROM DATE OF PUBLICATION]. If a hearing is requested on the proposed partial withdrawal, written comments must be received by [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0146, by one of the following methods:

- E-mail: Comments may be sent by electronic mail (e-mail) to a-and-r-Docket@epa.gov, Attention Docket ID

No. EPA-HQ-OAR-2003-0146.

- Fax: Fax your comments to: (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2003-0146.
- Mail: Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2003-0146. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0146. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information

claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

We request that you also send a separate copy of each comment to the contact persons listed below (see **FOR FURTHER INFORMATION CONTACT**).

CBI: Do not submit information containing CBI to EPA through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2003-0146. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing: If anyone contacts EPA requesting to speak at a public hearing by [INSERT DATE 10 DAYS FROM DATE OF PUBLICATION], a public hearing will be held on [INSERT DATE 15 DAYS FROM DATE OF PUBLICATION]. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Bob Lucas, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone

number: (919) 541-0884; fax number: (919) 541-0246; e-mail
address: lucas.bob@epa.gov.

SUPPLEMENTARY INFORMATION:

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate national emission standards for hazardous air pollutants (NESHAP) for those sources. The EPA is then required to review these technology-based standards and to revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, under CAA section 112(d)(6). The second stage in standard-setting focuses on reducing any remaining "residual" risk according to CAA section 112(f).

On January 16, 2009, then Administrator Stephen Johnson signed a final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries and the signed rule was made publicly available on EPA's website. The signed rule included several different actions. First, it promulgated maximum achievable control technology (MACT)

standards under sections 112(d)(2) and (3) for heat exchange systems, which EPA had not addressed in the original Refinery MACT 1 rule. Second, pursuant to CAA section 112(f)(2), the rule addressed residual risk for all Refinery MACT 1 sources, including heat exchange systems, and it addressed the technology review pursuant to CAA section 112(d)(6) for all sources addressed in the original Refinery MACT 1 rule. Additionally, we updated the table in the Refinery MACT 1 standards (Table 6) that cross-references the General Provisions in 40 CFR part 63, subpart A, and made a few additional clarifications to dates and cross-references in the Refinery MACT 1 standards.

The signed rule was submitted to the Office of the Federal Register for publication. Rahm Emanuel, Assistant to the President and Chief of Staff, issued a memorandum on January 20, 2009, directing Agencies to withdraw from the Office of the Federal Register "all proposed or final regulations that have not been published in the **Federal Register** so that they can be reviewed and approved by a department or agency head." Although there was an exception for "regulations subject to statutory or judicial deadlines," the Agency chose not to apply the exception in this case. One portion of the final rule, the CAA section 112(d)(6) review, was performed pursuant to the terms of a Consent Decree, which, as modified, required that by January 16,

2009, EPA "shall sign and promptly forward to the **Federal Register** for publication either final revisions to the standards for petroleum refineries in 40 C.F.R. Part 63, Subpart CC pursuant to 42 U.S.C. 7412(d)(6) or a final determination that no revisions are necessary." Former Administrator Stephen Johnson signed the rule on January 16, 2009, and promptly forwarded it to the **Federal Register** office, thus, fulfilling this obligation.¹

Upon further review, EPA has determined that the residual risk and technology reviews may not accurately characterize the risk posed by this source category. We recently responded to a Request for Correction under EPA's Information Quality Guidelines from the City of Houston. (Letter to U.S. EPA Information Quality Guidelines staff from the Honorable Bill White, Mayor of Houston, July 9, 2008.) In that response, we recognized that we are currently taking action (and plan to take additional action) to gather better emissions information from the refining industry. Additionally, we note that during the comment period on the proposed rule, similar issues were raised concerning the representativeness of the emissions data, and

¹ We note that on January 30, 2009, the litigants notified EPA by letter that they believed the Agency had discharged its obligation under the consent decree and that "further review of the rule pursuant to the Emanuel memo will not violate the consent decree."

whether they provide an accurate basis for characterizing the risks posed. Accordingly, after additional consideration of these issues, we believe it is necessary to withdraw the rule that was signed on January 16, 2009, so that we may develop a more robust analysis based on the improved information we are developing.

For these reasons, EPA is proposing to withdraw the signed final rule that included the residual risk and technology review for Refinery MACT 1 sources to provide the Agency with time to collect additional data and perform these analyses. Once EPA has undertaken these activities, we will provide the public with an opportunity to comment on a new proposed rule that would be issued.

Simultaneous with the issuance of this proposal, we are publishing in the **Federal Register** a final rule identical in substance to that signed on January 16, 2009, for: (1) the technology-based MACT standards for heat exchange systems under section 112(d)(2) and (3) of the CAA; (2) revisions to Table 6 of the existing Refinery MACT 1 rule (subpart CC), which describes the application of the NESHAP General Provisions in 40 CFR part 63, subpart A to subpart CC; and (3) the other conforming changes and corrections that were included as part of the January 16, 2009 rule. The portions of the January 16, 2009

rule that are being published as a final rule are included in a new **Federal Register** notice signed by Administrator Jackson and, regarding those issues, are identical in substance to the final rule that was signed by former Administrator Stephen Johnson.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 15, 2009

Lisa P. Jackson,
Administrator.