

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

March 25, 2002

Dear Ms. Whitman:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for EPA's planned proposed rulemaking entitled "National Emission Standards for Hazardous Air Pollutants (NESHAP) for Lime Manufacturing Plants." These regulations are under development by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act, section 112. EPA is in the process of developing this rule to set emission standards based on Maximum Achievable Control Technology.

The schedule for the rulemaking is included in a settlement agreement currently being negotiated between EPA and the Sierra Club, and the currently agreed-upon deadline for the proposal is November 30, 2002, although this may be moved up as negotiations proceed.

On January 22, 2002, EPA's Small Business Advocacy Chairperson (Thomas E. Kelly) convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Emission Standards Division of the Office of Air Quality Planning and Standards within EPA's Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. The options the Panel identified for reducing the rule's regulatory impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the Clean Air Act.

Summary of Small Entity Outreach

EPA has actively involved stakeholders in the development of the proposed rule in order to ensure the quality of information, identify and understand potential implementation and compliance issues, and explore regulatory alternatives. EPA staff have communicated with, and provided information to, the National Lime Association (NLA) from time to time since the lime NESHAP development project began in 1995. The NLA represents commercial lime production companies, both small and large (7 out of the 12 small businesses in this industry are members of

NLA.) Communication with the NLA has occurred via formal meetings in person, formal teleconferences, informal telephone calls, electronic mail exchanges, and formal correspondence.

EPA staff have also communicated specifically with small firms. Some of these communications were documented in the formal notification for this Panel. An outreach meeting with potential small business representatives was held on December 20, 2001, in Washington, D.C. During this meeting, the planned requirements of the proposed rule were presented, and comments were solicited.

The full Panel report lists the materials provided to them and summarizes their comments. Their full written comments are also attached. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

Panel Findings and Discussion

Under the RFA, the Panel is to consider four regulatory flexibility issues related to the potential impact of the rule on small entities (i.e., small businesses and municipalities):

1. The type and number of small entities to which the rule will apply.
2. Record keeping, reporting and other compliance requirements applicable to small entities.
3. The rule's interaction with other Federal rules.
4. Regulatory alternatives that would minimize the impact on small entities consistent with the stated objectives of the statute authorizing the rule.

The Panel's most significant findings and discussion with respect to each of these issues are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 9 of the Panel Report.

Number and Types of Entities Affected

There are approximately 39 lime manufacturing companies operating about 80 lime plants in the U.S. that would potentially be subject to the proposed rule. (These numbers do not include lime plants at beet sugar facilities which would not be subject to the rule.) Of these 39 companies, 12 are classified as small businesses according to the SBA definition and would potentially be subject to the rule. These small businesses operate 14 of the 80 facilities. Small businesses within the lime industry are defined by SBA as any company with a total employment of 500 or less.

Some of the 12 small businesses potentially subject to the rule will likely be exempt from the rule because they are not major sources of hazardous air pollutants (HAP). We estimate that 70 percent of all lime plants are major sources (*i.e.*, 30 percent would be area sources and not subject to the rule). Note that there are a few lime small businesses (not included in the 12 that are potentially subject to the rule) that would not be subject to the rule, because they do not produce lime in a kiln, *e.g.*, they are depot (storage) facilities and/or produce only hydrated lime from lime imported from another lime plant.

Related Federal Rules

Currently the Federal air emissions regulations that cover this industry are the New Source Performance Standards for Lime Manufacturing Plants (40 CFR Part 60, Subpart HH) and Non-Metallic Minerals Processing Plants (40 CFR Part 60, Subpart OOO). Some facilities have been regulated by State air emission regulations as part of their federally required State Implementation Plans.

Summary of Small Entity Representative Comments

We received an initial set of comments from potential SERs during the pre-Panel phase, and during the Panel, small entity representatives (SERs) provided comments during a face-to-face outreach meeting and subsequently sent their final supplemental comments on March 5, 2002.

Economic Impact of the Standard on Small Businesses: The main point conveyed was that because the industry is subject to high competition (due to declining markets, pressure from non-lime product substitutes, foreign producers, and potentially unregulated captive lime producers that may start to sell commercially), and there is an excess of capacity, the costs of the rule cannot be passed through to customers. EPA's economic impacts model should reflect this.

Removal of the HCl Standard Via Section 112(d)(4) of Clean Air Act: The NLA conducted a risk assessment to determine whether there would be an ample margin of safety with respect to hydrogen chloride (HCl) levels in the atmosphere without an emission standard for HCl. Their study concluded an ample margin of safety would exist even without a standard for HCl. Section 112(d)(4) of Clean Air Act would allow EPA to forego setting an emission standard for HCl if this is the case.

HCl Work-Practice Standard: SERs believe EPA has overestimated the performance (*e.g.*, emissions reductions) of lowering gas temperature to reduce HCl emissions; that replacing wet scrubbers with dry particulate matter (PM) control devices to meet the PM limit will increase HCl emissions, and that lowering the gas temperature will diminish and/or damage the existing dry PM control device.

Materials Handling Operations (MHOs) in Quarries: The SERs do not believe that the MHOs in limestone quarries should be regulated. They suggest regulation of limestone MHOs should begin with the raw material storage in the production sequence. This is what is required under the Portland Cement NESHAP, and they believe EPA should follow that precedent.

Kiln PM/Metals Standard: The SERs suggested that EPA create a subcategory that would set an alternative standard for kilns employing a wet PM-control device. The SERs stated that lime kilns using high-sulfur coal can operate such that the sulfur is emitted through the stack, rather than incorporated into the product. The SERs stated that a scrubber makes it possible for a kiln to burn high-sulfur coal, produce a low-sulfur product, avoid an adverse environmental impact, and continue to meet its SO₂ emission limits. They also suggested EPA allow bubbling of PM emissions from the kilns at the lime plant.

Monitoring: The SERs agreed that continuous opacity monitoring systems should be allowed as an option to the bag leak detectors (BLDs) that would currently be required for PM monitoring. They requested EPA allow sources the flexibility in choosing PM control device operating parameters. The SERs stated that the incorporation by reference of chapters 3 and 5 of the American Conference of Governmental Industrial Hygienists (ACGIH) *Industrial Ventilation* manual of recommended practice is unduly prescriptive, and that this requirement should be removed.

Area Source Determinations: The SERs stated that EPA should not require the use of the Fourier Transform Infrared (FTIR) spectroscopy method (EPA Method 320) for the measurement of HCl for area source determinations, since the American Society of Testing and Materials (ASTM) HCl method has been approved and EPA is required to use this consensus-based standard under the National Technology Transfer and Advancement Act.

Recommendations of the Panel

The Panel considered a wide range of regulatory options that would enable EPA to mitigate impacts on small businesses. The Panel arrived at these options through consideration of the comments of the SERs and its findings based on the assembled record. The Panel believes that the following regulatory options would minimize the burden on small entities without compromising the requirements of the Clean Air Act.

Kiln HCl Standard: The NLA conducted a risk assessment of HCl emissions from lime kilns, with the purpose of demonstrating there would be an ample margin of safety with respect to HCl levels in the atmosphere without the work practice standard under consideration for HCl. Section 112(d)(4) of Clean Air Act would allow EPA to forego setting an emission standard, or set an emission standard less stringent than the Maximum Achievable Control Technology floor, for HCl, if this is the case. After careful review of the NLA's report, the EPA concurs with the

report's findings that there would be an ample margin of safety. Therefore the Panel recommends that the proposed rule should not include the HCl work practice standard.

Materials Handling Operations (MHOs): The Panel recommends that the MHOs in limestone quarries should not be considered affected sources under the proposed rule. In other words, the first affected source in the sequence of kiln feed MHOs would be the raw material storage. This is consistent with what is required under the Portland Cement MACT standard.

Kiln PM/Metals Standard: The Panel recommends including in the proposed rule a bubbling provision for the kiln PM emission limit, such that the sum of all kilns=and coolers=PM emissions at a lime plant would be subject to the PM emission limit, rather than each individual kiln and cooler. In this approach, kilns that "over-comply" could compensate for kilns not meeting the emission limit. The Panel recommends that EPA undertake an analysis of the costs and emissions impacts of replacing scrubbers with dry APCDs and present the results of that analysis in the preamble. The Panel also recommends that EPA consider and request comment on establishing a subcategory because of the potential increase in SO₂ and HCl emissions that may result in complying with the PM standard. The Panel further recommends that EPA specifically request comment on any operational, process, product, or other technical and/or spatial constraints that would preclude installation of a dry APCD.

Area Source Determinations: The Panel recommends that the recently-developed ASTM HCl manual method be allowed for the measurement of HCl for area source determinations. The EPA is required to use this consensus-based method under the National Technology Transfer and Advancement Act.

Monitoring Requirements: The Panel recommends that EPA consider providing the option of using continuous opacity monitoring systems (COMS) in place of BLDs to monitor compliance with the standard. The Panel recommends that the incorporation by reference of Chapters 3 and 5 of the ACGIH *Industrial Ventilation* manual of recommended practice be removed from the rule. The Panel recommends that EPA take comment in the preamble about the suitability of other PM control device operating parameters that can be monitored to demonstrate compliance with the PM emission limits, in lieu of or in addition to the parameters currently required in the draft rule. The Panel also recommends that EPA take comment on whether the rule should specify separate, longer averaging time periods (or greater frequencies of occurrence) for demonstrating compliance with parameter limits, or other alternative approaches for demonstrating compliance with operating parameter limits. The Panel further recommends that EPA request comment on an approach for demonstrating compliance involving two tiers of standards for monitoring operating parameters whereby, if the conditions of the first monitoring tier are exceeded, the facility operator would be required to implement corrective actions specified in an established plan to bring the operating parameter levels back to established levels, and if the conditions of the second tier are exceeded, the exceedance would constitute a violation of the standard in question.

Economic Impacts Analyses: The Panel recommends that EPA reevaluate the assumptions used in modeling the economic impacts of the standard, taking into consideration the inputs provided by the NLA and other SERs. Given that the NLA and other SERs have stated there is little ability to pass on control costs to their customers and there is considerable opportunity for product substitution in a number of the lime industry's markets, EPA will conduct a sensitivity analysis using different price and supply elasticities reflective of such conditions to provide a broader picture of the potential impact of this regulation on the lime industry.

(see next page for signature blocks)

Sincerely,

/s/

Thomas E. Kelly
Small Business Advocacy Chair
Office of Policy, Economics and Innovation
U.S. Environmental Protection Agency

/s/

John D. Graham
Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget

/s/

Thomas M. Sullivan
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Sally L. Shaver
Director, Emissions Standards Division
Office of Air and Radiation
U.S. Environmental Protection Agency

Enclosure