

SMALL BUSINESS ADVOCACY REVIEW PANEL

Report on EPA's Planned Proposed Rule

“National Emissions Standards for Hazardous Air Pollutants

Maximum Achievable Control Technology

for Brick and Structural Clay Products Manufacturing”

December 6, 2013

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1. INTRODUCTION

This report is presented by the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the proposed rulemaking “National Emissions Standards for Hazardous Air Pollutants (NESHAP) Maximum Achievable Control Technology (MACT) for Brick and Structural Clay Products Manufacturing” that is currently being developed by the U.S. Environmental Protection Agency (EPA). Under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a Panel is required to be convened prior to publication of the initial regulatory flexibility analysis (IRFA) that an agency may be required to prepare under the RFA. In addition to EPA’s Small Business Advocacy Chairperson, the Panel consists of the Director of the Sector Policies and Programs Division of the EPA Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration.

This report includes the following:

- Background information on the proposed rule being developed;
- Information on the types of small entities that would be subject to the proposed rule;
- A description of efforts made to obtain the advice and recommendations of representatives of those small entities; and
- A summary of the comments that have been received to date from those representatives.

Section 609(b) of the RFA directs the Panel to report on the comments of small entity representatives (SERs) and make findings on issues related to elements of an IRFA under section 603 of the RFA. Those elements of an IRFA are:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Once completed, the Panel Report is provided to the agency issuing the proposed rule and is included in the rulemaking record. The agency is to consider the Panel’s findings when completing the draft of the proposed rule. In light of the Panel Report, and where appropriate, the agency is also to consider whether changes are needed to the IRFA for the proposed rule or the decision on whether an IRFA is required.

The Panel's findings and discussion will be based on the information available at the time the final Panel Report is drafted. EPA will continue to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process.

Any options identified by the Panel for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Clean Air Act (CAA) and its amendments.

2. BACKGROUND

2.1 Regulatory History of the NESHAP for Brick and Structural Clay Products Manufacturing

The EPA previously determined that the clay products manufacturing industry, which included Brick and Structural Clay Products (BSCP), may reasonably be anticipated to emit several of the hazardous air pollutants (HAP) listed in section 112(b) of the CAA. As a consequence, clay products manufacturing was included in the initial list of HAP-emitting categories published July 16, 1992, in the Federal Register and included in the draft schedule for the promulgation of emissions standards published in the Federal Register on September 24, 1992. EPA promulgated the NESHAP for brick and structural clay products on May 16, 2003, and the rule became effective on that same date. The compliance date was May 16, 2006. The NESHAP was subsequently challenged, and the D.C. Circuit (The Court) vacated the standards on March 13, 2007. The Court found that EPA's emissions standards did not meet CAA statutory requirements. Because the vacatur was after the compliance date, some facilities had installed controls to meet the requirements of the rule.

2.2 Description and Scope of the Rule

When finalized, the rule for BSCP manufacturing will apply to kilns and dryers at BSCP manufacturing facilities that are major sources of HAP emissions. The BSCP manufacturing source category includes those facilities that manufacture brick (face brick, structural brick, brick pavers, and other brick); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products

2.3 Related Federal Rules

These sources may also be subject to emissions limits for criteria pollutants requirements under new source review. We would not expect any requirements resulting from new source review to conflict with requirements under the Brick NESHAP. We not believe there are any other Federal regulations applicable to this industry which overlap or conflict.

3. OVERVIEW OF PROPOSAL UNDER CONSIDERATION

3.1 Potential Requirements and Guidelines of the Proposal

This rulemaking will establish emissions standards for HAP based on MACT for brick manufacturing facilities that are major sources of HAP. A major source is a source that emits or has the potential to emit (considering controls) 10 tons per year (tpy) or more of any one HAP, or 25 tpy or more of any combination of HAP. The EPA has identified two HAP-emitting sources at brick manufacturing facilities: brick kilns and dryers. The HAP emitted from brick manufacturing kilns are HF, HCl, Cl₂, Non mercury HAP metals, Mercury, and Dioxin. The pollutants emitted from dryers are dioxins only. All of these pollutants will be addressed in this rulemaking.

The EPA will use the available air emissions data to calculate the MACT floors, including data from the previous 2003 rulemaking and data collected in 2010 under section 114 of the CAA. Any MACT limits will be based on data from best-performing sources (regardless of any technology installed). As provided by CAA section 112, emissions standards for existing sources must not be less stringent than the MACT floor, as calculated pursuant to section 112(d)(3). In addition, EPA will evaluate whether to set emissions levels more stringent than the floor, called beyond-the-floor standards. The CAA also provides that EPA may set work practice standards under certain circumstances, including where the application of measurement methodologies is not practicable due to technological and economic limitations. With respect to pollutants for which a health threshold has been established, EPA may also consider that threshold level, with an ample margin of safety, when establishing emissions standards.

The emissions limits associated with the MACT floor could potentially require the installation of new controls and, in some cases, replacement of less efficient existing controls, some of which were installed to meet the vacated rule. We believe the impacts of applying MACT standards to this industry could possibly result in significant economic impacts.

3.2 Alternatives that are under consideration

EPA is evaluating different alternatives for setting standards consistent with the requirements of section 112(d), including, for example the alternatives shown below

Emissions Source or Pollutant	Regulatory Alternative under Consideration
Periodic Kilns	Work Practice Standards for All Pollutants
Dryers – Dioxin Emissions	Work Practice Standards
Tunnel Kilns – all pollutants	Subcategorization of kilns by size or other criteria
Tunnel Kilns – HF, HCl and Cl ₂ Emissions	Health Threshold Limits

4. APPLICABLE SMALL ENTITY DEFINITIONS

The Regulatory Flexibility Act (RFA) defines small entities as including “small businesses,” “small governments,” and “small organizations” (5 USC 601). The regulatory revisions being considered by EPA for this rulemaking are expected to affect a variety of small businesses, but would not affect any small governments or small organizations. The RFA references the definition of “small business” found in the Small Business Act, which authorizes the Small Business Administration (SBA) to further define “small business” by regulation. SBA’s definitions of small business by size standards using the North American Industry Classification System (NAICS) can be found at 13 CFR 121.201.

The detailed listing of SBA definitions of small business for affected industries or sectors, by NAICS code, is included in table 1 in section 5, below.

5. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSED REGULATION

The following table lists industries/sectors potentially affected by the regulation. The estimated number of small firms within each NAICS code and the number of employees in those small firms is shown.

Table: Industry Sectors, Definitions & Number of Small Entities Potentially Affected by EPA’s Planned Action¹

Name of Industry/Sector	2012 NAICS Code	SBA Size Small Business Standard	Number of Small Firms	Total Number of Firms
Clay Building Material and Refractories Manufacturing	327120	750 employees	38	46

¹ EPA database

We note that the number of brick manufacturers has declined since 2003 from 89 to 46. The number of small businesses appears to have declined similarly.

6. SUMMARY OF SMALL ENTITY OUTREACH

On June 26, 2013 the SBAR Panel held an outreach meeting/teleconference with the SERs. In addition to the materials that the SERs received for the pre-Panel outreach, the SERs were provided with background information in an outreach packet, which can be found in Appendix A, to help them prepare for the teleconference and prepare their comments on the proposed rulemaking.

During the Panel Outreach Meeting, 16 representatives that were selected for this SBREFA process participated in the meeting. The meeting opened with a short introduction for SERs on the purpose of the SBREFA Panel process and the Panel Outreach Meeting, a brief description of

the Panel process, and a presentation from Susan Miller of Brick Industry Association on the current state and challenges of the industry. The remainder of the Outreach Meeting itself focused on the Outreach Packet that was sent to SERs and potential regulatory flexibilities.

Lastly, EPA asked that the SERs provide feedback on the Outreach Packet materials as well as the outreach meeting itself, and SERs were asked to send any written comments by July 11, 2013. The outreach meeting with SERs was held to solicit feedback on the information provided and their suggestions for the upcoming rulemaking. During the meeting, the SERs were also asked to provide written feedback on ideas under consideration for the proposed rulemaking and responses to questions in the Outreach Packet. Comments made during the outreach meetings and written comments submitted by the SERs are summarized in section 8 of this document. Written comments received are included in Appendix B.

7. LIST OF SMALL ENTITY REPRESENTATIVES

Organization Name	SER Name	Title
Brick Industry Association	Susan Miller	Vice President, Environmental, Health & Safety
Brick Industry Association	Paul Regina	Tech. Assistant, Environment Health & Safety
Cherokee Brick & Tile Co.	Carol Conley	Vice President, HR, & Environmental Affairs
Columbus Brick Co.	Ed Thebaud	General Manger
Commercial Brick Corp.	Bob Harstok	President
Continental Brick Co.	Don Sult	Vice President
Cunningham Brick Co., Inc.	Richard Cunningham	Corporate Secretary
Elgin-Butler Brick Co.	Don Belcher	Vice President of Manufacturing
Endicott Clay Production	Gary Davis	Vice President of Sales
Henry Brick Co., Inc.	Davis Henry	Vice President Projects
Lee Brick and Tile Co.	John Burns	Plant Manager
McAvoy Brick Co.	Creighton McAvoy	President
Mutual Materials Co.	George Beamer	President
Pine Hall Brick Co., Inc.	Preston McMillan	Vice President
Sioux City Brick and Tile Co.	Steven Gerhart	Vice President of Administration & Law
Statesville Brick Co.	Steve Moose	Director of Engineering & Technical Services
Whitacre Greer	John Miller	Engineering, EHS Manager

Helper SERs

Some SERs request the assistance of an outside expert to advise them during the panel process. These “Helper SERs”, as they are referred, attend and participate in the panel outreach meetings and provide technical, scientific, and or legal expertise to a SER. During the Brick MACT SBAR Panel William Wehrum of Hunton & Williams LLP and Terry Schimmel of Boral Bricks participated on behalf of the Brick Industry Association and Whitacre Greer respectively.

8. SUMMARY OF COMMENTS FROM POTENTIAL SMALL ENTITY REPRESENTATIVES

8.1 Summary of March 14, 2013 Pre-Panel Outreach Meeting

The Pre-Panel Outreach Meeting was conducted as follows:

- 2:00 Welcome and Introductions
- 2:15 RFA/SBREFA Overview
- 2:30 Background Presentation
- 3:30 Brick Industry Association Presentation
- 3:50 Discussion
- 4:15 Summary and Closing

8.2 Summary of Written Comments from Potential SERs Submitted After March 14, 2013 Pre-Panel Outreach Meeting

Brick Industry Association (BIA)

- Supports health-based standard, believes brick industry is a logical candidate for such an approach.
- Requested consideration of less conservative approaches to health-based standards rather than a single emissions limit for all sources.
- Questioned the use of short term indicators for this category.
- Concerned about the availability and affordability of controls to remove small amounts of non-threshold pollutants.
- Removal of viable controls - Opposed to standards that would require removal of existing controls.
- Is opposed to the use of data from units that installed controls to meet the vacated Brick NESHAP.
- Is opposed to inclusion of data from synthetic area sources.
- Believes EPA should be using 12 percent of the category, not 12 percent of the stack data, when establishing MACT floors for most, if not all, pollutants and subcategories.
- Is concerned about cost estimates, assumptions and requested information.
- EPA should continue to use the same subcategories of tunnel kilns that were used in the previous rulemaking.
- Requested a reduction in the number of scenarios under consideration.

- Requested information identifying data gaps that need to be filled to ensure that EPA can support conclusions regarding subcategorization of periodic kilns, work practices for periodic kilns and work practices for dioxin emissions.
- Requested information on compliance approaches.

Cherokee Brick & Tile Company

- Family-owned business for over 113 years.
- Spent \$1.5 million on controls to meet vacated NESHAP.
- Concerned that new standards would require removal/replacement of controls installed to meet the vacated standards.
- Questioned the regulation of mercury and dioxin due to the small quantity emitted and the cost of control.

Continental Brick Company

- Pleased that EPA is considering health-based standard.
- Requirement for additional controls will put them out of business.
- Subcategorization of older, smaller kilns can be justified based on design and operational differences.

Cunningham Brick

- Small, family-owned business, 104 year old business with 135 employees at two facilities
- Cannot afford controls, fears that EPA standards would result in survival of only large corporations.
- Unless reasonable subcategorization on emission tonnage allowances is permitted, the company will face cessation.

Endicott Clay Products

- Supports the letter sent by BIA.

McAvoy Brick

- Economic climate the past four years has been devastating to brick industry, especially to smaller manufacturers.
- Brick industry is not like cement industry.
- Request that EPA consider health-based standards.
- Supports BIA letter.

Mutual Materials

- Supports subcategorization of tunnel kilns based on size, age or a combination of both.
- Provided information regarding differences between large, small, new and old kilns.
- Supports subcategorization of periodic kilns.
- Supports health-based standards.
- Expressed concern regarding methodology used to calculate standards. Believe we should set standards based on 12 percent of population rather than 12 percent of the dataset.

- Standards should not be based on data from facilities that have low emissions due to the content of their raw materials.

Statesville Brick

- Health-based studies. What approaches has EPA considered that would not tighten the limits?
- What controls can be used with wood firing?
- Statesville Brick is a small company. How is it that EPA would group them with other companies that are worldwide with unlimited resources.

Whitacre Greer

- Supports health-based standards.
- Supports subcategorization of kilns by size. Believes 10 tons per hour (tph) is a reasonable breakpoint.
- Operates small kilns to produce firebrick and pavers.
- Discussed differences in small and larger kilns (firing, car size, door design, kiln construction).
- Design and operational differences are important to uniqueness of product.
- Addition of APCD is not supportable and would require redesign of kiln.

8.3 Summary of June 26, 2013 Panel Outreach Meeting

The Panel Outreach Meeting was conducted as follows:

- 1:00 p.m. Welcome and Introductions
- 1:15 p.m. Overview of Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (RFA-SBREFA)
- 1:30 p.m. EPA overview of proposed rulemaking, options, cost estimates
- 3:00 Brick Industry Association presentation
Q&A/ Discussion
- 3:30 p.m. Summary and Closing

8.4 Summary of Written Comments from Small Entity Representatives Submitted After June 26, 2013 Panel Outreach Meeting

Brick Industry Association (BIA)

- EPA should develop health-based standards for threshold pollutants and work practice standards for all other HAP emitted at or near detection levels.
- If EPA also proposes “traditional” MACT emissions limits for the threshold pollutants, EPA should consider a single “gaseous HAP” limit.

- Stack tests do not represent periods of start-up, shutdown, malfunction and routine maintenance. Work practice standards are warranted during these periods.
- EPA should fully evaluate technical and economic feasibility of MACT options. BIA believes EPA has underestimated cost and economic impact of the rule.

Cherokee Brick & Tile Company

- Does not agree with subcategorization based on raw material and does not agree with testing of raw materials.
- Dry Limestone Adsorbers (DLA) were installed to meet vacated rule and are effective.
- No reason to believe that replacing existing DLA with alternative controls would lead to a better result.
- Work practice standards for pollutants that are essentially at non-detect levels are appropriate.

Continental Brick Company

- Health-based compliance standard for acid gas would be of benefit to Continental.
- Hopes EPA will provide work practice standards for Hg, PM and dioxin.
- Subcategorization by size, raw material, age and fuel should be considered.

Endicott Clay Products

- Estimated air pollution control costs, on top of other rising costs, would require an unprecedented price increase.
- Obtaining bank loans will be difficult and would likely be shorter term with higher interest.

Mutual Materials

- Health-based standards for threshold pollutants.
- Health-based concept combined with raw material and/or kiln size subcategorization might be acceptable.
- Cost of controls is unreasonable, cost of becoming “synthetic minor” is prohibitive.
- Is facing near certain closure if MACT costs are as presented at the June 26, 2013 meeting.
- Health-based standards for threshold pollutants and work practices for other pollutants are preferred.

Statesville Brick

- Fires sawdust.
- Send the majority of the kiln exhaust through a sawdust dryer which they understand helps to lower emissions.
- Made business decisions based on the small kiln subcategory.
- Does not object to subcategories of “under 10 tph”, “over 10 tph” or “kilns built after 2014 or whenever the regulations are completed.”

Whitacre Greer

- Becoming a synthetic minor source is an option but is not reasonable due to cost.
- Getting a bank to approve a loan to buy air pollution controls would be near impossible.
- Health-based solution for threshold emissions, combining gaseous HAP and work practice standards for other emissions is appropriate.
- Subcategorization of kilns by size should be continued.

Sioux City Brick and Tile Company

- Operates 3 kilns with two DLA and one Dry Injection Fabric Filter (DIFF) and states that it would be impossible to finance retrofits.
- Grandfathering of companies that complied with vacated MACT is needed.
- Supports work practices during startup and shutdown.

Pine Hall Brick

- Health-based approach for threshold pollutants combined with work practices for others is the most practical approach.
- If work practices are not adopted for metal HAP, there should be consideration of setting individual metal HAP rates in addition to PM.

8.5 Other outreach and discussions with the Brick Industry

In addition to the discussions noted above, EPA had several meetings with brick industry representatives to discuss emissions data, potential raw material sampling, acid gas modeling and other issues.

9. PANEL FINDINGS AND DISCUSSIONS

9.1 Number and Types of Entities Affected

For a complete description of the small entities to which the proposed rule may apply, see section 5.

9.2 Potential Reporting, Recordkeeping, and Compliance

There are requirements still under development. However, we anticipate that the requirements will be the minimum required by the statute to ensure compliance with the emission limits.

9.3 Related Federal Rules

There are no related Federal Rules for this source category.

9.4 Regulatory Flexibility Alternatives

9.4.1 Work Practice Standards

Section 112(h) of the CAA allows EPA to set work practice standards if in the judgment of the Administrator, it is not feasible to set or enforce numerical limits because the application of measurement methodology is not practicable due to technological and economic limitations, or a pollutant cannot be emitted through a conveyance designed to capture the pollutant.

In general, the SERs support work practice standards for mercury, HAP metals and dioxin. The Panel believes that EPA should consider work practice standards where it can be justified under section 112(h).

The Panel recommends that EPA propose work practices for dioxin and take comment on the feasibility of work practice standards for mercury and other metals. The discussion of work practices for mercury and other metals should clearly identify any areas where the agency believes that the data do not support work practices to allow for meaningful comments, and also discuss work practice alternatives with sufficient specificity that they can be fully considered as an alternative in the final rule.

9.4.2 Health Based Emissions Limits (HBEL) For HF, HCl and Cl₂

A recurring comment from the SERs is that health-based standards for acid gases are supportable and are perhaps the most important step EPA can take to lessen the financial impact the Brick MACT may impose on small entities. Therefore, the SERs believe HBEL should be a critical component of any future rule to lessen the impact on small entities.

The panel recommends that EPA co-propose both a health-based limit and MACT limits for acid gases unless EPA determines it lacks sufficient information to propose a numerical health-based limit.

9.4.3 Subcategorization

The vacated Brick MACT included subcategorization of kilns based on size. The SERs support continued subcategorization of kilns based on size and type (tunnel kilns vs. periodic kilns). The SERs also commented that EPA should consider subcategories based on raw materials, fuel and other factors. There appears to be sufficient information to support subcategories based on type and size, but data and information are lacking for subcategorization based on raw materials and fuels.

The panel recommends that EPA propose separate subcategories for kilns based on size if it reduces the financial impact and that EPA should take comment and solicit data on subcategorization based on raw materials, fuels and other factors.

The SERs also suggested a subcategory for facilities that installed controls to meet the vacated rule. The panel has determined that there is no legal basis for establishing subcategories based upon those criteria.

One SER commented that they send the majority of the kiln exhaust through a sawdust dryer, which prepares the sawdust for burning. The source was told this also lowers emissions. SERs commented that EPA should address the issue of limits for kilns with sawdust dryers.

The panel currently does not have enough information to address this issue. The panel recommends that EPA specifically request information, at proposal, on how the presence of sawdust dryers would affect emissions and control costs.

9.4.4 PM HAP Metals Limit

For source categories with emissions of non-mercury HAP metals, EPA has generally used particulate matter (PM) as a surrogate for non-mercury metals. The SERs commented that if EPA were to include an alternative emission limit for total non-mercury HAP metals, it would provide additional flexibility for some sources. They requested that EPA allow sources the option of complying with a PM limit or a total non-mercury metals limit.

The panel agrees that this approach would provide additional flexibility and recommends that EPA propose both a PM numerical limit and a total non-mercury metal HAP limit. Sources could thus determine compliance either through direct measurement of HAP metals or measurement of PM as a surrogate for HAP metals.

9.4.5 Start Up/Shut Down

The SERs commented that no testing has ever been conducted during kiln start-up and shutdown. The SERs indicate that stack tests do not accurately represent emissions periods of start-up and shutdown and recommended that work practices be required during those periods.

As noted above, section 112(h) of the CAA allows EPA to set work practice standards if it is not feasible to set numerical limits. The panel recommends that EPA propose work practice standards for startup and shutdown.

9.4.6 Determination of MACT Floors.

For most, if not all, pollutants and subcategories, the SERs commented that EPA should calculate the floor based on 12 percent of the entire source category, as opposed to 12 percent of the data available to the agency when EPA cannot establish that such data reflects the best performing sources.

The Panel recommends that EPA set the floor based on 12 percent of the entire source category if EPA can establish that the data available to the agency represent the best performing sources consistent with section 112 of the CAA and relevant case law.

Appendix A: List of Materials EPA shared with Small Entity Representatives

- Brick Panel Draft Options Table_06.12.2013
- Brick Panel Outreach Presentation Slides_06.12.2013
- Brick Panel Revised Control Information_06.12.2013
- BSCP Cost Scenarios-03-21-13
- BSCP Unit Costs_6-20-13
- ACI costs

Appendix B: Written Comments Submitted by SERs following Panel Outreach



July 15, 2013

Nathaniel Jutras
U.S. Environmental Protection Agency
OA /Office of Policy/ Regulatory Management Division
1200 Pennsylvania Ave. NW, Mailcode:1806A
Room 6440G ARN
Washington, DC 20460

Re: Small Business Regulatory Enforcement Fairness Act (SBREFA) panel meeting comments

Dear Nate:

Thank you again for your efforts to coordinate the small business panel meeting for the Brick and Structural Clay MACT on June 26th of this year, as well as the informal panel meeting on March 14th. A reasonable and attainable rule for our industry is critical to our industry's ability to continue to come back from the recent economic downturn and catastrophic reduction in housing starts and once again become a viable industry. We believe that this panel meeting, and the panel report that will come from this meeting, are critical steps to ensure an effective rulemaking.

This MACT could eliminate many, if not all, of our small businesses if it requires the installation of add-on air pollution control devices with minimal to no emissions reduction. We believe that the "typical" rule development process could lead to such an outcome. However, we implore EPA, the Small Business Administration (SBA), and the Office of Management and Budget (OMB) to thoughtfully consider the information that we presented at both the informal and formal panel meetings and in our comment letters and follow-up conversations that occurred between and since these meetings. We absolutely believe that ***there are alternative approaches for this rulemaking that can ensure that the requirements of the Clean Air Act (CAA) are met, the environment is protected, and our important industry can continue to manufacture our consumer preferred and environmentally sustainable products.*** We ask all of you to continue to work with us to ensure those options are fully explored.

Founded in 1934, the Brick Industry Association (BIA) is a national trade association representing clay brick distributors and manufacturers, and suppliers of related products and services throughout the United States. This letter is written on behalf of our BIA members, all BIA member and non-member small entity representatives (SERs), as well as the other non-member small businesses in our industry who participate with us in all MACT-related activities. We provided letters from many of those non-member small businesses as handouts at the formal meeting.

As we understand that all materials presented and meeting minutes are already part of the record, we will focus this letter on summarizing our position on why EPA needs to consider alternatives in this rulemaking and on our recommendations for moving forward.

The EPA should avail itself of all flexibilities within the CAA as they develop the MACT for brick and structural clay products. If the full alternatives are not included in the final rule, provisions to explore these options must be referenced in the proposed rule such that they can be further developed and included in the final rule.

- The brick industry is the first industry to come into full compliance with a MACT standard for almost a year before the standard was vacated by the courts. The industry has already spent over \$100 million complying with ongoing requirements stemming from that initial MACT. The current approach to setting the floor based on the previously mandated controls that were installed as a result of the vacated rule results in unobtainable and inconceivable limits if the recent “tradition” approach is allowed to play out.
- This industry is largely comprised of small businesses, including approximately 40 of the 50 companies expected to be covered by the MACT. Many of these companies have fewer than 100 employees.
- The hazardous air pollutants (HAP) that make our facilities major HAP sources are all threshold pollutants, which have been demonstrated with EPA’s own emissions models to present no adverse impact on human health or the environment. The remaining HAP emissions are from trace contaminants in our mined raw materials, taken from mines located near our plants that have been in operation for 75 years or more. Changing our mined material is not an option available to us.
- Even in good economic times, the costs of the controls that EPA is considering represent an average of 20 percent of our small businesses’ gross revenues from brick manufacturing, with some facilities seeing predicted costs as more than 100 percent of their revenue.

We recommend the following:

1. EPA should develop alternative emission standard approaches for the brick and structural clay industry that include the inclusion of a health-based compliance approach for all threshold pollutants and a work practice approach for all other HAP emitted at or near detection levels.
2. If EPA also proposes “traditional” MACT emission limits for the threshold pollutants, EPA should consider a single “gaseous HAP” limit.
3. EPA should recognize that the stack tests do not represent periods of start-up, shutdown, malfunction and routine maintenance. It is not generally possible to conduct a stack test during these malfunctions since they are, by definition, unplanned. No testing has ever been conducted during start-up, shutdown or routine bypass. During these periods, the exhaust gasses must generally bypass the air pollution control device to preserve the integrity of the control device. Work practices can ensure that these bypass periods are minimized and are warranted under the CAA for these operations in this source category.
4. EPA should more fully evaluate the technical and economic feasibility of the MACT options presented in the SER package. We can only conclude at this time that the EPA has underestimated the cost and economic impact of this rule because:
 - a. We have yet to see the additional information listed in the SER package as “information forthcoming.” We expected this new information would provide demonstration that the controls under consideration have been operated in streams similar to ours and could reduce emissions to the levels EPA expects to be required by the MACT. Since that information has yet to be provided, we cannot comment on the validity of the assumptions. We also have discussed a costing error that we believe underestimates

the capital costs of the activated carbon injection systems by an order of magnitude, but have yet to hear the results of EPA's own assessment of the costs.

- b. Even assuming EPA's costs estimates are correct, our industry cannot finance the controls. Based on our own small business survey (results expected to be final later this week), the annual costs of the anticipated controls represent an average of 20 percent of gross revenues in a record year. For some facilities, the costs would represent 100 percent of revenues. ***The inability for an industry to borrow the money required to comply with a rule has to factor into the analysis.*** Given the tight economy over the past 5 plus years, our companies have often been operating without profit in order to keep the doors open. Most believe that they would be unable to borrow the money to purchase an air pollution control device since the expense would not increase productivity or quality and would actually increase unit costs to pay for the operation of the control. Any economic assessment developed by EPA must acknowledge that requiring the installation of any add-on control would mean the closure of essentially all small businesses in our industry. To require such closures, when the environmental benefit is minimal at best would be tragic.

We thank you again for allowing us to participate in this critical meeting. Our industry is committed to ongoing involvement on this rulemaking. We appreciate the steps that EPA has already taken to try to minimize the impacts on our facilities and we look forward to continuing to work with EPA to find additional flexibilities, as suggested above.

If you or anyone else has any questions or requires any additional information to fully consider our position, please do not hesitate to contact me at smiller@bia.org or (919) 380-2191. Thank you.

Sincerely,



Susan J. Miller
Vice President
Brick Industry Association

Cc: David Rostker, SBA
Cortney Higgins, OMB
Alex Cristafaro, EPA

CHEROKEE



BRICK & TILE COMPANY

KATHERINE SAMS RUSSELL
GENERAL COUNSEL

July 15, 2013

WATERVILLE ROAD
P.O. BOX 4667
MACON, GEORGIA 31208
TELEPHONE 478-781-6800
FAX 478-781-6964

Nathaniel Jutras
U. S. Environmental Protection Agency
OA/Office of Policy/Regulatory Management Division
1200 Pennsylvania Ave. NW, Mailcode: 1806A
Room 6440G ARN
Washington, DC 20460

Alexander Cristafaro, EPA
Cortney Higgins, OMB
David Rostkers, SBA

RE: National Emission Standards for Hazardous Air Pollutants (NESHAP) for
Brick and Structural Clay Products Manufacturing

Dear Mr. Jutras:

We appreciate EPA for their efforts to evaluate alternatives and thank all the panel members (EPA/SBA/OMB) for holding the meeting on June 26, 2013.

As we are all aware, there is a wide spectrum of possibilities for what this regulation could entail. Without having more detail about what exactly EPA is considering it is nearly impossible to address every option. This letter only highlights our largest concerns based on discussion during the meeting.

While many of the SERs present at the meeting appeared open to the prospect of subcategorizing based on raw material, Cherokee Brick does not agree that this is an efficient nor constructive use of time and money. The discussion by EPA regarding mined material was disconcerting as the Clean Air Act clearly excludes raw materials sourced from an on-site mine. Our brick is manufactured by clay that is mined on-site—and has been for the last 136 years. Should EPA's rulemaking adversely affect our being able to use this clay, this would shut our operation down. Moreover, we do not feel that the testing of raw materials is the answer to sub categorization as was suggested by some at the meeting. The Clean Air Act regulates what *comes out of the kilns*—not what is put into the kilns. Quite frankly, we believe the testing of raw materials would be a digression from the ultimate issue. If facilities have higher amounts of any given substance, these facilities will immediately be put on the defense, even though there may be no correlation with what is coming from the kiln. Overall, Cherokee Brick believes

that the attempt to subcategorize based on raw materials will be a futile path, which will use already scarce amounts of time and money for all parties.

Secondly, while many options were discussed regarding the use of control devices, we ask again that EPA be cognizant of the fact that DLAs, which were installed in good faith under the prior MACT, have been and continue to be effective controls for those who installed them. Given our experience in the day to day operation and construction of the DLA now being utilized on our facility, we have no reason to believe that alternative controls requiring us to remove our current controls and install entirely new ones would lead to a better result. Because our State still has our emission limits set per the vacated Brick MACT we can confidently say that these controls are effective. Requiring companies to abdicate currently effective controls for new ones that have no evidence of being any *more* effective (or even as effective) would lead to an absurd result. As we have stated several times in prior correspondence, as a small company we simply cannot absorb the huge cost of having to remove effective controls and reinstall other (possibly) effective controls because they are *perceived* to be better. We will have no choice but to go out of business.

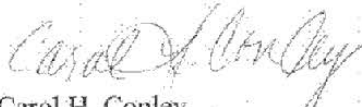
Third and finally, we urge EPA to carefully consider the benefits of work practice standards in several parts of operation. It is no secret that the brick industry is at its worst, only a small source of pollutants. As a result, we believe that work practice standards for some pollutants which are essentially at non-detect levels, would be an appropriate control for our industry. Just as the costs to lower these pollutants would be enormous, the cost to prove compliance would also be extremely difficult. The small amount of benefit (if any) in reducing these nearly non-detectable levels of pollutants comes with a huge price – potentially destroying an industry of family businesses around for multiple generations. As a result, work practice standards would be an appropriate control in this situation.

I want to reiterate that Cherokee Brick appreciates the opportunity to be heard during this process. We have been operating on the same family owned land for 136 years and place huge importance on manufacturing our brick with an extraordinary level of environmental stewardship. Should you have any questions, please don't hesitate to contact us.

Sincerely Yours,



Katherine S. Russell
General Counsel



Carol H. Conley
VP HR/Environmental Affairs

Continental Brick Company

154 Charles Town Road
Martinsburg, West Virginia 25405

Phone: 304-263-6974
Fax: 304-267-0793

July 15, 2013

Mr. Nathaniel P. Jutras
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1806A
Washington, DC 20460

Re: Brick MACT Small Entity Representative Panel

Dear Mr. Jutras:

I would like to thank you and representatives of the other government agencies, Alex Cristafaro of the EPA; David Rostkers of the SBA; and Courtney Higgins of the OMB, for taking the time to meet with representatives of the brick industry at your offices in Washington, DC on Wednesday, June 26. I thought the exchange of concerns and ideas was very productive and helped us understand where the EPA stands in the development of a Brick MACT and the alternatives for compliance being considered. As David Rostkers put it early in our meeting, it is the hope of us in the industry that the final Brick MACT is something that is fair, that allows the small brick manufactures to stay in business, and right, in that it complies with the Act and responsibilities of the EPA. We believe those goals can be accomplished by providing the maximum degree of flexibility to plant operators in complying with any the new Brick MACT.

I represent Continental Brick Company, a small, independent brick manufacturer located in the eastern panhandle of West Virginia. In fact, we are the only brick manufacturer in the state. We have two small tunnel kilns, each with a capacity of less than 10 tons per hour, located at a common facility near Martinsburg. Because of the capacity of our kilns, we would not have had to install any emissions control equipment in order to comply with the original Brick MACT.

Continental Brick Company has been operating at the same location, using the same raw materials for almost 100 years. The raw material used at Continental is the Martinsburg Shale. This shale deposit has supplied raw material for several brick plants in the northern Shenandoah Valley over the last century or so, and Continental is one of only two remaining. It is not feasible for us to change our raw material in an effort to reduce emissions from constituent pollutants contained in the Martinsburg shale. Our mined material has certain chemical and physical characteristics that cannot be changed and the economics of the plant prohibit the use of a raw material transported to the plant from out of the area.

The Martinsburg shale is relatively high in hydrogen fluoride (HF), which makes it impossible for us to become a synthetic minor source simply by limiting our throughput rate or operating schedule. The projected cost of installing any type of emissions controls on our older, leaky kilns is more than a million dollars per kiln, far more than Continental can afford or justify in the

current business climate. The capital and operating costs associated with installing any type of scrubber simply cannot be justified when the plant is already losing money. The imposition of a Brick MACT that does not contain alternative compliance methods that Continental could use would certainly result in the closing of our plant.

Due to the age of our plant, our manufacturing process is labor intensive and our kilns are old and poorly sealed. This means our manufacturing costs are high when compared to the newer, more capital intensive plants. Because of the overall decline in building in our market area, brick prices and demand are down and Continental has been operating at a loss for the last few years. We continue to manufacture brick in hopes that future improvements in the market will allow us to return to profitability and recoup our losses. This is the financial condition in which Continental finds itself as the EPA moves forward with the promulgation of a Brick MACT.

It is our understanding that the EPA is considering the use of Health Based Compliance alternatives for acid gases, which includes HF, HCl, and chlorine. It would be a great benefit to Continental if this approach could be taken. It would also result in no threat to public health. As we know, our plant has operated in the same location, using the same raw material, for decades with no public health issues or adverse effect on our neighbors.

The discussions at the June 26 meeting about numeric standards for PM and Hg were disconcerting. Due to our tenuous financial condition, Continental could not afford to install a filter system designed to remove PM and Hg, even if the filter was not associated with a lime based scrubber system. The use of a Work Practice Standard would provide an opportunity for us to comply with the Brick MACT by imposing operating and record keeping standards and allow the plant to continue to operate. We have no analytical data on the emission of Hg from our raw material or fuel, but are hopeful that a Work Practice Standard can be incorporated into the Brick MACT that would allow Continental Brick an opportunity to comply with the MACT without a scrubber or filter system. The fact that the Brick and Clay Tile Product (BCTP) industry is admittedly a very low emitter of Hg should help justify including a Work Practice Standard as a compliance alternative for Hg, PM, as well as dioxin as Keith Barnett mentioned at the meeting.

In summary, Continental Brick Company hopes that the EPA will provide a Health Based Compliance alternative for HF, HCL, and chlorine, and a Work Practice Standard alternative for PM, Hg, and dioxin.

We believe that sub categorization should be considered in promulgating the standards for a new Brick MACT. Among the items that should be considered for sub categorization are:

- Size or throughput capacity of the plant - Smaller plants contribute fewer pollutants than larger plants utilizing the same raw material and fuel supply.
- Raw material used at the plant - Most brick manufacturing plants are located at or near their source of raw material. That is generally why the plant was built in that location originally. There is nothing an operator can do to change the raw material available to it or modify the chemical or physical characteristics of the raw material which contribute the most to the plant's emission characteristics.
- Plant age - Older plants, such as the Continental plant, tend to have leaky kilns from the years or decades of operation. These leaks allow large quantities of air into the combustion system without contributing to the kiln's operation. In fact, the leakage

increases the quantity of fuel required per pound of fired ware and directly influences the size of any scrubber or emissions control system. A small kiln such as Continental's could require an emissions control system similar in air throughput capacity as a kiln many times larger in firing capacity. The absolute quantity of pollutants is dictated by the pounds of ware fired while the size of the scrubber needed to remove pollutants is determined by the air throughput. Put another way, the low concentration of pollutants in the air emissions of an older, leaky kiln, would be far more difficult to remove than the higher concentration of pollutants in a modern, large, well sealed kiln. The marginal cost per unit of pollutant removed from an older kiln would be many more times higher than for a modern kiln. It may not even be technologically feasible to remove the greatly diluted pollution constituents from the exhaust stream of an older kiln.

- Fuel source – Brick plants depend on a reliable supply of low cost fuel. This typically means close by, readily available fuels. Depending on the plant's location the most economical fuel could be natural gas, fuel oil, coal, saw dust, or any other solid, liquid or gaseous fuel. Each fuel would have its impurities and contaminants which are beyond the control of the brick manufacturer.

Continental Brick Company is not a member of the Brick Industry Association (BIA) but we certainly appreciate and support the work that has been done by Susan Miller and her associates at the BIA toward helping the EPA promulgate a Brick MACT that everyone in the industry can live with. The brick industry is a relatively small, close knit group of companies and individuals who have been working to have compliance alternatives incorporated in the new Brick MACT that would benefit all of the manufactures, large and small. Continental has been the beneficiary of the extensive knowledge and experience brought to the table by the BIA in hopes of achieving a Brick MACT that, as David Rostkers put it, is both fair to the industry and right for the EPA.

Finally, all of us who work at Continental Brick Company appreciate the efforts undertaken by representatives of the EPA, OMB, and SBA to write a Brick MACT which incorporates the necessary compliance alternatives needed to allow our plant to continue to operate. We hope the Continental name will survive this very difficult economy and building supply market and allow us to manufacture brick for many more decades while complying with the new Brick MACT.

Sincerely,



Donald B. Sult
Vice President

cc: Susan Miller, BIA

Endicott Clay Products Co

July 15, 2013

Nathaniel Jutras
U.S. Environmental Protection Agency
1200 Pennsylvania Ave N
Washington, DC 20460

Dear Nathaniel:

Re: NESHAP for BSCP

The recent SER meetings pertaining to NESHAP for BSCP manufacturers leading to a new Brick MACT present some real issues for not only this company, but the brick industry as a whole. I wish to put this in some perspective by stating that I held the position of Executive Director of the Structural Clay Products Institute - Region 6 (now the Brick Industry Association - Heartland Region) from 1967-1969. At that time there were twenty-seven (27) brick and tile manufacturing entities in this seven state region. Today there are eight (8) remaining companies producing brick. This decrease in the number of manufacturers was largely due to the ever-increasing regulations brought on by EPA, and the inability of these small manufacturers to financially cover the costs brought about by these regulations.

The EPA has estimated the annualized cost/year for adequate air pollution controls on our three (3) kilns to be \$2,182,453. These costs, on top of our regular production and maintenance costs, annual labor rate increases and a projected 30% increase in health insurance premiums, will place an unprecedented financial burden on this company.

Post Office Box 17 • Fairbury, Nebraska 68352 • 402/729/3915
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Endicott Clay Products Co

Page 2

Re: NESHAP for BSCP

In the year 2005 we produced 81,077,865 MBE which was the highest production ever achieved at this plant. Using this benchmark, we would have to increase our FOB plant prices by \$26.92/m (14.17%) to cover the costs of these required controls.

In the year 2012 we produced 65,651,560 MBE. Using this benchmark, we would have to increase our FOB plant prices by \$33.24/m (17.51%) to cover these costs of required controls.

Considering that during the 2008-2011 time period we operated at two-thirds capacity, and considering that the current economic recovery appears to be slow (and fragile) at best, we are projecting production to continue at two-thirds capacity into the foreseeable future. If this turns out to be the case, we will have to increase our plant prices by \$43.65/m (22.97%) to cover the increased production costs necessitated by these required emission control devices.

I must point out that the largest annual price increases we have initiated over the last forty years have been 5%, and in some years we were not able to increase prices at all.

Expenditures of the magnitude estimated by EPA (\$6,150,000) generally require bank loans, as few small brick manufacturing entities can finance such capital expenditures from cash reserves. Our investigations and past banking experience tell us that it would be difficult, if not impossible, to secure funding at anything even close to 20 year loan terms @ 7% interest rates. Rather, we would expect acquiring bank loans to finance the purchase of these air pollution controls to be more on the order of 8% for 5 years and higher variable rates thereafter. It would be difficult to convince lending

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Endicott Clay Products Co

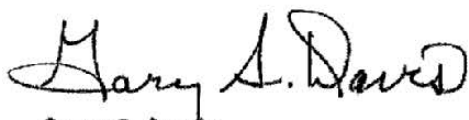
Page 3

Re: NESHAP for BSCP

institutions to consider large loans for equipment that neither contributes to increased revenues nor improves product quality. This is especially true for an industry that has operated at approximately 30% of production capacity since 2008. And this does not take into consideration the fact that there are no guarantees that this equipment would even have a 20 year longevity.

Finally, a new very restrictive air toxic rule (MACT) could wreak financial havoc on a small brick company of our size, a company that has been in existence since 1920 and under the present ownership since 1955. The same can be said for the brick industry as a whole.

Sincerely,



Gary S. Davis
Vice President of Sales

GSD:mj

July 12, 2013
Mr. Nathaniel Jutras
U.S. Environmental Protection Agency
Washington, DC 20460

Re: Comments pertaining to the SER Outreach Meeting, NESHAP for Brick of June 26, 2013

Mr. Jutras

Subsequent to the meeting referenced above Mutual Materials would have the following comments.

We would like to thank the EPA, SBA, and OMB for their time and considerations in providing a format for discussion and exchange of information. We are not sure that sufficient time and exchange has been provided for evaluation of all data and alternatives. David Rostker of SBA Office of Advocacy asked at the meeting if EPA felt they had sufficient evidence for proposal of health based limits and the answer was yes. Most within our industry still believe that the case can be made to allow health based management of threshold pollutants, and work practices management for all other pollutants. The brick industry is very different from others, in terms of the reasons used to deny health based limits, in previous MACT rule development. The health based concept, combined with some raw material, and or kiln size sub categorization might still be acceptable to all parties, if sufficient time for study and data analysis is provided. BIA as the industry advocate has collected incredible amounts of data from every brick manufacturing entity in the country. This data should be evaluated and analyzed to the maximum extent for the good of the MACT rule, the brick industry, and environmental concerns of all parties. BIA and the industry support the idea of a rule, but want a fair and reasonable rule that balances economic impact with environmental impact.

Another very significant comment pertains to the financial burden this regulation will potentially place upon our business. The MACT rule and its potential cost burden may well be the end of many small business operations in the brick industry, and that is something the SER panel outreach process is intended in part to prevent. Our business sector, brick and structural clay products, as demonstrated by data collected and presented by Susan Miller of BIA is comprised of many small independently operated companies. This is the case with Mutual Materials Company as well. The cost numbers furnished by EPA for installing and then annually operating a control device, relative to annual revenues and typical cost of product are unreasonable. As data collected by BIA indicates the costs of these control devices are a major percentage of revenues, and increase cost of product to levels the construction industry cannot accept. These same costs relative to the potential reduction in emission tonnage, or cost per ton of pollutant reduction, seem even more unreasonable, as data from BIA again substantiates. While EPA must not consider cost of controls when writing regulations, surely the economic impact and relative gain per unit cost cannot be ignored or minimized. These numbers alone may seem to merit creation of subcategories.

Finally a comment regarding the EPA suggestion that the easiest way for small entities to comply with the MACT is to install DLA control devices prior to the regulation taking effect and thus become synthetic minors not subject to the MACT. Our colleague, John Miller, of Whitacre-Greer, noted very early and very precisely in the meeting on June 26 that this was a valid compliance method, but it was not free. By EPA estimates of cost, even this "easy" compliance process may well be the end of many small brick product companies. The ability to borrow capital money for the purpose of installing machinery or equipment that will not increase production, improve efficiencies, or reduce costs, does not exist in our world. The ratio of cost for a control device to revenue is prohibitive to borrowing, so installation of even a simple DLA to accomplish this "easy" fix, is likely impossible.

To summarize it might best be said that Mutual Materials is facing a near certain closure of its brick manufacturing facilities if the MACT is written as presented in the meeting of June 26. We do not believe that is necessary if sufficient time is allowed for evaluation of possible health based standards for management of threshold pollutants and work practices management for other pollutants. We expect EPA to do the right thing for the environment and yet we believe it can save the brick industry by using all the options available for MACT rule development.

Respectfully,
George Beamer
Mutual Materials Company



July 15, 2013

Alex Cristafaro, Environmental Protection Agency
Cortney Higgins, Office of Management and Budget
David Rostkers, Small Business Administration

Re: Outreach Meeting with Small Entity Representatives

My name is Preston McMillan and I work for Pine Hall Brick Company, a Small Entity. I would like to thank all panel members from the EPA, the SBA and the OMB for holding and attending the June 26, 2013 meeting. I think the meeting was informative and productive.

I would like to specifically thank the EPA for its efforts in evaluating alternatives to more traditional rule-making. The health-based approach in dealing with threshold pollutants makes sense. This approach along with workplace practices seems to make sense for other pollutants as well. We think the EPA's efforts in evaluating these and other options should continue.

This meeting was primarily about the economic impact small businesses would suffer if certain rules were adopted. In our case, traditional rule-making could require us to dismantle existing and install new control equipment for acid gases. This would result in annualized costs of over 5 million dollars for all of our operations. Under current financial conditions and those in the foreseeable future, we could not get a bank to loan us the money for these changes. The result would be not starting some existing operations back up and shutting down ones that are currently operating.

For control of mercury and PM, the EPA has recommended certain enhanced technology which has not been proven in our industry. The cost estimates for this technology, again, put some of our operations at risk of being closed.

Again, we feel a health-based approach for threshold pollutants combined with work practices for others is the most practical approach. If work practices are not adopted for metal HAPs then there should be some consideration for setting individual metal HAP emission rates in addition to PM.

We continue to work with and support BIA in this endeavor and feel they represent us and our entire industry in the best way. We will also continue to work for the best solutions to problems facing our industry and our environment.

Sincerely,

A handwritten signature in black ink that reads "Preston McMillan". The signature is written in a cursive style with a large initial 'P'.

Preston McMillan
Vice President of Technical Services

Jutras, Nathaniel

From: Steve Gerhart [sgerhart@siouxcitybrick.com]
Sent: Friday, July 12, 2013 1:38 PM
To: Jutras, Nathaniel
Cc: Susan Miller
Subject: Comments on MACT standard for the brick industry

Dear Mr. Jutras: First, thank you for giving me the opportunity to provide comments on the upcoming MACT standard for the brick industry. I would also like to thank the EPA for providing an opportunity for brick industry representatives to provide comments in this important matter.

I fully support the comments already submitted by the BIA in this matter and the comments submitted by other industry representatives. I would like to address a few key issues:

- 1). The brick industry is in a serious depression at this time as I am sure you are aware. I will speak only for Sioux City Brick, and our current situation. We have three tunnel kilns that are equipped with two DLA's and with one DIFF. The tunnel kiln equipped with the DIFF has not operated since 2007 due to the depressed state of brick sales in this country. With regard to the other two kilns, it is **totally impossible** for us to finance the retrofits that are being proposed in this matter. I mean totally impossible. You might as well ask us to pay for repaving the entire interstate road system; we would have an equal chance of financing that project.
- 2). Secondly, we complied with the previous MACT standard at great financial cost and risk. In fact, the financial costs of compliance remain an issue for us today as we struggle with current economic conditions. Now, after the fact, we are to be punished for our compliance. This is totally unreasonable. Some mechanism needs to be made available to grandfather companies that in good faith complied with the terms of the previous MACT standard. This is simple fairness.
- 3). Third, I think it is critical that consideration be given to actual operating conditions which include periods when a tunnel kiln is shut down and when it is brought back to operating temperatures. These are periods when kilns are operated below the acid dew point and to force the use of emission controls under these operating conditions will have very negative impacts on the emission control equipment. In fact, the manufacturer of the scrubbers on Sioux City Brick's tunnel kilns (Hellmich) states that the equipment must **not** be operated when the temperature is below the acid dew point. It is also important to note that the stack tests used by the EPA for the control devices do not represent start up and shut down conditions. However, good work practices insure that start up and shut down times are minimized. Given the operating conditions present during start up and shut down, a different standard must be considered that is premised on a work practice standard that protects both the environment and the control device.

Thanks for the opportunity to provide these thoughts and thanks again for your attention to these matters.

Respectfully submitted,

Steven G. Gerhart
Chief Administrative Officer
Sioux City Brick & Tile Company
310 S. Floyd Blvd.
Sioux City, Iowa 51101
712-202-1133
712-574-0002 (cell)

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Statesville Brick Company



An American owned family business for over 100 years. . . .

Manufacturers of Authentic Wood Fired Brick

July 11, 2013

Nathaniel Jutras
U.S. Environmental Protection Agency
Office of Policy, Regulatory Management Division
1200 Pennsylvania Avenue NW, Mailcode: 1805A
Room 6440G ARN
Washington, DC 20460

Dear Sir,

Thank you for your time in the panel meeting on June 26, 2013 and for letting us voice our questions and concerns. Statesville Brick Company has been in business for over one hundred years. We are a small family-owned company employing close to one hundred people. We fire our kilns with sawdust – a renewable energy source. Additional control costs will place an undue burden on our ability to remain competitive in our business. We have spent a great deal of time and money developing a system in which we do not use any natural gas or other fossil fuel in the course of firing our brick kilns. We only use natural gas to restart our kilns. We send the majority of the kiln exhaust thru a sawdust dryer which is an integral part of our process which we understand helps to lower emissions. As our records indicate we have very low emission rates including PM.

In 2005 we spent millions of dollars to build a new plant around an existing kiln in order to comply with the "under 10 tons per hour" limit. Without this limitation, we would have built an entirely different facility that would have been larger and more efficient. Also, over the years we have spent capital in our other plant in a manner that also keeps that plant under the ten ton limit. All of this together means we spent millions to comply with EPA's request and feel it is only fair that we NOT be required to install "expensive-to-buy" and "costly-to-run" equipment for a fuel that is less pollutive than fossil fuels and has the great benefit of being a renewable energy.

We have no objection to kilns being placed in separate categories of "under 10 TPH", "over 10 TPH", or "kilns built after 2014 or whenever the regulations are completed" as we have already been burdened financially to comply.

Please feel free to contact us if you have questions or we can be of any help.

Sincerely,

Michael B. Foster
Chairman of the Board & C.E.O.

Stephen L. Moose
Director of Safety and Government Relations
regs@statesvillebrick.com

MBF: tak

Cc: David Rostker
Asst. Chief Counsel to SBA Ofc of Advocacy
David.Rostker@sba.gov

Cc: William Wehrum
Partner – Hutton & Williams
wwehrum@hutton.com

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Phone: 704-872-4123 Fax: 704-872-4125 Toll Free: 800-522-4716
www.statesvillebrick.com



July 15, 2013

Nathaniel Jutras
US Environmental Protection Agency

On June 26th I was in attendance in Washington as a SER regarding the Brick MACT. I would like to thank you and those involved for taking the time to meet with us and evaluate other alternatives to a traditional MACT. I believe it was very helpful to allow us the opportunity to discuss our concerns with EPA, OMB, and the SBA in one setting. As was mentioned during the meeting there is an extremely high ratio of implementation cost to benefits received.

As a small business, I would like to take the opportunity to summarize several points that are of concern:

- To comply with a traditional MACT, per EPA estimates, requires a capital investment of \$4.9 million and \$1.6 million yearly in operating costs for our small kiln.
- Becoming a synthetic minor is an option but certainly not a reasonable one. Our costs to "opt-out" are estimated at a capital cost of \$2.6 million with annual expenses of \$800,000. Again, EPA numbers.
- Getting a bank to approve these loans would be near impossible, as this is 73% of our net worth and increases our operating expenses by 25%.
- A health based solution for the threshold emissions along with work practices for other emissions is a viable option that is afforded the EPA and would be at a reasonable cost to the Brick Industry. PM-HAP for small businesses is estimated to cost \$7.0 million/ton.
- There should continue to be a sub-category of small kilns. As detailed below, there are many technical reasons why small kilns should not be subject to the same constraints as a modern larger kiln.

Our Company

Whitacre Greer manufactures high quality dry pressed clay pavers and low duty firebrick for niche markets. Our non automated, older facility allows us to do a large amount of customized work for our customers, which is one of the keys to our success in these niche markets. We were founded in 1916 and have been owned and operated by the Whitacre family since that time.

Whitacre Greer is located in Alliance, Ohio. We have two tunnel kilns, each of which is under a Federally Enforceable limit of 10 tons/hour, and three dryers. Decreased demand for our products has resulted in decreased production which has gone from 63,100 tons in 2007 to 44,450 tons in 2009.

1400 South Mahoning Ave.
Alliance, Ohio 44601

800 WG PAVER
P: 330.823.1610
F: 330.823.5302
info@wgpaver.com
www.wgpaver.com

Most of our hourly employees live locally, many of them walking to work or riding bikes during good weather. We do not have automatic loaders and unloaders, therefore these production functions are performed by employees which results in a highly labor intensive operation. All of our 80 employees receive wages above the Ohio and Federal minimum, although with our decreased production level our hourly workforce is on a 35 hour work week for the past two years. They receive good benefits such as paid holidays, vacations, retirement 401k, and medical. As a labor intensive facility many of our employees have only a high school education, many far less.

We have always tried to operate in an environmentally responsible manner. In 2009 we were the recipient of the Brick Industry Association Environmental Stewardship Award. We received this award for our Reduce-Reuse-Recycle program and the development of our environmentally friendly permeable paver that allows stormwater runoff to soak into the ground rather than overflow into ditches and streams. One of the colors is made entirely of recycled clay.

As a Title V facility we are inspected periodically by The Ohio Environmental Protection Agency (OEPA) and the Mahoning-Trumbull Air Pollution Control Agency (MTAPCA). Our last review stated "the facility appears to be in compliance with the Title V permit issued June 6, 2001, and all pollution control laws." In fact, we have had no negative findings since a paperwork issue in early 2002.

Although we intend to remain environmentally conscious, we also want to remain in business. As a small business we are struggling to stay afloat due to the decreased demand for our products. A MACT that would require us to invest in an APCD would be a significant economic challenge to our company, possibly resulting in our closure and the elimination of good jobs with benefits. Using the data that has been previously provided by the EPA shows that an APCD would cost 73% of our net worth. Additional economic challenges include trying to obtain a loan of this magnitude in today's banking climate. As we certainly could not afford to install two devices, we would be forced to permanently shutdown one kiln and cap our production.

We would prefer to use our capital to grow and provide additional jobs.

Sub-categorization of Small Kilns

The previous vacated MACT had a sub-categorization for small kilns. We believe that a sub-categorization of kilns should be continued.

Beyond the obvious economic factors, the installation of an APCD would have significant impact upon our products, therefore on our ability to successfully maintain our niche markets. As was acknowledged in the vacated MACT, brick color is an important factor in the consumer's decision to buy one brick over another and it is critical that color duplication be achieved on a regular basis. Color is affected by changes in airflow. An APCD greatly affects the air flow, certainly more so on a small tunnel kiln due to the slower production rates. Addition of an APCD would affect the historic color

reproduction possibly making duplication impossible. Color is another key factor in the success of our niche paver product line.

Adding an APCD on an older small kiln would also be impractical. Older kilns are not designed to be airtight. The exit end has no door and the entrance to the kiln has a loosely fit non insulated sliding door. Sealing the kiln would cause changes in air pressure distribution, moving the balance points, which in turn could cause the mixing of the waste heat and the products of combustion. This would affect the color and quality of the pavers.

As a manufacturer of pavers, in order to account for years of wear, it is important that the color is consistent throughout the paver. Our color is achieved by knowing, through years of experience, how to adjust the burners for the optimum time, temperature, and airflow. Operating too lean or too rich of a mixture will result in a different firing curve resulting in a different looking product and possibly weak inferior products.

There are several other differences between small and large kilns. For instance, our small kilns are fired with high velocity side burners positioned at the bottom of the deck. Even with the high velocity burners the temperature difference from top to bottom is as much as 100 degrees. Larger kilns are top fired with a more even temperature distribution.

Our kiln cars are narrow (6' wide) but higher (5' in our larger kiln, a bit lower in the smaller kiln) with a large gap in the middle and loosely hacked to enhance airflow. A modern larger kiln is low and wide; typically 1-2 feet high and as much as 20' wide, more densely hacked and require less airflow to achieve even heat distribution.

As mentioned above our kiln is not sealed. The exit end is completely open and the entrance has a very loose fitting door. Larger kilns are sealed with a vestibule. The airflow and temperature remain constant while the smaller kiln temperatures and airflow changes when the entrance is opened and shut to admit a car.

The walls and ceilings of older smaller kilns are constructed with sizeable amounts of refractory bricks in the walls and arched ceilings. The arched ceilings allow for open spaces and airflow above the cars, something not found in large kilns. Large kilns are typically designed with a fiber lined tight ceiling.

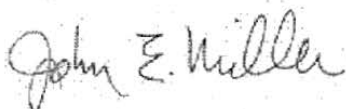
Summary

An APCD clearly would be detrimental to our continued operations, but more importantly, is unwarranted. EPA should continue to distinguish between small and large tunnel kilns. By doing so, EPA will correctly recognize that the smaller kilns are operated differently than a large kiln and should not be held to the same standards.

We are requesting that the EPA use the discretion afforded to them in the CAA and, as was done in the vacated MACT, continue with the sub-category of 10 tph differentiations between small and large kilns.

The brick industry has provided to the EPA data which when modeled has shown that our emissions do not provide a health risk. We furthermore feel that it would be appropriate to consider a Health Based Alternative approach and the combining of gaseous HAPs and appropriate work rules for other emissions, because doing so would ensure that the environment is protected as required by the CAA, but also that the manufacturing of brick can continue in the United States.

Sincerely,



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