



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

JAN 16 2014

Dear Administrator McCarthy:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the U.S. Environmental Protection Agency's planned proposed rulemaking entitled "National Emission Standards for Hazardous Air Pollutants (NESHAP) Maximum Achievable Control Technology (MACT) for Brick and Structural Clay Products Manufacturing." The rulemaking is being developed by the EPA under section 112 of the Clean Air Act (CAA). The proposed rule is currently going through the regulation development process.

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. The 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 the 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.

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.

PANEL BACKGROUND

On June 12, 2013, the EPA's Small Business Advocacy Chairperson 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 Sector Policies and Programs Division within the EPA 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 EPA is continuing to conduct analyses relevant to the proposed rules, and additional information may be developed or obtained during this process as well as from public comment on the proposed rules. The options the Panel identified for reducing the rules' economic 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 CAA.

SUMMARY OF SMALL ENTITY OUTREACH

Before beginning the formal SBAR Panel process, the EPA actively engaged in outreach with entities that would potentially be affected by the upcoming rulemaking. The EPA held both in-person phone conferences with representatives from the Brick Industry Association and some of these companies, and also had conference calls with an ad-hoc coalition of small entities to discuss the proposed rulemaking and to provide these contacts with an early opportunity to ask questions and discuss their concerns with the upcoming rulemaking. The EPA provided each small entity representative (SER) with general information on the SBAR Panel process and background information on the rulemaking process. Once the SBAR Panel process began and SERs were identified, the EPA held outreach meetings with the SERs as described below.

On March 14, 2013, the EPA held a two-hour meeting with SERs for this SBAR Panel and invited representatives from the SBA and the OMB to the meeting. To help them prepare for the meeting/teleconference, the EPA had provided materials to each of the SERs via email two weeks prior. The Outreach Meeting was held to solicit feedback from the SERs on the upcoming rulemaking. The EPA asked that the SERs provide feedback on the outreach packet they received as well as the outreach meeting itself by March 28, 2013.

The SBAR Panel convened on June 12, 2013. The Panel held a formal outreach meeting/teleconference with SERs on June 26, 2013. To help the SERs prepare for the meeting/teleconference, the Panel sent materials to each of the SERs via email following convening on June 12. The Outreach Meeting was held to solicit feedback from the SERs on their suggestions for the upcoming rulemakings.

The SERs were also asked to provide written feedback on ideas under consideration for the proposed rulemaking. Section 8 of the Panel Report provides a complete discussion of SER comments, and the full written comments are included in Appendix B. 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 section 609(b) of the RFA, the Panel is to report its findings related to these four items:

- 1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
- 2) A description of the projected reporting, recordkeeping 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.

- 3) Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.
- 4) A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the proposed rule on small entities consistent with the stated objectives of the authorizing statute.

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

A. Number and Types of Entities Affected

There are currently 46 brick manufactures in the United States that would potentially be affected by the proposed rule; 38 of the firms are small business as defined by SBA size standards. Since 2003, the number of brick manufactures has declined from 89 to 46. The number of small businesses appears to have declined similarly.

B. Potential Reporting, Recordkeeping, and Compliance Requirements

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.

C. Related Federal Rules

There are no related federal rules for this source category.

D. Regulatory Flexibility Alternatives

The following are some of the regulatory flexibility alternatives recommended by the panel:

The Panel recommends that the EPA propose work practices for dioxin and take comment on the feasibility of work practice standards for mercury and other metals.

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

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

The Panel recommends that the EPA propose both a PM numerical limit and a total non-mercury metal HAP limit.

The Panel recommends that the EPA propose work practice standards for startup and shutdown.

The Panel recommends that the 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.

Sincerely,



Alexander Cristofaro
Small Business Advocacy Chair
Office of Policy, Economics & Innovation
U.S. Environmental Protection Agency



Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget



Winslow Sargeant
Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration



Peter Tsigotis
Director, Sector Policies and Programs Division
Office of Air and Radiation
U.S. Environmental Protection Agency