

November 6, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments. This rule is being developed by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

Lime Manufacturing Plants in this source category include facilities engaged in the manufacture of lime products (calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite) by calcination of limestone, dolomite, shells, or other calcareous substances. This rule currently has emissions standards for particulate matter (PM) as a surrogate for metal hazardous air pollutants (HAP), and opacity limits that apply to kilns during startup, shutdown, and materials handling operations. The existing rule also contains requirements for electronic reporting of emissions tests and compliance reports. Facilities requesting area source status must also perform an emissions test for Hydrochloric Acid (HCl) emissions to demonstrate it emits less than 10 tons per year of HCl. As a result of emissions data collected for the 2020 Lime Residual Risk and Technology Review (RTR), EPA identified four previously unregulated pollutants: HCl, Mercury (Hg), Organic HAP (oHAP), and Dioxins/Furans (D/F).

The regulatory revisions currently being considered and evaluated by EPA are new emission limits for HCl, Hg, oHAP, and D/F, along with associated testing, reporting and recordkeeping necessary to determine compliance with the emissions standards. These new emission limits are limited to the lime kilns.

On July 20, 2023, 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 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. EPA is continuing to conduct analyses relevant to the rule, and additional information may be developed or obtained during this process. The options the Panel identified for reducing the rule's 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 the CAA.

SUMMARY OF SMALL ENTITY OUTREACH

This Panel has not followed the normal course of events typical of an EPA Panel. Based on the information available to EPA at the time the Notice of Proposed Rulemaking (NPRM) for this action published, EPA certified the rule as not having a significant economic impact on a substantial number of small entities (No SISNOSE). Since the NPRM published, EPA received additional data and feedback via

public comments to update its economic analysis, including impacts to businesses affected by the proposed rule. An initial review of this updated information indicates control costs developed to support the proposal may be understated and there could be significant economic impacts to small businesses. Therefore, EPA convened a Panel. EPA will publish an Initial Regulatory Flexibility Analysis for public comment prior to issuing a final rule.

After the SBAR Panel was formally convened, the Panel distributed information to the small entity representatives (SERs) on July 20, 2023, for their review and comment and in preparation for the outreach meeting. On August 3, 2023, the Panel met with the SERs to hear their comments on the information distributed to them. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking. See Section 8 of the Panel Report for a complete discussion of SER comments. Their full written comments are also 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 the following 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

The affected facilities are commercial lime manufacturing plants. Of the 12 businesses in this source category, only two are considered small businesses based on the SBA small business standard. These small businesses operate a total of five lime kilns.

B. Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule requires testing every five years for all pollutants. This is the minimum testing requirement for a NESHAP. The Panel supports EPA's decision to not propose a continuous emissions monitoring requirement, which minimizes the monitoring burden.

C. Related Federal Rules

New Source Performance Standards for Lime Manufacturing Plants, 40 CFR part 60 subpart HH, are related to this rule.

D. Regulatory Flexibility Alternatives

The Panel believes that EPA should consider setting a work practice standard for D/F rather than a numeric emissions limit. The Panel notes that Section 112(h)(2) of the CAA allows the Administrator to set a work practice standard if they determine that the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations, and that a significant percentage of the D/F data shows that emissions are below the method detection limit. The Panel believes that EPA should review these data to determine if they support a finding that it is not feasible in the judgment of the Administrator to prescribe or enforce a numeric emissions limit.

The Panel believes that EPA should account for additional sources of variability in this floor determination, namely the long-term variability of the limestone mercury content that is not captured by a short-term emissions test. EPA is aware that limestone quarries are immense and customarily used from periods of 50 to 100 years. The Panel notes that taking the average of a three-hour emissions test from one part of the quarry would not necessarily encompass all of the different mercury levels throughout the quarry. The Panel notes that industry commenters had provided data on mercury content of kiln feed and core samples of quarry mercury content which they believe could be used to assess this long-term emissions variability.

With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing NESHAP emission standards, CAA Section 112(d)(4). The Panel notes that there have been two separate risk analyses performed on the health impacts of HCl for this source category and both indicated that ambient levels of HCl resulting from kiln emissions were well below the health effects threshold established in the EPA Integrated Risk Information System. Therefore, the Panel believes these data are sufficient to allow EPA to consider the health impacts threshold when setting an HCl emissions limit. The Panel noted this would be an important step to lessen the impact of the rule on small businesses.

The proposed rule used total hydrocarbons (THC) as a surrogate for establishing an emissions limit for o-HAP. The Panel notes that EPA has the option of setting a standard for o-HAP (the actual pollutant being regulated) rather than relying on a THC surrogate if data are available. This option could address the SERs' concerns that installing Regenerative Thermal Oxidizers (RTOs) to meet a THC standard would be cost prohibitive. There is o-HAP data available to EPA. However, the EPA notes that the data are somewhat limited.

The Panel notes that EPA does have the flexibility to set subcategories based on size, class, or type. In the proposed rule EPA exercised this flexibility and established separate HCl emissions limits for different types of lime kilns and different types of lime products. The Panel notes that this flexibility reduces the economic impacts of the HCl standard by accounting for differences in emissions that are inherent to the kiln type. The Panel supports this subcategorization, noting that if EPA does decide to set a health-based standard then this issue would become moot.

E. Summary of Panel Recommendations

1. The Panel recommends EPA consider and take public comment on a health-based standard for HCl pursuant to section 112(d)(4) of the Clean Air Act.
2. The Panel recommends EPA consider and take public comment on an overall o-HAP limit rather than a THC limit.
3. The Panel recommends that EPA consider intra quarry variability of mercury in setting the mercury emissions limit using the data already provided, and any additional data that may become available.

4. The Panel recommends that EPA retain the subcategories for the HCl numeric emissions limits unless EPA sets a health-based standard for HCl.
5. The Panel recommends that EPA consider and take public comment on setting a work practice standard for dioxins/furans in place of a numeric limit.

Sincerely,

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Enclosure