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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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February 23, 2007

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The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

I am writing to request additional factual and analytical information regarding the air toxic emission consequences of your December 21, 2006, proposal to change the air toxics program. I also request that you discuss how the proposed rule would affect the ability of the Environmental Protection Agency (EPA) to ensure that companies are complying with air toxics requirements.

In 1990, Congress made major changes to the way that EPA regulates air toxic emissions because EPA had regulated only seven air toxics in the preceding 20 years. Congress was quite prescriptive in its direction to EPA in 1990. We required EPA to issue rules limiting emissions of approximately 190 air toxics from all major sources over a 10-year period. Although EPA has not acted as quickly as Congress required, air toxic emissions have been reduced significantly as a result of the 96 air toxics rules (also called MACT or Maximum Achievable Control Technology standards) that EPA has issued since 1990.

Under EPA's current policy, adopted in 1995, sources are required to meet the applicable MACT air toxics standard if, on the date that the MACT standard went into effect, the source emitted more than 10 tons of one air toxic or 25 tons of any combination of air toxics annually (the "10/25 ton threshold"). You have proposed to change this so that sources that are currently complying with MACT air toxic standards would have the option of getting out of all MACT requirements if their emissions are below the 10/25 ton threshold – even if the source is currently subject to a MACT standard that requires emissions below that threshold.

EPA regional offices have expressed the concern that this proposal has the potential to increase air toxic emissions by undercutting many of the MACT air toxic standards issued over the last 15 years. Would this proposal have the effect of changing existing air toxics standards to

allow sources to meet the *higher* of the MACT standard or the 10/25 ton threshold? Does this have the potential to increase air toxics emissions by changing the legal applicable limit under the MACT program?

The preamble notes that MACT standards currently require some sources to emit less than the 10/25 ton threshold, and goes on to state that “we believe it is unlikely that such sources would . . . increase their current emissions.” To justify this belief, the Agency speculates about what sources or State regulators *may* do and provides conclusory statements that the sources will not increase emissions because the same controls required by MACT may be required by other regulations. If there are facts to back up this speculation, none are referenced in the Agency’s justification for the rule. Does the Agency have factual support for its belief that sources currently below the 10/25 threshold will not increase their emissions to that level if this proposal is adopted?

EPA goes on to state that, if there are emissions increases, they “will likely be offset by emission reductions at other sources that should occur as the result of this proposal.” The preamble provides just one anecdotal example of one source that has indicated it would reduce emissions of one pollutant if this proposal were finalized. Does EPA have any quantitative analysis or other factual information to support the proposition that any increases would likely be offset by reductions at other sources?

The proposal provides no discussion of the potential impacts on enforcement of air toxics requirements. EPA mentions that the benefits to sources might include reduced monitoring, recordkeeping, or reporting requirements. EPA Regions commenting on the proposal noted that, “Many of the environmental benefits that are achieved by the comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process.” How would the proposal affect EPA’s ability to ensure that sources are complying with legal limits on air toxics emissions?

More detailed questions on these same subjects are attached. In light of the preamble’s limited discussion of these key issues, I request that you answer the enclosed questions by Tuesday, March 6, 2007. I further request that, once the requested information is provided, you place the information in the rulemaking docket for this rule and extend the public comment period at least 30 days afterwards.

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Thank you for your assistance in this matter. If you have any questions regarding this request, please contact me or have your office contact Lorie Schmidt, Majority Counsel to the Committee on Energy and Commerce at (202) 225-2927.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over a large, faint circular stamp or watermark.

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: Mr. Bill Wehrum, Acting Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency

Mr. Granta Nakayama, Assistant Administrator
Office of Enforcement and Compliance Assurance
Environmental Protection Agency

**Questions for the Honorable Stephen L. Johnson
Administrator, Environmental Protection Agency**

1. You state in the proposal that you cannot quantify “the environmental, economic or energy impacts of the proposed amendments . . . without knowing which sources will avail themselves of the regulatory provisions proposed in this rule” You can, however, provide any useful quantitative information regarding the potential emissions impacts of this proposal. Please provide the following information (providing ranges where appropriate):
 - a. What would be the maximum potential decrease in air toxic emissions if this proposal were finalized? In other words, if all sources that currently are allowed by MACT standards to emit less than the 10/25 ton threshold decided to decrease emissions to just below the threshold, how much would air toxic emissions decrease annually? In answering this question, please provide both the number of sources currently subject to a MACT standard that legally emit more than 10 tons of one air toxic or 25 tons of any combination of air toxics and how much more they emit.
 - b. What would be the maximum potential increase in air toxic emissions if this proposal were finalized? In other words, if all sources that currently are required by MACT standards to emit less than the 10/25 ton threshold decided to increase their emissions to that threshold, how much would air toxic emissions increase annually? In answering this question, please provide both the number of sources currently subject to a MACT standard that legally emit less than 10 tons of one air toxic or 25 tons of any combination of air toxics and how much less they emit.
 - c. Under which MACT standards, if any, are sources allowed to emit more than 10 tons of one air toxic or 25 tons of any combination of air toxics annually?
 - d. Under which MACT standards, if any, are sources required to emit less than 10 tons of one air toxic and 25 tons of any combination of air toxics annually?
2. The preamble to this proposal states that EPA does not believe the maximum potential increase in air toxic emissions will occur and provides a rationale. Please state how much of the potential decrease EPA believes will materialize if the proposal is finalized, and provide your rationale.

3. If this proposed rule were finalized, would you anticipate air toxic emission reductions from sources required by MACT to emit below the 10/25 ton threshold? If so, please explain why and provide the likely potential decrease from this group of sources.
4. Please provide all documents dated prior to issuance of the proposal that contain, relate to, or refer to analysis, calculations, or data regarding quantification of the potential reduction or increase in air toxic emissions that could result from this proposal.
5. The preamble states that “EPA has heard from others who have taken the position that the OIAI [once-in-always-in] policy serves as a disincentive for sources to reduce emission of HAP [hazardous air pollutants or air toxics] beyond the levels required by an applicable standard.” For each of these “others” from whom EPA has heard, please provide:
 - a. the name and affiliation of the person who stated that position, including the company or association that the person represented;
 - b. the names of the EPA employees to whom that position was conveyed;
 - c. a description of the manner in which the position was provided to EPA (e.g., written letter, oral communication, comment at private meeting);
 - d. all documents reflecting or containing communications between EPA and the person regarding this position.

EPA’s preamble also states that “we believe” that it is unlikely that sources that currently emit less than the 10/25 ton threshold due to MACT requirements would increase emissions up to that threshold. To support this belief, you rely on a number of assertions. Please answer the questions 6 through 9 below with respect to these assertions.

6. You state that “many sources” that emit below the 10/25 ton threshold “do so because of the control devices they installed to meet MACT standards. Such control devices are designed to operate a certain way and cannot be operated at a level which achieves only a partial emission reduction.” For each source category that is subject to a MACT standard and that has sources emitting below the 10/25 ton threshold:
 - a. identify the control devices or other methods sources use to meet the MACT standard;
 - b. provide the percentage of sources in that category that use each control device or other compliance method;
 - c. state whether the control device or other method can be operated at a level that achieves only a partial emission reduction; and

- d. state whether the control device or other method costs money to operate and whether it can be turned off for a given time period (or whether it must be operated continuously).
7. If you did not have the information requested in the previous question at the time the proposal was signed, please provide the factual basis for the statements quoted in that question.
8. You state that “in many cases, sources will maintain the level of emission reduction associated with the MACT standard because that level is needed to comply with other requirements of the Act such as RACT controls on emissions of volatile organic compounds” With respect to this statement, please provide the following information:
 - a. What percentage of sources that are subject to MACT are also subject to identical or more stringent RACT controls on volatile organic compounds?
 - b. Do RACT controls on emissions of volatile organic compounds apply across the entire country? If not, what areas are not subject to RACT controls for volatile organic compounds?
9. You state that “those sources that seek to maintain area source status will likely take PTE [potential-to-emit] limits at or near their current MACT emission levels to ensure that their emissions remain below the major source thresholds [10/25 ton threshold]. Sources have no incentive to establish their PTE limit too close to the major source thresholds because repeated or frequent exceedances above the PTE could provide the permitting authority reason to revoke the PTE and bring an enforcement action.”
 - a. Given that the PTE is an enforceable emission limit, would not the source have an incentive to have its PTE as high as possible because repeated or frequent exceedances above the PTE could provide the permitting authority reason to bring an enforcement action for violating the PTE regardless of how the PTE compares to the 10/25 ton threshold?
 - b. Is it likely that a PTE at or near the 10/25 ton threshold would give a source more flexibility than a significantly lower PTE? If not, please explain why.
 - c. A number of States have laws that prohibit State air pollution requirements from being more stringent than Federal law. Would such a State be allowed to require a source to accept a PTE in a State permit below the 10/25 ton threshold?

10. For sources that must comply with MACT, please describe:
- a. sources' recordkeeping requirements;
 - b. sources' reporting requirements;
 - c. sources' monitoring obligations;
 - d. sources' Title V permitting obligations;
 - e. citizens' right to bring enforcement actions against sources that are not complying with the applicable MACT standard; and
 - f. whether EPA can bring enforcement actions against sources that are not complying with the applicable MACT standard.

11. If the proposal were finalized and sources chose to avail themselves of the regulatory provisions of the rule and accept a PTE, please describe the Federal requirements for these sources:
- a. sources' recordkeeping requirements;
 - b. sources' reporting requirements;
 - c. sources' monitoring obligations;
 - d. sources' Title V permitting obligations; and
 - e. citizens' right to bring enforcement actions against sources that are not complying with their PTE.

Please also state whether EPA would have the ability to bring an enforcement action against sources that are not complying with their PTE.

12. Please provide all documents (including those from regional offices, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, or the Department of Justice) discussing, regarding, or relating to the potential effect of the proposed rule, if adopted, on:
- a. sources' recordkeeping, reporting, monitoring, or Title V obligations; or
 - b. on EPA's or citizens' ability to enforce air toxic requirements (including PTEs).