



July 14, 2003

General Provisions Docket
Docket ID No. OAR-2002-0044
Category IV, Part 63 General Provisions Subpart A
Pollution Prevention Compliance Alternative Amendments
U.S. EPA West (MD-6102T)
1200 Pennsylvania Avenue, NW
Washington, DC 20560

NESCAUM
Northeast States
for Coordinated
Air Use Management

101 Merrimac Street
10th Floor
Boston, MA 02114
Tel (617) 367-8540
Fax (617) 742-9162

Kenneth A. Colburn
Executive Director

NEWMOA
Northeast Waste
Management Officials'
Association

129 Portland Street
6th Floor
Boston, MA 02114
Tel (617) 367-8558
Fax (617) 367-0449

William F. Cass
Executive Director

Dear Sir or Madam:

Thank you for the opportunity to comment on the proposed amendments to the General Provisions for National Emission Standards for Hazardous Air Pollutants (NESHAPs), which were published in the Federal Register on May 15, 2003 (68 FR 26249). NEWMOA and NESCAUM are nonprofit, nonpartisan interstate associations. NEWMOA's membership is composed of the hazardous waste, solid waste, waste site cleanup and pollution prevention program directors for the environmental agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NESCAUM is a regional association of the state air quality management agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

Both NEWMOA and NESCAUM have been actively involved in assisting member states on a variety of permitting and compliance issues at the state, regional, and federal level. We have also coordinated on a Pollution Prevention in Permitting Project (P4), which involves evaluating and training the Northeast states in the process of incorporating pollution prevention into Title V air operating permits.

The Northeast states strongly support the basic premise of the amendments that would establish regulatory incentives for sources that implement pollution prevention (P2) measures to reduce or eliminate HAP emissions. The use of pollution prevention strategies to reduce the production, transportation, handling, and releases of hazardous air pollutants provides environmental, health and safety, and site security benefits that can not be achieved through the use of control technologies. For this approach to be successful the Northeast states believe that it needs to be clear that the P2 strategies being considered result in a net decrease in hazards to public health and the environment. We also believe that the burden of overcoming the learning curve associated with the use of these alternative technologies within the NESHAP regulatory structure should be shared by the facility, state and local permitting authorities, and EPA.

use P2 to reduce emissions to replace certain requirements of the subpart with other requirements considered more appropriate for P2 measures. Both of these options would eventually be implemented through Title V operating permits. For example, under Option 1 EPA is proposing that implementation of P2 measures be considered applicable requirements. Similarly, Option 2 would replace the compliance requirements in the NESHAP subpart with alternative compliance requirements in the Title V permit.

We are concerned that the current proposal does not adequately recognize existing state programs under the state Title V operating programs. State operating permit programs have established publicly approved procedures and timelines for issuing permits that contain the same items listed in the request/approval process in the proposal. Therefore, it is critical that the request/approval process under Options 1 and 2 conform to the procedures set forth in the existing state regulations under the Title V permit program and not supercede them. The implementation of the P2 measures and changes in the applicability of MACT requirements should only be approved through a modification to a Title V permit, and not through a separate request/approval process. This approach also provides a mechanism for public notice and comment, which is not provided in the current process. A possible solution to integrate the P2 amendments into the General Provisions may be to designate the request/approval items as minimum requirements in the modification provisions of the Title V operating permitting programs.

One specific area of concern is EPA's proposal to allow a source to switch back to HAP emissions if it provides 30 days notification. A great deal of resources and effort was expended in the development of guidance by EPA and procedures by the state air quality agencies to provide sources with the flexibility to change modes of operation without being unnecessarily impeded by the terms of the operating permit. For example, the use of "minor source permit amendments" was specifically established for this purpose. Therefore, we do not believe that a 30 day notification is adequate. We believe the facility must obtain a permit prior to switching back to the HAP according to the procedural timeframes established in the state permit programs.

State air toxic regulations

Another omission in the current proposal is in regards to the regulation of HAP sources under the state air toxic programs. Phase 1 emission limitations for NESHAP sources were intended to establish a level playing field across the nation of emission controls on HAP sources. These emission limitations are not necessarily technology-forcing and have generally been found to be less stringent than the emission limitations established by the state agencies, particularly in the Northeast region. This is due to several factors including the fact that the Northeast states required best available control technology for air toxic sources and EPA's decision not to regulate above the MACT floor determination for most source categories. As a result, many of the federal MACT standard determinations are less stringent than the state emission limits in this region. The states have addressed this problem by stipulating the more stringent emission limits on the state-only portion of the Title V permit. EPA proposal, however, does not account for the fact that sources are also required to comply with state emission standards that may be more stringent than the limitations in the subpart. The omission is most evident