

Management Alert



USEPA Publishes Rulemaking Notice Affecting Air Pollution Controls for the Chemical Manufacturing Sector

On January 30, 2012, USEPA published in its Notice of Reconsideration of the October 29, 2009 Final Rule for the Chemical Manufacturing Area Source (“CMAS”) Rule for 9 area source categories in the chemical manufacturing sector. At the same time, a corresponding new Proposed Rule for the CMAS was published. The reconsideration and proposed rule have been published in response to petitions for reconsideration filed last February by various representatives of the chemical industry. The January 2012 reconsideration rule not only responds to concerns raised by the affected chemical industry, but further proposes **new provisions** relating to **malfunctions, and new requirements for Metal Hazardous Air Pollutants (HAP) Process Vents**.

Highlights of the reconsideration/proposed rule are as follows:

A. Proposed CMAS Rule:

- 1. Title V Permitting** - In the proposed rule, Title V permits will be required for “synthetic area sources”² that control emissions from at least one chemical manufacturing process unit (CMPU) in order to maintain synthetic area source status at the facility. There will still be an exemption from Title V permitting requirements for “natural” area sources.
- 2. Overlapping Requirements** - The proposed rule is seeking comments on approaches for addressing situations where facilities are subject both to the CMAS and to another rule or rules. USEPA originally proposed that a facility subject to multiple rules can either comply with all the rules or can elect to comply with the most stringent rule. Industry has identified several problems with the election to comply with the most stringent rule, and therefore USEPA is seeking comment on approaches to addressing overlapping rules.
- 3. Direct and Proximal Leak Inspections** - Industry challenged, as unsafe to inspectors, the rule that required intimate, thorough inspection of all areas of potential leaks within a CMPU. As a result, USEPA has deleted the requirement for direct and proximal inspections and instead is proposing quarterly sensory inspections (detection by sight, sound or smell) of all equipment and process vessels, provided the inspections are capable of detecting leaks within the CMPU. USEPA is seeking comment on both the direct and proximal, as well as sensory, alternatives.
- 4. Covers and Lids on Process Vessels** - Industry objected to language in the final rule that required process vessels in HAP service to be equipped with a cover lid that would remain in place at all times the vessel contains HAPs, except for during material addition and sampling. Industry argued that the standard could not be met because it does not address the removal of material from a vessel, and does not address maintenance and routine cleaning operations. USEPA has proposed revised language that applies to organic HAPS as well as metal HAPS, and requires a cover or lid be closed during organic HAP service or metal HAP service except during manual operations that require access, including “...material addition and removal, inspection, sampling, and cleaning”.
- 5. Leak Inspections when Equipment is in HAP Service** - Industry requested clarification of the requirement that equipment must be in HAP service when leak inspections are conducted, and in the proposed rule USEPA has responded by requesting comments on several issues. First, USEPA is seeking comment on how sources which change the configuration of process vessels and CMPU should track the equipment configurations and use. Second, USEPA is seeking comment on how inspections of equipment in volatile organic compound (VOC) service for different configurations would be relevant to checking leaks from CMPU. Third, USEPA is seeking comment on the use of Method 21, versus sensory inspections, for VOCs.

B. Startups, Shutdowns and Malfunctions:

Consistent with other recent New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) rulemaking, USEPA has proposed provisions for addressing excess emissions during malfunctions.

USEPA is proposing, in 40 CFR Section 63.11502, an affirmative defense to civil penalties for exceedences of emission limits or other violations of applicable standards that are caused by **malfunctions**. As an affirmative defense, the defendant will have the burden of proof demonstrating that it has met all of the elements of a “malfunction” which elements are specifically set forth in the rulemaking. USEPA is proposing in 40 CFR 63.11501(e) that to establish the affirmative defense associated with a malfunction, excess emissions associated with the malfunction must be:

- caused by a sudden, infrequent and unavoidable failure of equipment or a process;
- could not have been prevented through careful and proper planning or design or better O& M practices;
- did not stem from an event that could have been foreseen, avoided or planned for;
- were not part of a recurring pattern indicative of inadequate design or inadequate O&M;
- repairs were promptly made (and off-shift and overtime labor were used to the extent practicable to make repairs);
- frequency, amount and duration of emissions were minimized;
- if emissions resulted from a bypass, it was unavoidable to prevent loss of life, personal injury or severe property damage;
- all steps were taken to minimize impacts on ambient air and human health and the environment;
- all emissions monitoring and control systems were kept in operation;
- all response actions were documented in signed operating logs;
- good practices were utilized; and
- a written root cause analysis has been prepared.

The malfunction elements set forth in proposed 40 CFR 63.11501(e) will not be used solely to determine the sufficiency of the affirmative defense for malfunctions; the rule adds notification, recordkeeping and reporting requirements for malfunctions. Notice of an exceedence associated with a malfunction must be provided to USEPA within 45 business days of the initial occurrence of the exceedence, and must include all of the information required by USEPA to establish the affirmative defense.

C. Metal HAPS Process Vents:

In the January 30, 2012 rulemaking, USEPA seeks comment on the definition of, and standards for, Metal HAP Process Vents and the applicability of the definition of equipment from which metal HAPS are emitted.

The definition of Metal HAP Process Vent as it currently exists under the final rule is: “The point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any CMPU at an affected source”. USEPA is particularly interested in comments as to how the definition, as it applies to chemical manufacturing processes comports with similar definitions for batch and continuous process vents and other Maximum Achievable Control Technology (MACT) standards including the Non-Organic Chemical NESHAP (NON) and Miscellaneous Organic Chemical Manufacturing NESHAP (MON).

USEPA is also seeking comments to assist it in clarifying how the VVVVVV rule will apply to metal HAPS emitted as gaseous organo-metallic compounds, as compared to metal HAPS emitted as particulate matter. USEPA wants to determine whether Generally Available Control Technology (“GACT”) for processes that emit gaseous metal HAPS should be different than GACT for those metal HAPS as particulate.

Comments are due on or before March 30, 2012; please contact [Jeryl Olson](#) or [Eric Boyd](#) if you would like to submit, or contribute to, comments.

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¹ The nine affected area source chemical manufacturing categories are: Agricultural Chemicals and Pesticides, Cyclic Crude and Intermediates Production, Industrial Inorganic Chemicals, Industrial Organic Chemicals, Inorganic Pigments, Miscellaneous Organic Chemicals, Plastic Materials and Resins, Pharmaceutical Production and Synthetic Rubber Manufacturing.

² Synthetic Area Sources are those that are considered “area sources” rather than “major sources” because emissions are controlled by pollution controls installed after 1990, and which limit emissions to below major source thresholds.