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U.S. Environmental Protection Agency
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1200 Pennsylvania Ave, NW
Washington, DC 20460.

Attn: Docket ID No. EPA-HQ-OAR-2011-0817

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants: Proposed rules on reconsideration*. 77 Fed. Reg. 42,368 (July 18, 2012). CRWI is a trade association comprised of 23 members.

CRWI has been extensively involved in the development of rules under the MACT program. MACT rules regulating hazardous waste combustors (40 CFR Part 63, Subpart EEE), a source category covering most of our industrial members, have been at the forefront of many of the MACT's program legal and policy disputes over the past 12 years and were the subject of a decision by the DC Circuit Court of Appeals, *Cement Kiln Recycling Coalition v. EPA,* 255 F.3d 855, 862 (DC Cir. 2001). These rules, and others regulating our members, were also subject to numerous public notice and comment periods from 1996 – 2008, were extensively reviewed by the Agency in light of the *Brick MACT* court decision that plays a major role in this proposal. Consequently, CRWI has considerable expertise in MACT issues.

CRWI has concerns about the following issues associated with the proposed reconsideration rule.

1. EPA should modify the affirmative defense provisions so that it is a "rebuttable presumption."
2. CRWI suggests that EPA clarify its affirmative defense provisions.
3. The PM CPMS provisions should be modified.
4. EPA should allow for upward extrapolation of the alternative organic standard.

5. Sulfur dioxide (SO_2) CEMS should be allowed for demonstrating continuous compliance with HCl emission limits.
6. EPA should not apply Performance Specification 15 to HCl CEMs but should promulgate a performance specification specifically designed for these instruments.
7. EPA's proposed requirement that facilities meet steady-state standards during SSM events is not logical nor is it lawful.
8. There is no reason to report daily CEMs data.

Specific comments on each of the issues listed above are attached. Thank you for the opportunity to comment on this proposed rule. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,

Melvin E. Keener, Ph.D.
Executive Director

cc: CRWI members
S. Nizich – EPA

Specific comments

1. EPA should modify the affirmative defense provisions so that it is a "rebuttable presumption."

As EPA knows, malfunctions will occur. Even the best run facilities will have circumstances where events happen that are out of their control. While CRWI believes that EPA must take into account the conditions that occur during malfunctions and establish limits that consider these circumstances, CRWI also agrees that some form of enforcement discretion is needed for malfunctions. As such, we support EPA maintaining a regulatory provision for malfunctions. However, we are concerned that allowing a facility to interpose an affirmative defense for violations caused by malfunctions implies that the facility is guilty until proven innocent and improperly shifts the burden to the facility. Therefore, CRWI suggests that EPA establish a rebuttable presumption (rather than affirmative defense) where it is presumed that any violation occurring during the malfunction was not the facility's fault unless the Agency proves certain facts that are enumerated in the rules. This will allow the Agency to challenge the alleged deviation without compromising the legal rights of either party.

2. CRWI suggests that EPA clarify its affirmative defense provisions.

While we prefer EPA use a rebuttable presumption, should the Agency keep the affirmative defense concept, CRWI suggests the following modifications to the language to make it more usable. CRWI understands that most of the provisions EPA has proposed for the affirmative defense comes from earlier guidance memos. While these provisions were in guidance, the Agency did not need to be careful of the wording since they were only guidance and did not have the weight of regulation. However, if the Agency wants to codify this guidance into regulatory language, several changes are needed. For example, EPA should drop the reference to "any" activity. There are also several references to "All" that would make it difficult to satisfy the requirements of an affirmative defense. In addition, the language in the provision is contradictory. In paragraph (a), the phrase "preponderance of evidence" is used while later in that paragraph (iii), the language refers to "any activity" meaning that more than preponderance of evidence is needed. This same trend occurs in paragraphs (5) – "All possible," (6) "All," and (8) "At all times." While "all" would include "preponderance," "preponderance" does not mean all of the time. CRWI suggests that the phrase "preponderance of evidence" is adequate and the references to "all" and "any" in the later paragraphs should be modified.

In 40 CFR 63.2, EPA defines malfunctions as follows.

> *Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause,

> the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

The language EPA is proposing in § 63.1344 is similar to the definition in § 63.2 with one major exception. In the proposed language, one of the conditions for an affirmative defense is that the excessive emissions were caused by a "sudden, infrequent, and unavoidable failure…" The General Provisions definition of malfunction uses the phrase "not reasonably preventable" instead of the word "unavoidable." In addition, in this proposed rule, EPA uses the same phrase ("not reasonably preventable") in the definition of malfunction as part of the proposed changes to 60.63(g)(2) (77 Fed. Reg. at 42,396). Obviously EPA understands that there should be one definition of malfunction. However, the Agency still makes a change in definition of malfunctions in § 63.1344. CRWI believes that is inappropriate have two different definitions of malfunction and requests that the Agency revise the language to reflect the General Provisions definition of a malfunction.

To many engineers, the term "root cause analysis" implies a specific formal process. For many malfunctions, the cause is immediately obvious and a formal process for determining the cause is not needed. When a malfunction occurs, the expectation is that the facility will correct the problem as quickly as possible and return to their operating window. A formal root cause analysis is typically limited to very significant events or repeat events. For example, if a thermocouple fails, the most likely cause is a bad thermocouple. The first response is to simply replace the thermocouple. However, if the replacement thermocouple fails within a short period of time, then something else may be causing that event to occur and a more detailed analysis may be needed. It may take several failures before the real cause is identified. Here a formal root cause analysis may be needed, but it certainly is not needed to replace the first failed thermocouple. The proposed language assumes that all malfunctions are equally significant and need an identical degree of investigation. For example, a missing data point due to a malfunction of the data acquisition system is not as significant as a power failure or a catastrophic event such as fire or explosion. CRWI believes that a formal root cause analysis should only be used when other reasonable methods fail to show what caused the malfunction or when the serious nature of an event might make such an analysis necessary. Moreover, other tools may be more appropriate (e.g., failure mode and effect, fault tree, etc.) or more powerful tools may be introduced in the future. The facility is the only one that can and should decide what tool to use to determine the cause of the malfunction.

Part of this problem may be in communications. To some companies and potentially to some local regulators, the term "root cause analysis" implies a specific formal process. There are several techniques that may be called "root cause analysis," depending on the author and industry. If EPA intends for the facility to investigate and fix the source of the malfunction so that it is less likely to recur, CRWI supports that concept but suggests that the Agency use an alternative term that does not carry a specific meaning. However, if the Agency envisions a formal process for determining the root

cause for every malfunction, no matter how simple, CRWI believes this is unnecessary and would result in excess efforts with no environmental gains.

As facilities and EPA move toward electronic recordkeeping, it makes no sense to require keeping a "properly signed, contemporaneous operating logs" as a requirement for an affirmative defense. There are a number of electronic methods for maintaining records currently available (and more will likely be available in the future). As such, we suggest modifying this provision. In addition, it is impossible to eliminate the causes for certain malfunctions (e.g., lightning strikes).

Finally, CRWI notes that EPA does not allow facilities to assert an affirmative defense for the exceedance of an emission limit during malfunctions if EPA is seeking to enforce that emission limit through injunctive relief. Apparently the Agency takes that position based on a memorandum, State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown at 2 (Sept. 20, 1999). (SIP SSM Memo). CRWI asserts that this policy is wrong. The type of legal action or relief should have no bearing on the availability of this defense. A malfunction "is a sudden, infrequent, not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner." 40 CFR § 63.2. It is not affected by the type of enforcement action EPA may eventually bring. Indeed, because a malfunction is not reasonably preventable, enforcement actions, regardless of type, have no deterrent effect on them. Therefore, the type of legal action EPA uses to enforce a violation of its emission limits is simply irrelevant to whether the violation should be excused because of circumstances beyond the facilities control.

Consequently, CRWI believes that not allowing an affirmative defense in an action for injunctive relief is arbitrary and capricious. As the D.C. Circuit Court stated in *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427. 433 (D.C. Cir. 1973) a case reviewing a § 111 rule, the court held that startup, shutdown, or malfunction ("SSM") provisions are "necessary to preserve the reasonableness of the standards as a whole." The D.C. Circuit Court of Appeals has also noted that "[a] technology-based standard discards its fundamental premise when it ignores the limits inherent in the technology." *NRDC v. EPA*, 859 F.2d 156, 208 (D.C. Cir. 1988). Therefore, EPA should not apply a policy drafted to "ensure that SIPs provide for attainment and maintenance of the national ambient air quality standards ("NAAQS") and protection of prevention of significant deterioration (PSD) increments" and other risk-based programs, SIP SSM Memo at 2, to the CAA § 129 technology-based program.

CRWI suggests that EPA consider making the following modifications to the regulatory language in § 63.1344 to address the concerns mentioned above and to make an affirmative defense a more useful tool (using ~~strikeout~~ to show text deleted and <u>underline</u> to show text added).

§63.1344 Affirmative defense for violation of emissions limit during malfunction.

In response to an action to enforce the standards set forth in paragraph §63.1343(b) you may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. ~~The affirmative defense shall not be available for claims for injunctive relief.~~

(a) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The violation:

(i) Was caused by a sudden, infrequent, and ~~unavoidable~~ <u>not reasonably preventable</u> failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been <u>reasonably</u> prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been <u>reasonably</u> foreseen and avoided, or planned for; and

(iv) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when a violation occurred. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(4) If the violation resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) ~~All possible~~ <u>Reasonable</u> steps were taken to minimize the impact of the violation on ambient air quality, the environment and human health; and

(6) ~~All e~~<u>E</u>missions monitoring and control systems were kept in operation if at all possible consistent with safety and good air pollution control practices; and

(7) Your actions in response to the violation were documented ~~by properly signed, contemporaneous operating logs~~; and

(8) ~~At all times, t~~<u>T</u>he affected source was operated in a manner consistent with good air pollution control practice for minimizing emissions; and

(9) A written ~~root cause analysis~~ <u>report</u> has been prepared, the purpose of which is to determine~~, correct,~~ and ~~eliminate~~ <u>mitigate</u> the primary causes of the malfunction and the violation resulting from the malfunction event at issue. <u>Facility personnel will determine the appropriate type of analysis required (may include but not limited to root cause analysis, failure mode and effect, fault tree, etc.) to identify the cause of the malfunction.</u> The ~~analysis~~ <u>report</u> shall also specify, using best monitoring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(b) Report. The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. This affirmative defense report shall be included in the semiannual report required by section 63.1354(b)(9). The affirmative defense report shall be included in the first semiannual, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess the semiannual report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second semiannual compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

3. <u>The PM CPMS provisions should be modified.</u>

EPA is proposing (77 Fed. Reg. at 42,376) to remove the requirement to calibrate a PM CEMs (continuous emissions monitor) and instead will require the facility to install, calibrate, and operate the instrument as a CPMS (continuous parameter monitoring system) based on a site-specific monitoring plan. CRWI supports this concept and has some suggestions that could make the concept more useful and more practical to implement.

As proposed, the facility will use Method 5 to show compliance and will set a not-to-exceed operating limit as the highest of the one hour average of the PM CPMS readings (mA) during the stack test. Continuous compliance is based on a 30-day rolling averages (updated once a day). If the facility exceeds this operating limit, they have to conduct a new stack test.

The preamble and regulatory language do not appear to be clear or consistent on how to revise that operating limit based on subsequent tests. In one place (77 Fed. Reg. at 42,377), the preamble states that the operating limit should reflect the most recent test but in the next column on the same page, the preamble implies that a facility could include data collected over multiple tests to give a more representative operating limit. The regulatory language (§ 63.139(B)(1)(I)(C)) states that “You must verify an existing or establish a new operating parameter limit after each repeated performance test. You must repeat the performance test annually and adjust the site-specific operating limit in accordance with the results of the performance test.”

CRWI has the following suggestions to improve the usability of PM CPMS.

a. The Agency should allow the use of all stack test data collected over time that has passed normal QA/QC requirements and their associated instrument reading to determine the most representative operating limit.
b. The Agency should allow the use of all data collected over time that has passed QA/QC requirements to show that a PM CPMS can mean Performance

Specification 11. Once that demonstration has been made, the facility should be able to switch from a CPMS mode to a CEMs mode.

c. The Agency should allow facilities to extrapolate the operating limit up to the standard using a simple ratio method. By restricting the operating limit to the highest hourly average during a stack test forces the facility to either restrict operations or to force the unit to emit additional PM emissions during the test to gain that operational flexibility. In reality, it is often difficulty to "detune" modern air pollution control equipment (especially fabric filters) so that the facility can test in a mode that will allow for future operational flexibility. It is not possible to accurately "dial in" a specific PM emissions rate. Thus, to gain this experience, the facility would need to run several trials to determine the best way to "detune" their equipment to get this needed operational flexibility. The Agency understands this and is allowing the use of a 30-day rolling average to show continuous compliance. Longer-term averages may help in some cases but will not help when operating limits are significantly below the standard. Allowing the facility to extrapolate their operating limit upward toward the standard would eliminate the need for multiple pre-testing, additional PM emissions during the pre-testing and testing, and allow for additional operational flexibility for those facilities that reduce PM emissions to levels significantly below the standard. We note that the Agency specifically requested comments on a similar idea for organic HAP emissions (see below).

Finally, we question the need for both a PM CPMS and a bag leak detection system. It seems that a PM CPMS can serve both functions and we see no need for a separate bag leak detection system. We suggest that the final rule be modified to allow for this substitution.

4. <u>EPA should allow for upward extrapolation of the alternative organic standard.</u>

The Agency has requested comments (77 Fed. Reg. at 42,381) on whether it would it be appropriate to allow sources to scale up their site-specific total hydrocarbon (THC) limit based on the degree to which the measured organic HAP levels are below the organic HAP limit. CRWI supports that idea. As noted in the May 17, 2011, reconsideration notice (76 Fed. Reg. 28,318, 28,325), the Portland Cement Association pointed out that the site specific THC limit can unintentionally deprive kilns of operating flexibility where kilns have measured total organic HAP below the alternative standard. The example given in the reconsideration notice was that if a kiln has measured total organic HAP of 3 ppmvd and site specific levels of THC of 15 ppmvd during the performance test, it would be de facto subject to a considerably more stringent THC standard than if it were subject to the main THC standard. The Agency stated that the issue of unnecessarily constrained operating flexibility is worth reexamining. We agree. In the comments on PM emissions above, we discussed the merits of allow for upward extrapolation. The same ideas are valid for organic emissions as well. Annual performance tests are typically not designed so that emissions (and thus operating limits) are close to the standards. If a facility wanted maximum operating flexibility, they would need to re-design their tests (include a series of pre-tests to make sure they can

get the operational flexibility without exceeding the standards) to accomplish that. It seems like a waste of facility time and resources and a waste of Agency resources to use such a system when a simple ratio method allowing upward extrapolation would accomplish the same thing with minimal costs to either the facility or the permitting authority. We support this idea and encourage the Agency to add this in the final rule.

5. Sulfur dioxide (SO_2) CEMS should be allowed for demonstrating continuous compliance with HCl emission limits.

EPA is soliciting comments on petitioner's request to allow use of SO_2 CEMS for demonstration of continuous compliance with the HCl emission limits for sources that are equipped with acid gas controls (77 Fed. Reg. at 42,381).

CRWI agrees with EPA's conclusions that acid gas HAP control efficiencies would be better than SO_2 control efficiency (for a given acid gas control device) and that it should be possible to demonstrate a correlation between the two control efficiencies and then to rely on an SO_2 CEMS to demonstrate continuous compliance. EPA drew this same conclusion in the recently finalized Utility MACT (77 Fed. Reg. 9,304, February 16, 2012) and set alternative SO_2 emission limits. We also agree there is not enough information to set an alternative SO_2 limit that correlates with the HCl emission standard, such as was done in Utility MACT.

We suggest SO_2 continuous monitoring be allowed as a continuous parametric monitoring system (CPMS) and that the maximum 30 day rolling average SO_2 operating parameter limit to be set during a 3-run performance test where HCl emissions are demonstrated to comply with the final HCl emission limit. This method of continuous compliance should be allowed on any unit that utilizes an acid-gas control technology including wet scrubber, dry scrubbers, and duct sorbent injection.

If this option is incorporated into the final rule, we request that the SO_2 CEMS be allowed to select either Part 60 or Part 75 for compliance procedures as many of the existing SO_2 CEMS already use Part 75 quality assurance procedures.

6. EPA should not apply Performance Specification 15 to HCl CEMs but should promulgate a performance specification specifically designed for these instruments.

Performance Specification (PS) 15 is designed for extractive FTIR (Fourier Transform Infrared Spectroscopy) continuous emissions monitors. Most commercial HCl CEMs use some form of infrared light attenuation to measure HCl concentrations. Requiring HCl CEMs to use PS 15 is simply not appropriate (77 Fed. Reg. at 42,409). Ideally, EPA should promulgate a performance specification specifically for HCl CEMs much like they have performance specifications for other CEMs (e.g., PS 11 for PM CEMs, and PS 12A for mercury CEMS, etc.). CRWI would encourage EPA to start this process as soon as possible.

CRWI also believes that it is not appropriate to require compliance with an HCl CEMs unless there is a promulgated performance specification for HCl CEMs. Our initial suggestion is that these CEMs should not be required until a performance specification for these types of units is promulgated. However, if the Agency decides to require these CEMs, we believe there is a better interim solution than PS 15. EPA has already approved two preliminary Other Test Methods (OTM) for HCl CEMs. These are posted at www.epa.gov/ttnemc01/prelim.html as OTM 22 and 23. CRWI believes that it makes more sense to temporarily use a preliminary test method already approved for HCl CEMs than to use an already promulgated performance specification that may not apply. We suggest that EPA modify the final rule to allow the use of OTM 22 and 23 instead of PS 15.

7. EPA's proposed requirement that facilities meet steady-state standards during SSM events is not logical nor is it lawful.

EPA's proposal to require Portland cement kilns to comply with what are essentially the same emission standards during periods of startup, shutdown, malfunction, and steady state conditions is neither logical nor lawful. MACT floor standards must be based on evidence that sources have already achieved them. However, EPA's statement that sources can meet the standards during startup, shutdown, and malfunctions is not based on any data (at least there is no data in the record to show this). In fact, it is most likely wrong.

Before the court's decision in *Sierra Club v. EPA*, 551 F.3d 1019 (DC. Cir 2008) ("*SSM Decision*") the DC Circuit had consistently held that technology-based standards *must* contain exemptions or less stringent standards during periods of startup, shutdown, and malfunction (SSM) than would usually apply during steady state periods.

For example, in *Portland Cement Ass'n v. Ruckelshaus*, 86 F.2d 375, 396, 398 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974) ("*Portland Cement*"), the DC Circuit recognized that "'start-up' and 'upset' conditions, due to plant or emission device malfunction, is an inescapable aspect of industrial life and that allowance must be made for such factors in the standards that are promulgated. The Court, which was addressing EPA's NSPS rules, also noted that including the startup, shutdown, and malfunction provisions "imparts a construction of 'reasonableness' to the standards as a whole and adopts a more flexible system of regulation than can be had by a system devoid of 'give.'" *Id.* at 399.

In *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 432 (D.C. Cir. 1973), petitioners argued that lesser or no standards should apply during startup, shutdown or malfunction conditions. The Court agreed, holding that such provisions "appear necessary to preserve the reasonableness of the standards as a whole." *Id.* at 433. And in *NRDC v. EPA*, 859 F.2d 156 (D.C. Cir. 1988), the court held that, although water-quality permit limits need not incorporate an "upset defense," "[a] technology-based standard discards its fundamental premise when it ignores the limits inherent in the technology." *Id.* at 208 (citing *Marathon Oil. Co. v. EPA*, 564 F.2d 1253, 1273 (9th Cir. 1977)). Consequently,

because all pollution control technologies will occasionally malfunction and take time to get to their steady-state conditions (such as during startup, shutdown or malfunction), "achievable" technology-based standards must contain provisions for compliance during such unavoidable events.

Now that the court has decided that MACT compliant standards must apply during periods of SSM, the Agency must develop standards that are "achievable" with this ruling in mind. The court has stated that for standards to be "achievable," they must be achievable under the most adverse circumstances which can reasonably be expected to recur, *Sierra Club, supra*, 665 citing *National Lime Ass'n v. EPA* 627 F2.d 416 (D.C. Cir. 1980) ("*National Lime I"*). Consequently, since startup, shutdown, and malfunctions will recur, EPA must set standards that must be achievable during those times.

Cement kilns may not be capable of complying with the standards EPA is proposing during periods of SSM. For example, facilities with baghouses cannot comply during startup periods because they have to bypass the bags until the stack gas temperature gets above the condensation point. Otherwise, they will prematurely damage their bags. There are similar issues for other types of air pollution control devices. Despite this, EPA states in the preamble that these units will not be feeding raw material during startup and shutdown and typically use cleaner fuels than used during normal operations (77 Fed. Reg. at 42.370). EPA is correct in both of those assertions. However, there are two major flaws in EPA's reasoning. The first is that even when using a cleaner fuel (e.g., natural gas), the combustion process is inefficient when starting up. Until ideal combustion conditions can be met in the combustion chamber (adequate temperature and turbulence), the combustion process will be incomplete. While this should not impact fuel-derived hazardous air pollutants (chlorine and mercury), it will impact the emissions of organics and possibly PM. As stated earlier, is also not possible for certain air pollution control devices to work until a certain temperature and gas flow rates are achieved. The second is that EPA did not include emissions data during either startup or shutdown in the development of these standards; all data was collected under steady-state conditions. Since emissions under non-steady-state conditions may vary significantly, they could significantly alter the Agency's calculations. As such, the standards are not properly set. Thus, from a physical and legal standpoint, it makes no sense to group startup, shutdown, malfunctions, and normal operation events under essentially the same set of standards.

As such, EPA must establish, and explain why facilities can comply with the standards it promulgates. As the court noted in *National Lime I*, "by failing to explain how the standard proposed is achievable under the range of relevant conditions which may affect the emissions to be regulated, the Agency has not satisfied this initial burden." *National Lime I*, *supra*, at 433.

While it is appropriate to use data gathered under steady-state conditions to set emission standards for steady-state conditions, it is not appropriate (from either a logical or legal perspective) to apply those standards to non-steady-state conditions. Thus, EPA must find an alternative method for facilities to show compliance during these

phases of operation. Congress provided for this when they set up the work practice provisions of 112(h). Here Congress stated that EPA may set work practice standards if it is not feasible to prescribe or enforce an emissions standard. CRWI believes that it is infeasible to gather data during startup, shutdowns, or malfunctions simply because there are no EPA approved methods to make measurement during non-steady-state conditions and malfunctions, by definition, are sudden and infrequent. In the final Hospital/Medical/Infectious Waste Incinerator rule, EPA agrees with this. At 74 Fed. Reg. 51,394, EPA states "It would be very difficult to do any meaningful testing during such an event because the exhaust flow rates, temperatures, and other stack conditions would be highly variable and could foul up the isokinetic emissions test methods (thus invalidating the testing)." EPA followed this logic in the industrial boiler rule (76 Fed. Reg. 15,613) where they determined that it is not technically feasible to complete stack testing during periods of startup and shutdown due to the physical limitations and the short duration of the startup and shutdown periods. As a result, they set work practice standards for startup and shutdown events in this final rule. We believe the same sets of circumstances are applicable to this rule and suggest that EPA set work practice standards in this final rule for startups and shutdowns. CRWI also believes that EPA should make a similar choice for malfunctions since we believe that malfunctions create the same set of circumstances pertaining to gathering data as do startups and shutdowns.

In summary, standards developed under steady-state conditions cannot incorporate the variability that occurs during SSM events. Expecting a facility to comply with emission standards developed under steady state conditions during SSM events is neither logical nor lawful. Thus, EPA should modify the proposed regulatory language to require facilities to meet emission standards (derived from data gathered under steady-state conditions) during normal operations. In addition, CRWI suggests EPA set work practice standards for startup, shutdown, and malfunctions. This would satisfy both Congress' intent that 112 standards apply at all times and the recent court ruling. Alternatively (although probably not viable, particularly for malfunctions), EPA could gather data during startups, shutdowns, and malfunctions and incorporate this data into the data gathered during steady-state conditions to set numerical emission standards. Emissions standards based on data collected during all modes of operation could then reasonably apply at all times.

8. <u>There is no reason to report daily CEMs data.</u>

As proposed, § 63.1354(b)(9)(vi) requires facilities to report all PM, HCl, Hg, and THC CEMs or Hg sorbent trap 30-day rolling average data using EPA's WebFIRE database. Facilities are already required to report deviations as a part of their semi-annual report (see the requirements in § 63.1354(b)(9)(vii) that require the date, duration, and description of each deviation). It appears that requiring facilities to report daily rolling averages and deviations is a duplication of effort, increasing costs without any environmental benefit. CRWI suggests that both are not needed. The purpose of excess emissions reports under § 63.10(e)(3) is to alert the permitting authority of any excess emissions. This is already required for these facilities (see Table 1 to Subpart

LLL of Part 63). Reporting a large number of CEMs data point showing compliance on a daily basis does not add any information that the Agency needs. It simply adds a reporting burden on the facility and creates large databases of useless information that will be archived within the Agency's database. Since the facility is required to keep this information for 5 years (see 63.1355(a)), this is essentially two entities keeping copies of the same data. In addition, making sure this data is reported will require significant Agency resources that could dilute other initiatives that would have more environmental protection value. As such, CRWI sees no reason to report daily CEMs data and suggests that EPA remove this requirement when promulgating the final rule.