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U. S. Environmental Protection Agency  
HQ EPA Docket Center (6102T)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2006-0085

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *Revisions to Standards of Performance for Stationary Sources, National Emission Standards for Hazardous Pollutants, and National Emissions Standards for Hazardous Pollutants for Source Categories* (71 Fed. Reg. 45,487, August 9, 2006). CRWI is a trade association comprised of 26 members with interests in hazardous waste combustion. CRWI members operate incinerators, boilers, process heaters, hydrochloric acid production furnaces, and cement kilns and are regulated under a number of MACT standards. CRWI members also provide technical expertise and services to facilities that own and operate hazardous waste combustors. We appreciate the effort EPA has put into this notice and look forward to working with the Agency to develop regulations that are consistent with the requirements of the Clean Air Act and good engineering practices.

CRWI member companies are subject to Parts 60, 61, and 63. We support the proposed changes to Parts 60, 61, and 63 to allow for facilities to use the force majeure concept to postpone performance testing. As described below, we suggest that EPA expand the concepts developed in this proposed rule in three areas: 1) expand the definition of force majeure to include pandemics; 2) extend the coverage of force majeure to other areas such as monitoring, inspection, recordkeeping and reporting requirements, and 3) allow, under certain circumstances, the declaration of force majeure to be self implementing.

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1. Pandemic should be included in the definition of force majeure. Influenza pandemics are rare but recurring events. The Spanish influenza pandemic impacted the entire world and killed an estimated 30-40 million people. The Asian influenza occurred in 1957 and the Hong Kong influenza occurred in 1968. Neither was as severe as the 1918 pandemic yet both disrupted commerce and lives. Currently, a great deal of planning is being done to contend with the next influenza pandemic by both government agencies and corporations. A widespread pandemic could lead to disruptions in commerce (areas quarantined) and the ability of workers to get to and do their jobs. Saving as many human lives as possible in the next pandemic will be made easier by the types of planning that are already occurring. CRWI suggests that an additional way to plan for such an event is to add the word "pandemic" to the definitions of force majeure in §§ 60.2, 61.2, and 63.2. This would make it clear that force majeure could be used in these times.
2. The coverage of force majeure should be expanded to cover events such as monitoring, inspection, recordkeeping and reporting. Recent events have made it clear that the concept of force majeure should be extended beyond just the testing requirements to include other Title V requirements. As described below, it may not be possible to comply with certain monitoring (e.g., § 61.242-2(d)(3) referenced by subpart DD), inspection (e.g., § 61.242-2(d)(4), valves, pumps, etc, under 40 CFR 63 Subpart H, drums under the Benzene Waste Operation NESHAP, etc.), periodic testing of CEMs under 40 CFR 60, Appendix F, and recordkeeping (on line monitoring systems for § 61.242-2(d)(3), etc.) requirements as part of Title V when certain events occur.

Hurricanes can have a significant and unforeseeable impact on all phases of compliance. For instance, in 2005 prior to Hurricane Rita, 14 counties along the Texas Gulf Coast were placed under mandatory evacuation orders. Movement by road was restricted during this order, preventing most employees and support contractors from reporting to work. There are a large number of sources subject to Parts 60, 61, and 63 located in these 14 counties. Performance testing at any facility in any of these counties would not have been possible under these circumstances. The sites in this area would have been unable to meet many regulatory requirements due to events beyond their control. This mandatory evacuation order was imposed as a precaution, since the movement and strength estimates of hurricanes are subject to error. As landfall of Hurricane Rita approached, the predicted path and intensity of the storm became more accurate and the mandatory evacuation orders for a number of these counties were lifted. Even through there was no direct damage from the storm for some of these counties, the



effects of the mandatory evacuation order itself created an impact on facility's abilities to conduct business as normal. This also should be taken into consideration.

The physical impacts of hurricanes are often very extensive. After Hurricane Rita, significant areas were without electrical power for an extended period of time. The local utility suffered major damage to their generating and distribution systems, requiring major repairs. (See the attached document describing some of the impact). Replacement equipment was in limited supply due to the magnitude of the event. After 15 days of extensive efforts by the utility and the utility's contractors, 10% of the utility's customers were still without electrical power. For example, Veolia's Port Arthur facility was ready to start back up ten days after Hurricane Rita but the damage to the high voltage power lines was so extensive that power was not restored for another week. Until electrical power could be restored, monitoring (such as barrier fluid failure sensor required by § 61.242-2(d)(3)) may not have been possible. It is important to remember that the monitoring being discussed is not monitoring of operations. Under these circumstances, the facility is in complete shutdown and the monitoring we are discussing pertains to maintaining barriers, inspection of drums under the Benzene Waste Operations NESHAP, periodic testing of CEMs and CMS under 40 CFR 60, Appendix F, monitoring emissions from tanks under 40 CFR Part 264, Subpart CC, etc. Even if a facility has auxiliary power, these are often for emergency purposes only and are not designed for providing sufficient power to run the facility, especially for long periods of time. If there is a widespread electrical outage, there may not be sufficient electrical power available to start the boiler feed water pumps, control systems, etc., needed in order to restart the power generation equipment. This was the case in one Gulf Coast facility after Hurricane Rita.

In addition to the direct impacts of such a storm, there are numerous indirect impacts that may hamper a facility's ability to meet their requirements. After hurricanes, residences and business often suffer extensive damages and need repair. This includes hotels and other facilities needed to accommodate testing contractors as well as the repair staff. Working conditions after a storm can be very difficult even after electrical service is restored. Support businesses (e.g., grocery stores, gas stations) may be damaged and cannot open, or accept cash only. Relief efforts (e.g., National Guard, FEMA, and Red Cross) may provide supplies, but distribution lines can be lengthy and time consuming. Fuel may have limited availability until electrical service is restored and/or the fuel trucks can return to service. Debris may need to be removed from roads, limiting travel. Governing agencies may (and did during



the Rita and Katrina hurricane events) restrict travel, impose curfews, or impose other requirements that delay a return to normalcy.

Cleaning up from these events is not a simple task. Storm surge can significantly damage electrical components, such as transformers, wiring, control computers, flow meters, etc. They may also damage computer records and/or paper records. If the event is widespread, replacement components may have to be manufactured before installation.

The entire response to such a major event is of necessity cautious and time-consuming. Structural and electrical assessments need to be completed to ensure that the facility is first safe to re-enter. Downed power lines and broken natural gas mains will need to be identified and isolated to ensure safety of first the response team and then the restoration team. Then the facility has to be inspected and assessed for damages before starting any repairs. Some types of damage may not be apparent immediately (e.g., if air conditioning cannot be restored within a short time frame, relay contact corrosion or other problems associated with high humidity may occur). Additional threats to human health may occur from the growth of mold or from animals seeking shelter.

In addition, employees may not be available because they were evacuated or are unable to return. It may not be possible to locate all employees for several days. These events often result in an increased level of personal injuries, as employees or contractors clear storm debris from their properties. Individuals may not have a home to return to, as was the case for a number of Hurricanes Katrina, Rita, and Wilma victims.

All of this information is designed to show that it may not be possible to identify when a performance test, monitoring of certain activities, or reporting may be conducted. In fact, these activities may not be possible until a significant time after the event. These restrictions are not under the control of the facility. It may take several weeks to overcome the limitations in manpower or equipment and to determine if several thousand facility components are functional. It may take up to several months if a large number of components require replacement. Often, it is not possible to predict to return to normal conditions after major events. It is imperative during the times to identify and correct problems to protect the safety and health of persons involved and to prevent or mitigate any environmental damage. Diluting these efforts by directing resources toward regulatory requirements that do not directly benefit safety or the environment is not in the best interest of the public.



In addition to the concerns mentioned above and after immediate concerns have been addressed, sensitivity should be given to the time it takes to adequately assess the current compliance status and the development of a plan to get back on task. This can vary according to the location and the damage experienced by the local community. Latitude should be afforded to sites to address issues as expeditiously as possible tempered by the specific conditions to which they have become victim. Again, the diligent pursuit of protecting the public and safely restoring a site to operational condition must be the primary focus.

Some specific problems caused by such events include:

- a. Critical records may be lost or unavailable for several weeks as backup copies are generated. This includes equipment records and designs as well as environmental compliance records, many of which are required to be maintained on-site. Computer discs may have to be shipped to recovery specialists. Monitoring instruments (e.g. instruments used for LDAR compliance) may have become damaged, requiring replacements to be located and supplied. Depending on how widespread the event is, sufficient replacement instruments may not be readily available for all facilities. Reporting may be delayed as facilities struggle to obtain the proper information to make a true and accurate report.
- b. Various enforcement agencies may restrict facility access or operations during some types of events such as a terrorist attack as evidence is gathered. This can lead to a significant and unpredictable delay in all aspects of compliance.
- c. Back up facilities may not be available. Generators or other critical emergency or backup equipment may be impounded by authorities. Travel restrictions (e.g., from debris on roads, curfews) may prevent rapid deployment of equipment, and depending on the size and type of event and number of facilities affected, may not be available.
- d. Shipping restrictions (such as on air freight) may delay equipment or supplies such as spiking materials or laboratory samples. Inspection restrictions at ports may delay delivery of equipment manufactured overseas.

There are other examples that disrupt the ability to conduct business as normal. After the September 11, 2001, attacks on the World Trade Center



Towers and the Pentagon, airline travel was stopped for a period of time. Even after the airlines resumed flying, it was several weeks/months before service was completely restored. This may prevent critical staffing for both employees and contractors, as well as having state or federal test observers available in a timely fashion.

Other types of events that can cause similar disruptions are ice or snow storms, natural gas consumption restrictions as was experienced in the Northeast during the 1970's. The most recent example is the early snow storm in Western New York that disrupted power and travel in the region for several days. Events can occur in other areas of the country or world that can prevent compliance (e.g. contractors are not able to travel from a previous job site or home location to the facility). Each event is unique, and as such, requires addressing it on a case by case basis.

In addition, when facilities are brought back on-line after these type of events, additional problems may be identified that require additional time and equipment repair. Thus, there are often additional delays that cannot be anticipated.

3. In certain cases, force majeure should be self-implementing. For widespread events like hurricanes, travel restriction and emergency evacuation orders may also impact state officials. They may not be able to get to their offices to process these requests. Even if they are able to get to their offices, they may receive so many requests that they may not be able to process all of them in a reasonable time frame. In addition, it may not be possible for the facility to request approval, as proposed. If communications are sufficiently disrupted, it may not be possible to notify the administrator in writing until some time after the event. Therefore, other forms of initial communication should suffice, to be followed as soon as practical by written communications.

Thus, we suggest that the implementation should be more streamlined under certain circumstances. For the events where the local, state, or federal governing body declares restrictions such as Mandatory Evacuations, restricted road movement, energy or supply restrictions, curfews or acts of war, there should be no need for facilities to make an application to the Administrator and wait for approval. If the appropriate governing body has already declared the event an emergency, the application of force majeure for a facility located in the effected area should be self-implementing. We agree that other events beyond the control of the affected facility may require administrator approval.



An example of how this might work was demonstrated by the Governor of Texas during Hurricane Rita when he suspended regulations for the duration of the event ([www.tceq.state.tx/comm.\\_exec/hurricane\\_rita\\_update\\_92005\\_1086816.pdf](http://www.tceq.state.tx/comm._exec/hurricane_rita_update_92005_1086816.pdf)). While this suspended the state requirements, it did not impact federal requirements.

Finally, CRWI agrees that the declaration of force majeure should not be construed as a means to avoid compliance. However, neither should the facility be required to either record or report as Title V deviations those events that are not within the facility's control nor should these events be incorporated into the facility's compliance record. In fact, a facility's concern should be the safety of its people and taking whatever measures possible to minimize adverse environmental effects. Demonstrating due diligence in these matters is the only reasonable and practical measure during events triggering the concept of force majeure.

In summary, CRWI supports the proposed rulemaking to allow facilities to use force majeure under certain conditions to postpone performance testing. We suggest that the Agency should expand the definition to include pandemics. In addition, we suggest that the Agency initiate a second rulemaking to include certain monitoring, inspection, recordkeeping, and reporting requirements. CRWI will be happy to work with the Agency to identify these areas. Finally, when a state of emergency has been declared by a government agency, the use of force majeure to postpone certain activities should be self-implementing, much like what is done as a part of startup, shutdown, and malfunction plans.

If you have questions or need additional information on any of the points raised, please contact us ([mel@crwi.org](mailto:mel@crwi.org) or 202-452-1241). Thank you again for the opportunity to comment.

Sincerely yours;

A handwritten signature in black ink, appearing to read 'Melvin E. Keener', is written over a light blue horizontal line.

Melvin E. Keener, Ph.D.  
Executive Director

cc: CRWI members  
L. Melton, EPA