Coalition for Responsible Waste Incineration

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Air and Radiation Docket and Information Center
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1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: Docket ID No. OAR-2002-0058

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration* (70 Fed. Reg. 36907, June 27, 2005). CRWI is a trade association comprised of 25 members with interests in hazardous waste combustion. CRWI's members operate incinerators, boilers, process heaters, hydrochloric acid production furnaces, and cement kilns and are regulated under a number of MACT standards. We appreciate the effort EPA has put into this reconsideration 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.

In general, CRWI is satisfied with the rule as issued on September 13, 2004. Primarily our comments support EPA's decision in that final rule. Below are specific comments on selected sections where EPA requested comments.

1. **CRWI supports using a tiered approach to risk assessment but has concerns about the documents referenced in the reconsideration notice.**

   CRWI supports a tiered approach to risk assessment. EPA has used it in a number of other settings and is conceptually a common sense approach.

   CRWI understands EPA's concern about properly placing the document *A Tiered Modeling Approach for Assessing the*

Risks Due to Sources of Hazardous Air Pollutants (EPA-450/4-92-001, March 1992) in the docket for the proposed rule. Once EPA referenced that document in the proposed rule, it should have been placed in the docket. Since EPA did not do so earlier, it is now appropriate to place that document in the docket and request comments on it. CRWI believes that the tiered modeling concept mentioned in the 1992 document is appropriate but specific recommendations in this document have been superseded by newer guidance documents (e.g., Air Toxics Risk Assessment Library). For example, the 1992 document references outdated material such as the ISCLT2 and ISCST2 models rather than more updated models. As such, the 1992 document should not play any further role in this rule.

When EPA discussed the tiered modeling approach in the final rule, they properly point to the Air Toxics Risk Assessment Library as an example (69 Fed. Reg. at 55283). The final rule does not reference the previously mentioned 1992 document. We believe that this is appropriate since 1992 document has been superceded by the newer documents. Thus, we believe that EPA was correct in using a tiered modeling approach and properly referred to the most recent guidance document in the September 13, 2004, final rule.

2. **CRWI supports the use of look-up tables.**

CRWI supports the use of look-up tables as the first step in a tiered approach for determining eligibility for the health-based alternative standards for HCl and manganese. We agree that the tables and the assumptions used to build these tables should be conservative.

3. **CRWI supports the approach for conducting a site-specific risk assessment and the criteria set forth in section 7 of appendix A to subpart DDDDD.**

CRWI supports the Agency's approach for conducting a site-specific risk assessment as outlined in Section 7 of Appendix A. We believe that it is appropriate to use any scientifically-accepted, peer-reviewed risk assessment methodology to demonstrate eligibility. We believe that EPA is correct in referencing the Air Toxics Risk Assessment Library (69 Fed. Reg. at 55283) as the most recent guidance documents. Because risk assessment methodologies are constantly changing, CRWI believes that guidance documents are the correct vehicle in which to place recommendations on how to conduct a risk assessment. Putting more details into regulatory language

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would be counterproductive and would require constant updates of the regulations as methodologies change and additional information is obtained.

4. CRWI agrees with EPA's decision to use a hazard index of 1.0 but suggests the Agency has additional flexibility.

In the proposed reconsideration notice, EPA states "After evaluating comments on this issue, we are satisfied that a HI or HQ of 1.0 is appropriate." (70 Fed. Reg. at 36912). CRWI agrees that a HI of 1.0 does give an ample margin of safety but would like to suggest that the Agency has additional flexibility should they choose to use HI's greater than 1.0. The basis for this idea is that RfC calculations already contain sufficient layers of safety to represent an ample margin of safety.

Reference concentrations (RfC) that make up a hazard quotient or index are derived by first defining a protective level and then applying safety factors to arrive at the RfC. As the Risk Commission described in its report,

> RfC's are considered to be exposure concentrations that are unlikely to be associated with adverse health effects. An RfC is derived by dividing a NOAEL, LOAEL, or BMD by "safety," "modifying," or "uncertainty" factors. In general a factor of 10 is used to account for uncertainty related to interspecies variability, and subchronic to chronic biosassay variability, respectively unless data (or expert judgment) exist to show that different factors should be used. If uncertainties have been resolved, such as for fluoride, a factor of 1 is used. Another factor of 10 is used if a NOAEL is unavailable.

Risk Assessment and Risk Management in Regulatory Decision-Making, Vol. 2, p. 110, fn. 1 ("Risk Commission Report"). Consequently, an RfC and its concomitant hazard quotient already use safety factors to account for scientific uncertainty. For HCl and manganese, the uncertainty factors from the Integrated Risk Information System (IRIS) database (www.epa.gov/iris) are 300 and 1000, respectively. Thus, in developing an RfC, EPA has already incorporated an ample margin of safety. No additional margin is needed. Based on this, we believe that a HI of 1.0 is the most stringent margin of safety required and that the Agency may use HI's greater than 1.0 in certain cases.

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5. CRWI agrees with EPA's decision not to consider background concentrations or emissions from co-located sources in setting standards under 112(d)(4).

This logic is based on two reasons. First, we view the health-based alternatives as simply another standard being promulgated under subsection 112(d). That subsection requires EPA to establish standards based on the performance of sources within a specific category or subcategory. The statute does not authorize EPA to use sources outside the source category when setting standards for that category. Likewise, the health-based standards should reflect the emissions from sources within the category as well, since the statute specifically states that the standards promulgated using § 112(d)(4) are for the purpose of establishing standards under subsection 112(d). That is, a standard must be based on the emissions coming from sources in that category. Congress wrote:

> With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this section.

Thus, there is nothing in this provision that alters the basis for setting standards under § 112(d). Consequently, all § 112(d) standards should be based on the emissions from the sources in the source category, and not on the emissions coming from other sources.

Second, Congress stated that they wanted to avoid the lengthy studies needed to incorporate exposure from background and co-located sources. In Senate report language, Congress stated:

> [T]he Administrator is given discretionary authority to consider the evidence for a health threshold higher than MACT at the time the standard is under review. The Administrator is not required to take such factors into account; that would jeopardize the standard-setting schedule imposed under this section with the kind of lengthy study and debate that has crippled the current program. But where health thresholds are well-established, for instance in the case of ammonia, including cancer, for which no threshold can be established, and the pollutant presents no risk of other adverse health effects, the Administrator may use the threshold with an ample margin of safety (and not considering cost) to set emissions limitations for sources in the category or subcategory.

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Senate Report No. 101-228 at 171 (1990). We believe that considering background and emissions from other sources would be the kind of lengthy study that Congress wanted EPA to avoid. Thus, we believe that EPA has properly decided not to consider background concentrations and emissions from co-located sources under § 112(d)(4).

6. **At this time, CRWI does not believe that an extension of the deadline for submission of health-based applicability determinations is necessary.**

   Based on the final rule, facilities have until September 2006 to submit their eligibility demonstrations. Facilities will need time to develop the necessary data, run the models, and develop the eligibility demonstration. As long as EPA has finished the reconsideration process in a reasonable period of time, we see no need for an extension. If the reconsideration process is not finished in time for facilities to complete all the steps required for the eligibility demonstration, EPA may need to consider extending the deadline/compliance date.

7. **CRWI supports the proposed corrections to allow all industrial boilers to use the health-based compliance alternatives.**

   CRWI sees no reason why the health-based alternatives should not be applied to all sources covered under this rule. If a facility can demonstrate eligibility under the promulgated criteria, they will have shown that they are protective with an ample margin of safety and the size of the unit, the type of the unit, or the fuel burned should not be important.

Thank you for considering these comments. If you have additional questions, please contact us at 202-452-1241 or mel@crwi.org.

Sincerely yours,

Melvin Keener, Ph.D.
Executive Director

cc: CRWI Board
James Eddinger, EPA