March 11, 2024

Via Regulations.gov

Mr. Brian Storey
U.S. Environmental Protection Agency
EPA Docket Center, OAR Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Air Advocacy Coalition and Brick Industry Association Comments on EPA's Proposed Rule Entitled "National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments"
Docket ID No. EPA-HQ-OAR-2017-0015

Dear Mr. Storey:

The Air Advocacy Coalition ("A2C") and the Brick Industry Association ("BIA") appreciate the opportunity to comment on the U.S. Environmental Protection Agency's ("EPA" or the "Agency") proposed rule entitled National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, published at 89 Fed. Reg. 9088 (Feb. 9, 2024) ("Proposed Rule").

The A2C is an ad-hoc coalition that comprises the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Forest & Paper Association, the American Fuel & Petrochemical Manufacturers, the American Iron and Steel Institute, the American Petroleum Institute, the American Wood Council, the National Lime Association, and the U.S. Chamber of Commerce. The purpose of the A2C is to advocate for sensible and effective federal emissions standards under the Clean Air Act ("CAA"). BIA is the national trade association representing distributors and manufacturers of clay brick and suppliers of related products and services.

Some members of the A2C represent companies that own or operate lime manufacturing affected facilities that will be subject to the final rule. In addition, A2C and BIA members represent a broad swath of domestic manufacturers that are subject to CAA § 112 emissions standards and, thus, will be affected by the cross-cutting legal and policy determinations that the U.S. Environmental Protection Agency ("EPA" or "Agency") will make in the final rule.

We write to support EPA's proposal to establish health-based emission limits ("HBEL") for hydrogen chloride ("HCl") emissions. CAA § 112(d)(4) provides that "[w]ith 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 subsection." That provision allows EPA to set a less stringent emission limitation for a threshold hazardous air pollutant ("HAP") than would otherwise be required using the "MACT" standard setting procedures specified in CAA § 112(d)(2)/(3), provided that the alternative standard provides an ample margin of safety against potential health impacts. Congress thus sensibly enabled EPA to avoid unwarranted over-regulation by tailoring the stringency of an emissions limitation for a given threshold HAP to the health risks associated with emissions of that HAP from a given source category.

EPA has set only a handful of HBELs since the current CAA § 112 air toxics program was enacted as part of the 1990 Clean Air Act Amendments. We believe that HBELs for HCl emissions from lime manufacturing are amply supported by the legal, technical, and scientific record. We strongly support EPA's proposal to adopt such standards.

We further believe that HBELs can and should be much more widely used to minimize unwarranted over-regulation and that EPA should adopt additional HBELs for many other source categories as part of the periodic technical reviews required by CAA § 112(d)(6). That is particularly true given that EPA has already completed one-time CAA § 112(f) residual risk reviews for most source categories. EPA observes in the Proposed Rule that completion of such risk reviews lays a solid foundation for a subsequent HBEL. 89 Fed. Reg. at 9093 ("Because the hazards associated with HCl were acceptable with an ample margin of safety in the 2020 RTR, it is possible to contemplate setting an HBEL for this rule."). Setting HBELs here will set helpful precedent for the program as a whole.

Below, we offer comments supporting EPA's responses to the D.C. Circuit's objections to the HBEL for HCL that EPA set in 2015. EPA explains in the Proposed Rule that "in *Sierra Club v. Environmental Protection Agency*, 895 F.3d 1 (D.C. Cir. 2018) ["*Sierra Club*"], the court remanded the [HBELs in the] NESHAP for Brick and Structural Clay Products Manufacturing and for Clay Ceramics Manufacturing." 89 Fed. Reg. at 9092. The court identified two specific concerns.

First, "[t]he court found that the EPA had not sufficiently supported its determination that HCl is a ''pollutant for which a health threshold has been established''; specifically, the court determined that the rulemaking record did not show that HCl is not a carcinogen." *Id*. citing 895 F.3d at 11. Second, "[t]he court also stated that the EPA had not sufficiently explained why it had used the EPA inhalation Reference Concentration (RfC) instead of using California's health value in setting the HBEL." *Id*.

As explained below, EPA provides comprehensive responses to both concerns in the Proposed Rule. As such, EPA has established firm legal and factual bases for the proposed HCl HBELs.

I. CAA § 112(d)(4) encompasses threshold pollutants, which reasonably include potential carcinogens for which a threshold has been established.

We begin by reasserting the conclusion that EPA reached when it previously set HBELs for HCl emissions from the brick industry – there is an "absence of evidence of carcinogenic risk" related to HCl exposure. 80 Fed. Reg. 65470, 65488 (Oct. 26, 2015). As EPA explained at the time, HCl has not "been classified as a carcinogen or as ''suggestive of the potential to be carcinogenic,'' [] by existing authoritative bodies, including EPA, CalEPA, International Agency for Research on Cancer (IARC), Organisation for Economic Co-operation and Development (OECD), and the European Community." *Id*. In short, the available scientific evidence does not support a conclusion that HCl is a potential or actual carcinogen.

In the Proposed Rule, EPA avoids the task of trying to "prove a negative" with regard to the question of whether HCl is a carcinogen. Instead, EPA appropriately focuses on the more pertinent question of whether there is a threshold of exposure below which no significant adverse health effects (including cancer) should be expected due to exposure to HCl. The existence of such a threshold is, of course, the proper question in deciding whether CAA § 112(d)(4) may be applied and not the wholly different question as to whether a given HAP is a carcinogen.

EPA explains that "it is important to acknowledge that the science and methods of cancer risk assessment have evolved over the 33 years since the CAA amendments were issued." *Id*. The Agency "now recognizes that carcinogens can be either non-threshold or threshold pollutants" and, as a result, "we believe that the issue is not whether HCl is a carcinogen but rather whether HCl has a threshold." *Id*.

EPA notes that "[a]n important consideration when determining if a carcinogen has a threshold is whether it is mutagenic." *Id.* EPA proposes to find that "[i]n the case of HCl, the available evidence does not indicate that HCl has a mutagenic effect." *Id*.

EPA further explains that "[a]nother important consideration in determining whether a pollutant has a threshold is understanding whether there are alternative mechanisms by which the observed effects could lead to the development of cancer." *Id*. For HCl, animal studies show "increased cell production and tissue enlargement, known as hyperplasia" but the animal studies "showed no evidence of HCl-induced tumors or cancer." *Id*. Because "cancer cannot occur through [hyperplasia] if exposure is below the threshold at which hyperplasia occurs" and because the Agency "derived a reference concentration (RFC) for HCl which identifies a health-based threshold for hyperplasia" (consistent with the findings of an expert review workshop), EPA asks for comment on "whether it is appropriate to consider HCl a threshold pollutant under CAA section 112(d)(4)." *Id*. at 9093.

The A2C and BIA agree with EPA that the proper inquiry under CAA § 112(d)(4) is whether "a health threshold has been established" for the given HAP. CAA § 112(d)(4). That provision does not use the terms "cancer" or "carcinogen" and otherwise does not equate a threshold pollutant with a carcinogen. Indeed, the court in *Sierra Club* concluded that "[w]ith respect to scientific conclusions, "established" and "health threshold" are ambiguous terms and we give deference to the EPA to the extent its interpretations fall within the bounds of reasonableness." *Sierra Club* at 10. EPA has authority (and an ample factual basis) to reasonably conclude that an HBEL may be established for a carcinogen, provided that a health threshold can be set for that compound.

Notably, EPA appears to have conceded in *Sierra Club* that it "should not implement health thresholds in lieu of MACT standards for carcinogenic pollutants." *Id*. But conceding that point in *Sierra Club* does not prevent or preclude EPA from asserting the different, fact-based interpretation that it has proposed here.

In its comments on the Proposed Rule, the National Lime Association ("NLA") (which, as noted above, is an A2C member) provides extensive commentary and analysis in support of EPA's technical and scientific assertions that, to the extent HCl might be considered a carcinogen, the available evidence supports the conclusion that there is a protective health threshold below which there should be no appreciable risk of developing cancer to any segment of the population. The A2C and BIA support NLA's comments on those issues.

II. EPA's RfC for HCl is an appropriate benchmark in establishing an HBEL for HCl.

The second issue raised in *Sierra Club* is whether EPA's RfC is a suitable benchmark for setting an HBEL. EPA explains that the *Sierra Club* court faulted the Agency for "not fully explain[ing] why the EPA's RfC for HCl, which the Agency has designated as a ''low confidence'' value, was preferable to an alternative value developed by the California EPA, known as the chronic reference exposure level (REL)." 89 Fed. Reg. at 9093.

According to the *Sierra Club* court, EPA asserted in the Brick MACT rulemaking "that the "low confidence" label means that it has low confidence in the derivation of the hydrogen chloride reference concentration below which no adverse health risks were expected to occur because the existing data were incomplete and the reference concentration is subject to change as new data are developed." *Sierra Club* at 11. The Agency further asserted "that though reference concentrations are assigned high, medium, and low confidence values based on the supporting database, even a low confidence value is reliable enough for regulatory use." *Id.* The court concluded that "EPA's statement that "low confidence" reference concentrations are suitable for regulatory purposes lacks any supporting reasoning" and that "EPA did not explain how the health threshold could be established if low confidence reference concentrations are subject to change." *Id*. at 12.

In its response to those issues, EPA asserts in the Proposed Rule that "a ''low confidence'' RfC value indicates that it may change if additional supporting data become available" and, thus, "[i]t does not mean that the current available data base is weak or unreliable." 89 Fed. Reg. at 9093. EPA points out that "the principal and supporting studies selected to derive the RfC for HCl meet the data base criteria for estimation of an RfC which means that the data base is adequate and acceptable." *Id*. Those are compelling points that definitively address the *Sierra Club* court's concerns.

The *Sierra Club* court also was concerned with EPA's explanation in the Brick MACT rulemaking that "it did not use the California EPA's hydrogen chloride reference concentration because of its general preference favoring EPA benchmarks." *Sierra Club* at 11 (internal cites and quotes omitted). The court concluded that EPA had failed to adequately "explain why low confidence data were enough to demonstrate an "established" limit less strict than the California EPA threshold." *Id*. at 12.

In the Proposed Rule, EPA observes that "[t]he California EPA chronic REL for HCl was derived using the same principal and supporting studies" and "[t]herefore, the California EPA value reflects the same data base confidence as the EPA RfC." 89 Fed. Reg. at 9093. But according to EPA, "[w]hile the EPA and California EPA values were derived using the same principal study and similar methodologies, there was a significant difference in the derivation of each value, which led to the California EPA value being more stringent. *Id*. EPA states that "[t]he principal driver for this difference was the California EPA's exclusion of mid- respiratory tract (i.e., trachea) effects from its dosimetry adjustment calculations." *Id*. "By contrast, the EPA incorporated both upper- (i.e., nose, mouth) and mid-respiratory tract effects." *Id*. Upon further analysis, EPA concludes that its "approach to derive the RfC is more robust because it better represents the observed respiratory effects reported in the scientific literature." *Id*.

That is a rational, fact-based assessment that materially supplements the rationale the Agency relied upon in the Brick MACT rulemaking and clearly provides the additional information and analysis that the *Sierra Club* court found lacking. EPA's further explanation of its reasoning here is more than adequate to support the use of EPA's RfC rather than California's value. *Arkansas v. Oklahoma*, 503 U.S. 91, 113 (1992).

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Thank you again for the opportunity to submit these comments. Please feel free to contact the undersigned if you have questions or need more information.

Sincerely,

/s/ Ryan Steadley

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