

March 11, 2024

Mr. Brian Storey
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Mail Code: D143-04
109 T.W. Alexander Drive, P.O. Box 12055
Research Triangle Park, NC 27711

Re: Comments of the Portland Cement Association on the Supplemental Proposed Rulemaking, National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, 89 Fed. Reg. 9088 (Feb. 9, 2024)

Docket ID No. EPA-HQ-OAR-2017-0015

Dear Mr. Storey:

The Portland Cement Association (“PCA” or “Association”) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency’s (“EPA’s” or “the Agency’s”) supplemental proposed amendments to the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Lime Manufacturing Plants, which were published in the Federal Register on February 9, 2024, at 89 Fed. Reg. 9088 (“Supplemental Proposal”).

PCA, founded in 1916, is the premier policy, research, education, and market intelligence organization serving the majority of America’s cement manufacturers. The Association promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure investment. The cement and concrete industry, directly and indirectly, employs more than 600,000 people in the United States, contributes more than \$100 billion to our economy each year, and is playing a key role in delivering on the infrastructure investments provided in the Bipartisan Infrastructure Law.

I. Introduction

On January 5, 2023, EPA proposed to amend the NESHAP for lime manufacturing plants (“Initial Proposal”),¹ to address unregulated hazardous air pollutants (“HAPs”) in response to the

¹ National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, 88 Fed. Reg. 805 (Jan. 5, 2023).

court decision *Louisiana Environmental Action Network v. EPA* (“LEAN”), 955 F.3d 1088 (D.C. Cir. 2020). In *LEAN*, the court held that EPA must address unregulated emissions from a major source category when the Agency conducts its eight-year technology review. EPA last finalized its Risk and Technology Review (“RTR”) for the lime manufacturing category in July 2020, but did not address certain HAPs.² Based on the data collected for the RTR,³ EPA proposed maximum achievable control technology (“MACT”) standards for hydrogen chloride (“HCl”), mercury (“Hg”), organic HAP (which EPA proposed to regulate using total hydrocarbons (“THC”) as a surrogate), and dioxin/furans (“D/F”).

PCA submitted comments on the Initial Proposal on February 21, 2023 (attached here as Attachment A). In its prior submittal, PCA commented that:

- EPA appropriately proposed to exercise its authority to subcategorize sources by kiln configuration;
- EPA should use sufficient data sets when performing the MACT floor analysis;
- EPA should not disregard reliable data when determining whether a work practice standard is appropriate;
- EPA must consider the cost of further emission reductions; and
- EPA should make the proposed regulatory text available in the *Federal Register* notice.

On February 9, 2024, EPA issued a supplemental notice of proposed rulemaking.⁴ In the Supplemental Proposal, EPA proposed, among other issues, to: (1) subcategorize vertical kilns by product,⁵ and (2) not set a beyond-the-floor standard for mercury.⁶

² National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review, 85 Fed. Reg. 44,960 (July 24, 2020).

³ EPA’s Proposal primarily relies on data collected through information collection requests (“ICRs”) sent to nine companies more than six years ago for the 2020 RTR. See Memorandum from Matt Hakos, RTI International, to Brian Storey, EPA, on Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry (Oct. 2022), Docket No. EPA-HQ-OAR-2017-0015-0135 (the “MACT Floor Analysis Memo”), at page 2 of the PDF. EPA did not send additional ICRs for the Proposal and only collected “minor additional data provided by the industry.” *Id.*

⁴ National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, 89 Fed. Reg. 9088 (Feb. 9, 2024).

⁵ See *id.* at 9091.

⁶ See *id.* at 9095.

EPA's final action on the Initial Proposal and the Supplemental Proposal may have significant implications for the Agency's ongoing reconsideration of the Portland Cement NESHAP RTR. PCA represents the majority of the nation's cement manufacturers and, as such, has a substantial interest in how EPA is proposing to address *LEAN* in the Proposals and in future NESHAP rulemakings.

PCA incorporates by reference prior issues raised in the Association's February 21, 2023 comments. At the same time, PCA appreciates EPA's ongoing consideration of certain issues in the Supplemental Proposal. PCA provides the following comments for EPA's consideration, supporting EPA's proposal to (1) subcategorize vertical kilns by product, and (2) not set a beyond-the-floor standard for mercury.

II. EPA appropriately proposes to exercise its authority to subcategorize sources by product.

In response to comments received on the Initial Proposal, EPA now also proposes to subcategorize vertical kilns by the type of stone produced, similar to the subcategorization of rotary kilns by product. Thus, EPA now proposes to further subcategorize by product type, specifically high calcium quicklime and dolomitic lime (and dead-burned dolomitic lime).⁷

PCA supports EPA's new proposal. As discussed in PCA's comments to the Initial Proposal (see Attachment A at pages 2–3), Clean Air Act Section 112(d)(1) affords the Agency broad discretion to differentiate “among classes, types, and sizes of sources within a category or subcategory.”⁸ EPA's proposed subcategorization based on the lime product, informed by discussions with lime industry representatives and by public input, is well within the Agency's statutory authority and warranted by the circumstances.

Major source categories can encompass facilities of varying kinds with significantly different designs and operation practices necessary to manufacture a particular product that would meet unique specifications. These differences impact facility emissions. These differences also may affect effluent gas stream conditions and compatibility and efficiency of potential control technologies. It is thus critical that EPA take key factors fully into account so that emissions standards are appropriate for the characteristics of each subcategory. Failure to consider subcategorization may result in inappropriate emission limits for some sources, including emission limits and compliance requirements for sources that do not emit any of the targeted HAP.

⁷ See 89 Fed. Reg. at 9091.

⁸ 42 U.S.C. § 7412(d)(1).

III. EPA appropriately proposes to not set a beyond-the-floor standard for mercury, which necessarily considered the cost of further reductions.

EPA now proposes to decline to set a “beyond-the-floor” MACT standard for mercury. In determining whether more stringent, “beyond-the-floor” MACT standards are achievable, the Agency must consider additional factors including “the cost of achieving such emission reduction,” “any non-air quality health and environmental impacts,” and “energy requirements.”⁹

In the Initial Proposal, EPA proposed to set a beyond-the-floor MACT standard for mercury. The Agency did so under the flawed assumption that there would be “zero” cost of compliance in installing the activated carbon injection (“ACI”) control technology, because, according to EPA, facilities already would be installing ACI to comply with the proposed THC standards.¹⁰

In its comments on the Initial Proposal, PCA outlined why such an assumption was inappropriate (see Attachment A at pages 5–6), and now welcomes EPA’s proposed determination that a beyond-the-floor standard for mercury is not warranted. As EPA now acknowledges, the control costs are simply not reasonable—“the total capital investment [is estimated] to be \$244,000,000 and total annual costs [is estimated] to be \$116,000,000 per year for beyond-the-floor limits,” resulting in “approximately \$238,000 per pound.”¹¹

These are real costs and cannot be written off, as was EPA’s approach in the Initial Proposal. While EPA previously determined that the additional cost of installing controls could be zero when the technology already is necessary to meet existing standards,¹² or is required to meet a proposed MACT floor for the *same* HAP,¹³ the Initial Proposal’s cost assumption was predicated on the premise that controls would be installed to address a *proposed* limit for a *different* HAP. Such a leap would violate EPA’s duty to “consider[] the cost of achieving such emission reduction”¹⁴ for mercury specifically (since the cost consideration was based on THCs).

⁹ 42 U.S.C. § 7412(d)(2).

¹⁰ See 88 Fed. Reg. at 812.

¹¹ 89 Fed. Reg. at 9095 (“We do not consider the control costs to be reasonable compared to other rules where we have regulated mercury and costs are consideration.”).

¹² See National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 87 Fed. Reg. 60,816 (Oct. 6, 2022) (Proposed Rule).

¹³ See 88 Fed. Reg. at 812 (“In the case of the quick lime and dolomitic lime subcategories, the new and existing MACT floor limits were similar in value (24.94 lb/MMton for new sources, and 25.58 lb/MMton for existing sources), such that with the suggested controls the existing sources would be able to comply with the new source standard with no additional costs.”).

¹⁴ 42 U.S.C. § 7412(d).

Additionally, because the *proposed* emission limit for THC's might not be finalized as originally presented (EPA may revise the limits or choose not to implement the limits at all), any deviation from the proposal would present unconsidered cost implications. PCA appreciates the Agency's revised approach to conform its beyond-the-floor analysis to the requirements of the Clean Air Act and consider costs of mercury emission reduction.

* * *

PCA appreciates the opportunity to provide comments on the Supplemental Proposal. If you have any questions regarding these comments, please feel free to contact me at 202-719-1974 or soneill@cement.org.

Regards,



Sean O'Neill
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February 21, 2023

Mr. Brian Storey
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Re: Comments of the Portland Cement Association on the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, Docket ID No. EPA-HQ-OAR-2017-0015 (Jan. 5, 2023)

Dear Mr. Storey:

The Portland Cement Association (“PCA” or “Association”) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency’s (“EPA’s” or “the Agency’s”) proposed amendments to the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Lime Manufacturing Plants, which were published in the *Federal Register* on January 5, 2023, at 88 Fed. Reg. 805 (“Proposal”).

PCA, founded in 1916, is the premier policy, research, education, and market intelligence organization serving the majority of America’s cement manufacturers. The Association promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure investment. The cement and concrete industry, directly and indirectly, employs more than 600,000 people in the U.S., contributes more than \$100 billion to our economy each year, and is playing a key role in delivering on the infrastructure investments provided in the Bipartisan Infrastructure Law.

I. Introduction

EPA is proposing to amend the NESHAP for lime manufacturing plants to address unregulated hazardous air pollutants (“HAPs”) in response to a decision by the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) in *Louisiana Environmental Action*

Network v. EPA (“LEAN”), 955 F.3d. 1088 (D.C. Cir. 2020).¹ In *LEAN*, the D.C. Circuit held that EPA has an obligation to address unregulated emissions from a major source category when the Agency conducts its eight-year technology review. EPA last finalized its Risk and Technology Review (“RTR”) for the lime manufacturing category in July 2020 (“Lime RTR”) but did not address unregulated HAPs.² Based on data collected for the RTR,³ EPA is proposing maximum achievable control technology (“MACT”) standards for hydrogen chloride (“HCl”), mercury (“Hg”), organic HAP (which EPA proposes to regulate using total hydrocarbons (“THC”) as a surrogate), and dioxin/furans (“D/F”).⁴

EPA’s final action on the Proposal may have significant implications for the similar and upcoming reconsideration of the Portland Cement NESHAP RTR. PCA represents the majority of the nation’s cement manufacturers and, as such, has a substantial interest in how EPA is proposing to address *LEAN* in the Proposal and in future NESHAP rulemakings. PCA requested an extension of the Proposal’s comment period on February 3, 2023, to allow stakeholders like PCA sufficient time to evaluate the Proposal and provide comments,⁵ which EPA subsequently denied. PCA reiterates the concerns raised in the extension request and, although PCA does not believe that the comment period allowed stakeholders a meaningful opportunity to comment, provides the following comments for EPA’s consideration.

II. EPA appropriately proposes to exercise its authority to subcategorize sources by kiln configuration.

EPA is proposing to subcategorize lime manufacturing sources based on kiln configuration for purposes of the proposed HCl and mercury standards.⁶ Clean Air Act (“CAA”) section 112(d)(1) affords EPA the broad discretion to differentiate “among classes, types, and sizes of

¹ National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, 88 Fed. Reg. 805 (Jan. 5, 2023).

² National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review, 85 Fed. Reg. 44,960 (July 24, 2020).

³ EPA’s Proposal primarily relies on data collected through information collection requests (“ICRs”) sent to nine companies more than six years ago for the 2020 RTR. See Memorandum from Matt Hakos, RTI International, to Brian Storey, EPA, on Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry (Oct. 2022), Docket No. EPA-HQ-OAR-2017-0015-0135 (the “MACT Floor Analysis Memo”), at page 2 of the PDF. EPA did not send additional ICRs for the Proposal and only collected “minor additional data provided by the industry.” *Id.*

⁴ 88 Fed. Reg. at 808.

⁵ Portland Cement Association (PCA), Request for Extension of Comment Period on the National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments, Docket No. EPA-HQ-OAR-2017-0015-0147 (Feb. 3, 2023).

⁶ 88 Fed. Reg. at 810.

sources within a category or subcategory.” EPA’s proposed subcategorization based on kiln configuration, informed by discussions with lime industry representatives, is well within EPA’s statutory authority and warranted by the circumstances. Major source categories can encompass facilities of varying sizes with significantly different designs and varying operational practices necessary to manufacture product meeting unique specifications. These differences impact facility emissions. These differences also may affect effluent gas stream conditions and compatibility and efficiency of potential control technologies. It is critical that EPA take key factors fully into account so that emissions standards are appropriate for the characteristics of each subcategory. Failure to consider subcategorization may result in inappropriate emission limits for some sources, including emission limits and compliance requirements for sources that do not emit any of the targeted HAP.

III. Sufficient data sets must be used when performing the MACT floor analysis.

EPA’s MACT floor analysis relied on limited emissions data from stack tests performed, in some cases, more than two decades ago⁷ and ignored some historically valid test data.⁸ The D.C. Circuit has recognized that “it would be arbitrary and capricious for EPA to set a MACT floor based on intentionally skewed data.”⁹ EPA’s data collection does not have to result in a perfect dataset, but the process must be reasonable.¹⁰ EPA’s data collection here does not appear to be reasonable. In contrast to EPA’s dataset in the NESHAP for electric generating units that was determined to be reasonable in *White Stallion*, which involved data collection from over 300 emitting units,¹¹ for the current Proposal EPA relied on a very small dataset that appears to skew inferences about the best-performing units. For categories or subcategories containing 30 or more sources, EPA must base the MACT floor on the best performing 12 percent for which EPA has emissions information.¹² Because EPA relied on an unreasonably limited dataset, EPA has proposed MACT floors for some subcategories based on data from far less than 12 percent of the sources in the subcategories: the mercury limit for the “quick lime dolomitic lime subcategory” reflected a floor determination based on only two tests and the HCl limit for the “preheater rotary

⁷ See MACT Floor Analysis Memo, at 2 (“The test data submitted through the 2017 ICR was used (in conjunction with minor additional data provided by the industry) to develop the proposed standards.”).

⁸ HCl emissions test data obtained via the ASTM D6735-01 test method was excluded even though the test method was valid at the time of use.

⁹ *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222, 1247 (D.C. Cir. 2014), *rev’d sub nom. Michigan v. EPA*, 576 U.S. 743 (2015).

¹⁰ See *id.* at 1248 (D.C. Cir. 2014) (“In short, EPA’s data-collection process was reasonable, even if it may not have resulted in a perfect dataset.”).

¹¹ See *id.* at 1247.

¹² 42 U.S.C. § 7412(d)(3)(A).

kiln quick lime subcategory” is based on a single test from a single source.¹³ For categories or subcategories containing less than 30 sources, EPA must base the MACT floor on the five best performing sources.¹⁴ EPA’s limited dataset resulted in MACT floors for these smaller subcategories being based on far fewer than five sources.

IV. EPA should not disregard reliable data when determining whether a work practice standard is appropriate.

In certain instances as provided in CAA section 112(h), EPA may set work practice standards in lieu of numerical emission standards.¹⁵ EPA has determined that work practice standards are justified in lieu of emission limits when at least 55 percent of the test data are determined to be non-detect following the methods specified by EPA in a 2014 memorandum.¹⁶ When assessing non-detect data, EPA should not discard reliable data, particularly in circumstances where available data already is limited, as is the case here.

EPA’s MACT floor analysis for D/F presents three-run test result averages for two sources, asserts the MACT pool is one source, and then calculates an emission limit for D/F using the upper prediction limit (“UPL”) method for all new and existing kilns based on three test runs from one kiln.¹⁷ EPA also had test data for five additional kilns, but each test report had only one valid test run. EPA “determined that these one-run tests were valid for estimating expected emission rates, but were not valid for use in determining proposed standards using the UPL method” because that “variability cannot be assessed with less than three runs.”¹⁸

¹³ See, e.g., MACT Floor Analysis Memo, at page 15 of PDF.

¹⁴ 42 U.S.C. § 7412(d)(3)(B).

¹⁵ *Id.* § 7412(h).

¹⁶ See Steffan Johnson, EPA, to SPPD Rule Writers, EPA, on Determination Of “Non-Detect” From EPA Method 29 (Multi-Metals) and EPA Method 23 (Dioxin/Furan) Test Data When Evaluating the Setting of MACT Floors Versus Establishing Work Practice Standards (June 5, 2014), Docket No. EPA-HQ-OAR-2017-0015-0117.

¹⁷ See MACT Floor Analysis Memo, at page 22 of the PDF. This set of tests was performed in 1996 at a kiln equipped with an archaic “wet fan PM scrubber.” See EPA, FINAL REPORT – VOLUME I OF II LIME MANUFACTURING EMISSIONS TEST REPORT CHEMICAL LIME COMPANY (FORMERLY EASTERN RIDGE LIME COMPANY) RIPPLEMEAD, VIRGINIA, EPA-454/R-99-044a, at 2-1, 3-2, (Sep. 1999), Docket No. EPA-HQ-OAR-2017-0015-0079. The plant ceased operation prior to promulgation of the original Lime MACT. See Email from Jonathan De’Ath, National Lime Association, to Brian Storey, EPA, on Summary of Information Requested (Feb. 23, 2022), Docket No. EPA-HQ-OAR-2017-0015-0103 (confirming closure of Eastern Ridge facility around 2000).

¹⁸ See MACT Floor Analysis Memo, at page 22 of the PDF.

When subsequently evaluating whether a work practice standard for D/F was appropriate instead of a numerical emission standard, EPA should have considered all available test runs. Even if the one-run tests were unsuitable for the UPL calculation, there is no reason to exclude them from the run-by-run analysis of test results for consideration of a work practice standard. As EPA itself recognized, the one-run tests were valid for estimating emission rates.¹⁹ EPA instead relied on only two three-run tests when determining whether a work practice standard was appropriate. Of the six runs, three (50 percent) fell below the detection limit and three fell above the detection limit (50 percent). Because less than 55 percent of the data were non-detect, EPA proposes to determine that a work practice standard is inappropriate. Had EPA included the five one-run tests, EPA likely would have reached the opposite conclusion: 55 percent or more of the tests would very likely have fallen below the detection limit, thus justifying a work practice standard in lieu of emissions standards.²⁰ All valid data should be used when evaluating the need for work practice standards.

V. EPA must consider the cost of further reductions.

In addition to determining the MACT floor, EPA also must consider whether more stringent, “beyond-the-floor” MACT standards are achievable. In determining whether a beyond-the-floor standard is “achievable,” the Agency must consider additional factors including “the cost of achieving such emission reduction,” “any non-air quality health and environmental impacts,” and “energy requirements.”²¹ EPA does not appear to have fully assessed all costs in its proposed beyond-the-floor analysis for mercury for the “dead burned dolomitic lime subcategory.” In evaluating this beyond-the-floor standard, EPA failed to fully assess the actual costs of compliance, which would require installing activated carbon injection (“ACI”). Instead, EPA relied on the assumption that these facilities already will be installing ACI to comply with the proposed THC standards. According to the Proposal,

Because facilities will incur costs associated with controlling THC emissions, we did not double-count those costs when assessing the dead burned dolomitic lime subcategory, where ACI controls are used to reduce their mercury emissions beyond the calculated MACT floor. The total annual costs for the dead burned dolomitic lime subcategory to go beyond the MACT floor by installing ACI controls is, therefore, zero, due to these sources already installing ACI controls to comply with the THC MACT floor limits.²²

¹⁹ *Id.*

²⁰ The exact percentage cannot be calculated because EPA did not include the five one-run tests in the docket.

²¹ 42 U.S.C. § 7412(d)(2).

²² 88 Fed. Reg. at 812 (emphasis added).

Such a beyond-the-floor analysis is improper by failing to account for a necessary factor (cost) in the beyond-the-floor analysis. EPA has previously determined that the additional cost of installing controls is zero when the technology already was necessary to meet existing standards,²³ or was required to meet a proposed MACT floor for the *same* HAP.²⁴ But here, EPA improperly relies on the assumption that controls will be installed to address a *proposed* limit for a *different* HAP. EPA's "consideration [of] the cost of achieving such emission reduction" for THC does not absolve the Agency of its obligation to account for costs when considering what limits are achievable for mercury.²⁵

Furthermore, it is not a foregone conclusion that a proposed emission limit will be finalized as proposed. EPA may revise the limits or may choose not to implement the limits at all. In that event, the costs of achieving the finalized beyond-the-floor mercury limits for the "dead burned dolomitic lime subcategory" will not be zero. In fact, the costs associated with additional reductions in mercury may not be cost-effective and therefore unreasonable to justify a beyond-the-floor standard.

VI. EPA should make proposed regulatory text available in the *Federal Register* notice.

Both the CAA and the Administrative Procedure Act ("APA") require that EPA provide sufficient notice and opportunity to comment on proposed rules.²⁶ Under the APA, agencies must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved" in a *Federal Register* notice of proposed rulemaking.²⁷ However, if an agency chooses to publish only the description of the subjects and issues involved as EPA did here, the information contained in the notice must offer stakeholders a meaningful opportunity to offer informed comments.²⁸ EPA's Proposal fails to provide such an opportunity.

²³ See National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 87 Fed. Reg. 60,816 (Oct. 6, 2022) (Proposed Rule) ("In all cases, the controls that were already installed were the same types of controls that would be required to meet either the 2013 limits or the less stringent limits calculated in the proposed rule and, therefore, no additional costs would be incurred to meet the more stringent limits.").

²⁴ See 88 Fed. Reg. at 812 ("In the case of the quick lime and dolomitic lime subcategories, the new and existing MACT floor limits were similar in value (24.94 lb/MMton for new sources, and 25.58 lb/MMton for existing sources), such that with the suggested controls the existing sources would be able to comply with the new source standard with no additional costs.").

²⁵ 42 U.S.C. § 7412(d)(2).

²⁶ *Id.* § 7607(d); 5 U.S.C. § 553.

²⁷ 5 U.S.C. § 553(b)(3).

²⁸ See *Missouri Limestone Producers Ass'n, Inc. v. Browner*, 165 F.3d 619, 622 (8th Cir. 1999) (citing *Northwest Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309, 1319–20 (8th Cir.1981)) ("We have held that an

Instead of including the proposed regulatory text in the notice, EPA produced a copy of the proposed text in the regulatory docket. There appears to be a significant discrepancy between the proposed regulatory text in the docket and the *summary* of the proposed regulatory text in the *Federal Register* notice. EPA's standard for D/F in the *Federal Register* notice is different from the standard set forth in the redline of the proposed regulatory language – 0.028 ng/dscm versus 0.092 ng/dscm.²⁹ It is therefore unknown what EPA is proposing and, as a result, what stakeholders should analyze and provide comments on. In other words, stakeholders cannot offer informed comments because it is impossible to know which standard EPA is proposing.

PCA urges EPA to include proposed regulatory text in its *Federal Register* notices in future rulemakings. Doing so reduces the likelihood for inconsistencies and confusion over the proposed regulatory changes and enhances transparency. Furthermore, as the Office of the Federal Register has noted, doing so is consistent with agency practice which is “usually” to follow the preamble by “publish[ing] the regulatory text of the proposal in full.”³⁰

PCA appreciates the opportunity to provide comment on the Proposal. If you have any questions regarding these comments, please feel free to contact me at 202-719-1974 or soneill@cement.org.

Regards,



Sean O'Neill
Senior Vice President
Government Affairs

agency's notice is sufficient if it allows interested parties to offer ‘informed criticism and comments.’”); *Hall v. EPA*, 273 F.3d 1146, 1162 (9th Cir. 2001) (citing *Ober v. EPA*, 84 F.3d 304, 316 (9th Cir. 1996) (“Notice is adequate if it is sufficient to provide the public with a meaningful ‘opportunity to comment on [the proposed] provisions.’”).

²⁹ *Compare* Lime Manufacturing Proposal - Redline Strikeout Version (Oct. 20, 2022), Docket No. EPA-HQ-OAR-2017-0015-0139 at Table 1 with 88 Fed. Reg. at 814.

³⁰ OFFICE OF THE FEDERAL REGISTER, A GUIDE TO THE RULEMAKING PROCESS (2011), https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.