EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

November 25, 2024

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

Mr. Michael S. Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator (1101A)
1200 Pennsylvania Ave., NW
Washington, DC 20460
Regan.Michael@epa.gov

Re: Response to National Lime Association's Petition for Reconsideration of EPA's Final Rule, *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review*, 89 Fed. Reg. 57,738 (July 16, 2024)

Dear Administrator Regan:

Enclosed please find Earthjustice's Response to NLA's Petition for Reconsideration, dated September 13, 2024. A copy of this Response has also been electronically submitted to the Office of Air and Radiation Docket Center for filing in Docket No. EPA-HQ-OAR-2017-0015.

Sincerely,

James S. Pew
Kevin Breiner

Enclosure

Cc: Gautam Srinivasan, Associate General Counsel for the Air and Radiation Law Office
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources
Peter Tsirigotis, Director of Office of Air Quality Planning and Standards (OAQPS)
Penny Lassiter, Director of Sector Policies and Programs Division, OAQPS

BEFORE THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review, 89 Fed. Reg. 57,738 (July 16, 2024)	EPA Docket No. HQ-OAR-2017-0015

RESPONSE TO NLA'S PETITION FOR RECONSIDERATION

Earlier this year, EPA published updated emission standards for the lime manufacturing source category, including emission limits for previously unregulated hazardous air pollutants. The National Lime Association (NLA) filed a petition for reconsideration with EPA under Clean Air Act § 307(d)(7)(B). EPA should promptly deny the petition, because it does not meet the requirements for reconsideration under Clean Air Act § 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B).

BACKGROUND

In July of this year, EPA published updated emission standards for the lime manufacturing source category. The updated standards finally established emission limits for previously unregulated hazardous air pollutants including mercury, hydrogen chloride, dioxin/furans, and other organic hazardous air pollutants. EPA set each of the new limits at the minimum level of stringency allowed by the Clean Air Act. *See* 42 U.S.C. § 7412(d)(3).

Prior to issuing final emission limits under § 112(d)(3), EPA took comment on establishing an alternative "health-based emission limit" (HBEL) for hydrogen chloride, under § 112(d)(4), that would not have required any facility in the source category to reduce its emissions of hydrogen chloride at all. 89 Fed. Reg. 9,088, 9,092 (Feb. 9, 2024). *See* "02a_HCl Emissions," EPA-HQ-OAR-2017-0015-0251 (showing no facilities with baseline HCl emissions above 300 tons per year or 685 pounds per hour).

NLA filed detailed comments urging EPA to adopt this HBEL, and environmental groups filed comments opposing it. Environmental groups argued that, because the Agency lacked substantial evidence showing that hydrogen chloride is a threshold pollutant that may be regulated under § 112(d)(4), issuing a HBEL would be arbitrary and contrary to law. *See* Enviro Comments, EPA-HQ-OAR-2017-0015-0237 (March 11, 2024). After considering the comments it received, including those submitted by NLA, EPA decided not to issue the HBEL, noting that "additional time is needed to evaluate the existing body of evidence regarding carcinogenicity of [hydrogen chloride]." Summary of Public Comments and Responses for National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments (June 2024), EPA-HQ-OAR-2017-0015-0267 at 93. Because of that decision, the final rule, lawfully

regulating hydrogen chloride and other pollutants pursuant to § 112(d)(3), will significantly reduce emissions and lower the risk of adverse health effects for communities living around lime manufacturing facilities. 89 Fed. Reg. at 57,747. The benefits of the final rule will accrue to historically disadvantaged populations, including Hispanic and Latino individuals, linguistically isolated households, and individuals living below the poverty line. *Id.* at 57,748. The rule will be "particularly impactful to pregnant women, infants and children . . . since these life stages are especially susceptible to exposures" to toxic chemicals. *Id.* at 57,747.

After EPA published the final rule, NLA challenged it in the D.C. Circuit and submitted a petition for administrative reconsideration in September of this year. In its petition for reconsideration, NLA asserts that because EPA did not provide an opportunity for NLA to comment on the comments it received from environmental groups, the Agency must commence reconsideration proceedings under Clean Air Act § 307(d)(7)(B). Petition for Reconsideration, EPA-HQ-OAR-2017-0015-0272 (September 13, 2024) ("Petition").

One month after initiating its legal challenge to the final rule, NLA moved to place the litigation in abeyance pending the Agency's decision on the petition for reconsideration. NLA v. EPA (D.C. Cir. No. 24-1297), Doc. 2078192 (October 3, 2024). EPA did not oppose the motion, and the court granted it. NLA v. EPA, (D.C. Cir. No. 24-1297), Doc. 2078692 (October 7, 2024).

BASIS FOR DENYING THE PETITION

I. NLA DOES NOT RAISE ANY OBJECTIONS THAT COULD NOT HAVE BEEN RAISED DURING PUBLIC NOTICE AND COMMENT.

The Clean Air Act provides:

> Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

42 U.S.C. § 7607(d)(7)(B).

NLA's reconsideration petition does not contain any objections to the final rule that were impracticable to raise during the public comment period. To the contrary, it primarily contains objections to environmental groups' comments on the proposed rule. Indeed, NLA's petition states expressly that "NLA was . . . denied the opportunity to comment on . . . the NGOs' comments, so NLA is doing so through this Petition for Reconsideration." Petition at 4.

Because objections to another party's comments are not objections to a "rule or procedure," and because the material in NLA's petition could have been raised during the public comment period, the petition fails to establish a basis for reconsideration under § 307(d)(7)(B).

By expressly seeking comment on whether it should establish a HBEL for hydrogen chloride, 89 Fed. Reg. at 9,092, EPA provided ample opportunity to comment on this issue, and NLA submitted extensive comments on it in both 2023 and 2024. NLA Comments, EPA-HQ-OAR-2017-0015-0228 at 17-18, 30-40 (March 11, 2024); NLA Comments, EPA-HQ-OAR-2017-0015-0166 at 21-27 (Feb. 21, 2023).

In addition to NLA's responses to environmental groups' comments, the petition contains some freestanding objections that NLA already raised during the public comment periods. *Compare* NLA Comments, EPA-HQ-OAR-2017-0015-0228 at 30-32 (March 11, 2024) and NLA Comments, EPA-HQ-OAR-2017-0015-0166 at 21-23 (Feb. 21, 2023) *with* petition at 5-8 (comments repeated nearly verbatim). Because NLA raised these objections during the public comment periods, they do not warrant reconsideration under § 307(d)(7)(B).

CONCLUSION

Because NLA's petition does not raise any objection to the final rule that could not have been raised during the public comment periods, it does not meet the requirements of Clean Air Act § 307(d)(7)(B). EPA should promptly deny the petition.