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VIA ELECTRONIC MAIL AND U.S. MAIL

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

Mr. Michael S. Regan, Administrator
Office of the Administrator
U.S. Environmental Protection Agency
WJC South Building, Room 3000
1200 Pennsylvania Ave. NW
Washington DC 20460
Regan.Michael@goc.com

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

Dear Administrator Regan:

Enclosed please find National Lime Association's Petition for Reconsideration of EPA final rule titled *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review*, 89 Fed. Reg. 57,738 (July 16, 2024). A copy of this petition has also been electronically submitted to the Office of Air and Radiation Docket Center for filing in Docket No. EPA-HQ-OAR-2017-0015. Please contact us with any questions you may have.

Sincerely,

David M. Friedland

Enclosure

cc: Brian Storey, Office of Air and Radiation
Gautam Srinivasan, Associate General Counsel for the Air and Radiation Law Office

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of the Final Rule:	)	
National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review	)	EPA Docket No. OAR-2017-0015

PETITION FOR RECONSIDERATION

Pursuant to Section 307(d)(7)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7607(d)(7)(B), National Lime Association ("NLA") hereby petitions the Administrator of the United States Environmental Protection Agency ("EPA") to reconsider portions of the final rule *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review* (the "Final Rule"), published in the Federal Register at 89 Fed. Reg. 57,738 (July 16, 2024). As set forth in detail below, NLA requests that EPA reconsider its decision not to set a health-based emission limit ("HBEL") under CAA section 112(d)(4) for hydrogen chloride ("HCl").

As promulgated, the Final Rule fails to consider important facts, data, and science, which prevented EPA from making a fully informed decision of whether it should issue an HBEL for HCl. The inclusion in the Final Rule of new and existing source emission limits instead results in unnecessary regulation. As described in more detail below, the objections raised in this petition were impracticable to raise during the time period that EPA allowed for public comment on the proposed rule. EPA closed the public comment period one day after receiving comments on which EPA significantly relied to justify issuing source limits instead of an HBEL, which precluded NLA from timely filing its own rebuttal comments, including a comprehensive and reputable report from a third-party environmental consulting firm explaining the appropriateness of issuing an HBEL for HCl.

Because NLA's objections go to the lawfulness of the final rule as promulgated, they are also of central relevance to the outcome of the rule and thus satisfy the criteria and requirements of CAA section 307(d)(7)(B) regarding mandatory reconsideration. EPA should therefore "convene a proceeding for reconsideration of the rule . . . ."[1] and ultimately establish an HBEL for HCl.

BACKGROUND

On July 16, 2024, EPA promulgated the Final Rule, revising maximum achievable control technology ("MACT") standards for HCl, mercury, organic HAP, and dioxins/furans ("D/F") in response to the D.C. Circuit's decision in *Louisiana Environmental Action Network v. EPA* ("*LEAN*"), 955 F.3d 1088 (D.C. Cir. 2020) and a lawsuit brought by the Sierra Club in

[1] 42 U.S.C. § 7607(d)(7)(B).

Sierra Club v. EPA, et al., Case No. 20-1381 (D.C. Circuit, September 22, 2020).[2] NLA is concurrently filing a petition for review of the Final Rule in the D.C. Circuit, and will, among other things, challenge EPA's interpretation of *LEAN* in that lawsuit.

EPA's regulation of hazardous air pollutants ("HAPs") produced during lime manufacturing started two decades ago when, in 2004, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants. (40 CFR §§ 63.7080-7083). In so doing, EPA noted that: "the purpose of the final NESHAP is to protect public health by reducing emissions of HAP from lime manufacturing plants." 69 Fed. Reg. 394-395 (Jan. 5, 2004). EPA carefully evaluated the lime manufacturing sector and regulated HAP emissions by establishing a particulate matter ("PM") standard as a surrogate for non-volatile and semi-volatile metal HAPs. As part of this evaluation EPA "addressed" all four of the HAPs emitted by the lime industry including HCl, mercury, organics, and dioxins and furans. Based on this evaluation, EPA found that new regulations were not necessary for those categories of HAPs. EPA additionally fulfilled its obligations under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act ("SBREFA") by reaching out to small lime companies, performing extensive economic analysis on the impacts of the rule, and convening a small business panel with the Small Business Administration ("SBA") to identify less burdensome alternatives that would still accomplish EPA's regulatory objectives.

EPA's 2004 rule was not challenged by the lime industry or any environmental groups. Likewise, in 2020, EPA issued a final rule to fulfill its obligations under CAA sections 112(d)(6) and (f)(2), or the "risk and technology review" ("RTR"). Here, EPA found that "risks are acceptable and that the current NESHAP provides an ample margin of safety to protect public health" and opted to not set standards for several pollutants, including HCl, mercury, organics, and D/F because doing so was not necessary. *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Residual Risk and Technology Review*, 85 Fed. Reg. 44960 (July 24, 2020). EPA further determined that "there are no developments in practices, processes, or control technologies that necessitate revisions to the standards." *Id.*

Although EPA provided facts supporting an HBEL for HCl in the January 2023 Proposed Rule that NLA supported in comments, EPA took a different approach in the February 2024 Proposed Rule when it proposed to implement a MACT floor standard for HCl without providing details or an explanation of why EPA was reversing its 2004 determinations that HCl is a threshold pollutant warranting an HBEL. Although EPA still solicited comment on the concept of adopting an HBEL for HCl in the February 2024 Proposed Rule, EPA ultimately rejected promulgating an HBEL in the Final Rule based upon comments submitted by environmental groups at the close of the comment period. Immediately after close of the comment period, NLA submitted an analytical report rebutting the environmental group's comments. NLA requests that EPA reconsider the Final Rule in light of this report as described in more detail below.

[2] On October 22, 2020, EPA filed an unopposed motion to hold the case in abeyance while EPA considers Petitioner's petition for administrative reconsideration. The Court granted EPA's motion on October 29, 2020.

ISSUES MERITING RECONSIDERATION

I. NLA LACKED ANY MEANINGFUL OPPORTUNITY TO COMMENT ON THE FINAL RULE'S ISSUANCE OF SOURCE LIMITS INSTEAD OF AN HBEL FOR HCL, EVEN THOUGH THAT DECISION HAS A MAJOR IMPACT ON IMPLEMENTATION OF THE FINAL RULE

A commenter's right to judicial review hinges on the ability to timely comment. Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment may be raised during judicial review. 42 U.S.C. § 7607(d)(7)(B). However, if the commenter raising an objection can demonstrate that it was impracticable to raise such objection during the public comment period, or if the grounds for the 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, EPA must 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. *Id.*

Three non-profit governmental organizations (the "NGOs") filed lengthy comments on the last day of the proposed rule comment period, asserting that an HBEL is improper for HCl and that HCl is a carcinogen.[3] EPA did not post these comments to the docket until March 14, 2024, two days after the public comment period closed.[4] EPA ultimately sided with the NGOs,[5] rejecting EPA's initial HBEL approach in favor of setting new and existing source limits for HCl. Due to the timing of the NGOs' filing, NLA and other commenters could not see the NGOs' comments before EPA's public comment period closed. However, as soon as NLA read the NGOs' comments advocating for source limits instead of an HBEL, NLA engaged a respected consultant to conduct a detailed analysis of the NGOs' comments. The analysis rebutted the NGOs' comments point-by-point in a 119-page report that NLA submitted almost immediately after the public comment period closed. *See* Ramboll Americas Engineering Solutions, *Response to the comments of California Communities Against Toxics; Sierra Club; and Earthjustice regarding EPA's proposed health-based exposure limit for hydrochloric acid* ("Ramboll Report"), dated April 23, 2024, submitted to EPA April 25, 2024, and attached as Exhibit A. Because of the NGOs' timing in filing its comments, and EPA's delay posting the comments, the objections raised in this petition were impracticable to raise during the time period that EPA allowed for public comment on the proposed rule. NLA was therefore denied the opportunity to comment on or respond to the NGOs' comments, so NLA is doing so through this Petition for Reconsideration.

[3] https://www.regulations.gov/comment/EPA-HQ-OAR-2017-0015-0237

[4] *Id.*

[5] In EPA's response to the NGOs and industry, EPA stated, "The EPA agrees with commenters' assertions that we cannot claim that mutagenicity is the sole test to determine whether a pollutant has a threshold, for cancer or other adverse health effects. We acknowledge industry comments in support of an HBEL and that current HCl emissions based upon the 2020 RTR are at levels that were acceptable with an ample margin of safety. However, considering the other comments received, we have decided not to promulgate an HBEL for HCl." (89 Fed. Reg. at 57,742).

II. EPA SHOULD REGULATE HCL USING AN HBEL UNDER CAA SECTION 112(d)(4) RATHER THAN USING SOURCE LIMITS

As noted above, EPA determined that HCl was a threshold pollutant when it issued the MACT standard for lime manufacturing in 2004. In the February 2024 Proposed Rule, EPA stated in the preamble to the rule that (1) HCl is a threshold pollutant; (2) even though HCl is a threshold pollutant, EPA is soliciting comment on whether HCl is a threshold pollutant; (3) since HCl is a threshold pollutant, EPA proposed an HBEL; (4) since it is feasible that HCl is not a threshold pollutant, EPA proposed source limits. *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments*, 89 Fed. Reg. 9088, 9091-94 (Feb. 9, 2024). Rather than issue an HBEL for HCl in the Final Rule, EPA did an about-face in the Final Rule and promulgated source limits for HCl without much, if any, justification. In the absence of new information or new law, EPA's reversal of its prior decision that HCl is a threshold pollutant for the lime industry is arbitrary and capricious.

A. EPA Carefully and Correctly Evaluated the Scientific Data and Concluded that HCl was a Threshold Pollutant in the Original Lime MACT Standard in 2004

The CAA allows EPA to use an HBEL when issuing emission standards under section 112(d) for certain pollutants. (CAA § 112(d)(4); 42 U.S.C. § 7412(d)(4)). Such an HBEL must include an "ample margin of safety." *Id.* In its 2004 112(d) MACT standard for lime manufacturing, EPA concluded that HCl was a threshold pollutant, considering several factors such as "evidence and classification of carcinogenic risk and evidence of non-carcinogenic effects." *National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants*, 67 Fed. Reg. 78046, 78054-55 (Dec. 20, 2002).[6]

NLA conducted a risk assessment to determine whether emissions of HCl from lime kilns at baseline levels resulted in exposures below threshold values for HCl. EPA reviewed NLA's risk assessment report and concluded that it used reasonable and conservative methodology, was consistent with EPA methodology and practice, and reached a reasonable conclusion that current levels of HCl emissions from lime kilns would be well under the threshold levels of concern for human receptors. *Id.* at 78055. To aid in its analysis, EPA reproduced several of NLA's modeling analyses, performed its own analyses for selected facilities having the highest potential for risk to the surrounding community, and ultimately affirmed NLA's assessment.

EPA's conclusions were validated in its RTR review. In 2019, as part of the residual risk review, EPA performed a comprehensive risk assessment for all 35 operating lime plants that are major sources of HAP. EPA estimated the maximum chronic noncancer hazard index ("HI") for the lime manufacturing source category to be only 0.04 based on actual emission of HCl, nickel

[6] In the preamble to the proposed lime MACT standard in 2002, EPA noted that it had included a detailed discussion of factors it considers in deciding whether a pollutant should be categorized as a health threshold pollutant. *National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills*, 63 Fed. Reg. 18,766 (April 15, 1998).

compounds, and acrolein emitted from lime kiln and cooler exhaust, and 0.05 based on allowable emissions, with HCl, nickel compounds, acrolein, and formaldehyde emissions as primary risk drivers. 85 Fed. Reg. at 44,964. In other words, when EPA did its follow-up residual risk assessment using representative data under actual and allowable emissions scenarios, it found that the chronic risks from all noncancer HAPs (including, but not limited to, HCl) were much lower than the risks estimated in 2002. This analysis proves that EPA was correct in determining that risks from uncontrolled emissions of HCl were acceptable with an ample margin of safety.

EPA also evaluated whether HCl emissions would cause any significant or widespread adverse environmental effects to wildlife, aquatic life, or other natural resources, ultimately concluding, "we do not anticipate any adverse ecological effects from HCl." 67 Fed. Reg at 78057. Putting all this evidence together, EPA correctly concluded that "[t]he results of the exposure assessment showed that exposure levels to baseline HCl emissions from lime production facilities are well below the health threshold value." *Id.* EPA concluded that HCl was a threshold pollutant and that the risks from emissions of HCl from lime manufacturing facilities were below such threshold value. No party challenged this conclusion, and the time for making any such challenge has long since passed. (CAA § 307(b)(1); 42 U.S.C. § 7607(b)(1)). Accordingly, that conclusion is the "law of the case," and must be respected in the Final Rule.[7]

In its 2020 RTR rule for lime manufacturing facilities, EPA hired an outside contractor to conduct a new comprehensive risk assessment for all hazardous air pollutants (including HCl). This new analysis found that the risks of lime manufacturing under the current MACT standard (which contains no HCl standard at all, let alone an HBEL) were "acceptable" and that the "current NESHAP provides an ample margin of safety to protect public health." (85 Fed. Reg. 44,960). EPA's RTR fact sheet describing the conclusions of the risk assessment states that the "maximum individual cancer risk for inhalation for the source category is estimated to be 1-in-1 million," and that this data supported the conclusion that risks from lime manufacturing source category were acceptable and safe. EPA, *Fact Sheet: Final Amendments to Air Toxics Standards for Lime Manufacturing Plants,* June, 2020.[8]

EPA itself recently concluded in other rules that HCl is not a carcinogen. On November 18, 2021, EPA issued a final RTR for the flexible polyurethane foam fabrication operations industry. *National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review,* 86 Fed. Reg. 64385 (Nov. 18, 2021). These facilities emit HCl, and EPA promulgated standards for HCl, but EPA specifically concluded that "no carcinogens are emitted by this category." *Id*. at 64391-92. Further, several other RTRs have confirmed EPA's longstanding position that HCl is not a carcinogen. *See National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review,* 85 Fed. Reg. 14526, 14535 (Mar. 12, 2020) (citing to the International Agency for Research on Cancer's conclusion that HCl is "not classifiable as to its carcinogenicity to humans"); *National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production Residual Risk and Technology*

[7] As noted above, in 2004, after EPA decided that HCl was a threshold pollutant entitled to an HBEL under 112(d)(4), EPA ultimately determined that the risks were so low that no standard was justified.
[8] https://www.epa.gov/sites/default/files/2020-06/documents/lime_manufacturing_rtr_final_fs.pdf

Review, 85 Fed. Reg. 20855, 20861 (Apr. 15, 2020) ("[t]he results of the inhalation cancer risk assessment…indicate there is no quantifiable cancer risk posed by the source category…HCl is not classifiable as a human carcinogen").'

In the absence of new information or new law, EPA's reversal of its prior decision that HCl is a threshold pollutant for the lime industry is arbitrary and capricious. Moreover, as noted above, newer information, including the Ramboll Report, only serve to strengthen the determination that HCl is a threshold pollutant. Thus, EPA should not have reversed its prior decision and should have promulgated an HBEL for HCl.

B. EPA's Final Rule Improperly Concludes that HCl Should be Regulated Using Source Limits Rather than an HBEL.

In the February 2024 Proposed Rule, EPA sought comments on potentially setting an HBEL for HCl. EPA made several key statements that supported such a standard, including recognizing that even a carcinogen may have a health threshold, allowing for an HBEL to be set. EPA stated in the preamble:

> With regard to carcinogenicity, 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. The EPA now recognizes that carcinogens can be either non-threshold or threshold pollutants. Linear non-threshold carcinogens can cause adverse health effects, including cancer, at any level of exposure. In contrast, non-linear threshold carcinogens may pose a cancer risk only above a certain exposure level. Based on the science and methods developed over the last 33 years, and CAA section 112(d)(4)'s focus on a threshold, not cancer risk, we believe that the issue is not whether HCl is a carcinogen but rather whether HCl has a threshold.

89 Fed. Reg. at 9092 (footnotes omitted).

EPA goes on to explain that HCl has not been shown to be mutagenic. 89 Fed. Reg. at 9092-93.

Based on these conclusions, EPA calculated a potential health-based standard for HCl, explained as follows:

> Based on this analysis, the HBEL would be an emission limit of 300 tpy, not to exceed 685 pounds per hour (lb/hr). We would expect such a limit to ensure that HCl emissions from this source category, while could be higher than in the proposal would remain at levels consistent with a chronic HQ no greater than 0.2 and a maximum acute HQ no greater than 0.6. We request comment on

> whether such a standard would provide an ample margin of safety and whether additional measures would be needed to do so.

89 Fed. Reg. at 9094.

NLA strongly believes that such a standard provides an ample margin of safety. EPA has already performed a comprehensive risk assessment of HCl emissions from all lime plants and found, on multiple occasions, that there are already acceptable risks with an ample margin of safety with no additional standards at all. Thus, an HBEL will by definition also provide an ample margin of safety—essentially, one already exists. An HBEL would guarantee that HCl emissions would remain below any possible level of concern. Accordingly, NLA urges EPA to convene a proceeding for reconsideration of the Final Rule and set an HBEL for HCl, based on EPA's own findings.

III. RECONSIDERATION OF THE MERCURY, ORGANICS, AND D/F STANDARDS

NLA further requests that EPA reconsider the final rule in its entirety. A decision to replace the final HCl standards with an HBEL would have a substantial impact on other elements of the rule and EPA's analysis, including costs, avoided risk and feasibility of controls. Furthermore, NLA believes that EPA should have adopted NLA's suggestions on multiple elements of the rule, including the proper intra-quarry variability factor for mercury, the correct calculation of an organic HAPs standard, an alternative compliance method for dioxins and furans, and others. In addition, NLA believes that EPA should reconsider whether it should decline to regulate additional HAPs under *de minimis* principles, bearing in mind that courts will no longer give deference to an agency's statutory construction that is not the "best" interpretation of the statute in the court's judgment See *Loper Bright Enterprises v. Raimondo* 144 S.Ct. 2244, 2247 (2024); *Wisc. Dep't of Rev. v. William Wrigley, Jr., Co.* 505 U.S. 214, 231 (1992).