



March 11, 2024

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
Washington, DC

Re: National Emissions Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments (Docket ID EPA-HQ-OAR-2017-0015)

Dear Administrator Regan:

On February 9, 2024, the Environmental Protection Agency (EPA) published a proposed rule entitled National Emissions Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments.¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule.

Overall, the EPA has asked for comment on various changes from the January 5, 2023 proposed National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Lime Manufacturing Plants.² While many of the changes suggested by the EPA will likely improve the proposed lime manufacturing NESHAP, they are directed at the lime manufacturing industry as a whole, as opposed to small entities within the sector. Additional flexibilities will be needed for small lime manufacturing plants to meet the requirements of the proposed NESHAP, even with the agency's amendments.

Advocacy appreciates the EPA including multiple recommendations from the Small Business Advocacy Review (SBAR) Panel for this rule which was convened in late 2023.³ One such recommendation was taking comment on establishing a health-based emission limit (HBEL) for hydrogen chloride (HCl). Advocacy strongly supports establishment of a HBEL for HCl. This

¹ 89 Fed. Reg. 9088 (Feb. 9, 2024).

² 88 Fed. Reg. 805 (Jan. 5, 2023).

³ The full SBAR Panel Report may be found on EPA's website. U.S. Env't Prot. Agency, *SBAR Panel: National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments*, <https://www.epa.gov/reg-flex/sbar-panel-national-emission-standards-hazardous-air-pollutants-lime-manufacturing-plants> (last updated Feb. 9, 2024).



approach will give small entities the flexibility they need to meet the proposed requirements while properly recognizing HCl is a threshold pollutant.

Advocacy also appreciates the EPA's inclusion of the SBAR Panel's recommendation to incorporate an intra-quarry variability factor (IQV) for mercury from lime plants. However, as proposed, Advocacy worries that small entities will not have the flexibility they need to comply with the proposed amendments. Additionally, Advocacy supports the EPA's proposed aggregate standards for organic hazardous air pollutants (oHAPs) but recommends using an average of all detection limits, as opposed to the five lowest, to generate a more accurate standard. Also, Advocacy does not think the EPA has gathered enough information to warrant the proposal's limits for dioxin/furans (D/F) emissions.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),⁴ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁵ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁶ Additionally, Section 609 of the RFA requires the Consumer Financial Protection Bureau, the Occupational Safety and Health Administration, and the Environmental Protection Agency to conduct special outreach efforts through a review panel.⁷ The panel must carefully consider the views of the impacted small entities, assess the impact of the proposed rule on small entities, and consider less burdensome alternatives for small entities.⁸ If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.⁹ The agency must provide a statement of factual basis that adequately supports its certification.¹⁰

⁴ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁵ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁶ 5 U.S.C. § 603.

⁷ *Id.* § 609.

⁸ *Id.*

⁹ *Id.* § 605(b).

¹⁰ *Id.*

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.¹¹ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.¹²

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."¹³

B. The Proposed Rule

Under Section 112 of the Clean Air Act (CAA), the EPA is required to establish a NESHAP for lime manufacturing and review those standards on a regular basis. Initial standards under this section are based on the emissions from best performers in an industry.¹⁴ The statute gives the EPA some flexibility to set standards based on health impacts or work practice standards where circumstances warrant.¹⁵ As part of the regular review, the EPA conducts a risk assessment to determine whether there remains an unreasonable risk from hazardous air pollutants¹⁶ and whether technology has advanced sufficiently to justify more stringent standards.¹⁷ The EPA concluded the most recent review in July 2020 and made no changes to the NESHAP for lime manufacturing plants.¹⁸

Due to an April 2020 court decision, the EPA has been reviewing all NESHAPs and setting new standards for previously unregulated pollutants that were determined to not pose a public health risk in previous rulemakings.¹⁹ The proposed rule supplements the EPA's January 5, 2023 proposed NESHAP for lime manufacturing plants. In that action, the EPA proposed hazardous air pollutant (HAP) emissions standards for HCl, mercury, total hydrocarbon (THC) as a surrogate for oHAP, and D/F based on additional data received by the EPA.

II. Advocacy's Small Business Concerns

While the amendments contain many positive recommendations from the 2023 SBAR panel conducted on EPA's proposed changes to the NESHAP for lime manufacturing plants, Advocacy has suggested refinements.

A. The proposed rule will still have a significant impact on small entities.

In the lime manufacturing sector, there are two small businesses. Both were represented on the SBAR Panel and both will be impacted by the proposed rule. Specifically, they will have to

¹¹ Small Business Jobs Act of 2010, Pub. L. No. 111-240, § 1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

¹² *Id.*

¹³ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

¹⁴ Clean Air Act § 112(d)(3); 42 U.S.C. § 7412(d)(3).

¹⁵ CAA § 112(d)(4), § 112(h).

¹⁶ *Id.* § 112(f)(2).

¹⁷ *Id.* § 112(d)(6).

¹⁸ 85 Fed. Reg. 44960 (July 24, 2020).

¹⁹ *See* La. Env't Action Network v. EPA, 955 F.3d. 1088 (D.C. Cir. 2020) (EPA has an obligation to set standards for unregulated pollutants as part of technology reviews under CAA section 112(d)(6)).

comply with emissions requirements of four previously unregulated pollutants, possibly requiring the use of new air pollution control devices.²⁰ Additionally, periodic performance testing would be required to demonstrate compliance.²¹ The proposal would also impose new reporting, recordkeeping, and other administrative requirements. The EPA has estimated that total annual costs to these small businesses from the proposed rule could be “at least 3 percent of their annual revenues.”²² As such, the EPA determined that there is potential for the rule to have a significant economic impact on a substantial number of small entities.²³

While Advocacy appreciates and supports the SBAR Panel recommendations included in the proposal, these changes are all general in nature. They can provide positive changes to the overall lime manufacturing industry, but they are not specifically targeted at small businesses. Advocacy spoke with both small businesses impacted by the proposed rule. They stated that even if all the rule’s changes were implemented, the three-year deadline would not be enough time for compliance.

This was based on two concerns. First, as small businesses within their sector, they would not have priority with the technology vendors and consultants needed to help them meet the proposal’s requirements. Basic market forces dictate that they would have to wait until larger entities met their needs first. Second, the small businesses noted that they need time to evaluate which technologies can help them best comply with the NESHAP. Granting additional time would allow them to evaluate which technologies worked best for larger facilities and invest their limited resources accordingly.

Advocacy recommends the EPA grant the small businesses in the lime manufacturing sector additional time to comply with the rule.²⁴

B. The EPA should adopt a health-based standard for HCl.

Advocacy appreciates the EPA specifically requesting comment on the SBAR Panel’s suggestion to consider a HBEL for HCl. A HBEL is appropriate here because the EPA concluded that HCl is a threshold pollutant in 2002.²⁵ There has been no evidence to the contrary since this decision. In the proposal, the EPA discusses *Sierra Club v. EPA*²⁶ which held that the EPA had not sufficiently supported its determination that, “HCl is a pollutant for which a health threshold has been established.”²⁷

In that case, the EPA was criticized by the court for not sufficiently supporting its findings regarding HCl. Here, there is ample evidence to demonstrate a health-based standard is

²⁰ 89 Fed. Reg. 9088, 9101 (Feb. 9, 2024).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ At a minimum, the Clean Air Act allows the Administrator to grant existing sources an additional one-year to comply. *See* CAA § 112(i)(3).

²⁵ National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, 67 Fed. Reg. 78046, 78,055-56 (Dec. 20, 2002).

²⁶ 895 F.3d 1 (D.C. Cir. 2018).

²⁷ 89 Fed. Reg. at 9,092.

appropriate for HCl. Specifically, a study by the firm Ramboll which has been submitted to the docket states, “HCl has not been identified as a carcinogen, either by authoritative reviews or Ramboll’s own search of the scientific literature, despite its long history of use.”²⁸ Additionally, in *Sierra Club v. EPA* the agency was criticized for not considering methods utilized by the California Environmental Protection Agency (CalEPA). In this case, the EPA has already utilized the CalEPA methodology to evaluate lime manufacturing emissions and did not find unacceptable risk levels from HCl.²⁹

A HBEL for HCl is based on the best available science and will adequately protect both public and ecological health. Additionally, the small lime manufacturing plants have told Advocacy a HBEL for HCl will provide the flexibility needed to meet the new HCl requirements. As such, Advocacy strongly urges the EPA to adopt a HBEL for HCl.

C. The EPA should alter proposed rule’s requirements for organic HAPs and mercury to reflect the realities of the lime manufacturing industry more accurately.

Advocacy appreciates the EPA including flexibilities recommended by the SBAR panel regarding organic HAPs (oHAP) and mercury in the proposal. Advocacy supports the EPA’s incorporation of an aggregate total approach to calculating oHAPs.³⁰ This approach considers that different facilities emit different oHAPs and appropriately sets one overall standard for the industry to meet.

However, in developing the proposed oHAP standards, the EPA has averaged the five lowest detection limits instead of using an average of all available detection limits. Advocacy recommends basing the oHAP standard on an average of all available detection limits to gain a more representative picture of emissions for the lime manufacturing sector. This approach has been used by the EPA before with the cement industry.³¹ Additionally, Advocacy has been told by small business representatives that the EPA should reexamine the proposed oHAP standards to provide a maximum amount of flexibility given that with no additional controls, the current level of risk is already acceptable.

Advocacy also commends the EPA for including the SBAR’s recommendation of an intra-quarry variability factor (IQV) for mercury.³² An IQV properly considers that mercury levels may be different throughout a single limestone deposit. As the EPA proceeds with development of an IQV, Advocacy recommends the agency continue to work with the lime manufacturing industry, including its small businesses, to ensure the best science and methods are being used.

²⁸ Ramboll, *Evaluation of the Carcinogenicity of Hydrochloric Acid (HCl) and HCl Mist* (June 11, 2011), <https://www.regulations.gov/document/EPA-HQ-OAR-2017-0015-0073>.

²⁹ U.S. ENV’T PROT. AGENCY, RESIDUAL RISK ASSESSMENT FOR THE LIME MANUFACTURING SOURCE CATEGORY IN SUPPORT OF THE 2020 RISK AND TECHNOLOGY REVIEW FINAL RULE 7 (Feb. 2020), <https://www.regulations.gov/search?filter=EPA-HQ-OAR-2017-0015-0057>.

³⁰ 89 Fed. Reg. at 9095.

³¹ 83 Fed. Reg. 35112 (July 25, 2018).

³² *Id.*

D. The EPA does not have enough information to promulgate its proposed D/F emissions standard.

Advocacy does not believe the EPA has enough information to promulgate the rule's proposed D/F emissions standard. The proposal states that the data available to the EPA "consisted of three tests with three test runs each and five tests where there was only a single test run."³³ The EPA further notes that "none of the single run tests detected D/F emissions."³⁴ Additionally, the EPA has previously noted that D/F emissions from the lime industry are "emitted in extremely low quantities."³⁵

Given the current data indicating D/F emissions from the lime industry are not significant and the lack of available information to the contrary, Advocacy does not believe the proposed standard is warranted. If the EPA wishes to pursue a D/F emissions standard, Advocacy continues to recommend adoption of a work practice standard which would allow small businesses to continue operating without unnecessarily changing their processes or installing costly new equipment.³⁶

III. Conclusion

Advocacy appreciates the EPA convening a SBAR Panel as well as incorporating several of its recommendations into the proposed rule. Advocacy strongly advises the EPA to grant small businesses in the lime manufacturing industry additional time to comply with the proposed rule. Advocacy supports the inclusion of a HBEL for HCl in the final rule and urges the EPA to work with the lime manufacturing industry to further revise the proposed standards for mercury and oHAPs. Finally, Advocacy does not believe enough information exists to warrant a standard for D/F emissions.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or by email at nick.goldstein@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

³³ *Id.* at 9,096.

³⁴ *Id.*

³⁵ Memorandum from Ron Hawks & Mike Remsberg, Trinity Consultants, to Nat'l Lime Ass'n (Feb. 28, 2022), <https://www.regulations.gov/document/EPA-HQ-OAR-2017-0015-0090>.

³⁶ *See*, U.S. Small Bus. Admin., Off. of Advocacy, Comment letter on National Emissions Standards for Hazardous Air Pollutants for Limke Manufacturing Plants; Residual Risk and Technology Review, (Feb. 16, 2023) <https://www.regulations.gov/comment/EPA-HQ-OAR-2017-0015-0152>.

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: The Honorable Richard L. Revesz, Administrator
 Office of Information and Regulatory Affairs
 Office of Management and Budget