



## Summary

We agree with the way EPA is handling the following issues.

1. The proposed methods for developing the standards.
2. The use of the Maximum Deviation concept.
3. CRWI supports a flexible approach for setting standards for liquid fuel-fired boilers.
4. CRWI supports the use of chlorine as a surrogate for metals in the HAF subcategory.
5. CRWI supports EPA's decision not to go beyond-the-floor for the chlorine standard for solid fuel-fired boilers.
6. CRWI supports the use of a health-based alternative standard for chlorine and hydrochloric acid.

We have concerns about how EPA is handling the following issues.

7. CRWI believes that the health-based alternative standard for chlorine (Cl<sub>2</sub>) and hydrochloric acid (HCl) should be self-implementing.
8. Unless at least one source is able to meet all new source standards, the new source standards are not achievable.
9. The top performers used to determine the new source standards must be *similar* to the other sources within the category.
10. EPA should not incorporate data from facilities that have already upgraded to meet the interim standards into the calculations for the permanent replacement standards.
11. EPA should make sure that data used to develop the standards, especially for new sources, meet the requirements for data quality.
12. EPA needs to ensure that the current EPA approved methods can be used to show compliance with the proposed standards.
13. EPA should ensure, especially for new sources, that all aspects of data uncertainty are considered.
14. EPA needs to justify any beyond-the-floor standards.
15. EPA should not require site-specific risk assessments (SSRA) as a part of the permanent replacement standards rulemaking.

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## **Detailed discussion**

### **Issues where we agree with EPA**

#### **1. The proposed methods for developing the standards.**

- The Hazardous Waste Combustion (HWC) source category is comprised of a diverse mix of industrial activities, ranging from commercial and non-commercial incinerators utilizing thermal treatment to reduce the volume and toxicity of hazardous waste, cement kilns, lightweight aggregate kilns, industrial boilers, and halogen acid recovery furnaces combusting hazardous waste primarily for fuel value, and the specialty facilities for munitions and chemical weapons destruction.
- Individual categories of HAPs – dioxins and furans (D/F), semi-volatile (SVM) and low-volatile metals (LVM), particulate matter (PM), chlorine and hydrochloric acid (Cl<sub>2</sub>/HCl) – require different control technologies. There is no one-size-fits-all methodology for judging the performance of the HWC source category.
- EPA proposed to use straight emissions to develop D/F emission standards, a technology approach to develop PM emission standards, and a SRE/Feed approach to develop most of the rest of the emission standards.
- CRWI continues to support these proposed methods for developing the HWC MACT standards.

#### **2. The use of the Maximum Deviation concept.**

- We agree that, in setting emission standards, using the detection limit as the default emissions rate for non-detects underestimates run-to-run variability. It appears that EPA has found a reasonable solution in the Maximum Deviation concept (Max Dev) that can be applied uniformly to all cases where non-detect data are used to provide a consistent method of estimating variability.
- Our most immediate concern with the concept is our inability to independently verify this concept on the actual data used to develop the standards. These data will not be released until the final rule is published. When the method is applied to the selection of the top performers and to development of the floor values for each HAP in each sub-category, problems may be encountered that could not be anticipated from a theoretical evaluation.
- We also have concerns about using non-detect data to develop emission standards. When the agency is forced to use non-detect data to develop



standards, we believe that EPA should follow their own guidance and use the reliable detection limit (RDL) rather than the method detection limit (MDL) – (RDL=2.623 x MDL). See *Developments of Compliance Levels from Analytical Detection and Quantification Levels*, USEPA, NTIS, PB95-216321.

**3. CRWI supports a flexible approach for setting standards for liquid fuel-fired boilers.**

- In our comments, CRWI suggested finalizing the liquid fuel-fired boiler standards as either a thermal based emission limit or as a concentration based emission limit.
- EPA has indicated that the final rule will allow flexibility in how the heat-recovery units meet their standards. We support the use of flexibility but cannot specifically endorse this new concept without having seen it.

**4. CRWI supports the use of chlorine/hydrochloric acid as a surrogate for metals in the HAF subcategory.**

- CRWI supports the proposal that total chlorine ( $\text{Cl}_2 + \text{HCl}$ ) can be used as a surrogate for particulate matter, mercury, semi-volatile metals, and low-volatile metals standards for the halogen acid recovery furnaces subcategory for both existing and new sources.
- Most hydrochloric acid production furnaces use wet scrubbers to recover HCl as a product. These scrubbers will also remove the small amounts of metals and particulate that may be present in the waste feeds.
- We agree that controlling  $\text{Cl}_2/\text{HCl}$  emissions will also ensure control of metal HAPs and particulates.

**5. CRWI supports EPA's decision not to go beyond-the-floor for the chlorine standard for solid fuel-fired boilers.**

- CRWI supports EPA's decision not to go beyond-the floor for  $\text{Cl}_2$  and HCl for solid fuel-fired boilers

**6. CRWI supports the use of a health-based alternative standard for chlorine ( $\text{Cl}_2$ ) and hydrochloric acid (HCl).**

- Congress gave EPA the authority in Section 112(d)(4) to establish health-based alternative standards for HAPs with established health-based thresholds. In the report language, Congress encouraged EPA to use its discretion to avoid compliance costs that secure no public health or environmental benefit.



- HCl is a threshold pollutant. The reference dose (RfC) is listed in the IRIS database.
- The RfC for HCl has an uncertainty factor of 300, thus already meeting the ample margin of safety requirement for 112(d)(4).
- EPA properly noticed and should promulgate the health-based alternative for chlorine and HCl as proposed with one exception as discussed below.



### Issues of concern

**7. CRWI believes that the health-based alternative standard for chlorine (Cl<sub>2</sub>) and hydrochloric acid (HCl) should be self-implementing.**

What are our concerns?

- As proposed, EPA would require agency approval of a facility's eligibility demonstration prior to the compliance date. Should the Agency fail to approve the demonstration prior to the compliance date, the facility is required to comply with the technology-based standard.
- The Agency's past record for other HWC MACT approvals, such as CPT plans, alternative monitoring applications, etc., has not given us much faith that these eligibility demonstrations will be promptly acted upon. Timeliness of agency review is further complicated by state/regional interactions and by what authority will or will not have been delegated by the time approvals are needed.

Why is this a problem?

- We do not object to submitting the eligibility determination to the Agency for approval.
- Our only concern is that the permitting authority can effectively remove this option by failing to approve the eligibility demonstration in a timely manner. While the proposed rule allows the Agency 6 months to make a decision, there are no provisions for any extensions nor are there any penalties on the permitting agency for a failure to act. This could force eligible facilities to expend resources to reduce emissions that would have no benefit to human health and the environment simply because the Agency failed to act on a timely basis.
- We do not believe that facilities should be punished because the permitting agencies fail to approve these demonstrations in a timely manner. This is contrary to Congress' intent when allowing these types of standards.

What do we want OMB to do?

- If the health-based Cl<sub>2</sub>/HCl standard is self-implementing in the final rule, no action by OMB is needed
- If the health-based Cl<sub>2</sub>/HCl eligibility demonstration requires prior approval in the final rule, we suggest that EPA develop a method that allows for extensions of the compliance date for facilities that have



submitted complete eligibility demonstrations but are waiting on agency approval.

**8. Unless at least one existing source is able to meet all new source standards, the new source standards are not achievable.**

What are our concerns?

- The “A” in MACT stands for “achievable.” When Congress imposed the technology-based MACT regimen in 1990, the first step for dealing with HAPs was to determine what HAP-emitting source categories were actually achieving, then setting emission standards based on the best level of industry performance.
- In making this determination for the HWC MACT, EPA has proceeded on a HAP-by-HAP basis, calculating an average for the best performing existing sources. In the proposed rule, EPA stated that at least 6% of existing facilities could simultaneously meet all of the proposed standards for existing sources.
- In setting the significantly more stringent MACT standards for new sources, however, EPA did not consider whether any single existing source can actually meet the new source standards for each HAP.
- In our comments, we showed that no one source could meet all the new source standards.
- We consider that this renders the proposed new source standards unachievable.

Why is this a problem?

- EPA has chosen to use a HAP-by-HAP process to develop existing standards.
- This works for existing sources because the method averages emissions for the top performers and many of the top performers in the HAP categories overlap.
- When EPA chooses the best top performer for each HAP category to set the new source standards, each standard comes from a different facility. For example, the chlorine standard is from source 349, the mercury standard is from source 3019, the LVM standard is from source 341, the SVM standard is from source 810, the PM standard is from source 3011, and the dioxin/furan standard is from source 222.
- As a result, no single source can simultaneously meet all the new source standards.



- In addition, technologies are incompatible. For example the best technology to control PM, SVM, and LVM is fabric filters, the best technology to control mercury and dioxin/furan is activated carbon, and the best technology to control chlorine is wet scrubbing. Fabric filters and activated carbon can work well together. However, neither fabric filters nor activated carbon works well with wet scrubbing systems without some method to remove the water in the gas stream (not impossible but not easy and requires additional energy input).
- Congress anticipated this problem and addressed it during a colloquy between Senators Dole and Durenberger during the Senate debate on the Clean Air Act Amendments of 1990 conference report (Leg History Vol. 1: 1129). See text of exchange below.

“Mr. DOLE. This section also requires the development of standards for a variety of pollutants. It is entirely possible that different technologies may reduce one pollutant better than another. For example, technology A may reduce heavy metals better than technology B while technology B may reduce particulates better than technology A; yet, one would not be compatible with the other. I would assume that EPA would have adequate discretion to balance environmental benefits to determine which technology on the whole represents a better MACT. I would appreciate some discussion on this point as well from my distinguished colleague from Minnesota.

Mr. DURENBERGER. The Senator is correct. Where differing air pollution control technologies result in one technology producing better control of some pollutants and another producing better control of different pollutants but it is technically infeasible according to the MACT definition to use both, EPA should judge MACT to be the technology which best benefits human health and the environment on the whole.”

What do we want OMB to do?

- To make the standards for new sources “achievable,” at least one existing facility has to be able to meet all standards simultaneously. If this is not done, the standards for new sources are not achievable and are vulnerable to challenge.
- Direct EPA to address the statutory requirement that new source standards be based on actual performance of the best performing single source. To do this, EPA has to show that at least one existing facility can meet the all new source standards simultaneously.



**9. The top performers used to determine the new source standards must be *similar* to the other sources within the category.**

What are our concerns?

- Based on the database used for the proposed permanent replacement standards for PM, the database contains 38 rotary kilns, 39 liquid injection units, 6 fixed hearths, 5 fluidized beds, 3 rotary hearths, 2 roller hearths, 2 controlled air units, and 1 moving hearth.
- The two most common configurations are rotary kilns and liquid injection units. A rotary kiln will typically be 40-60 feet long, 12-16 feet in diameter, feed 10,000-15,000 pounds per hour, and have a thermal rating of 60-120 MM BTU/hr.
- The top performers are as follows:
  - Chlorine – Unit 349, rotary kiln, 5 feet inside diameter, thermal rating of 4.9 MM BTU/hr, reported Cl<sub>2</sub>/HCl emissions of 0.18 ppmv.
  - Mercury – Unit 3019, vertical fired, liquid injection, reported mercury emissions of 8.1 ug/dscm.
  - LVM – Unit 341, fixed hearth, feed 900 pounds per hour, thermal rating of 6.4 MM BTU/hr, reported LVM emissions of 8.9 ug/dscm.
  - SVM – Unit 810, liquid injection, reported SVM emissions of 6.5 ug/dscm.
  - PM – Unit 3011, rotary hearth, small arms munitions furnace, 2080 pounds per hour feed rate, reported PM emissions of 0.0007 gr/dscf (< 2 mg/dscm).

Why is this a problem?

- Section 112(d)(3) of the Clean Air Act requires that the standards for new sources be developed based on “the emissions control that is achieved in practice by the best control *similar* source...” (emphasis added).
- When setting MACT standards for existing sources, the average of several sources is used, thus diffusing the effect of one anomalous facility on the eventual standard. When the regulatory task is selecting one facility to use as the benchmark to set new source MACT standards, however, special attention must be paid to how representative that “top performer” is of the overall source category.
- For the following reasons, CRWI submits that the “top performers” used as the models for EPA’s new source MACT standards are not representative of the overall HWC source category.
  - The chlorine standard for new sources is based on a facility that is much smaller than the typical hazardous waste combustor. It is less



than half the diameter (5 feet) of a typical rotary kiln (12-16 feet) and has a significantly lower thermal rating (4.9 MM BTU/hr vs. 60 MM BTU/hr).

- The mercury standard is based on what could be considered a representative unit – however, the unit did not feed significant amounts of mercury based on a strategy to develop an annualized permit limit, and a need to show only 40% SRE. Furthermore, the testing protocol employed a non-standard sampling rate with the BIF metals sampling method in Part 266 Appendix IX, which has a potential low-bias for mercury if precipitate forms in the KMnO<sub>4</sub> impingers (Method 29 is required to show compliance under the HWC MACT and has procedures to avoid the bias.).
- The LVM standard is based on a small, fixed hearth unit, atypical of common HWC technology. In addition, this unit feeds significantly less waste (900 lb/hr vs. 10,000 lbs/hr) and has a much lower thermal rating (6.4 MM BTU/hr vs. 60 MM BTU/hr) than does typical rotary kilns. Furthermore, seven of the nine measurements in the database were non-detects, and 80% of the waste profile is non-hazardous (Note: CRWI commented that there were several errors in the test report and reporting methodology for this facility, making it questionable for use).
- The PM standard is based on a small rotary hearth unit, also atypical of common HWC technology. In addition, the feed rate of this unit is significantly less than typical rotary kilns (2080 lb/hr vs. 10,000 lb/hr) and its feed type (small arms munitions) is not similar to typical rotary kilns combusting organic waste.
- The SVM standard is based on what could be considered a typical unit – however, this unit had already upgraded to meet the interim standard prior to testing.

What do we want OMB to do?

- EPA's methodology for setting HWC MACT standards for new sources does not meaningfully address the statutory requirement that benchmark performers must be *similar* to the overall source category and likely proposed new facilities. Ask EPA to modify their technique for setting new standards to include some mechanism to ensure that the best performing source for each HAP is actually *similar* to the units in each source category.

10. **EPA should not incorporate data from facilities that have already upgraded to meet the interim standards into the calculations for the permanent replacement standards.**



What are the concerns with the revised database?

- After the court vacated the 1999 HWC MACT standards, EPA initiated a data gathering effort to update the database.
- EPA appropriately removed facilities that have shut down or no longer burn hazardous waste.
- In addition, EPA added data that was gathered from facilities after they had upgraded to meet the interim standards. We believe that including data from upgraded sources is not appropriate.

Why is this a problem?

- We believe that including facilities that have already upgraded to meet the interim standards no longer measures the state-of-the-art as it existed at the time mandated by Congress, but rather the performance of a source category already affected by the MACT regulatory initiative. The result of such a modified MACT pool is an inevitable downward ratchet of emission requirements not anticipated or intended by Congress. The shorthand description for this unique regulatory phenomenon is "MACT of MACT," a MACT standard derived from performance data of facilities that have already modified their operations to meet the MACT standards.
- EPA has partially acknowledged this and has already removed data from a new cement kiln because the new kiln was designed to meet the interim standards.

Would removing data from upgraded facilities make any difference when developing the standards?

- This will only matter if one of the facilities that has upgraded or completed its comprehensive performance test is included in the top performers (EPA's way of designating the top 12% as required by Section 112 of the Clean Air Act).
- The top performing facility for SVM (810 – Eastman Chemical, Kingsport, TN) had already upgraded to meet the interim standards.
- Not only will this have an impact on the existing source SVM standards, it will set the new source standard for SVM. Thus, the new source standard will be set by a facility that has already upgraded to meet the interim standard.

What do we want OMB to do?



- If data from upgraded facilities is included in the top performers, we believe that data should be removed and the data from the facility that is ranked next should be substituted. This would not require EPA to completely redo the analysis – only that they substitute one or more facilities and recalculate the second step of the standards setting process.

**11. EPA should make sure that data used to develop the standards, especially for new sources, meets the requirements for data quality.**

What are our concerns?

- The data used to develop the standards was developed for a totally different purpose.
- There is nothing wrong with using data developed for another purpose. However, to do this, the suitability of the data should be examined in light of the new use for the data. For example, when a facility is testing to show compliance with a 0.08 gr/dscf PM limit under RCRA, there is no reason for the permitting agency to question data quality of a test that showed 0.008 gr/dscf in PM emissions, simply because the test results were so far below the required limit. When this data is used for a different purpose (to set emissions standards under MACT), additional scrutiny of this data is appropriate.

Why is this a problem?

- One way to show this is to look at the top performers for PM.
- EPA's Emissions Measurement Center developed a report in 1996 that concluded that the minimum catch for a  $\pm 10\%$  accuracy for PM would be 7.2 mg.
- Based on the data from the 2002 database, a member company (Lilly) estimated the catch from the top performers for PM. The catch ranged from 0.9 mg to 1.9 mg, far below the minimum catch determined by EPA to achieve reasonable accuracy. Again, for the purpose of showing compliance with a RCRA limit of 0.08 gr/dscf, the quality of the data was more than adequate since resulted in PM emissions ranging from 0.0007 to 0.0012 gr/dscf. However, data quality objectives did not exist to validate the result at the much lower concentrations (two orders of magnitude below the 0.08 gr/dscf limit). Without an adequate data quality determination, these results should not be considered as adequate for setting standards in the 0.0007 range. These analyses were provided to EPA during the comment period.



- From this, one could conclude that the proposed PM standard for new sources is based on data of questionable quality.

What do we want OMB to do?

- OMB should require EPA to reanalyze the database in the following manner.
  - Select representative sources.
  - Exclude facilities that have already upgraded to meet MACT.
  - Follow the data quality program recommended by EPA's Office of Environmental Information.

**12. EPA needs to ensure that the current EPA approved methods can be used to show compliance with the proposed standards.**

What are our concerns?

- EPA committed in a response to previous comments that "MACT standards will not be set below levels which are not consistently or accurately achievable using established (and required) sampling methods."
- Most of the methods used to show compliance have never been evaluated at the levels being considered for some existing and all new source standards.
- For example, Section 1.2 of SW-846 Method 0050 states that "This method is not acceptable for demonstrating compliance with HCl emissions standards less than 20 ppm," but both the proposed existing and new source standards are below 20 ppm.

Why is this a problem?

- While the laboratory techniques themselves can be very accurate, the accuracy and precision of the sampling train may not be capable of consistently delivering results to show that new sources are in compliance with the standards.
- When standards were fairly high, the variability relative to the actual standard was not a significant issue. As standards get more stringent, the variability becomes relatively higher and designing a test to show compliance with these more stringent standards becomes more complicated (e.g., target measurement levels must be set further below the emission standards).
- For example, Method 5i for PM states a practical quantification limit of 3 mg. DOE funded research has shown that the 95% confidence interval



for a 3 mg/dscm PM measurement is bounded by 2 and 4 mg/dscm. A 99% confidence interval (one chance in a hundred for random failure) would be even broader. The new source PM standard is less than 2 mg/dscm.

What do we want OMB to do?

- Require EPA to document method performance as necessary to demonstrate compliance.

**13. EPA should ensure, especially for new sources, that all aspects of data uncertainty are considered.**

What are our concerns?

- EPA has not considered all the uncertainties associated with the feed MTEC calculation that it uses in its rankings. EPA is only accounting for run-to-run variability which is an assessment of precision only, not accuracy.
- Even in accounting for run-to-run variability in the feed MTEC calculation, EPA has apparently excluded the uncertainties associated with stack flow measurements and stack oxygen measurements, both of which are part of the MTEC calculation.
- Trial Burn quality assurance plans typically specify an acceptable accuracy for metals in waste feeds as +/- 35%. Accuracy of metals assays in organic matrices is typically poor, but precision may be good.

Why is this a problem?

- For example, take source 341 which is reportedly the best performer for LVM. Its feed MTEC ranking is 11<sup>th</sup>. Is the feed MTEC ranking of the 13<sup>th</sup> ranked source statistically different? The 13<sup>th</sup> ranked source's feed MTEC (source 3016) is only 11% higher which is certainly within the typical +/- 35%. Furthermore, the measured average MTEC for the 13<sup>th</sup> ranked source (without the run-to-run variability factor) is actually less than the 11<sup>th</sup> ranked source. How can the performance of these sources be considered different?
- The calculation of the feed rate MTEC is a function of the metals being fed, the stack flow, and the oxygen concentration (the later because the MTEC is corrected to 7% oxygen). There are several measurements of stack flow and oxygen taken during a trial burn, but the EPA's calculation apparently uses a constant value for both when calculating feed MTEC. This artificially dampens the apparent run-to-run variation. What is the



potential affect? Recalculating the feed rate MTEC for source 341 using the highest variation of stack flow and oxygen resulted in a 31 % increase in feed rate MTEC, moving its ranking two places down on the list.

- A more comprehensive assessment of uncertainty, using one or both of the examples above, would change source 341's overall performance ranking from uniquely #1 to tied for #1 with the next two sources. Accordingly, the new source LVM standard would potentially change from 8.9 ug/dscm to something close to the interim standard of 97 ug/dscm.

What do we want OMB to do?

- OMB should require EPA to assess all aspects of uncertainty in its calculations and rankings, and not just run-to-run precision.

#### **14. EPA needs to justify any beyond-the-floor standards.**

What are the concerns?

- We have concerns about a dioxin/furan beyond-the-floor standard for halogen acid furnaces
  - In the proposed rule, EPA justified a beyond-the-floor standard for this sub-category based on reducing dioxin/furan emissions by 2.3 grams per year.
  - About a third of the units in the database used to propose the standard were either misclassified or have ceased operations. CRWI or member companies have pointed this out to the Agency during the comment period.
  - When the database is updated, the dioxin/furan emissions reduction will be reduced to 1.3 grams per year.

Why is this a problem?

- It seems like a lot of effort and expense for a small amount of reduction in dioxin/furan emissions.

What do we want OMB to do?

- Ask EPA to re-examine this beyond-the-floor decision to determine if the calculated reduction in dioxin/furan emissions is worth considering.



**15. EPA should not require site-specific risk assessments (SSRA) as a part of the permanent replacement standards rulemaking.**

What is the history of SSRAs?

- EPA's Hazardous Waste Minimization and Combustion Strategy (1994) recommended that site-specific risk assessments (SSRA) become a part of the RCRA permitting process for hazardous waste combustors where necessary to protect human health and the environment.
- In 1998, EPA released draft guidance on conducting SSRAs.
- The preamble of the 1999 HWC MACT rule (see the discussion beginning at 64 FR 52840) recommended that for facilities subject to the new standards, permit writers evaluate the need for a SSRA on a case-by-case basis. EPA went on to state that "SSRAs are not anticipated to be needed for every facility, but should be conducted for facilities where there is reason to believe that operations in accordance with the MACT standards alone may not be protective of human health and the environment."
- These instructions left considerable room for interpretation by the states and the regions. Some states and regions were using the policy statements made in 1994 as the justification for requiring SSRAs.
- CKRC petitioned EPA to withdraw the SSRA guidance, suggesting that it was a rule in the form of guidance and suggesting that if EPA believes that SSRAs are necessary, they should initiate the rulemaking process to make them mandatory.
- In partial response to the CKRC petition, a memo from the Office of Solid Waste and Emergency Response Assistant Administrator Marianne Horinko was sent to the Regions on April 10, 2003 (copy attached). This memo made it clear that the only authority to require a SSRA is the RCRA omnibus authority which requires a fully documented finding in the administrative record.
- In the 2004 *Federal Register* notice rule, EPA proposed to add two new paragraphs (270.10(l) and 270.32(b)(3)) in response to the Cement Kiln Recycling Coalition's petition.
- EPA has stated at public meetings that these two paragraphs do not make any changes in their authority to require site-specific risk assessments and has reiterated that these provisions do not change current EPA policy.

What do we want OMB to do?

- Since, in the Agency's opinion, these two paragraphs do not add to their authority or make any changes in current policy, we see no real reason



to keep them in the final rule. OMB should suggest that EPA remove these two paragraphs from the final rule.

- If the Agency believes that additional explicit language must be added to make it clear that permit writers have the authority to require site-specific risk assessments, then OMB should request that the following language is necessary to define how this process will proceed.

“The factual and technical basis for any decision under this paragraph should be included in the administrative record for the facility according to the requirements in 40 CFR 124.”

- This change is required to be consistent with the Horinko memo, dated April 10, 2003, which defines current EPA policy on when and how to require risk assessments.