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Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2010-0600

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Group I Polymers and Resins; Marine Tank Vessel Loading Operations; Pharmaceuticals Productions; The Printing and Publishing Industry, and Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants; Proposed Rule. 75 FR 65068 (October 21, 2010)*. CRWI is a trade association comprised of 27 members. All of our Full members are regulated under EEE. In addition, some of our members own and operate units that will be impacted by these rules.

In these proposed rules, CRWI is primarily concerned about the changes EPA is proposing in how startup, shutdown, and malfunction are regulated. We are submitting specific comments on the three issues listed below.

1. EPA's proposed requirement that facilities meet steady-state standards during startup, shutdown, and malfunctions is neither logical nor lawful.
2. EPA should modify the affirmative defense provisions so that it is a "rebuttable presumption."
3. CRWI suggests that EPA clarify its affirmative defense provisions.

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Thank you for the opportunity to comment on this proposed rule. If you have any questions, please contact me at (202-452-1241 or [mel@crwi.org](mailto:mel@crwi.org)).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Melvin E. Keener', is written over a light blue horizontal line.

Melvin E. Keener, Ph.D.  
Executive Director

cc: CRWI members  
M. Kissell – EPA



### Specific comments

1. EPA's proposed requirement that facilities meet steady-state standards during startup, shutdown, and malfunctions is neither logical nor lawful.

EPA's proposal to require units to comply with the same emission standards during periods of startup, shutdown, malfunction, and steady state conditions is neither logical nor lawful. In this regard, CRWI joins with the comments filed by the SSM Coalition. CRWI, however, also wishes to make the additional comments regarding startup, shutdowns, and malfunctions.

- A. EPA does not demonstrate that sources can meet standards during startup, shutdown or malfunction.

MACT floor standards must be based on evidence that sources have already achieved them. However, EPA's statement that sources can meet the standards during startup, shutdown and malfunction (SSM) events is not based on any data (at least there is no data in the record to show this). In fact, it is most likely wrong. The current standards were developed using data collected during steady-state operations. It cannot reflect the variations that will be experienced during SSM events because no data was taken during these events. EPA includes variability but the variation in test data taken during steady state conditions only reflects the normal variations that occur during normal operations. It cannot take into account the variability that would be experienced during SSM events. To do this would require having data on emissions during these events. EPA does not have that data. If EPA decides to require facilities to meet the same emission standards under both normal operations and during SSM events, they must use data gathered during both normal operations and SSM events in developing those standards.

- B. If EPA cannot develop emission-based standards that apply during periods of startup, shutdown, or malfunction, then it should adopt work practice standards.

CRWI does not believe that it is possible for EPA to develop valid floor standards for the periods of startup, shutdown, and malfunction. We note that EPA's own National Stack Testing Guidance precludes and possibly prohibits the development of such data ("Operations during periods of startup, shutdown, and malfunction do not constitute representative conditions for the purposes of a performance test." Section VII. 5 of the September 30, 2005 Final Clean Air Act National Stack Testing Guidance). So, even if a facility had such data, EPA



would not have accepted it in a test report according to this guidance, much less have incorporated it into an emissions database based on compliance test reports. For example, if a facility ran a Method 5 test during startup, a single test would take 3 – 6 hours (each run takes at least an hour, three runs are required for a valid test, and the sampler must have time in between runs to change out the sampling trains). During those six to eight hours, the conditions would have changed so significantly that it would be virtually impossible to understand what that data meant or to extrapolate the results (which will be one hour averages) to other transient conditions.

In the absence of data and in the absence of a credible methodology to develop data (even if one can be developed which is not certain), CRWI believes EPA should use a work practice under § 112(h) to address this situation where a methodology to develop a standard of performance is not feasible due to technological constraints.

2. EPA should modify the affirmative defense provisions so that it is a "rebuttable presumption."

As EPA knows, malfunctions will occur. Even the best run facilities will have circumstances where events out of their control (e.g., power failures) will occur. So, while CRWI believes that EPA must take into account the conditions that occur during SSM events and establish limits that consider these circumstances, CRWI also agrees that some form of enforcement discretion is needed for malfunctions. As such, we support EPA maintaining a regulatory provision for malfunctions such as an affirmative defense. However, we are concerned that an affirmative defense implies that the facility is guilty until proven innocent. We believe that the proposed language improperly puts the burden of proof on the facility rather than on the Agency. Therefore, CRWI suggests that EPA establish a rebuttable presumption (rather than affirmative defense) where it is presumed that the facility did everything in their power to minimize emissions during these events, unless the Agency proves certain facts that are enumerated in the rules. If the Agency wants to challenge these activities, the burden of proof would be on them to show that the facility did not undertake reasonable actions to minimize emissions.

3. CRWI suggests that EPA clarify its affirmative defense provisions.

CRWI understands that most of the provisions EPA has proposed for the affirmative defense came from earlier guidance memos. While they were in guidance, the Agency did not need to be careful how certain things were worded since they were only guidance and did not have the weight of regulation.



However, if the Agency wants to codify this guidance into regulatory language, several changes are needed. For instance, the requirements in § 63.342(b)(1)(i)(A) are impossible to meet due to the use of ambiguous terms such as “careful,” “proper,” or “better.” Until these are defined, it is impossible to determine whether these criteria have been met. EPA should also drop the reference to “any” activity in this paragraph. There are also several references to “All” that would make it difficult to ever satisfy the affirmative defense (or rebuttable presumption).

In addition, the requirements in (I) to do a root cause analysis jumps to the final step without considering that there may be many steps in determining causality. For most malfunctions, the cause is immediately obvious. There is no need to go into a detailed root cause analysis to determine the cause. Hazardous waste combustors have a similar requirement in the provision relating to automatic waste feed cutoffs. When one of these events occur, the facility immediately shuts off waste feed, investigates the cause, corrects the problem, takes appropriate measures to minimize future events, and complete a report. The report contains a detailed explanation of what caused the event, describe any immediate corrective actions taken to clear the combustion zone of waste, any corrective action taken to mitigate the impacts of the event, and corrective actions taken to prevent recurrence. A root cause analysis is typically limited to very significant events or repeat events. For example, if a thermocouple in a combustion chamber fails, the most likely cause is a bad thermocouple. The first response is to simply replace the thermocouple. However, if that same thermocouple fails again within a short period of time, then something else may be causing that event to happen and a more detailed analysis may be needed. It may take several failures before the real cause is identified. Here a root cause analysis may be needed, but it certainly is not needed to replace the first failed thermocouple. The proposed language assumes that all malfunctions are equally significant and need an identical degree of investigation. For example, a missing recorded data point because of a malfunction in a data acquisition system is not as significant as a power failure or a catastrophic event such as fire or explosion. CRWI believes that a root cause analysis should only be used as a last resort when other reasonable methods fail to show what caused the malfunction or when the serious nature of an event might make such an analysis necessary. The facility needs to have some discretion in making that determination.

If it is necessary to do a root cause analysis, it may not be possible for that to be completed in 30 days. It is reasonable to develop a simple report of the cause and whatever corrective action was taken within 30 days. However, if the event were significant and a root cause analysis were required, a facility would need



more time, such as 90 days to complete that report. It should also be noted that it is impossible to eliminate the causes for certain malfunctions (e.g., lightning strikes). Finally, faxing is an obsolete technology. EPA should allow notification by e-mail or other electronic forms.

Other than numbering differences, EPA is proposing the same language in all six rules (§ 63.342(b), § 63.480(j), § 63.562(e)(7), § 63.820(c), § 63.1155(d), and § 63.1250(g)). CRWI suggests the following modifications (as illustrated for § 63.342(b)) be applied to the regulatory language of all six.

§ 63.342(b)(1)(i) To establish ~~the affirmative defense~~ a rebuttable presumption in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements of paragraph (b)(1)(ii) of this section, ~~and~~ The Administrator must prove by a preponderance of evidence that:

- (A) The excess emissions were not caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, or of a process to operate in a normal an usual manner; and could ~~not~~ have been reasonably prevented through careful planning, proper design or better operation and maintenance practices; and ~~did not stemmed~~ from any activity or event that could have been reasonably foreseen and avoided, or planned for; and were ~~not~~ part of a recurring pattern indicative of inadequate design, operation, or maintenance; and
- (B) If the applicable emission limits were exceeded, Rrepairs were not made as expeditiously as possible ~~when the applicable emission limitations were being exceeded. including using O~~off-shift and overtime labor ~~were used,~~ to the extent practicable ~~to make these repairs;~~ and
- (C) The frequency, amount and duration of the excess emissions (including any bypass) were not minimized to the maximum extent practicable during periods of such emissions; and
- (D) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was not needed ~~unavoidable~~ to prevent loss of life, severe personal injury, or severe property damage; and
- (E) ~~All possible~~ Reasonable steps were not taken to minimize the impact of the excess emissions on ambient air quality, the environment, and human health; and
- (F) ~~All e~~Emissions monitoring and control systems were not kept in operation if ~~at all~~ possible; and
- (G) Your actions in response to the excess emissions were documented by properly signed, ~~contemporaneous~~ operating logs; and
- (H) ~~At all times, t~~The facility was not operated in a manner consistent with good practices for minimizing emissions; and



(l) The owner or operator has prepared a written report ~~root cause analysis~~ to determine, ~~correct and eliminate~~ mitigate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. A root cause analysis may be required only if the cause of the malfunction is difficult to determine or if the serious nature of the event indicates one is needed. Facility personnel will have the discretion to make this determination. The analysis shall also specify, using the best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(ii) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission, or electronic means as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of ~~an affirmative defense~~ the rebuttable presumption to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (b)(1)(i) of this section. If the report requires a root cause analysis, the report must be submitted within 90 days of the initial occurrence of the event.