

# Air Permitting Forum

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## COMMENTS OF THE AIR PERMITTING FORUM

EPA, *National Emission Standards for Hazardous Air Pollutants: Site Remediation Residual Risk and Technology Review; Proposed rule*,  
84 Fed. Reg. 46,138 (Sept. 3, 2019)

Docket ID No. EPA-HQ-OAR-2018-0833

Submitted October 18, 2019

The Air Permitting Forum (“APF” or “the Forum”) submits these comments in response to the U.S. Environmental Protection Agency’s (“EPA” or “the Agency”) *National Emission Standards for Hazardous Air Pollutants: Site Remediation Residual Risk and Technology Review; Proposed rule*, 84 Fed. Reg. 46,138 (Sept. 3, 2019) (“Proposed Rule”). The Forum is a coalition of manufacturing companies focused on stationary source implementation issues under the Clean Air Act, including air toxics regulations (National Emission Standards for Hazardous Air Pollutants, or NESHAPs), New Source Performance Standards, other Clean Air Act standard-setting, the implementation of standards in State Implementation Plans (“SIPs”), pre-construction new source review (“NSR”) permitting regulations and guidance, and Title V operating permit regulations and guidance.

In addition to requesting comments on EPA’s residual risk and technology review (“RTR”) determinations and associated proposed changes, EPA seeks comment on the 2016 proposal to remove the exemption for site remediation activities conducted under federal oversight authority under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) or Resource Conservation and Recovery Act (“RCRA”) corrective action or other RCRA order (the “RCRA/CERCLA exemption”).<sup>1</sup> The Forum comments included in this submittal predominantly address the proposed removal of the exemption.

The preamble also notes that EPA has not taken final action on a proposal to remove the applicability requirement that site remediations be co-located with at least one other stationary source and states that EPA is not seeking comment on this issue in the current proposal.<sup>2</sup> APF members would like to highlight, however, that removal of the co-located applicability requirement would create significant uncertainty in determining rule

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<sup>1</sup> See EPA, *National Emission Standards for Hazardous Air Pollutants: Site Remediation; Proposed rule; notice of reconsideration of final rule; request for public comment*, 81 Fed. Reg. 29,821 (May 13, 2016) (“2016 Proposed Rule”).

<sup>2</sup> Proposed Rule, 84 Fed. Reg. at 46,168.

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applicability due to the often unknown initial scope of remediation and would likely expand applicability to small sources that were not considered during the original rulemaking.

Our comments below are summarized as follows:

- I. EPA should finalize the proposed residual risk determination that the source category risk is acceptable with an ample margin of safety.
- II. In light of the very low risk from the source category, EPA should finalize the RTR proposal without additional, discretionary rulemaking (*i.e.*, without setting new standards under Clean Air Act Section 112(d)(2)-(3)<sup>3</sup> or taking any further action on the 2016 Proposed Rule regarding the RCRA/CERCLA exemption). Indeed, EPA should withdraw the 2016 Proposed Rule because significantly more information is necessary in order to finalize any rulemaking affecting or removing the RCRA/CERCLA exemption.
- III. EPA's proposal not to move forward with removing the RCRA/CERCLA exemption is reasonable because EPA is under no obligation to revoke it and the policy reasons that supported the exemption in the first place remain appropriate.
- IV. If EPA nonetheless determines to take further action on the 2016 proposal to remove the RCRA/CERCLA exemption, EPA should withdraw the 2016 Proposed Rule and issue a new proposed rule in order to appropriately address complexities and identify subcategories within the Site Remediation source category because a one-size-fits-all approach is not appropriate in this context.
- V. EPA should make certain revisions to existing regulatory provisions to appropriately account for the diminishing amounts of pollutants, and thus emissions, present at Site Remediation sources over time due to the unique nature of this source category.
- VI. With respect to the proposed requirements for pressure relief devices, some of EPA's assumptions are flawed or lacking in evidentiary basis and certain revisions are needed to enable compliance.

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<sup>3</sup> 42 U.S.C. § 7412(d)(2)-(3).

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### **I. EPA should finalize the proposed residual risk determination that the source category risk is acceptable with an ample margin of safety.**

EPA appropriately proposes to determine that the residual risk from the Site Remediation source category is acceptable and the existing standards provide an ample margin of safety due to the very low risk from the source category. In the Proposed Rule, EPA's modeling results indicated that the maximum individual cancer risk for affected sources based on actual and allowable emissions is only 1-in-1 million,<sup>4</sup> which is not only well below EPA's presumptive level of acceptability of 100-in-1 million, but is on the cusp of the level below which the Clean Air Act grants the Administrator discretion to delete source categories from the list of regulated source categories under Section 112.<sup>5</sup> EPA's proposed determinations regarding other key risk parameters include:

- Population at increased risk of cancer  $\geq$  1-in-1 million: 400.
- Annual cancer incidence (cases per year): 0.001.
- Maximum chronic non-cancer TOSHI (target organ-specific hazard index): 0.1.
- Maximum screening acute non-cancer HQ:  $HQ_{REL} = 1$ .<sup>6</sup>

On the basis of these extremely low risk findings, EPA appropriately determined that the Site Remediation source category poses acceptable risk, and that the existing standards provide an ample margin of safety for public health. EPA thus reasonably found that no revisions to the existing standards are necessary to address residual risk.

In addition to the risk determinations for affected sources, EPA identified minimal risk from the sources exempt under the RCRA/CERCLA exemption, based on conducting an inhalation risk assessment, a multi-pathway screening assessment, and an environmental risk screening assessment. For example, the maximum individual cancer risk for these exempt sources was only 4-in-1 million, which is still far below the 100-in-1 million presumptive level of acceptability. EPA also determined the cancer incidence for exempt sources is .001 cases/year, and non-cancer hazard indices are well below 1.<sup>7</sup> Although the Proposed Rule does not address ample margin of safety for RCRA/CERCLA exempt sources, based on prior risk determinations, it is reasonable to conclude that EPA would have also found these risks acceptable with an ample margin of safety. Based on

<sup>4</sup> Proposed Rule, 84 Fed. Reg. at 46,155.

<sup>5</sup> 42 U.S.C. § 7412(c)(9)(B)(i) ("In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).").

<sup>6</sup> Proposed Rule, 84 Fed. Reg. at 46,155, Table 2.

<sup>7</sup> Proposed Rule, 84 Fed. Reg. at 46,158-59, Table 4.

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the emission reduction estimates and risk results, there is no environmental driver for further regulation of the exempt sources.

**II. In light of the very low risk from the source category, EPA should finalize the RTR proposal without additional, discretionary rulemaking (i.e., without setting new standards under Clean Air Act Section 112(d)(2)-(3) or taking any further action on the 2016 Proposed Rule regarding the RCRA/CERCLA exemption). Indeed, EPA should withdraw the 2016 Proposed Rule because significantly more information is necessary in order to finalize any rulemaking affecting or removing the RCRA/CERCLA exemption.**

EPA proposes to satisfy its RTR obligation, as well as to eliminate the startup, shutdown, and malfunction exemption in accordance with the D.C. Circuit's decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), and to make certain, targeted revisions to the regulations. EPA appropriately declined to include in the Proposed Rule, however, further discretionary rulemaking not required by the RTR process. This decision is both within EPA's authority and reasonable. The Proposed Rule thus should be finalized without additional rulemaking, including promulgation of additional standards under Clean Air Act Section 112(d)(2)-(3) or action on the 2016 proposal to remove the RCRA/CERCLA exemption, not reflected in the proposal.

EPA considered whether regulation of metals and inorganic hazardous air pollutant ("HAP") emissions from the source category is necessary in connection with the residual risk review and appropriately declined to propose any such standards.<sup>8</sup> EPA's reasonable determination is supported by its finding, based on its review of emissions data, that metals and inorganic HAP are not being emitted from facilities in the Site Remediation source category. Given the lack of data demonstrating emissions of these pollutants from the source category, EPA's proposal not to promulgate standards for them under Clean Air Act Section 112(d)(2)-(3) is reasonable.

EPA also reasonably proposes not to take action to remove the RCRA/CERCLA exemption as contemplated in EPA's 2016 Proposed Rule.<sup>9</sup> This exemption is important and should be retained, as discussed below. If EPA were to nonetheless decide to remove it, contrary to good policy reasons for the exemption, significantly more information than is currently available or reflected in the 2016 Proposed Rule would be required to proceed. As a result, EPA should withdraw the 2016 proposal to remove the RCRA/CERCLA exemption. If, in the future, EPA determines to eliminate the exemption despite the good reasons for retaining it, the agency could issue a new proposal that

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<sup>8</sup> Proposed Rule, 84 Fed. Reg. at 46,161.

<sup>9</sup> Proposed Rule, 84 Fed. Reg. at 46,168.

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reflects the additional information necessary and fully considers the intricacies involved with such a proposal, as discussed below.

Finally, removing the exemption in the context of the RTR is unnecessary. Doing so would be particularly inappropriate given the low risk associated with exempt sources, as discussed above, and the fact that EPA acknowledged in the 2016 Proposed Rule that it did “not anticipate any HAP emission reductions from the proposed removal of the RCRA/CERCLA exemption.”<sup>10</sup>

### III. EPA’s proposal not to move forward with removing the RCRA/CERCLA exemption is reasonable because EPA is under no obligation to revoke it and the policy reasons that supported the exemption in the first place remain appropriate.

The Proposed Rule acknowledges, but determines not to finalize in this rulemaking, EPA’s 2016 proposal to eliminate the exemption for remediations under CERCLA or RCRA.<sup>11</sup> Finalizing the 2016 Proposed Rule in the present RTR rulemaking would be neither necessary nor appropriate, as discussed above. Even under a separate rulemaking, however, EPA should not remove the RCRA/CERCLA exemption due to important policy considerations and particular complexities that support retaining it.

Many commenters on EPA’s 2016 Proposed Rule identified legal rationale and implementation circumstances, some of which could result in unintended consequences, which support retaining the exemption.<sup>12</sup> The Forum believes that these issues are valid and must first be addressed by EPA before considering whether additional input on sub-categorization is needed. It is not just a lack of information, data, or subcategories making EPA’s 2016 Proposed Rule problematic, but the proposed deletion of the exemption itself also creates the problem. EPA’s 2016 proposal to remove the RCRA/CERCLA exemption would make existing facility operations and remediation more complicated while resulting in an unfavorable impact on the transaction and revitalization of brownfield sites. These concerns should lead EPA to conclude that the exemption should remain in place. Some of the difficulties and unintended consequences of removing the exemption are as follows:

- ***Removing the RCRA/CERCLA exemption could cause environmental harm by delaying beneficial remedial activities.*** Under both CERCLA and RCRA, EPA and private parties conduct emergency, time-critical, and RCRA Interim

<sup>10</sup> 2016 Proposed Rule, 81 Fed. Reg. at 29,825.

<sup>11</sup> Proposed Rule, 84 Fed. Reg. at 46,168.

<sup>12</sup> See, e.g., American Chemistry Council, Comments on 2016 Proposed Rule (July 27, 2016), EPA-HQ-OAR-2002-0021-0074; American Petroleum Institute, Comments on 2016 Proposed Rule (July 27, 2016), EPA-HQ-OAR-2002-0021-0076; Residual Risk Coalition, *et al.*, Comments on 2016 Proposed Rule (July 27, 2016), EPA-HQ-OAR-2002-0021-0086; National Environmental Development Association’s Clean Air Project, Comments on 2016 Proposed Rule (July 27, 2016), EPA-HQ-OAR-2002-0021-0075.

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Measures removal and remediation projects prior to the completion of site investigation work. Such early actions are necessary to address environmental concerns quickly, including actual or substantially complete pathways of contaminant exposure or the off-site migration of groundwater contamination. Out of necessity given their expedited nature, these actions are all conducted with streamlined planning, design, and execution. In light of the exigent need to address the potential exposure or migration issue and the elevated public interest in seeing these types of projects completed as quickly as practicable, adding a layer of bureaucracy which would impede quick action and provide little or no environmental benefit is counter to the goals of RCRA, CERCLA, and the Clean Air Act,<sup>13</sup> and contrary to EPA's mission to protect human health and the environment. EPA has spent considerable time working with internal and external stakeholders to reduce administrative and other obstacles that slow such projects. Inserting a new layer of administration, planning, and review that would result in no decrease of HAPs at remediation sites, as EPA acknowledged in the 2016 Proposed Rule,<sup>14</sup> is unnecessary and will set the programs back.

Further, applying the NESHAP to CERCLA and RCRA sites could discourage facilities from undertaking active remediation at all or to delay such activities in order to avoid the duplicative and onerous requirements of the Subpart GGGGG standards. Moreover, applying the Site Remediation maximum achievable control technology ("MACT") standards to CERCLA and RCRA sites could limit remedial alternatives or create conflicts in the detailed and site-specific management plans developed under those programs.

- ***Removal of the exemption could adversely impact existing CERCLA and RCRA remediations.*** The need to conduct a Site Remediation MACT applicability and compliance assessment could slow, or even stop, remediation activity while newly subject sites review and determine how to comply with added regulatory requirements. Existing CERCLA and RCRA sites will be burdened with new administrative, recordkeeping, and reporting obligations as well as costs on top of the requirements already imposed through CERCLA or RCRA. This could potentially include additional sampling, testing (including stack testing), design evaluations, and equipment installations and/or modifications to ensure compliance with all of the provisions of the Site Remediation MACT.

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<sup>13</sup> RCRA, 42 U.S.C. § 6902(a) ("[T]o promote the protection of health and the environment and to conserve valuable material and energy resources . . ."); CERCLA, 42 U.S.C. § 9604(a)(1) (To reduce the risk from the "release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare . . ."); Clean Air Act, 42 U.S.C. § 7401(b)(1) ("[T]o protect and enhance the quality of the Nation's air resources" with the purpose of "promot[ing both] the public health and welfare and the productive capacity of its population.").

<sup>14</sup> 2016 Proposed Rule, 81 Fed. Reg. at 29,825.



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Eliminating the RCRA/CERCLA exemption could also disincentivize facilities from undertaking remedial activity at co-located operating facilities if the HAP emissions calculations for the site remediation activities would trigger a major source designation for the remediation project, the operating facility, or both. Facilities could be encouraged to delay conducting active remediation under CERCLA or RCRA that could lead to facility operations being designated as a major source, and thus subject to major source MACT requirements, solely due to the remediation activities. In this case, environmental cleanup would require additional time to complete or not be conducted at all, increasing the risk for further environmental harm.

- ***Removing the exemption could impede brownfield redevelopment and investment.*** Applying MACT controls on remediation projects proceeding under CERCLA or RCRA would also inhibit both brownfield redevelopment and investment in the facility operations by the responsible party where existing long-term remediation is expected. The 2016 proposal would not require the co-located facility operations to be owned or operated by the same entity responsible for the remediation activities, thus any company considering operating a facility adjacent to or within the same property as the remediation activities would have to determine if their operations' emissions would exceed major HAP thresholds when combined with the projected HAP emissions from the site remediation activities. Most companies would seek another site before investing in any brownfield site with an existing or planned long-term remediation activity. Similarly, liable parties performing remediation at their manufacturing site may seek new investment at different sites instead of being required to install MACT technology on low emitting facility sources simply due to an unrelated remediation project.
- ***Eliminating the exemption would impose potentially significant burdens and costs on subject facilities.*** By removing the RCRA/CERCLA exemption, HAP emissions from the remediation project combined with those from ongoing operations in another source category co-located at the facility could make the facility major and force the co-located activities to install MACT emission controls on sources that otherwise would not be required (and may not have been required for many years after promulgation of the relevant NESHAP for the operating source) because the operational processes emit low amounts of HAPs. Installing MACT emission controls and imposing new recordkeeping and reporting obligations on operational sources which emit low amounts of HAPs would impose a significant and unnecessary additional cost burden, increase operational complexity and would result in little to no environmental benefit. Moreover, it does not appear that EPA has adequately accounted for the costs and other burdens of such requirements. For instance, EPA estimated in the 2016 Proposed Rule “no

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capital costs associated with the proposed removal of the RCRA/CERCLA exemption,” based on the fact that “[n]one of the 69 affected facilities are anticipated to implement additional emissions control to meet the requirements of the Site Remediation Rule.”<sup>15</sup> This estimate is incorrect and ignores costs that would result. As an example of costs not considered in EPA’s estimation, one Forum member notes that it has several pressure relief devices (“PRDs”) in service at facilities where removing the exemption would trigger electrical upgrades and tie-ins to a control center to monitor these devices, which do not have a history of releases, and require associated expenditures.

EPA previously acknowledged in the 2003 final Site Remediation MACT that the RCRA/CERCLA exemption is appropriate because CERCLA and RCRA provide federally enforceable environmental requirements that serve as the functional equivalent of the Site Remediation NESHAP.<sup>16</sup> In particular, EPA noted:

In short, we view the Superfund program under CERCLA and the hazardous waste corrective action program under RCRA as the functional equivalents of the establishment of MACT standards under [Clean Air Act] section 112. These programs, as part of the [Record of Decision (“ROD”)] process for Superfund cleanups and the RCRA permitting process for corrective action cleanups, require consideration of the same HAP emissions that we do in establishing MACT standards, and provide opportunity for public involvement in these site-specific remediation determinations. The RCRA and CERCLA statutes apply more specifically to the remediation process than does MACT under the [Clean Air Act] and, unlike the [Clean Air Act], authorize site specific means of dealing with remediation activities and their associated HAP emissions.<sup>17</sup>

EPA’s observation in 2003 remains valid today. CERCLA and RCRA impose stringent, federally enforceable obligations and an active public involvement regime on sites performing remediation activities. These programs also specifically impose air standards, as well, such as RCRA’s requirements for hazardous waste treatment, storage, and disposal facilities.<sup>18</sup> Further, as a commenter on the 2016 Proposed Rule noted, many site remediations occur pursuant to orders or agreements that expressly contain or reference air emission control requirements.<sup>19</sup>

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<sup>15</sup> 2016 Proposed Rule, 81 Fed. Reg. at 29,825.

<sup>16</sup> See EPA, *National Emission Standards for Hazardous Air Pollutants: Site Remediation; Final rule*, 68 Fed. Reg. 58,172, 58,176 (Oct. 8, 2003) (“2003 Rule”).

<sup>17</sup> *Id.*

<sup>18</sup> 40 C.F.R. Parts 264 and 265, Subparts AA (process vents), BB (equipment leaks), and CC (tanks, surface impoundments, and containers).

<sup>19</sup> American Chemistry Council, Comments on 2016 Proposed Rule, at 7 (July 27, 2016), EPA-HQ-OAR-2002-0021-0074.



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In addition to triggering the issues raised in the comments on the 2016 Proposed Rule (and noted above), eliminating the exemption for sites proceeding under CERCLA and RCRA would create additional recordkeeping and reporting obligations, and could slow the process of remediation and investment in beneficial reuse and redevelopment. Removing the exemption would, at a minimum, drive additional costs that become “institutionalized;” costs that are unnecessary, particularly given that there is no associated environmental benefit. EPA should withdraw the 2016 Proposed Rule and further assess and highlight the functional equivalence of the CERCLA and RCRA programs to the Site Remediation NESHAP.

**IV. If EPA nonetheless determines to take further action on the 2016 proposal to remove the RCRA/CERCLA exemption, EPA should withdraw the 2016 Proposed Rule and issue a new proposed rule in order to appropriately address complexities and identify subcategories within the Site Remediation source category because a one-size-fits-all approach is not appropriate in this context.**

EPA should retain the exemption to site remediation source category standards in Subpart GGGGG for remediation activities proceeding under CERCLA or RCRA, both in the current rulemaking, as EPA proposes, and in general. If, notwithstanding the considerations described above, the agency determines to pursue removal of the RCRA/CERCLA exemption, EPA would need to issue a new proposal to that effect in order to address the issues in Section III above and additional complexities, such as the need for subcategorization, and afford the public adequate notice of and opportunity to comment on EPA’s intended regulatory approach. Because the 2016 Proposed Rule is insufficient to provide the public, including the regulated community, with such notice, EPA’s request for comment in the Proposed Rule on “subcategorization or other methods of distinguishing among appropriate requirements for such sources”<sup>20</sup> is an inadequate opportunity to comment on how difficult and nuanced circumstances may be addressed. Thus, EPA should withdraw its 2016 Proposed Rule in connection with finalizing the current RTR Proposed Rule.

In the event that EPA were to issue a new proposal to remove the RCRA/CERCLA exemption, it should subcategorize and provide mechanisms for distinguishing appropriate requirements for the many different types of facilities at which site remediation activities may occur. For instance, EPA could create a subcategory of site remediation activities proceeding under CERCLA or RCRA. Given the site-specific approaches required at such sites that create additional variability among them, applying the Subpart GGGGG standards to them could create problems for facilities to comply with their individual CERCLA- or RCRA-based requirements and the MACT requirements, and subcategorizing to account for that added complexity is appropriate. EPA could also

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<sup>20</sup> Proposed Rule, 84 Fed. Reg. at 46,167.

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consider subcategorizing site remediation sources based on the type of industry at the facility. Subcategorizing based on this rationale may be reasonable because the nature of pollutants and contamination is likely to be different at a chemical manufacturing facility than at an oil and gas plant, for example. Alternatively, EPA could create subcategories to address site remediation activities based on the predominant contaminants of concern or type of contaminated media identified at the initial remedial investigation stages at a site. This type of subcategorization may be appropriate given the different transport mechanisms and emissions potential involved for different types of pollutants or for pollutants present in different type of media (*i.e.*, in soil or in groundwater).

Further, if—despite all the reasons not to do so—the agency were to move forward with finalizing the portion of its 2016 Proposed Rule to remove the applicability requirement that site remediations be co-located with at least one other stationary source subject to NESHAP regulation in a future action, it would present another opportunity to create reasonable subcategories. Subcategorizing to distinguish between co-located site remediation activities and other, non-co-located activities, would be appropriate given the complexity involved to comply with multiple NESHAP requirements at co-located site remediation activities. The Forum notes, however, that it does not support the removal of this applicability requirement and urges EPA to withdraw the 2016 Proposed Rule in its entirety.

**V. EPA should make certain appropriate revisions to the existing regulatory provisions to appropriately account for the diminishing amounts of pollutants, and thus emissions, present at Site Remediation sources over time due to the unique nature of this source category.**

EPA should expand the existing exemption of site remediation facilities where all activities are complete, to encompass facilities where the site remediation is administratively complete or the remaining contamination and associated HAP emissions are otherwise so far reduced that continued compliance with the Subpart GGGGG standards is no longer necessary. The current regulations provide that a site remediation is not subject to the Subpart GGGGG requirements “if all remediation activities at your facility subject to this subpart are completed and you have notified the Administrator in writing that all remediation activities subject to this subpart are completed.”<sup>21</sup> In reality, however, minimal site remediation activities may continue for a long time at a facility despite the substantial completion of work and greatly diminished emissions. For instance, although a facility may have completed its active remediation work, it may not yet be deemed “complete” by virtue of ongoing, long-term monitoring or other obligations.

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<sup>21</sup> 40 C.F.R. § 63.7881(d).

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Under the current regulations, such facilities would not be covered by Section 63.7881(d) and would remain subject to the site remediation standards under Subpart GGGGG.

EPA should revise Section 63.7881(d) to include sources where site remediation activities may not be entirely complete, but where emissions have been reduced to such a minimal level that imposing the regulatory requirements for site remediation on them is no longer beneficial. This revision would be consistent with EPA's recent guidance and proposed rulemaking regarding the "Major MACT to Area Source" ("MM2A") policy, and attendant withdrawal of the former "Once In Always In" policy.<sup>22</sup> In the MM2A policy and proposal to codify it, EPA has acknowledged that, consistent with the Clean Air Act, once emissions from a source drop below the major source threshold the source is no longer a major source and may accordingly be re-permitted as an area source.

Emissions from residually affected environmental media are unlike the volume and concentration of chemicals generated by operational sources and controlled by the maximum achievable control technology at a manufacturing site, which is what NESHAP standards are intended to address. In addition, remediation projects are often limited in duration compared to commercial manufacturing operations. It is particularly appropriate in light of the unique nature of the Site Remediation source category, where the volume, concentration, and duration of pollutants are different than typical manufacturing facilities, for EPA to acknowledge a point prior to final completion of all remediation activities but after which application of NESHAP requirements no longer provides an environmental benefit. EPA should make a conforming change to Section 63.7881(d) to reflect the fact that, once emissions from site remediation activities at a facility drop below a certain minimal threshold, they are no longer subject to the site remediation requirements of Subpart GGGGG, even if the activities are not entirely complete.

### **VI. With respect to the proposed requirements for pressure relief devices, some of EPA's assumptions are flawed or lacking in evidentiary basis and certain revisions are needed to enable compliance.**

EPA proposes work practice standards for PRDs to address emission releases from PRDs in the site remediation source category. EPA reasonably determined that numeric emission limits for PRDs would be infeasible to prescribe or enforce, and thus work practice standards under Clean Air Act Section 112(h) are appropriate.<sup>23</sup> Some aspects of EPA's proposed work practice standards, however, are based on insufficient, or inaccurate, information and EPA should correct those assumptions before finalizing the work practice standards. EPA should also provide a longer compliance period for the

<sup>22</sup> EPA, *Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*, Proposed rule, 84 Fed. Reg. 36,304 (July 26, 2019); see also Mem. from William L. Wehrum, Assistant Adm'r, Office of Air & Radiation, to EPA Reg'l Air Div. Dirs., *Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act* (Jan. 25, 2018).

<sup>23</sup> Proposed Rule, 84 Fed. Reg. at 46,152.

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proposed work practice standards. Lastly, EPA should incorporate certain revisions to the proposed work practice standards to facilitate compliance.

One example of EPA's lacking information regarding the proposed work practice standards for PRDs is with respect to estimated costs for the proposed monitoring requirements. EPA estimated that the monitoring requirements for PRDs would not impose added costs on facilities, based on its assumption that site remediations are already equipped with technology to comply with the proposed monitoring requirements on their PRDs.<sup>24</sup> That assumption is inaccurate. One Forum member, for example, has a site with remediation activity with five atmospheric PRDs, none of which are equipped with monitoring indication. In order to comply with the proposed monitoring requirements, the facility would need to enable communication from the monitoring device to the control room (located quite far away from the remediation activities), which would require installation and lead to additional cost for the facility. EPA should consider the costs and other burdens imposed by the proposed work practice standards.

EPA proposes to require compliance with the work practice standards for PRDs within one year of the effective date of the final rule.<sup>25</sup> That would be insufficient to allow facilities to achieve compliance with some proposed provisions, such as the monitoring requirements. If, for instance, a facility with site remediation activities needed to install monitoring devices on existing PRDs that vent to atmosphere in order to comply with the proposed work practice standards, the facility would need up to three years to identify PRDs, select the appropriate monitoring device, engineer and then install the monitoring device, install communication systems, and prepare reporting and calculation methodologies. Accordingly, EPA should extend the compliance period for facilities to comply with the proposed PRD requirements to three years from the effective date of the final rule. In addition to the significant amount of time necessary for these activities to occur, these steps would all entail additional costs not properly accounted for in the Proposed Rule.

In addition to correcting the cost assumptions and extending the compliance date, EPA should adopt several revisions to the proposed work practice standards in order to enable implementation of and compliance with the proposed standards. In particular, EPA should: (1) clarify that the proposed work practice standards apply only to PRDs "in organic HAP service," (2) exclude mobile equipment from the PRD definition, (3) exclude pressure vacuum vents from the PRD definition, and (4) clarify that PRD releases below a certain threshold do not require monitoring or reporting.

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<sup>24</sup> Proposed Rule, 84 Fed. Reg. at 46,154, 46,166.

<sup>25</sup> Proposed Rule, 84 Fed. Reg. at 46,166.

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First, EPA should clarify that the proposed work practice standards apply to PRDs that are part of a site remediation activity, rather than associated with other co-located operations, and are “in organic HAP service.” This clarification would be consistent with the Site Remediation MACT which targets volatile organic HAP emissions, but would make applicability determinations simpler for facilities. Moreover, such a clarification would comport with EPA’s approach in other rules, including the NESHAPs for Petroleum Refineries 40 C.F.R. Part 63 Subpart CC and Ethylene Production within the Generic MACT in 40 C.F.R. Part 63 Subpart YY. For example, the Petroleum Refineries regulations provide: “[i]n organic hazardous air pollutant service or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as determined according to the provisions of §63.180(d) of this part and table 1 of this subpart.”<sup>26</sup> The Ethylene Production regulations similarly state: “[i]n organic hazardous air pollutant or in organic HAP service means, for acrylic and modacrylic fiber production affected sources, that a piece of equipment either contains or contracts a fluid (liquid or gas) that is at least 10 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.”<sup>27</sup>

Second, EPA should revise the proposed definition of PRD to clarify that mobile equipment is not included. Mobile equipment is not owned or operated by the facility, nor are they in dedicated service. It would be also extremely difficult to monitor releases from mobile sources, communicate releases to the control room, estimate emissions, and report the release(s), consistent with the proposed work practices for PRDs in the site remediation source category. Excluding mobile sources from the PRD definition would be consistent with Clean Air Act Section 112, which is intended to regulate fixed point (*i.e.* stationary) sources, not mobile sources. Additionally, there is precedent for excluding mobile equipment from PRD definitions in other NESHAP contexts, as EPA did in the Petroleum Refinery Sector.<sup>28</sup> Accordingly, mobile equipment should be excluded from the proposed definition of PRD in the site remediation source category.

Third, EPA should clarify that pressure vacuum vents (“PVs”) that are designed and installed by the equipment manufacturer to “burp,” or periodically open to relieve pressure, as part of normal operations to maintain the integrity of the equipment are excluded from the proposed PRD definition. PRDs release during upset conditions, whereas PVs release during normal operations. In the rare instance where a PV releases

<sup>26</sup> 40 C.F.R. § 63.641 (emphasis added).

<sup>27</sup> 40 C.F.R. § 63.1103(b)(2) (emphasis added).

<sup>28</sup> 40 C.F.R. § 63.648(j)(5)(vi).

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during an upset condition, it could appropriately be treated as a PRD. Otherwise, however, normally operating PVs should be considered inherent to the design of the equipment and excluded from the PRD definition.

Finally, EPA should exclude PRD releases from the proposed monitoring and reporting requirements if the PRD has a potential to emit less than a certain threshold of volatile organic compound (“VOC”) emissions. Such an exemption would be similar to provisions already reflected in the Refinery Sector regulations, which exempt PRD releases below 72 lbs of VOC.<sup>29</sup> A similar exemption here would reduce the recordkeeping burden for little to no value management/control of PRDs.

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<sup>29</sup> 40 C.F.R. § 63.648(j)(5)(v).