

Integrated Iron and Steel RTR: Procedure for Authorizing Site-Specific Alternative Standards

PROBLEM: EPA’s proposed rules package contains new Maximum Achievable Control Technology (MACT) limits for several HAPs to address the *LEAN* court decision. Based on a third-party engineering assessment, some of the limits are technically and economically infeasible and there are no known iron or steelmaking applications in the world which deploy add-on controls for most of the new limits proposed by EPA. Thus, EPA’s proposed rule goes well beyond the “floor” level of emissions and is inconsistent with the Clean Air Act in calling the limit the floor level of control.

SOLUTION: The final rule should (1) provide the statutory maximum 3-year compliance schedule for all newly-issued MACT floor emission limits and any other new emission or monitoring requirements, and (2) establish a procedure authorizing requests for alternative emission limits or alternative operating limitations based on site-specific subcategorization where feasibility, economic, and environmental analyses for the sources demonstrate that the limits cannot be achieved at reasonable cost.

RATIONALE: The final rule would recognize that adjustments to the limits may be necessary and appropriate because the limits were based on the assumption that add-on control technology would not be needed to achieve compliance, and that assumption was based on very limited data sets. The final rule also must recognize that a site-specific standard may be needed because a facility may be configured in a fundamentally different manner than the facilities that comprised the MACT floor. Within a year of rule issuance, an affected source could conduct preliminary stack testing and provide EPA with a facility-specific analysis regarding the technological achievability and the economic and environmental costs of compliance with of any of the limits. The analysis would include a detailed cost evaluation, a technological feasibility assessment, and other information as appropriate regarding incidental environmental impacts that could result from applying control technologies to meet those particular limits. Based on this information, EPA would establish one or more separate subcategories with appropriate, adjusted emission limits that were achievable and would avoid significant adverse environmental and economic impacts.

EPA has broad discretion under Clean Air Act Sections 112(d)(3) and (6) to subcategorize sources subject to an emissions limit. Court cases specifically contemplate the subcategorization approach advocated here. In *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007), Senior Judge Williams, in a concurring opinion, explained that if a standard is extremely or prohibitively costly for a particular unit because of conditions “specific to” that unit, then EPA should create one or more additional subcategories to ensure that the floor defines an achievable standard. *See also, Portland Cement Ass’n v. EPA*, 665 F.3d 177 (D.C. Cir. 2011), where Judge Brown explained Congress’s intent for EPA to consider “costs, benefits, and other effects associated with compliance” when establishing MACT standards. Nothing in D.C. Circuit case precedents prohibits EPA from establishing a subcategory based on information obtained after a MACT standard is issued and such an approach balances the recognition by Congress that floors are established based on information that the Administrator has available. While Congress wanted to ensure that regulations were not unduly delayed by an endless search for data, it would be unreasonable to

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conclude that when data becomes available that augments or even contradicts the information that EPA had at the time of a rulemaking such data could not be considered.

Indeed, EPA has recognized this authority where technology standards, in the future, are found to be unachievable. In the methane rule, for example, EPA provided for compliance with a work practice standard when compliance with the zero emission methane standard was not feasible or workplace safety required release of methane. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Prepublication Notice, 926-927 (Nov. 30, 2023); *see also Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427 (D.C. Cir. 1973); *cf.* Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62624, 62633 (Oct. 15, 2012) (“The mid-term evaluation will assess the appropriateness of the MYs 2022–2025 standards, based on information available at the time of the mid-term evaluation and an updated assessment of all the factors considered in setting the standards and the impacts of those factors on the manufacturers’ ability to comply.”).