

## Environmental and Land Development ADVISORY

October 27, 2008

### Proposed EPA Rule Could Mean New and Increased Requirements for Chemical Manufacturers

In *Sierra Club v. Johnson*, 444 F.Supp.2d 46 (D.D.C. 2006), the United States Environmental Protection Agency (EPA) was ordered to issue standards for 10 area source categories by December 15, 2008. In an effort to meet the deadline, EPA is proposing National Emission Standards for nine area source categories in the chemical manufacturing sector via a proposed rule entitled "National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources" ("Proposed Rule"). Following is a discussion of the Proposed Rule and how it has the potential to impact various affected source categories.

#### Proposed Rule Applicability

The affected source categories include (1) Agricultural Chemicals and Pesticides Manufacturing; (2) Cyclic Crude and Intermediate Production; (3) Industrial Inorganic Chemical Manufacturing; (4) Industrial Organic Chemical Manufacturing; (5) Inorganic Pigments Manufacturing; (6) Miscellaneous Organic Chemical Manufacturing; (7) Plastic Materials and Resins Manufacturing; (8) Pharmaceutical Production Manufacturing; and (9) Synthetic Rubber Manufacturing.

The proposed rule applies to any affected source operation that processes, uses, produces or generates any of the following urban hazardous air pollutants (HAPs):<sup>1</sup>

- 1,3-butadiene;
- 1,3-dichloropropene;
- acetaldehyde;
- chloroform;
- ethylene dichloride;
- methylene chloride;
- hexachlorobenzene;
- hydrazine;
- quinoline; or
- compounds of cadmium, chromium, lead, manganese or nickel

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<sup>1</sup> Any such affected source operations are hereinafter referred to as "Affected Sources."

Notably, to the extent the Proposed Rule applies, it will apply to *all* organic HAP emissions and all metal HAP emissions from chemical manufacturing operations at an Affected Source. In other words, standards for each type of emission source apply to all of the emission sources at an Affected Source, including those that do not emit any urban HAPs. Despite the fact that EPA is only required to regulate urban HAPs to meet the requirements of the Clean Air Act (CAA) and the *Johnson* decision, it has made a policy decision to regulate all HAPs emitted by an Affected Source via the Proposed Rule. EPA's current position is that the CAA does not prohibit its proposed course of action and that the increased cost of applying the Proposed Rule in this manner is not enough to negatively impact Affected Sources.

Generally, pollutants in the chemical manufacturing industry are emitted through process vents. Accordingly, the Proposed Rule will regulate three types of process vents: continuous process vents, batch process vents, and metal HAP process vents. Additionally, it will regulate five other types of equipment and processes that are associated with or support a process: storage tanks, cooling tower systems, equipment leaks, transfer operations and wastewater systems (collectively, regulated process vents, equipment and processes are referred to as "Emission Sources").

- **Continuous Process Vents** - The Proposed Rule defines a continuous process vent as "the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream that meets three conditions: (1) it contains organic HAPs, (2) some or all of the gas stream originates from a unit operation that operates continuously, and (3) the gas stream flow is continuous."
- **Batch Process Vents** - The Proposed Rule defines a batch process vent as "a point of discharge from a single unit operation or from a common header that connects multiple unit operations through which an organic HAP-containing gas stream is, or has the potential to be, released to the atmosphere." The definition excludes continuous process vents and any other Emission Sources that are subject to other standards under the Proposed Rule.
- **Metal HAP Process Vents** - The Proposed Rule defines a metal HAP process vent as "the point of discharge into the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any unit operation in chemical manufacturing operations at an affected source." If both metal HAPs and organic HAPs are emitted by a source, a metal HAP process vent may also be a continuous process vent or batch process vent.

The rule imposes new testing, monitoring, operation and maintenance, notification, reporting and recordkeeping requirements for each Emission Source at an Affected Source operation. It also proposes new management practices for each Emission Source except wastewater, and emission limits for all Emission Sources except equipment leaks and transfer operations.

## Title V Implications

EPA recognizes that the Proposed Rule contains extensive monitoring, recordkeeping and reporting requirements. Accordingly, the Proposed Rule exempts Affected Sources from Title V permitting requirements. According to EPA, the Proposed Rule's requirements are sufficient to comply with the National Emissions Standards for Hazardous Pollutants. Therefore, the additional requirement of Title V compliance would be overburdensome without any corresponding benefit.

## Relevant Timeline

EPA held a public hearing on the Proposed Rule on October 21, 2008. In an effort to meet the December 15, 2008, deadline for regulation, comments on the Proposed Rule must be submitted by November 20, 2008.

EPA recognizes that the Proposed Rule will require some Affected Sources to design, purchase and install add-on control equipment necessary to meet proposed requirements. Accordingly, once the Proposed Rule is adopted, existing Affected Sources will be required to achieve compliance within three years of the final rule publication in the Federal Register. Any new Affected Source will be required to comply by the date of the final rule publication or upon initial startup, whichever is later.

If adopted, the Proposed Rule will subject Affected Sources to substantial new and increased requirements. As such, it has the potential to significantly impact the chemical manufacturing industry.

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