UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 07 2012

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Randy Rawson
American Boiler Manufacturer's Association
8221 Old Connecticut Rd., Ste. 202
Vienna, VA 22182

Pete Pagano
American Iron and Steel Institute
1140 Connecticut Ave., NW, Ste. 705
Washington, DC 20036

Leslie Hulse
American Chemistry Council
700 Second St., NE
Washington, DC 20002

Matt Todd and John Wagner
American Petroleum Institute
1220 L St., NW
Washington, DC 20005-4070

Tim Hunt
American Forest & Paper Association
1111 19th St., NW #800
Washington, DC 20036-3652

Robert Bessette
Council of Industrial Boiler Owners
6801 Kennedy Rd., Ste 102
Warrenton, VA 20187

Bill Perdue
American Home Furnisher's Association
317 W. High Ave., 10th Floor
PO Box HP-7
High Point, NC 27261

David Buff
Florida Sugar Industry
6026 NW 1st Place
Gainesville, FL 32607

Re: No Action Assurance Regarding Certain Deadlines in the March 2011 Major Source Boiler MACT Rule and the March 2011 CISWI Rule

Dear Sir/Madam:

Today, the EPA is providing a no action assurance (No Action Assurance) to all owners and/or operators of industrial boilers and commercial or industrial solid waste incineration units with respect to the notification deadlines contained in two regulations (discussed below), and subject to certain specified terms and conditions. This No Action Assurance is being issued in response to a request from Assistant Administrator for Air and Radiation Gina McCarthy. As explained more fully below, this No Action Assurance establishes that the EPA will exercise its enforcement discretion to not pursue enforcement action for violations of certain notification deadlines established in two recent final rules issued under sections 112 and 129 of the Clean Air Act. Specifically, this No Action Assurance addresses provisions of (1) the final rule to regulate industrial, commercial, and institutional boilers and process heaters located at major sources of hazardous air pollutant emissions (the "Major Source Boiler MACT"), 76 Fed. Reg. 15,608 (March 21, 2011), and (2) the final rule to regulate emissions of certain air pollutants from commercial and industrial solid waste incineration units (the "CISWI Rule"), 76 Fed.

Reg. 15,704 (March 21, 2011). For each rule specified above, this is limited to any violations of each specified notification deadline that may have occurred from the original effective date of the Major Source Boiler MACT and/or CISWI Rule until this No Action Assurance is no longer in effect for the relevant deadline.

Under the Major Source Boiler MACT, sources of hazardous air pollutants that are subject to the Rule pursuant to 40 C.F.R. § 63.7490 are designated as "affected sources." The Major Source Boiler MACT requires that an existing affected source that started up before May 20, 2011 submit an Initial Notification to the relevant authority not later than 120 days after May 20, 2011, making such notice due September 17, 2011. 40 C.F.R. § 63.7545(b). The Major Source Boiler MACT also requires that a new or reconstructed affected source that started up on or after May 20, 2011 submit an Initial Notification not later than 15 days after the actual date of startup. 40 C.F.R. § 63.7545(c).

New sources that become subject to Subpart CCCC of 40 C.F.R. Part 60 under the CISWI Rule must also comply with notification requirements. For such sources, the CISWI Rule requires that a notification be sent to the relevant authority prior to commencing construction. This notice must include each of the following: a statement of intent to construct; the anticipated date of commencement of construction; all documentation produced as a result of the siting requirements of §60.2050; the waste management plan as specified in §§60.2055 through 60.2065; and the anticipated date of initial startup. 40 C.F.R. § 60.2190. CISWI requires that a notification of the date that construction of the source will commence be postmarked no later than 30 days after such date, in accordance with 40 C.F.R. § 60.7(a)(1). 40 C.F.R. § 60.2230. A notification of the actual date of initial startup of an affected facility must also be sent, postmarked within 15 days after initial startup, in accordance with 40 C.F.R. § 60.7(a)(3). 40 C.F.R. § 60.2230.

When these rules were issued, the Major Source Boiler MACT was to become effective on May 20, 2011, and the CISWI Rule was to become effective on September 21, 2011. On May 18, 2011, however, the EPA published a notice in the Federal Register delaying the effective dates of the Major Source Boiler MACT and the CISWI Rule. In the notice of delay, as it had previously, the EPA stated that it was in the process of developing a proposed reconsideration of certain aspects of both rules. Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units; Final Rules; Delay of Effective Dates, 76 Fed. Reg. 28,663 ("Delay Notice") (citing National Emission Standards for Hazardous Air Pollutants; Notice of Reconsideration, 76 Fed. Reg. 15,266, 15,267 (March 21, 2011)). The EPA proposed reconsideration of both rules in December 2011, and currently intends to finalize the reconsiderations in the spring of 2012.

On January 9, 2012, the federal district court for the District of Columbia issued a decision vacating and remanding the May 18, 2011, Delay Notice. *Sierra Club v. Jackson*, No. 11-1278 (D.D.C. Jan. 9, 2012).

The vacatur of the Delay Notice has caused confusion and concern in the regulated community, particularly among sources who, but for the Delay Notice, would have submitted the above-discussed notifications prior to January 9, 2012. The vacatur, in conjunction with the proposed reconsideration of the major Source Boiler MACT, has created additional uncertainty regarding notice requirements because the EPA has proposed revisions to the compliance dates for all units (the date by which a unit must be in compliance with the substantive requirements in the Boiler MACT Rule) and to the subcategories for some units. Under the Major Source Boiler MACT, a source must identify its compliance date and applicable subcategory in its Initial Notification. If the EPA issues final action on reconsideration with amended compliance dates and subcategory revisions similar to those in the

proposed reconsideration, all of the approximately 1,800 notifications from affected facilities would be incorrect, and thus would have to be revised and resubmitted. Since the EPA intends to issue a final action on reconsideration of the Major Source Boiler MACT in the spring of this year, it makes sense for sources to avoid duplicative work and wait to submit their Initial Notifications until after the final rule is issued.

For the reasons discussed above, this No Action Assurance establishes that the EPA will exercise its discretion not to pursue enforcement for violations of the notification deadlines identified below that were established in the Major Source Boiler MACT Rule and the CISWI Rule, provided that the conditions set forth below are satisfied. Specifically, the EPA will exercise its discretion not to pursue enforcement for the following violations:

Major Source Boiler MACT:

- Failure to submit a complete Initial Notification by the dates required under the Major Source Boiler MACT (*see* 40 C.F.R. § 63.7545(b) & (c)).

New Sources Under the CISWI Rule:

- Failure to timely submit a complete notification prior to construction containing all elements identified in 40 C.F.R. § 60.2190;
- Failure to timely submit a notification of construction as required by 40 C.F.R. § 60.2230 that complies with 40 C.F.R. § 60.7(a)(1); and
- Failure to timely submit a notification of start-up as required by 40 C.F.R. § 60.2230 that complies with 40 C.F.R. § 60.7(a)(3).

I emphasize that this No Action Assurance applies only to the timeliness of these requirements, not to the underlying requirements themselves. I also note that nothing in this No Action Assurance affects any other provisions in the Major Source Boiler MACT or CISWI Rule besides those explicitly listed above.

This exercise of discretion is subject to the following conditions:

- The No Action Assurance is to remain in effect for the above-listed Major Source Boiler MACT provisions until either (1) 11:59 PM EDT, December 31, 2012, or (2) the effective date of a final rule addressing the proposed reconsideration of the Major Source Boiler MACT, whichever occurs earlier. The No Action Assurance is to remain in effect for the above-listed CISWI provisions until either (1) 11:59 P.M. EDT, April 30, 2013, or (2) the effective date of a final rule addressing the proposed reconsideration of the CISWI Rule, whichever occurs earlier. The EPA has proposed new notification deadlines in its proposed reconsideration of each rule, and, if the Agency takes final action to adopt those proposed deadlines, they will control.

- The EPA reserves the right to revoke or modify this No Action Assurance.

The issuance of a No Action Assurance for this period of time is in the public interest to alleviate public confusion and to ensure orderly administration of the affected rules. The EPA had delayed the effectiveness of the rules containing the deadlines, leading owners of affected facilities to not make certain notifications by the deadlines imposed by the rules. In addition, the proposed changes to the Major Source Boiler MACT notification deadlines and subcategories of sources, if finally adopted, would render notifications sent pursuant to the current Rule ineffective and require new notification. I believe this action will not increase environmental harm, as no requirements to comply with emissions

standards are affected by this action and the EPA expects new provisions in a final rule to soon supercede the notification deadlines addressed above.

If you have any further questions regarding this matter, please contact Sara Froikin of my staff at (202) 564-3187 or froikin.sara@epa.gov.

Sincerely,

Cynthia Giles

cc: Gina McCarthy
Steve Page
Peter Tsirigotis
Robert Wayland
David Cozzie