

Summary of Proposed NESHAP for the Site Remediation Category

The Environmental Protection Agency (“EPA”) has proposed new National Emission Standards for Hazardous Air Pollutants (“NESHAP”) under the Clean Air Act (“CAA”) for the “site remediation” source category. 67 FR 49398 (July 30, 2002). In addition to setting forth proposed limits and standards for certain remediation activities, in the preamble to the proposed rule EPA states that all remediation activities conducted at a facility, including activities exempt from the proposed “site remediation” NESHAP, are to be counted in determining whether the facility is a “major source” under the CAA. As discussed below, this view could result in the application of various other NESHAPs to a facility’s primary operations whenever remediation activities increase the facility’s potential to emit (“PTE”) to major source levels, even where the proposed site remediation NESHAP is inapplicable. The deadline for submitting comments on the proposed rule is September 30, 2002.

In general, the site remediation NESHAP would apply where: (1) a remediation is conducted at a facility; (2) the facility constitutes a “major source” of hazardous air pollutants (“HAP”); and (3) a non-remediation activity (*e.g.*, chemical manufacturing operations) covered by a listed major source category is also conducted at the facility. Among other exemptions, remediations conducted under Superfund and the Resource Conservation and Recovery Act (“RCRA”) corrective action program would be exempt from the NESHAP. In addition, the limits and standards of the rule would not apply if the facility determines, using procedures set forth in the rule, that the total HAP contained in extracted remediation material is less than 1 Mg/yr. Thus, facilities where organic materials are present, such as organic liquid storage terminals, petroleum refineries, and manufacturing facilities (particularly chemicals, plastics, and synthetics) are among those most likely to be subject to the NESHAP. However, according to EPA, remediations potentially subject to the rule are currently underway at other types of facilities, with primary activities such as waste management, business and miscellaneous services, refuse systems, and nonclassified activities.

Where applicable, the rule would impose emission limits and work practice standards on three affected sources associated with remediation activities. For process vents, the rule would require installation and proper operation of control devices to achieve a 95% reduction of emissions of organic HAP or total organic compounds (“TOC”) (minus methane and ethane), or alternatively, reduction of emissions of TOC (minus methane and ethane) below 1.4 kg/hr and 2.8 Mg/yr. For remediation material management units – *i.e.*, tanks, containers, surface impoundments, separators, and material transfer systems – the rule would require measures such as control devices, compliance with national emission standards relevant to the unit, installation of covers or enclosures, or other measures. For equipment leaks, the rule would require implementation of a leak detection and repair program and certain equipment modifications. In addition, the rule would subject the remediation activities to compliance testing, reporting, recordkeeping, and a number of NESHAP general provisions. However, any affected source that is already being controlled pursuant to another NESHAP standard would be exempt.

As noted above, in a preamble passage with implications for facilities outside the “site remediation” category, EPA states that remediation activities are generally to be considered together with all other facility activities in determining whether a facility is a “major source” under the CAA. Under this view, an area (or minor) source could become a major source if it initiates a remediation that increases the facility’s PTE to major source levels. In that event, non-remediation operations at the facility, such as manufacturing operations, could become subject to relevant maximum achievable control technology (“MACT”) standards. Indeed, a manufacturing operation or other non-remediation activity could apparently become subject to a MACT standard even if most or all of the facility’s HAP emissions are caused by Superfund or RCRA remediation activities that are exempt from the “site remediation” NESHAP.

EPA provides the example of an area source chemical processing plant not currently subject to the Hazardous Organic NESHAP (“HON”), but with manufacturing operations that would be covered by that MACT standard if the source were major. If that facility initiates a remediation that increases its PTE to major source levels, it would become a major source and would be required to comply immediately with the HON for the operations covered by that standard. In an attempt to alleviate the disincentive to conducting remediations, EPA determined that its “once in, always in” policy would not apply to remediations – thereby allowing the facility to return to area source status after the remediation.

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