

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB,)	
)	
Plaintiff,)	
)	Case No. 1:01CV01537 (PLF)
v.)	and Consolidated Cases
)	
LISA JACKSON, in her official capacity)	
as Administrator, United States)	
Environmental Protection Agency,)	
)	
Defendant.)	

DECLARATION OF PANAGIOTIS E. TSIRIGOTIS

I, Panagiotis E. Tsirigotis, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

1. I am the Director of the Sector Policies and Programs Division (SPPD) within the Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation (OAR) at EPA; a position I have held since February 6, 2006. SPPD is the division within OAQPS that has responsibility for, among other things, developing regulations under section 112 of the Clean Air Act (CAA), the national emission standards for hazardous air pollutants (NESHAP) program.

2. In my current capacity as Director of SPPD, I am responsible for overseeing EPA's promulgation of significant regulations related to the NESHAP program. In this capacity,

I am familiar with the process and time periods required for developing and promulgating major EPA regulations under the CAA.

3. This declaration is filed in support of EPA's "Motion to Amend Order of March 31, 2006." EPA needs additional time to promulgate certain emission standards that are needed to fulfill its CAA section 112(c)(3) and (k)(3) obligations under Paragraph 1(i) of the Court's Order of September 20, 2010, and its section 112(c)(6) obligations under Paragraph 3 of the Order.

4. As explained more fully below, EPA believes that the deadlines in Paragraphs 1(i) and 3 of the Court's Order should be extended from January 16, 2011, to April 13, 2012, to allow the Agency time to re-propose for further public comment and take final action on certain standards that are needed to meet the Agency's obligations under the Court's order. The standards that EPA needs to re-propose are the ones that apply to major source industrial, commercial and institutional boilers and process heaters ("major source boilers"),¹ area source industrial, commercial and institutional boilers ("area source boilers"), and commercial and industrial solid waste incinerators ("CISWI units"). EPA wishes to re-propose the rules for further public comment in order to ensure that the final rules are logical outgrowths of the original proposals. In addition to re-proposing, EPA would use the additional time to respond to the over 4,800 comments received on the original proposals. See infra ¶¶ 32, 36-40.

5. If the Court does not allow EPA to re-propose the standards at issue, EPA believes that it needs until June 15, 2011 to complete the final rules. EPA currently cannot respond in full to all of the comments received on the proposed rules by the January 16, 2011 deadline. I estimate that it would take approximately five more months to review and prepare

¹ A "major source" is a stationary source that emits or has the potential to emit 10 tons per year or more of any one hazardous air pollutant or 25 tons per year or more of a combination of hazardous air pollutants. An area source is any stationary source that is not a major source.

complete responses to the over 4,800 public comments received on the proposed major source boilers, area source boilers and CISWI rules and to prepare a final rule for the Administrator's signature consistent with the comments. While this short extension will not allow EPA to solicit further public comment, it will enable the Agency to reduce the legal vulnerabilities of the standards at issue and greatly increase the likelihood that the rules will withstand judicial review.

6. EPA also needs an additional six months to complete its section 112(c)(3) obligations for sewage sludge incinerators. Specifically, EPA requests that Paragraph 1(i) of the Court's September 20, 2010 Order be modified to allow EPA to complete one additional category pursuant to section 112(c)(3) by July 15, 2011. If the Court were to accept the proposed extension described in Paragraph 4 above, the deadline for completing the remaining section 112(c)(3) standards under Paragraph 1(i) would be April 13, 2012.

7. Below, I first provide some background on the actions that the Agency has taken to date to meet the requirements of Paragraphs 1(i) and 3 of the Court's Order. I then provide background concerning actions and events that have impacted the Agency's development of the remaining standards needed to meet our section 112(c)(6) obligations. After providing this background information, I first explain the Agency's need for additional time to meet its obligations under paragraph 3 of the Court's Order, and then discuss the additional time needed to meet its obligations under Paragraph 1(i).

Actions Taken to Date Pursuant to Paragraphs 1(i) and 3 of the Court Order

8. Paragraph 1(i) of the Court's September 20, 2010 Order requires the Agency to issue emission standards under CAA section 112(d) or section 129, assuring that area sources representing ninety percent of the area source emissions of the 30 of the thirty urban hazardous air pollutants identified pursuant to section 112(k)(3) are subject to emission standards by

January 16, 2011. Paragraph 3 of that Order requires the Agency to promulgate emissions standards by January 16, 2011, assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4).

9. To date, EPA has issued final emission standards for 48 area source categories pursuant to Paragraph 1(i) of the Order and CAA section 112(c)(3) and (k)(3). EPA proposed emission standards for three other area source categories in 2010, pursuant to section 112(c)(3) and (k)(3). Specifically, on April 29, 2010, EPA proposed emission standards for area source Industrial Boilers and area source Commercial and Institutional Boilers. In this declaration, I refer collectively to these two source categories as “area source boilers.” On September 30, 2010, EPA proposed emission standards for sewage sludge incinerators.

10. To date, EPA has issued final emission standards for one source category under Paragraph 3 of the Order and section 112(c)(6). On April 15, 2010, consistent with Paragraph 3(a) of the April 13, 2010 Order, EPA proposed emission standards for gold mining production processes. EPA intends to issue final standards for this category by December 16, 2010, consistent with the Court’s September 20, 2010 Order. Finally, on April 29, 2010, consistent with paragraph 3(b) of the Court’s April 13, 2010 Order, the EPA Administrator signed proposed rules setting “emission standards for industrial, commercial and institutional boilers under section 112(d)” and “standards for commercial and industrial solid waste incineration units under section 129.” Order dated April 13, 2010, ¶ 3(b). Those rules include: (1) National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (the “major source boilers rule”), 75 Fed. Reg. 32,006-73 (June 4, 2010); (2) National Emission Standards for Hazardous Air Pollutants for Area

Sources: Industrial, Commercial, and Institutional Boilers (the “area source boilers rule”), id. at 31,896-935; and (3) Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units (the “CISWI rule”), id. at 31,938-32,004.

11. In the proposed rules identified in Paragraph 10, EPA indicated that it believed that it needed to establish emission standards for certain emissions from major source boilers, CISWI units, and area source boilers to meet its section 112(c)(6) obligations.² EPA also indicated that it needed to establish emission standards for certain emissions from area source boilers to meet its section 112(c)(3) obligations.

General Background Relating to the Agency’s Section 112(c)(6) and Section 112(c)(3) and (k)(3) Obligations

12. Paragraph 3 of the September 20, 2010 Order provides that the Agency must promulgate emissions standards by January 16, 2011, assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4). Under section 112(d)(2), EPA imposes emission standards that require “the maximum degree of reduction in emissions of hazardous air pollutants” that EPA concludes are achievable based on consideration of factors identified in the statute. These are referred to as “maximum achievable control technology” or “MACT” standards. Section 112(d)(4) allows the Administrator, with respect to pollutants for which a health threshold has been established, to set a standard that considers such threshold and provides an “ample margin of safety.”

² In the proposed area source boilers rule, EPA indicated that it needed to set emission standards under section 112(c)(6) for certain hazardous air pollutants emitted by certain area source boilers. Based on the comments received on the proposed rules, the Agency is re-evaluating which area source boilers and CISWI units are needed to meet its section 112(c)(6) obligations.

13. In March 2007, the United States Court of Appeals for the District of Columbia Circuit vacated EPA's section 112(d)(2) MACT emission standards for the Brick and Structural Clay Ceramics source categories. Sierra Club v. EPA, 479 F. 3d 875, 882-83 (D.C. Cir. 2007) (the Brick MACT decision). In its opinion, the court identified several significant deficiencies with EPA's MACT standard-setting methodology.

14. Shortly thereafter, in June 2007, the Court vacated the MACT standards for major source industrial, commercial, and institutional boilers and process heaters ("major source boilers"). Natural Resources Defense Council v. EPA, 489 F. 3d 1250, 1257-61 (D.C. Cir. 2007) ("NRDC I"). As noted above, the Agency believes that it needs to establish standards for certain emissions from major source boilers to meet its section 112(c)(6) obligations. At the same time the D.C. Circuit vacated the major source boilers MACT, it vacated a related rule called the Commercial and Industrial Solid Waste Incineration Units (CISWI) Definitions Rule, 70 Fed. Reg. 55,568 (Sept. 22, 2005), which EPA issued pursuant to CAA section 129(a)(1)(D). NRDC I, 489 F. 3d at 1250. The D.C. Circuit vacated both the boiler MACT rule and the CISWI Definitions rule because EPA had improperly identified the universe of sources subject to each rule. Specifically, the Court rejected EPA's interpretation of the term "solid waste incineration unit" in section 129(g)(1) and held that such term "plainly and broadly includes 'a distinct operating unit of *any* facility which combusts *any* solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels).'" 489 F.3d at 1257. CAA section 129(g)(6), in turn, defines "solid waste" to have the meaning provided by the EPA Administrator under the Resource Conservation and Recovery Act ("RCRA"). In sum, the Court vacated the Boilers MACT rule in 2007, because EPA had

improperly included in that rule sources that combusted solid waste and therefore should have been subject to standards under the CAA section 129 CISWI rule.

15. Finally, also in the summer of 2007, the D.C. Circuit vacated, in part, another section 112(d) MACT standard for the plywood industry. Natural Resources Defense Council v. EPA, 489 F. 3d 1364 (D.C. Cir. 2007) (the “Plywood MACT decision”). This trilogy of decisions substantially impacted how the Agency sets MACT emission standards under CAA section 112 and section 129.

16. In light of these decisions, the Agency determined that it needed additional information and data from major industrial, commercial and institutional boilers and process heaters and CISWI units in order to set defensible MACT emission standards pursuant to CAA section 112(d) and section 129(a)(1)(D).³ As a result, the Agency prepared an information collection request. Because the request would be sent to “ten or more persons,” as that phrase is defined in the Paperwork Reduction Act of 1995, 44 U.S.C. § 3502(3), the Agency had to obtain approval from the Office of Management and Budget (“OMB”), as provided in 5 C.F.R. § 1320.5, prior to sending the request to the affected facilities. As required by regulation, EPA published two Federal Register notices, soliciting comment on the draft information collection request. See 5 C.F.R. § 1320 (8), (10). EPA issued the first Federal Register notice on December 7, 2007, on which the public had 60 days to comment. EPA reviewed the comments received, revised the draft information collection request based on those comments, and issued the second Federal Register notice on May 14, 2008, providing the public 30 days to comment on the revised draft information collection request. In total, the public had 90 days in which to

³ Like CAA section 112, section 129 requires that EPA set MACT standards. As such, the D.C. Circuit’s Brick and Plywood MACT decisions cited above are also relevant to the Agency’s section 129 standards.

comment on the draft information collection request. The regulations governing this process require this amount of public comment opportunity.

17. The draft information collection request consisted of two phases. The first phase required the submission of existing information, and the second phase required certain facilities to conduct a suite of stack tests to evaluate their emissions of hazardous air pollutants and certain other pollutants, such as particulate matter and carbon monoxide.

18. On August 1, 2008, OMB approved phase one of the information collection request, 5 C.F.R. § 1320.5, and the request was sent to about 3,000 facilities in late August 2008.

19. The facilities had until October 16, 2008 to complete phase one of the information collection request. We provided several facilities a 60-day extension because operations at the facilities were adversely impacted by the flooding that occurred in Texas, Louisiana and the Midwest due to Hurricanes Gustav and Ike in September 2008. EPA, therefore, did not receive the data and information required by the first phase of the information collection request until mid-December 2008, which is two months later than anticipated.

20. Once EPA obtained and reviewed the information submitted under phase one of the information collection request, it identified about 300 facilities (including both boilers and incinerators) for additional testing. EPA then submitted its list of proposed facilities for testing to OMB for review and requested approval of the second phase of the information collection request.

21. On May 21, 2009, OMB approved the second phase of the information collection request. Shortly thereafter, EPA, on June 1, 2009, sent the phase two testing survey to the affected facilities, and requested that all data be submitted to the Agency by October 15, 2009.

22. The Agency received numerous requests for extension of the phase two testing deadline, and EPA granted several of those requests. The requestors stated that the additional time was needed largely because of the lack of available testing contractors to perform the testing and the limited number of analytical laboratories available to analyze the required dioxin/furan samples. Other requestors, with units located in Alaska, cited weather issues that impeded completion of the testing on the schedule required by the information collection request. Finally, we had to identify some additional sources for testing because certain sources had shut-down or were in the process of shutting down. This resulted in additional delays in obtaining testing data. The Agency received most of the test data by December 31, 2009, and the remaining data in February 2010.

23. Consistent with the Court's Order, on April 29, 2010, the EPA Administrator signed proposed rules setting "emission standards for industrial, commercial and institutional boilers under section 112(d)" and "standards for commercial and industrial solid waste incineration units under section 129." Order ¶ 3(b). Those rules include the major source boilers rule, the area source boilers rule, and the CISWI rule. See supra ¶ 9.

24. In addition, on April 29, 2010, the EPA Administrator signed the "Identification of Non-Hazardous Secondary Materials That Are Solid Waste" proposed rule pursuant to RCRA ("Non-Hazardous Solid Waste Rule").⁴ This rule is intricately tied to the three air rules identified in the prior paragraph because some industrial, commercial, or institutional boilers or process heaters combust secondary materials as alternative fuels. The proposed Non-Hazardous Solid Waste Rule describes which secondary materials constitute "solid waste" within the meaning of RCRA. Consistent with NRDC I, units that combust solid waste are subject to CAA

⁴ In January 2009, EPA issued an Advanced Notice of Proposed Rulemaking ("ANPRM") on the Identification of Non-Hazardous Secondary Materials that are Solid Waste. The April 2010 proposal considered the comments received on the ANPRM.

section 129. Thus, if the industrial, commercial, or institutional boilers or process heaters combust secondary materials that are “solid waste” within the meaning of RCRA, those units would be subject to CAA section 129, and EPA would need to account for those units in setting MACT standards under section 129. By contrast, if the secondary materials combusted by a particular boiler are not solid waste, that source would be subject to the applicable section 112 boiler rule.

25. Following signature, the Agency promptly submitted the proposed major source boilers, area source boilers, and CISWI rules (the “three air rules”) and the Non-Hazardous Solid Waste rule to the Office of the Federal Register. The rules were published in the Federal Register on June 4, 2010.

26. Taken together, the rules impact a substantial number of sources. Specifically, in the proposed major source boilers rule, EPA estimated that the rule would cover about 13,555 boilers and process heaters located at about 1,600 facilities. As a result of the proposed emission standards for major source boilers and process heaters, EPA estimated significant annual health benefits, which EPA quantified to range from \$17 billion to \$41 billion in 2013. The total nation-wide capital cost for the proposed rule was estimated to be \$9.5 billion in the year 2013, with a total national annual cost of \$2.9 billion in the year 2013.

27. In the proposed area source boilers rule, EPA estimated that the rule would cover 183,000 existing area source boilers at about 92,000 facilities in the United States. Industrial boilers are used in manufacturing, processing, mining, refining, or any other industry. Commercial area source boilers include those used, for example, in malls, restaurants, hotels, and apartments. Institutional area source boilers include boilers used in medical centers (e.g., hospitals and nursing homes), educational and religious facilities (e.g., schools, universities and

churches), and municipal buildings (e.g., courthouses and prisons). EPA estimated that the proposed area source boiler standards would result in health benefits ranging from \$1 billion to \$2.4 billion, and \$900 million to \$2.2 billion, at 3% and 7% discount rates, respectively. EPA estimated the total nationwide capital cost for the rulemaking for existing and new area source boilers, as proposed, to be approximately \$2.5 billion, with an annualized cost of \$1 billion.

28. In the proposed CISWI rule, EPA estimated that the rule would cover 176 solid waste incineration units. EPA estimated that if all affected units used add-on controls, the total nationwide cost for complying with the rule would be approximately \$244 million per year. EPA further estimated the monetized benefits of the proposed regulatory action to be \$240 million to \$580 million (assuming 2008 dollars and a 3 percent discount rate) in the implementation year (2015).

29. In the June 4, 2010 Federal Register notices for the three air rules and the Non-Hazardous Solid Waste rule, EPA stated that one public hearing would be held, and that the comment period on the rules would close on July 19, 2010 (45 days following publication in the Federal Register).

30. Given the significant public interest in the 3 air rules and related Non-Hazardous Solid Waste rule and the substantial number of sources potentially affected by these rules, on June 9, 2010, EPA issued a notice of public hearing and extension of the comment period. The notice explained that EPA would hold three public hearings on the four related rules, as opposed to one hearing. 75 Fed. Reg. 32,682 (June 9, 2010). The notice further explained that the hearings would be held on June 15, 2010 in Arlington, Virginia, June 22, 2010 in Los Angeles, California, and June 22, 2010 in Houston, Texas. Finally, the notice extended the comment period to August 3, 2010.

31. EPA received several requests for additional extensions of the comment period. Generally, the requestors argued that additional time was needed for the public to provide meaningful feedback on the four complex and inter-related rules. Among other things, the requestors cited the need for additional time to review the calculations supporting EPA's proposed CAA emission standards and EPA's cost estimates. On July 22, 2010, EPA extended the comment period for the three air rules from August 3, to August 23, 2010. 75 Fed. Reg. 42676 (July 22, 2010). With the second extension of the comment period, the public had 80 days to comment on the three related air rules, and 60 days to comment on the Non-Hazardous Solid Waste rule.

Section 112(c)(6): Need for Additional Time To Complete Standards

32. EPA received about 2,360 individual comments on the major source boilers rule, 2,200 individual comments on the area source boilers rule, and over 250 individual comments on the CISWI rule. If each mass mailing received were also counted, the total number of comments received on the rules would exceed 30,000 comments. The volume of comments received on these three air rules is significant, as compared to the number received on other similar rules. Indeed, several of the comment letters submitted spanned hundreds of pages.

33. EPA received about 1,150 individual comments on the Non-Hazardous Solid Waste Rule. If each mass mailing received were also counted, the total number of comments received on the rule would exceed 20,000 comments. In addition, prior to issuance of the proposed rule, EPA received approximately 21,000 emails from concerned citizens, in addition to a host of comments it received in response to the January 2009 Non-Hazardous Solid Waste ANPRM. See *supra* n.4.

34. The Agency has spent considerable time reviewing the over 4,800 individual comments received on the three air rules. These comments raise several significant issues and provide new information and data. After reviewing the comments, we have a different and better understanding of the facts and complexities associated with the emissions of certain hazardous air pollutants from industrial, commercial and institutional boilers and process heaters and CISWI units. Based on the comments and new information and data, I believe a re-proposal of the major source boilers, area source boilers and CISWI rules would significantly bolster the strength of the final rules. As explained further below, there were a number of significant issues raised in the comments that may result in certain changes to the proposed rules that, we believe, could change the direction from the proposals sufficiently to make additional notice and comment advisable.

35. Although I cannot speak with specificity at this time as to the precise details of what we would include in a re-proposal because we have not yet presented the Administrator with options for her approval, I can discuss generally the kinds of issues that have emerged.

a. For example, commenters have raised legitimate issues concerning the proposed subcategorization scheme in the three air rules. Some commenters argued that we failed to establish a sufficient number of subcategories, while others argued that the proposed subcategorization scheme was not supported by the record. In addition to the new information and data we received on the sources at issue, these comments have made us recognize that, at proposal, we failed to understand fully certain issues associated with the affected sources that are relevant to subcategorization decisions. A different subcategorization decision could significantly change the proposed emission limits.

b. Another issue that emerged during the comment period is the scope of coverage of the proposed rules. Some commenters argue that the proposed boilers rules improperly fail to cover boilers that combust solely non-hazardous secondary materials that are not solid waste. We agree that the proposed boilers rules did not set standards for such boilers. If a decision is made to set standards for such boilers, we believe that providing the public an appropriate opportunity to comment on those standards would significantly reduce the risk that a reviewing court might later find that EPA had failed to provide sufficient notice to the regulated community.

c. Some commenters argued that we significantly under-estimated the number and types of certain units in the CISWI rule. For example, we estimated that there were 36 burn-off ovens in the United States. Commenters assert that there are between 10,000 and 15,000 of these ovens in the United States and that we lack data on these units and thus cannot set defensible MACT standards. Another commenter argued that we rushed to set standards for CISWI units that are not in the inventory supporting EPA's section 112(c)(6) listing and that such units are therefore not needed to meet the Agency's 112(c)(6) obligations. EPA is carefully evaluating these comments and assessing whether it needs burn off ovens and other CISWI units on which it currently lacks data or information to meet its section 112(c)(6) obligation.

36. Based on our current understanding of the facts about the sources at issue here and the issues that have emerged during the comment period, I believe that if we issue final rules for the three categories described above by January 16, 2011, various interested parties will allege in proceedings for judicial review that we did not provide meaningful notice and opportunity for public comment. In addition, I do not believe that we can adequately respond by

January 16, 2011, to the over 4,800 individual comments received on the major and area source boilers and CISWI rules. Although we have been working diligently to review and evaluate the comments since late August, we simply cannot fully respond by January 16, 2011, given the sheer volume and complexity of the issues presented.

37. EPA believes the deadline in Paragraph 3 of the September 20, 2010 Order should be extended from January 16, 2011, to April 13, 2012, to allow the Agency time to develop workable rules that can be implemented effectively and that can withstand judicial review. With such an extension, we would intend to re-propose the major source, area source, and CISWI rules by June 1, 2011. Following an opportunity for notice and comment on the re-proposals, EPA would take final action on the emission standards needed to meet the requirements of Paragraph 3 by April 13, 2012. See infra. In addition to issuing the re-proposals, EPA would use the extension of time to develop complete responses to all of the comments received on both the proposals and re-proposals. As explained above, the rules at issue cover almost two hundred thousand boilers and about 175 CISWI units and have significant environmental benefits, but they also have significant costs. See supra ¶¶ 26-28 (noting that the proposed major source boilers rule covers about 13,555 boilers and the proposed area source boilers rule covers about 183,000 boilers). As a matter of public policy, on rules of this significance that affect such a substantial number of sources, we believe it is appropriate to seek to avoid any risk of procedural error especially where, as here, we have identified the need for additional public input prior to issuing the final rules. I also believe that the re-proposal approach will result in standards that are more defensible and will yield environmental benefits earlier, because the final standards will more likely withstand substantive review.

38. EPA continues to work to complete final emission standards for those major source boilers, area source boilers and CISWI units that are needed to meet the requirements of Paragraph 3 of the Court's Order and section 112(c)(6). Were the Court to grant our request to extend the current January 16, 2011 deadline to April 13, 2012, I estimate that we would need at least 4 and one half months to develop re-proposals for the three rules. In addition to developing the re-proposals, we would need to prepare appropriate supporting documentation, including any revised calculations supporting the re-proposed emission standards and the costs associated with such standards.

39. Under the schedule proposed in Paragraph 37, there would be ten and one half months between signature of the re-proposed rule and signature of the final rule. I believe that this period of time is sufficient to promulgate the final standards. EPA currently intends to provide a 60-day comment period on the re-proposals, given the significant public interest in the original proposals. EPA also intends to hold a public hearing after the re-proposals are published in the Federal Register. We recognize that we will likely receive many additional comments, but we believe that the proposed period between the signature of the re-proposed and final rules provides sufficient time to review, consider, and respond to comments. We are prepared to commit the necessary resources to meet the schedule proposed in Paragraph 37.

40. If the Court does not allow EPA time to re-propose the standards at issue, EPA believes that the January 16, 2011 deadline in Paragraph 3 of the September 20, 2010 Order should, at a minimum, be extended to June 15, 2011. The Agency cannot currently respond in full to all of the significant comments submitted on the major source, area source, and CISWI proposed rules and prepare a final rule for the Administrator's signature that is consistent with those comments by January 16, 2011. While such an extension would not eliminate the

likelihood that opponents of the rules will allege the Agency provided insufficient notice and opportunity for comment, it would enable the Agency to develop responses to all significant comments received and to prepare fuller and more defensible response to those comments, which would enhance the defensibility of the final standards.

Section 112(c)(3): Need for Additional Time To Complete Standards

41. Consistent with the proposal set forth in Paragraph 37, Paragraph 1(i) of the September 20, 2010 Order would need to be extended to April 13, 2012, because the Agency believes that it needs to set standards for certain emissions from certain area source boilers to meet its section 112(c)(3) obligations. The deadline in Paragraph 1(i) must be consistent with the deadline in Paragraph 3, because certain area source boilers are needed to meet the requirements of both section 112(c)(3) and (c)(6). Thus, to the extent the deadline in Paragraph 3 is extended, the deadline in Paragraph 1(i) should be extended by the same amount of time.

42. As noted above, on September 30, 2010, EPA proposed emission standards for sewage sludge incinerators to meet its section 112(c)(3) obligations. EPA had hoped to be in a position to propose this rule earlier in 2010, but it encountered some unexpected delays, as explained below.

43. The Agency determined in 2009 that it needed additional information concerning the emissions of certain pollutants from sewage sludge incinerators. On October 23, 2009, EPA sent a CAA section 114 information collection request to a small number of facilities. Because of the small universe of sources targeted for information, the requirements of the Paperwork Reduction Act did not apply to this collection. In the information request, the Agency asked facilities to submit certain existing information and required the facilities to test for certain

pollutants. The information request required sources to submit the existing information by December 19, 2009, and the test data by February 17, 2010.

44. The Agency provided extensions for certain sources to submit their test data. Most of the sources requested these extensions because the units needed additional time to secure the necessary funding to complete the testing and to adhere to any relevant local government procedures for securing contractors to complete the testing. Sewage sludge incinerator units are owned almost exclusively by municipalities and the process for securing the funding and resources necessary to complete the testing was time consuming. Another source requested an extension of time to complete the testing due to weather-related issues. The Agency received all of the information and test data by March 31, 2010.

45. Once EPA reviewed and evaluated the information and data submitted in response to the survey, it identified some missing or incomplete information and data. It took a few additional weeks to resolve the data discrepancies that we had identified.

46. Finally, during the rule development process, we recognized that we were missing certain information relevant to our cost analysis of the proposed emission standards. In our cost analysis, we examined alternative disposal methods, one of which was landfilling sewage sludge. To complete our cost analysis, we needed the cost for small entities to transition from incinerating sewage sludge to landfilling it. It took a few weeks to obtain this information and complete the cost assessment for the proposed emission standards.

47. As noted above, the Administrator signed the proposed emission standards for sewage sludge incinerators on September 30, 2010. We received a request for a public hearing, and that hearing was held on October 29, 2010. The comment period closed on November 29, 2010, thirty days after the public hearing, as required by the CAA.

48. To date, we have received over 80 individual comments on the proposed rule. Based on the comments we have reviewed to date, we do not currently intend to re-propose the rule. The Agency cannot, however, currently respond in full to all of the significant comments submitted on the proposed sewage sludge incinerators rule by January 16, 2011.

49. Based on the comments reviewed to date and the information and data submitted, we estimate that we would need until July 15, 2011 to finalize the emission standards for sewage sludge incinerators. The additional time would enable the Agency to fully assess the new information submitted, including emissions and cost information, and to determine what, if any, changes to the proposed standards are needed. The additional time would also enable the Agency to develop responses to all significant comments received and to prepare fuller and more defensible responses to those comments, which would enhance the defensibility of the final standards. We therefore request that Paragraph 1(i) be modified to allow EPA to complete standards for one additional source category under section 112(c)(3) by July 15, 2011.

SO DECLARED:

/s/ PANAGIOTIS E. TSIRIGOTIS

Dated: December 6, 2010