I. Although not directly applicable to the Emission Control Projects, Indorama satisfies the compliance extension requirements under 42 U.S.C. § 7412(f)(4)(B) because additional time is necessary for the installation of controls and an extension will not result in imminent endangerment.

EPA's residual risk authority is set forth under 42 U.S.C. § 7412(f)(2). Unlike the recurring technology review prescribed by 42 U.S.C. § 7412(d)(6), Congress authorized EPA to conduct a single residual risk review. EPA itself has consistently interpreted the statute as directing it to conduct a single residual risk review, a position which has been affirmed by the D.C. Circuit Court of Appeals. *See* 77 Fed. Reg. 55,698, 55,699 (Sept. 11, 2012) (the residual risk review "is a one-time review that must occur within 8 years of issuance of the MACT standard"); 81 Fed. Reg. 97,046, 97,048 (Dec. 30, 2016) (same); 88 Fed. Reg. 13,956, 13,962 n.22 (Mar. 6, 2023) ("CAA section 112(f)(2) requires the EPA to conduct a one-time review of the risks remaining after imposition of MACT standards under CAA section 112(d)(2) within 8 years of the effective date of those standards (risk review)"); *Louisiana Env't Action Network v. EPA*, 955 F.3d 1088, 1093 (D.C. Cir. 2020) ("EPA under section 112(f)(2) must conduct a one-time review within 8 years promulgating an emission standard to, among other things, evaluate residual risk"); *see also Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (contrasting the risk and technology reviews, which are "two distinct, parallel analyses: a recurring 'technology review' under section 112(d)(6) and a one-time 'risk review' under section 112(f)(2)").

EPA conducted the residual risk review for the HON source category in 2006. During this rulemaking, numerous commenters pointed out that EPA lacks authority to conduct a second 112(f)(2) risk review.[3] In the Final Rule, EPA said that it has authority to conduct an additional risk review, "particularly where new information has come to light making a prior risk review unreliable (referring the to 2016 IRIS value for ethylene oxide)." 89 Fed. Reg. at 42,969. But had Congress wanted to authorize recurring residual risk reviews, it knew how to do so, as evidenced by the recurring technology review mandated by Section 112(d)(6). Thus, the additional risk review EPA conducted in the Final Rule is beyond EPA's statutory authority and the requirements EPA issued to address the unacceptable risk it found pursuant to this additional risk review are not 112(f)(2) standards. And while the constraints of the waiver authority set forth under 42 U.S.C. § 7412(f)(4)(B) are not directly applicable to the risk requirements of the Final Rule, Indorama meets the requirements set forth under that provision that "such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment." 42 U.S.C. 7412(f)(4)(B).

Because the risk requirements set by the Final Rule are outside of the 112(f)(2) framework, and represent a concurring review similar to EPA's 112(d)(6) technology review mandate, it would be reasonable to apply the allowable 3-year compliance period for 112(d) requirements to the Emission Control Projects and to look to the compliance extension provisions applicable to requirements promulgated under Section 112(d), which provides for a one-year extension of that 3-year compliance period, and which has been incorporated expressly into the HON Rule. *See* 42 U.S.C. § 7412(i)(3); 40 CFR 63.6(i)(4)(i)(A); 40 CFR 63.151(a)(6); 40 CFR 63.182(a)(6). Thus, Indorama is requesting a compliance period of 4 years from the effective date of the standard for the Emission Control Projects described herein, for a revised compliance date of July 15, 2028. The Port Neches Facility will require at least this much time to comply.

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[3] EPA-HQ-OAR-2022-0730-0152 at 17-18 (Indorama Comments); EPA-HQ-OAR-2022-0730-0168 at 9-11 (American Chemistry Council, et al., Comments).