

I. EPA Erred in Calculating the Dioxin/Furan Emission Limit

We submit that the dioxin and furan (“D/F”) emission limit for process vents was calculated in error. Pursuant to Section 112(d)(3) of the Clean Air Act,³ this limit shall be no less stringent than the “average emission limitation achieved by the best performing 12 percent of the existing sources (for which the administrator has emissions information) . . . for categories and subcategories with 30 or more sources.”⁴ Where categories or subcategories have fewer than 30 sources, the limit shall be no less stringent than “the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information).”⁵ According to the data presented by EPA, “there are 207 HON facilities . . . and 634 CMPUs nationwide,” of which the Agency estimates that “at least 34 HON CMPUs and 18 HON facilities . . . manufacture [chlorinated SOCMi chemicals] and would have emissions of dioxins/furans.”⁶ Since there are more than 30 HON CPMU sources, EPA was required to calculate the limit “utilizing the best performing 12 percent of existing sources for which the Administrator ha[d] emissions information.”⁷ The Agency instead used the top 12 percent of the nine sources for which it had data.⁸ The VI submits that this approach violates section 112(d)(3) as discussed below.

A. EPA’s Application of 112(d)(3)(A) Artificially Narrowed the Scope of Sources Considered in the Calculations

As noted above, EPA interpreted the parenthetical in Section 112(d)(3)(A) (*i.e.*, “for which the Administrator has emissions information”) to allow EPA to calculate the top 12% of the source category based on only the number of sources for which EPA had information. The result of this approach is that, while the category is comprised of at least 34 sources, EPA based its calculation of the top 12% on only nine sources. As a result, only two sources were considered in setting the limit—fewer even than the bare minimum number of sources that are to be considered for categories with less than 30 sources under section 112(d)(3)(B). Such an approach incorrectly reads the parenthetical directly into the surrounding text of the statute, casting aside any distinction created by Congress’ use of parentheses. The EPA’s interpretation and approach violates fundamental principles of statutory construction by giving too much

³ 42 U.S.C. § 7412(d)(3).

⁴ *Id.* at § 7412(d)(3)(A).

⁵ *Id.* at § 7412(d)(3)(B).

⁶ *Dioxins and Furans MACT Floor in the SOCMi Source Category for Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs*, Docket ID No. EPA-HQ-OAR-2022-0730-0084 at p. 8.

⁷ *Summary of Public Comments and Responses for New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry*, Docket ID No. EPA-HQ-OAR-2022-0730-2764 at p. 351.

⁸ *Dioxins and Furans MACT Floor in the SOCMi Source Category for Processes Subject to HON and Processes Subject to Group I and Group II Polymers and Resins NESHAPs*, Docket ID No. EPA-HQ-OAR-2022-0730-0084 at p. 10.