PETITION FOR RECONSIDERATION OF
THE COUNCIL OF INDUSTRIAL BOILER OWNERS
AND THE AMERICAN CHEMISTRY COUNCIL of

National Emission Standards for Hazardous Air Pollutants for Area Sources:
Industrial, Commercial, and Institutional Boilers
Rule; Notice of Final Action on Reconsideration
78 Fed. Reg. 7,488 (February 1, 2013)

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Pursuant to § 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B) and for the reasons set forth below, the Council of Industrial Boiler Owners (CIBO) and the American Chemistry Council (ACC) petition the Administrator of the United States Environmental Protection Agency (EPA) to reconsider specific provisions in its final reconsidered rule, National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (Area Source Rule), 78 FR 7488 (Feb. 1, 2013).

INTRODUCTION

CIBO is a broad-based association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates with members representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information within the industry and between industry and government relating to energy and environmental equipment, technology, operations, policies, law and regulations affecting industrial boilers. Since its formation, CIBO has been active in the development of technically sound, reasonable, cost-effective energy and environmental regulations for industrial boilers. CIBO supports regulatory programs that provide industry with enough flexibility to modernize -- effectively and without penalty - the nation's aging energy infrastructure, as modernization is the key to cost-effective environmental protection.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $720 billion enterprise and a key element of the nation's economy. ACC member companies own and operate boilers and process heaters subject to this rule.

On December 23, 2011, EPA proposed the Reconsideration Rule National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers. 76 FR 80532 (Proposed Reconsideration Rule). On February 1, 2013, EPA published the Final Reconsideration Area Source Rule. 78 FR 7488 (Final Reconsideration Rule).

Reconsideration of the rule is warranted because the grounds for the issues identified below, which are "of central relevance to the outcome of the rule," arose after the public comment period or could not be raised due to impracticability. 42 U.S.C. § 7607(d)(7)(B). Considering this, the Clean Air Act (CAA) requires that EPA "shall convene a proceeding for a reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed." *Id.*

We respectfully request that EPA grant reconsideration of the following issue.

DEFINITION OF STARTUP

The Final Reconsideration Rule announced a new requirement of startup periods that is not a logical outgrowth of the Proposed Reconsideration Rule. EPA failed to provide notice and an opportunity to comment on this new regulatory provision. The issue is of central relevance to the rule, as it imposes requirements on regulated sources that are inconsistent with basic boiler operations and with which some sources are unable to comply.

The definition of startup period was amended in the Final Reconsideration Rule, which now defines startup as ending "when any of the steam or heat from the boiler is supplied for heating and/or producing electricity, or for any other purpose." § 63.11237 (Final Reconsideration Rule); 78 FR 7517. This definition does not account for a wide range of boilers that operationally are still in startup mode even after some steam or heat is supplied to the plant. Identifying when startup ends is of central relevance to the rule because that point dictates what other rule requirements apply and therefore whether sources are able to comply with the rule. Defining the end of startup based on the production of any steam or heat for any purpose is not a logical outgrowth of the proposal, which focused on percent boiler load. Moreover, sources could not have anticipated that EPA would finalize a new definition that does not reflect the realities of boiler operations. *See Environmental Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) ("we have refused to allow agencies to use the rulemaking process to pull a surprise switcheroo on regulated entities"); *International Union, United Mine Workers of America v. Mine Safety and Health Admin.*, 407 F.3d 1250, 1261 (D.C. Cir. 2005) (changing a rule from including a minimum to including a maximum is not a logical outgrowth); *Fertilizer Institute v. EPA*, 935 F.2d 1303 (D.C. Cir. 1991) (rule is not a logical outgrowth where agency solicits comments on one approach but develops a different approach at final rule stage).

Clearly defining the end of startup is critical for compliance because it defines when sources must engage emission controls and comply with numeric emission standards rather than work practice standards. The Final Reconsideration definition of startup forces sources into the impossible circumstance of not being able to comply with other rule requirements. This definition does not accurately account for what constitutes "startup" for all boilers, which varies widely. For example, some boilers begin to supply steam or heat for some purposes onsite before they have achieved necessary temperature or load to engage emission controls. According to the rule, a boiler supplying even a small amount of steam would no longer be in startup and would be required at that point in time to engage emission controls. However, according to equipment specifications and established safe boiler operations, a source operator should *not* engage emission controls until specific parameters are met.

In the Area Source Proposed Reconsideration Rule, EPA proposed to define startup as ending when "the boiler first achieves 25 percent load (i.e., a cold start)." § 63.11237 (Proposed Reconsideration); 76 FR 80548. In comments on the Proposal, CIBO explained that ICI boilers have widely ranging operational characteristics, due to their varied fuel types, furnace and boiler designs (combustion methods), and operating methodologies, including varied minimum stable operating loads. CIBO provided multiple examples of different startup methodologies among boilers. CIBO Comments on Proposed Reconsideration Rule, EPA-HQ-OAR-2006-0790-2442 at 26. Similarly, in its comments, ACC pointed out that EPA's proposed 25 percent load threshold is not workable for all boilers as some have a much higher minimum stable operating load, for example stable operation for a stoker boiler may not be reached until 60 percent load. ACC Comments on Proposed Reconsideration Rule, EPA-HQ-OAR-2006-0790-2444.

To address these wide variations among boilers, we urged EPA to revise the startup definition to allow facilities to determine the minimum stable operating load on a unit-specific basis and include the minimum stable operating load and the proper procedures to follow during startup and shutdown in a site-specific plan. Establishment of the minimum stable operating load on a site-specific basis is analogous to setting other boiler and control device operating parameter limits on a site-specific basis. CIBO Comments at 27; ACC Comments at 23.

EPA acknowledged the problems with its Proposed Rule and eliminated 25% load as the basis for defining the end of the startup period. However, EPA did not adopt a definition that permits site-specific considerations. Instead, EPA selected as the basis for defining startup another variable boiler feature while still not accounting for the broad range of boiler and fuel types, operational methodologies and facility demands placed on boilers. EPA exchanged an overly narrow startup definition for an overly broad definition that also is unworkable.

The definition of startup does not rationally correspond to the fuels used during startup and the actual procedures and periods of startup at a large percentage of boilers covered by this rule. EPA should reconsider that aspect of the rule and propose a definition that allows sources to identify startup periods on a site-specific and unit-specific basis. Only with this degree of flexibility will the rule adequately account for the multiple design and operational variables of the diverse boiler population regulated by this rule in a way that allows safe and effective operation with assurance of compliance with the standard.

CONCLUSION

For all of the foregoing reasons CIBO and ACC respectfully request that EPA grant the Petition for Reconsideration.