



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RESEARCH TRIANGLE PARK, NC 27711

JUN 14 2018

OFFICE OF  
AIR QUALITY PLANNING  
AND STANDARDS

**MEMORANDUM**

**SUBJECT:** MACT Compliance Extension Requests for Brick Manufacturing Facilities

**FROM:** Penny Lassiter, Acting Director  
Sector Policies and Programs Division (D205-01)

A handwritten signature in black ink that reads "P. Lassiter".

**TO:** Regional Air Division Directors, Regions 1 – 10

The purpose of this memorandum is to provide additional information on potential compliance extension requests that may be submitted pursuant to Clean Air Act (CAA) section 112(i)(3)(B) and 40 CFR 63.6(i) for sources subject to the Brick and Structural Clay Products National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR part 63, subpart JJJJ).

On October 26, 2015, the Environmental Protection Agency (EPA) published the NESHAP for Brick and Structural Clay Products Manufacturing under CAA sections 112(d)(2) and (3), also referred to as Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants (HAP) (80 FR 65470). The 2015 NESHAP followed a previous NESHAP that the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated in March 2007. The 2015 NESHAP included emissions limits based on MACT for particulate matter (PM) (PM is used as a surrogate to regulate non-mercury HAP metals) and mercury. In addition, EPA set a health-based emission limit for acid gases.

On December 23, 2015, the Brick Industry Association (BIA) filed an administrative petition asking the agency to reconsider several issues in the NESHAP and a petition for judicial review. Earthjustice also filed a petition for judicial review. In April 2016, EPA denied BIA's administrative petition. Litigation in the Court also proceeded with briefs filed and oral argument scheduled. On October 3, 2017, EPA filed a motion to delay oral argument, citing statements from the EPA Administrator that the agency intended to review the provisions of the Brick and Clay Ceramics NESHAP, and that, as part of that review, the agency would consider issues raised in the litigation.

In November 2016, the Court heard oral argument on the challenges to the NESHAP brought by Earthjustice and on whether the industry challenges to the NESHAP should be held in abeyance. A decision on these issues is pending.

We have been told by the BIA that a number of sources are concerned that they will not be able to meet the current compliance date of December 26, 2018, and are likely to request a 1-year extension pursuant to CAA section 112(i)(3)(B) and 40 CFR 63.6(i), which allow for an extension if additional time is “necessary for the installation of controls.” EPA previously has interpreted these provisions broadly to allow an extension where additional time is needed to make modifications necessary to comply with emission standards. We believe that “installation of controls” can include the installation of any equipment needed to comply with the rule, such as adding or modifying emission control equipment and/or equipment necessary to comply with the monitoring, recordkeeping and reporting requirements of the rule. Although the need for additional time for purposes of installing controls is facility-specific, certain situations arise repeatedly. In particular, with respect to this industry, a number of sources may face challenges associated with installing controls necessary to comply with the MACT requirements on PM and mercury in the 2015 NESHAP.

We note that under 40 CFR 63.6(i)(4)(i)(B), non-frivolous requests submitted in writing at least 120 days prior to the source’s compliance date will stay the applicability of the rule for that source’s emissions points covered by the request until such time as the request is granted or denied. Any denial would be effective as of the original compliance date. The compliance date in the 2015 NESHAP is December 26, 2018. EPA will deem any request submitted by August 28, 2018, to be timely submitted under 40 CFR 63.6(i)(4)(i)(B). Further, 40 CFR 63.6(i)(4)(i)(C) provides that requests may be submitted after 120 days before the compliance date if: (1) the need for the compliance extension arose after the date that is 120 days before the compliance date and before the otherwise applicable compliance date, and (2) the need for the extension arose due to circumstances beyond the reasonable control of the owner or operator.

We are asking each Region to work with the state air programs in their Region to identify brick manufacturing sources in that state that believe they will need an extension of time to come into compliance with the Brick and Clay Ceramics NESHAP. We anticipate that the states and Regions will encounter sources that fall within the following general scenarios:

1. The facility will need additional time to install controls to come into compliance with the requirements in the NESHAP; or
2. The facility will need additional time to install controls (if necessary to reduce the facility’s potential to emit HAP to below the major source threshold) and to take an enforceable limit on the facility’s potential to emit HAP to below the major source thresholds.

Our view is that either of these two scenarios would provide a basis for the facility to obtain a compliance extension under CAA section 112(i)(3)(B) and 40 CFR 63.3(i). For sources that fall within one of these scenarios, we encourage the state and Region to suggest that the sources submit requests for a 1-year extension pursuant to CAA section 112(i)(3)(B) and 40 CFR 63.6(i). We note that the availability of an extension is not limited to these scenarios and EPA will evaluate each request individually.

To expedite this process, we ask that facilities in need of extensions submit their requests directly to the Office of Air Quality Planning and Standards, to the contact named below. We will review each request, respond to the source, and copy the appropriate state and Regional offices to expedite adding the extension to the source's permit.

For further information, please contact Brian Storey in the Office of Air Quality Planning and Standards, Sector Policies and Programs Division, at *storey.brian@epa.gov* or (919) 541-1103.