EPA AIR TOXICS RULES

Small Rule: Hydrochloric Acid Production

NESHAP: Hydrochloric Acid Production Proposed Rule (66 FR 48174) 18 Sept 2001. Rulemaking has to do with fumes emitted in the production of hydrochloric acid.

NESHAP: Hydrochloric Acid Production Extension of Public Comment (66 FR 57917) 19 Nov 2001

Parent Rule: NESHAP: Hydrochloric Acid Production Final Rule (68 FR 19076) 17 Ap 2003

NESHAP: Hydrochloric Acid Production Proposed Rule Amendments (70 FR 49530) 24 Aug 2005

This rule was proposed to amend an existing regulation having to do with the toxic fumes that can be emitted in the production of hydrochloric acid (NESHAP: Hydrochloric Acid Production Final Rule (68 FR 19076) 17 Ap. 2003.) It was intended to clarify certain applicability provisions, emission standards, and testing, maintenance, and reporting requirements, as well as to correct several omissions and typographical errors. As the EPA described its purpose, "We are proposing the amendments to facilitate compliance and improve understanding of the final rule requirements." The proposed changes would:

- exempt certain HCL facilities that are part of other source categories and subject to other federal regulations.
- eliminate exemptions that overly broad so that regulations would cover leaks from HCL storage tanks, transfer operations, or equipment in service.
- clarify the meaning of "equipment."
- clarify the meaning of emission standards so that they do not require an add-on control device when it is unnecessary for compliance. It had not been EPA's intent to impose this requirement.)
- relax maintenance requirements for tank control devices in keeping with the intent of the original rule.
- change reporting requirements for notification of compliance.
- clarify reporting requirement for compliance plans.

Although EPA offered to hold a public hearing on these proposed amendments if requested, that did not materialize. It received four public comment letters, all from HCL producers and industrial trade associations. The agency rejected most of the commenters' proposed changes but did clarify the compliance deadline for the final rule and the dates when initial compliance reports were due. It also reworded the language of the regulation in order to eliminate duplicative authority and clarify provisions regarding the retesting process for vent emissions.

(NESHAP: Hydrochloric Acid Production Rule Amending 2003 Rule (71 FR 17738) 7 Ap 2006.) Neither of these changes appear to have been very significant.

General Thoughts

This seems to fit into the second category of incremental policy development. The amendments did not result from a rethinking of fundamental policy issues or from a change in the technical or political environment. Proposed two years after the initial HCL rule, they addressed gaps in regulatory coverage and sought to eliminate redundancy with regard to aspects of HCL production that was covered by other regulations. They also sought to simplify and ease compliance requirements, but it did not seem to have weakened the regulation in any substantial way. The changes were small and noncontroversial, and participation was confined to regulated industry.

Medium Rule: Halogenated Cleaning Solvents

This rule was developed to control various halogenated solvent emissions from organic solvent vapor cleaners and from organic solvent continuous cold and vapor cleaners. These include several kinds of machines used to remove dirt, grease, metal filings, etc. from parts and equipment used in machine shops and various types of manufacturing. The rule was required under the Clean Air Act amendments of 1990.

The following is a chronology of key events and policy changes:

- An original NPRM was issued in November 1993 (58 FR 62588). No one requested a public hearing pursuant to this proposal and thus there was none. There were 57 public comments, mainly from states and from users, vendors, and trade groups associated with halogenated solvents and solvent machines.

- An original final rule was issued in December 1994 (59 FR 61801). Changes from the proposed rule do not appear to have been fundamental but all were responses to concern expressed by industry. They included the clarification of language, less frequent inspections for companies with good compliance records, the extension of deadlines for reporting and compliance, and more flexible testing procedures for some kinds of machines.

- The EPA issued corrections to the original final regulation in June 1995 (60 FR 29485). These were minor clarifications that did not alter the intended coverage of the rule.

- The EPA issued a rule in May 1998 granting a three-month stay of the application of certain emission standards for certain sources (63 FR 24749). The agency explained that it did not understand how those machines worked at the time it promulgated the original rule, and that it had become apparent that they could not comply with the regulations as written. The stay would allow EPA to analyze the problem and revise its requirements accordingly. The agency did not solicit public comment on this pursuant to the APA's good cause exception.

- The same notice also proposed a compliance extension of up to one year beyond the three-month stay in order "to complete analysis of equivalent methods of control for continuous web cleaning machines…" This proposal was precipitated by two owners and machine operators who argued that rule did not address their situation. The agency subsequently became aware of several other machines experiencing the same compliance problems. Three comment letters were received on the proposed extension. All were from industrial facilities and all argued that the extension was needed. A final rule was issued in December 1998 granting an extension until August of 1999 (63 FR 68397).

- The EPA issued a proposed rule in July 1999 that would exempt non-major batch cold solvent machines from its federal operating permit program (64 FR 37734). This was intended to create a level playing field for those operating this type of machine on Indian reservations and who thus could not obtain exemptions from the states (which had been granted the discretion to do so). EPA characterized this as a "noncontroversial revision," and the proposal was accompanied by a direct final rule that would go into effect in the absence of adverse comments (64 FR 37683). This turned out to be the case.

- The EPA proposed further amendments in August 1999 that would continue to allow permitting authorities the discretion to defer the requirement of operating permits until Dec. 2004 (64 FR 45116). The intent was to extend the deadline for certain area sources to submit applications for title V operating permits and thus provide relief to industry, as well as to overburdened officials in state and local agencies, and EPA regional offices. The agency noted that it did not have sufficient information to determine whether permit exemptions were warranted for most area sources and that it was not yet prepared to make decisions that either permanently relieved those sources from title V. This was partially a concession to the fact that some agencies had underestimated the resources that would be required to issue and that businesses unable to operate in the meantime.

- The EPA issued a Direct Final Rule in August 1999 as a follow-up to the compliance extension rule it had issued the previous December (64 FR 45187). This was in response to concerns raised by several industry groups that some machines did not clearly fit into any of the categories outlined in the regulation. Accordingly, the rule established

alternative compliance requirements for continuous web cleaning machines. It also made two other minor changes with regard to other kinds of machines. The Direct Final Rule would be effective in the absence of adverse comment.

- The EPA withdrew the preceding direct final rule in October of 1999 as the result of two adverse comments submitted by industry (64 FR 56173).

- The EPA issued a Final Rule in December 1999 that added an alternative standard for web cleaning machines at suggestion of one commenter on its August rule (64 R 67793).

- The EPA issued another rule in December of 1999 finalizing amendments that were proposed in August. The agency had received seven comments, most of which supported the proposal, and it made no changes. One environmental commenter objected that exemptions to permitting requirements under title V would allow unfettered pollution and impede public access to environmental information. This commenter stressed the benefits of the permitting process as something that increased citizen participation in enforcement, and also argued that permit fees could cover implementation costs borne by state and local agencies. EPA disagreed, stating that the sources in question were already subject to regulatory requirements without having to obtain permits. EPA also rejected argument by one state agency that permitting for certain kinds of sources was not overly burdensome and should be required. It reiterated the point that the rule only give the states the discretion waive permitting requirements.

- The EPA issued a Final Rule in September 2000 making several corrections and clarifications to the preceding rule (65 FR 54419).

- The EPA issued a Proposed Rule in March 2005 that would permanently exempt from title V operating permit program five categories of non-major sources: dry cleaners, chrome electroplaters, solvent degreasers, EO Sterilizers) (70 FR 15250).

- The EPA issued a Final Rule in December of 2005 exempting certain sources from title V permitting requirements (70 FR 75320). The agency had received many comments opposing exemptions in response to its March proposal. They argued both that the agency had underestimated the benefits associated with permits and overestimated the administrative and economic costs. These were all dismissed by the agency.

- The EPA issued a proposed rule in August 2006 recommending more stringent standards for three of the chemicals used in solvent cleaning machines (71 FR 47670). This NPRM was in response to the Clean Air Act's requirement that EPA revisit regulations every eight years to determine their effectiveness in light of experience and possible changes in

technology. The proposal was based on EPA staff research that relied predominantly on NEI data.

- The EPA issued a Notice of Data Availability in December 2006 (71 FR 75182). This was in response to new data submitted by various companies and industry groups pursuant to its August NPRM. Although these data were available to the public in the docket, EPA thought that the information was sufficiently relevant that it should be brought to light in a notice.

- The EPA issued a final rule in May 2007 based on a substantial "re-analysis" of comments and of the data contained in the preceding notice of data availability (72 FR 25138). There were comments both in favor of and against the proposed rule, but the latter seemed to dominate. All changes to the proposed rule made it less stringent. These included an extension of compliance deadlines and the raising limits on emissions. Changes were driven primarily by new data that contradicted EPA's analysis in the NPRM.

- The EPA issued a Proposed Notice of Reconsideration and Request for Public Comment in October 2008 (73 FR 62384). This was in response to petitions filed by several states and by NRDC, Sierra Club, citizens for Pennsylvania's Future, several state and federal legislators, and the Governor of Pennsylvania. These petitions generally claimed that EPA had failed to make the legal bases for its 2007 rule clear in the NPRM and that data on compliance measures had become available since the close of the comment period. EPA told petitioners that it would not stay the effectiveness of the 2007 rule but that it would publish this notice. A judicial challenge to the rule was put on hold.

General Comments

The early changes to the parent rule were based on industry feedback and generally made the regulations less burdensome, but were noncontroversial. Although the EPA issued a couple of direct final rules (that were not preceded by NPRMs), these would only be effective in the absence of adverse comment.

The first change that involved conflict was the 2005 proposal to grant permanent exemptions from permitting requirements under title V of CAA. This was based on feedback from industry and from state and local agencies. It was intended to reduce the regulatory burden on sources with relatively low emissions and on state and local agencies whose resources would be strained if required to administer the permit program. It was opposed by some environmentalists and a few state agencies, but their comments were rejected by EPA.

More controversy attended the 2006 proposal to impose more stringent standards. This was based on the "technology review" that the CAA required EPA to conduct after a rule had been in effect for 8 years. The proposal elicited lots of comment, both pro and con, but all of the changes in the final rule favored industry. These were based on industry comments that challenged the evidence used in the proposal regarding things such as the carcinogenetic effects of emissions and the costs associated with regulatory compliance.

The overall pattern of dynamic rulemaking in this case is one of industry dominance in bringing issues of implementation to light. Changes to the parent regulation were based on feedback within a relatively static environment rather than new technologies, new business practices, new policy theories, or a new balance of political influence.