

that we broaden the exemption to include facilities subject to any other NESHAP, whether it is already promulgated or yet to be promulgated, along with any facility that is subject to any federally enforceable permit that requires 95 percent reduction or greater.

Just like the commenters, we are interested in avoiding overlapping situations where a process that produces HCl might be subject to more than one Federal regulation. Based on the comments received, we have added exemptions for processes subject to the Pharmaceutical MACT (40 CFR 63, subpart GGG) and 40 CFR 63.994 of subpart SS. We have also expanded the exemption to include any process required by another rule to comply with 40 CFR 63.113(c) of the HON. In addition, according to our proposed decision not to regulate Cl₂ and HCl emissions from chlorine production (67 FR 44713; July 3, 2002), we consider direct synthesis HCl production units directly associated with chlor-alkali facilities to be part of the chlor-alkali facilities. Therefore, an exemption has been added in the final rule to exempt direct synthesis HCl production processes that are part of chlor-alkali facilities; this exemption does not extend to HCl production facilities that are co-located with chlor-alkali facilities but are not direct synthesis units directly associated with chlor-alkali facilities. So, we exempted all the specific situations raised by commenters. However, we cannot include a generic exemption for any other NESHAP or any federally enforceable permit. The statutory requirements in CAA section 112(d) are prescriptive regarding the level of control required by MACT standards, and we could not be assured that these other requirements would meet the minimum requirements for this source category. We will consider such situations on a case by case (*i.e.*, on a source-specific) basis under a request for an alternative non-opacity emission standard submitted in accordance with 40 CFR 63.6(g).

As part of our consideration of overlapping requirements, we reviewed the situation with the HON. The proposed rule exempted HCl production units located after an incinerator of a HON unit where the HCl and Cl₂ emissions are subject to 40 CFR 63.113(c). However, we did not exempt situations where gaseous HCl is produced as a by-product in a HON unit and then routed to an absorber to produce liquid HCl. In these by-product situations, the HCl and Cl₂ emissions are not covered by the HON. While we agree that the situation where the same

equipment and the same emission stream could be subject to both the HON and the HCl Production NESHAP is not ideal, we believe that these inorganic emissions should be addressed under the final rule in the same manner that comparable non-HON units are addressed. Therefore, the final rule continues to reach into the HON to cover those inorganic emissions from liquid HCl production.

Several commenters requested that the EPA exempt storage tanks that are smaller than a certain capacity. The commenters pointed out that the potential emissions from small storage tanks are low while the control costs are very high. Commenters suggestions for a minimum capacity ranged from 15,000 to 20,000 gallons. One commenter further requested an exemption for all portable storage containers (*e.g.*, drums, tank trucks, railcars). Another commenter suggested that tank capacity and HCl vapor pressure be used together to determine which storage tanks should be exempt.

We understand the commenters' concern about the cost of controlling emissions from small storage tanks. However, we believe that small storage tanks are not likely to be covered by the final rule given the other changes that we have made which were based on comments received. We have exempted storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater. We have also defined the HCl production facility such that storage tanks that store HCl for use in wastewater treatment or as feedstock for another process are not part of the HCl production facility. Therefore, we have not added an exemption for small storage tanks.

B. How Did the EPA Determine MACT?

1. Data Used To Determine MACT

Many commenters stated that the EPA did not use data that was truly representative of the sources in the source category when determining the MACT emission limitations. The commenters believed that the database used to prepare the proposed rule contained facilities that potentially would not be subject to the final rule and did not contain many facilities that potentially would be subject to the final rule. This criticism included the estimate of the number of facilities potentially subject to the final rule, but was more focused on the data used to establish MACT.

Commenters stated the number of sources subject to the final rule would likely be much greater than the 64 plant sites that we identified as potentially

subject at proposal. One commenter estimated that the number of plant sites could be as high as 300.

The commenters were especially concerned with the representativeness of the data set used to establish the MACT emission limits. They maintained that the lack of representativeness of the source category resulted in proposed emission limitations that were not adequately justified for the HCl production source category, and that the use of more representative data could change the MACT determination. A few of the commenters specifically requested that we gather data from a more representative group of potentially affected facilities and re-calculate the MACT floor. One commenter even went so far as to state that we should withdraw the proposed rule and re-propose it after properly surveying the industry and re-calculating the MACT floor based on accurate data.

First, we will briefly review the process used to obtain the information for the HCl production source category, followed by responses to the specific issues raised by the commenters.

In creating our list of sources in the HCl production source category, we consulted reliable and well-respected sources of information on the chemical industry. We removed plant sites from the original list that we believed would be subject to other MACT standards or Federal regulations. There were also a few plants that we were aware of through contacts with State agencies that were not on the original list, so they were added. That resulted in the 64 plants identified at proposal. We recognized the special difficulty in identifying all HCl production facilities, since HCl is often produced from by-product streams only for internal uses, and considered that our list may not have been comprehensive. Therefore, during a meeting held on February 28, 2001 with the primary trade organization for the HCl production industry, we specifically requested assistance in improving our initial list of potentially subject plant sites. However, no additional information resulted from this request for assistance.

While commenters claim that there could be potentially two or three times more plant sites subject to the HCl Production NESHAP than we originally estimated, there was little actual information provided to support this claim. Where commenters provided specific plant names and locations, we adjusted the list of plant sites. We also identified a few inconsistencies and overlaps from our original list. The result was that the revised list of