

intended for non-roofing products. The commenters suggested that confusion regarding applicability was caused by addressing both the asphalt processing and asphalt roofing manufacturing source categories together under one NESHAP. Confusion may have also been caused by the proposed definition of asphalt flux, which read: "asphalt flux means the residual material from distillation of crude oil used to manufacture asphalt roofing products."

Response: On June 21, 2002, the EPA sent letters to the commenters to clarify two aspects of the proposed rule:

- The proposed rule was intended to cover all asphalt processing regardless of the asphalt's end use; and
- Requirements for storage vessels at asphalt roofing manufacturing facilities, inadvertently left out of the proposed rule, are the same as those for storage vessels at asphalt processing facilities.

Subsequent comments on the notice letters disagreed with EPA's interpretation of the proposed rule's applicability and contended that the EPA should address this clarification in a supplemental proposal.

The EPA does not believe that a supplemental proposal is needed to clarify the applicability of the final rule. It has long been held that actual notice constitutes adequate notice and opportunity for comment for purposes of section 307 of the CAA. (See *Small Lead Refiner Phase Down Task Force v. EPA*, 705 F. 2d 507, 548 (D.C. Cir. 1983).) The extensive comments received in response to the June 21, 2002 letters demonstrates that the commenters had adequate notice and availed themselves of it. There is no credible claim that further comments could have been submitted had there been more notice or that the time for response was inadequate. Under these circumstances, EPA believes that it afforded all letter recipients adequate notice and opportunity for comment and a supplemental notice to clarify the applicability of the rule is not necessary.

The final NESHAP includes both asphalt processing and asphalt roofing manufacturing because many facilities both process asphalt and manufacture roofing products (asphalt roofing and other roofing products).

With respect to the issue of whether asphalt processing should include operations that process asphalt for non-roofing uses, EPA believes that it should. The HAP emissions from asphalt processing (and the means of controlling such emissions) are identical, whether or not asphalt is produced for roofing or for other uses. Nor did EPA ever intend to distinguish among asphalt uses in setting out the

rule's scope. The source category definition ("Documentation for Developing the Initial Source Category List," EPA-450/3-91-030, July 1992) of "asphalt processing" reads as follows:

"The Asphalt Processing source category includes any facility engaged in the preparation of asphalt at asphalt processing plants, petroleum refineries, and asphalt roofing plants. Asphalt preparation, called 'blowing,' involves the oxidation of asphalt flux by bubbling air through the liquid asphalt flux at 260°C for 1 to 4.5 hours, depending upon the desired characteristics of the asphalt. The category includes, but is not limited to, the following process: asphalt heating, blowing still, and asphalt storage tanks" (emphasis added).

This definition is not limited to asphalt that is processed for roofing manufacturing, and in fact, is not limited in any respect by the ultimate use to which processed asphalt is put. Consistent with the source category definition, it was not EPA's intent to limit the applicability of the final rule to the processing of roofing asphalt or any other end use.

To clarify the final rule applicability, EPA has written the definition of asphalt processing in the final rule to read as follows:

"Asphalt processing facility means any facility engaged in the preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities. Asphalt preparation, called 'blowing,' is the oxidation of asphalt flux, achieved by bubbling air through the heated asphalt, to increase the softening point and reduce the penetration of the oxidized asphalt.

An asphalt processing facility includes one or more asphalt flux blowing stills and their associated asphalt flux storage tanks, oxidized asphalt storage tanks and oxidized asphalt loading racks."

The EPA has also modified the definition of "asphalt flux" as proposed to remove any suggestion that the rule's scope is limited by the intended use of the processed asphalt.

B. Asphalt Storage Tank and Loading Rack Vapor Pressure Control Cutoff

Comment: Several commenters supported using a vapor pressure cutoff, such as those found in the petroleum refinery NESHAP (40 CFR part 63, subpart CC) and the new source performance standards for storage vessels (40 CFR part 60, subparts K, Ka, and Kb) for asphalt storage tanks and loading racks. The commenters contended that equipment with vapor pressures below those thresholds would emit only minimal amounts of HAP and therefore should not be subject to control requirements. The commenters also alleged that EPA was being

inconsistent among different MACT standards in developing standards applicable to similar types of equipment. For example, one commenter asserted that EPA should not declare emissions from low HAP, low vapor pressure stocks as *de minimis* sources under the petroleum refineries NESHAP and then propose to regulate those same emissions under the asphalt NESHAP. One commenter contended that it would be reasonable for EPA to use an approach similar to the petroleum refinery NESHAP because asphalt flux feedstocks and finished asphalt products are produced directly by refineries and because many refineries will be subject to the asphalt NESHAP.

Response: The proposed MACT for all asphalt storage tanks with a capacity of 1.93 Mg or greater at existing, new, and reconstructed affected sources was based on the fact that greater than 12 percent of the asphalt storage tanks were controlled with a combustion device operating at or above 1200 °F. Also, the available data showed that no sources were using a combustion device to control emissions from storage tanks with a capacity less than 1.93 Mg of asphalt. Therefore, the proposed MACT did not require control of tanks with capacities less than 1.93 Mg (66 FR 58620).

The EPA now believes that the prevalence of combustion devices on tanks storing asphalt at low vapor pressure is misleading. We believe that combustion devices in this industry are used to control emissions from tanks storing high- and low-vapor asphalt that are generally part of an "integrated system," an integrated group of process equipment including higher-emitting equipment such as a blowing still, so that what really is being controlled by combustion are the emissions from the high-emitting equipment, with emissions from other system components being "along for the ride."

An integrated system is one in which process components (e.g., blowing stills, coaters, and tanks storing high- and low-vapor pressure asphalt) are utilized largely together and are generally located in close proximity. In an integrated system, emissions from process equipment that are subject to less stringent emission standards (e.g., tanks storing low-vapor pressure asphalt) generally are routed to the control device (e.g., combustion device) that is used to control emissions from the equipment (e.g., blowing stills, coaters) that are subject to more stringent emission standards. In other words, it is more cost effective to "over control" emissions from lower-emitting