

- A requirement that the facility provide written notice to the Administrator at least 30 days prior to discontinuing the P2 measures and/or failing to maintain the HAP reductions described in the request.

- A condition that the applicable requirements of the subpart will again apply to the designated source(s) of emissions on the date that the facility discontinues the P2 measures and/or fails to maintain the HAP reductions described in the request, and that the facility must comply on that date. This written approval would serve as an enforceable agreement between the enforcing agency and the facility.

As noted previously, we believe that 45 days is a reasonable period for the Administrator to review a request and determine whether it should be approved or denied. We also believe that a reduced period of 30 days is a reasonable period of time for the Administrator to review a request from a Performance Track member facility and determine whether it should be approved or denied, particularly with the support of a designated central contact within EPA to facilitate and expedite the Performance Track request. Performance Track member facilities would be accorded a shorter review period in recognition of their top environmental performance, because of EPA's increased familiarity with operations at these member facilities, and to provide an incentive to promote increased participation in the Performance Track program. However, we are proposing that a failure to meet this deadline should not be deemed approval because an action of this importance should not go into effect without affirmative approval.

In implementing Option 2, the Administrator will remain cognizant of the fact that the purpose of these provisions is to provide an incentive for facilities to develop and implement P2 measures. At the same time, the reviewing agency must ensure that HAP emissions will be reduced to at least the level of MACT, and that the P2 alternative compliance requirements will assure compliance with the facility's commitments in a practically enforceable way. Option 2 is not intended to be a mechanism for obtaining an exemption from necessary compliance requirements.

As a first step, a facility would submit a clear and complete request for P2 alternative compliance requirements. At a minimum, the request would include the nine components previously listed. The facility would be free to submit any additional information that it believes

will help justify the alternative requirements.

The facility and the reviewing agency must have a common understanding of the sources of emissions designated for P2 alternative compliance requirements, the proposed alternative requirements (*i.e.*, the actions that the facility would be required to carry out), and the provisions of the NESHAP subpart and General Provisions that would no longer apply. In addition, three unambiguous certifications, signed by a responsible official of the facility (as defined in § 63.2 of the General Provisions) would be included in the request. The reviewing agency would not grant a request until these aspects are clearly and completely specified in writing.

A key component of the request would be a clear and comprehensive description of the P2 measures that the facility has implemented and a demonstration that these measures meet the definition of "pollution prevention" in the proposed amendments. As detailed earlier (in Section III A.), "pollution prevention" means "source reduction" as defined in the Pollution Prevention Act.

Another key component of the request would be a demonstration that the P2 measures have achieved, and will maintain, HAP emissions reductions equivalent to or better than the MACT level of control. Because of the uniqueness of each situation, the facility should describe operations before and after implementation of the P2 measures so as to demonstrate that the P2 measures obtain equivalent (or better) results. Facilities have detailed knowledge of their operations and, as such, are in the best position to determine how to make this demonstration.

We will encourage State, local, and tribal agencies that receive requests for P2 alternative compliance requirements to collaborate with the EPA Regional Offices and Headquarters in reviewing these requests. In this manner, we expect to build a common awareness of the issues that arise as a basis for forging a common approach to review and approval.

We invite comment on this approach to demonstrating that P2 measures reduce HAP emissions to at least the level required by the NESHAP subpart. Commenters who believe that we should provide more specific criteria or guidance on this demonstration should provide specific suggestions on appropriate criteria/guidance.

In addition to proposing clear P2 alternative compliance requirements, the proposed rule would require that the request include a commitment from the

facility to continue using the P2 measures and to maintain the described HAP emissions reductions. To be approved, the alternative requirements must be adequate to demonstrate and document continuous compliance.

For example, if a process has been modified to make it inherently less polluting and incapable of emitting HAP at or near the level of the MACT emission limit, the alternative compliance requirements might consist of documenting and periodically certifying that the process continues to be operated as described in the request. If the P2 measures consist of switching raw materials to reduce HAP emissions, tracking raw material purchases and HAP content may be adequate to demonstrate continuous compliance.

The margin of compliance achieved through the P2 measures can be an important consideration in developing proposed alternative requirements. When HAP emissions are at or near the emission limit, greater accuracy would typically be desired than when emissions are well below allowable levels and the likelihood of exceeding the limit is low. Many existing regulations and policies are based on this principle. For example, the General Provisions already provide a mechanism whereby a facility with a continuous emission monitoring system may apply for a less-rigorous alternative to the relative accuracy test when its emission rate is less than 50 percent of the applicable emission limit. (See § 63.8(f)(6).)

Many subparts include emission limits and/or compliance options based on P2. For such subparts, we do not believe that simply meeting these limits automatically entitles a facility to P2 alternative compliance requirements, since the requirements are based on the use of P2. In general, we believe that the existing requirements are appropriate in such cases; however, there may be situations where an alternative requirement is equally appropriate. For example, the reviewing agency may wish to consider approving alternative compliance requirements where a facility's P2 measures have reduced HAP emissions to well below the emission limit (*i.e.*, where the margin of compliance is large). The margin of compliance is relevant because we have typically developed compliance requirements based on what is needed to assure continuous compliance when a facility operates at or near the emission limit. In addition, a facility that has introduced P2 measures that were not considered during development of the applicable subpart's compliance requirements is a prime