

Response: We believe the commenter incorrectly interpreted the court's decision in *Alabama Power*. That case addressed, in part, the interpretation of "potential to emit" in the definition of major source in the prevention of significant deterioration (PSD) regulations (also part of the CAA, but unrelated to hazardous air pollutant regulations). The court found that EPA "must look to the facility's 'design capacity' a concept which not only includes a facility's maximum productive capacity * * * but also takes into account the anticipated functioning of the air pollution control equipment designed into the facility." (*Alabama Power*, 636 F.2d at 353). The commenter has interpreted this statement to mean that only controls that were part of the original design of the facility can be taken into account when calculating potential to emit. Nowhere does the court state or even imply such a result in its decision. The commenter failed to take into account that the PSD regulations define a *preconstruction* permitting process. Because the air emission sources under consideration in the PSD process have yet to be constructed, the permitting process must necessarily deal with only designs of future air emission sources. We believe the court's language reflects only this aspect of the PSD review process, not the interpretation given by the commenter.

The NESHAP program, on the other hand, is concerned with air emission sources already in existence, as well as new sources. If we were to apply the wording of *Alabama Power* to the NESHAP program, our interpretation would be that the phrase "designed into the facility" means any air emission control equipment in use at the facility at the time a major source determination must be made, not the interpretation given by the commenter. This is reflected in our memorandum¹ on the interim policy on federal enforceability of limitations on potential to emit. In this memorandum, we stated: "[T]he EPA regulations provide that 'controls' (i.e., both pollution control equipment and operational restrictions) that limit a source's maximum capacity to emit a pollutant may be considered in determining its potential to emit. Historically, large numbers of new or modified sources that otherwise would be subject to PSD and NSR permitting requirements have limited their PTE in order to obtain 'synthetic minor' status and thereby avoid major source requirements. With the advent of operating permit programs under Title V and the

MACT program under section 112, many sources that otherwise would be subject to these new requirements under the Clean Air Act Amendments of 1990 also have obtained, or plan to obtain, PTE limits to avoid coverage.

The phrase "have obtained, or plan to obtain" implies that these sources will be adding controls to limit emissions. Since these controls would be added to an existing facility, they could not have been designed into the facility before it was ever constructed. Thus, the commenter's interpretation is incorrect, and we have made no changes for the final rule in response to this comment.

Comment: One commenter requested that a definition for "process vent" be added to the final rule. Additionally, the commenter further argued that if EPA cannot exclude research and development vents from the definition of process vents, then the final rule must provide an exemption for research and development activities consistent with section 112(c)(7) of the CAA.

A second commenter was also concerned with the absence of a definition for process vent. The commenter pointed out that the absence of a definition results in ambiguity regarding compliance obligations. The commenter also suggested that a process vent definition would allow EPA to exclude categories of emission points with negligible emissions potential.

Response: We agree that a definition of "process vent" would be beneficial in determining which emission points at a semiconductor manufacturing facility are subject to the emission limitations in 40 CFR 63.7184 of the final rule. Because the affected source is defined in terms of semiconductor manufacturing process units (see 40 CFR 63.7182), the process vents subject to regulation necessarily must originate from these process units. Therefore, we have included the following definition to 40 CFR 63.7195: *Process vent* means the point at which HAP emissions are released to the atmosphere from a semiconductor manufacturing process unit or storage tank by means of a stack, chimney, vent, or other functionally equivalent opening. The HAP emission points originating from wastewater treatment equipment, other than storage tanks, are not considered to be a process vent, unless the wastewater treatment equipment emission points are connected to a common vent or exhaust plenum with other process vents.

We do not believe any of the other process vent exemptions requested by these commenters are appropriate. Research and development operations are considered to be part of the overall semiconductor manufacturing process

unless they are stand alone operations. We believe that relief valve discharge points, process analyzers, and conservation vents can be adequately connected to process vent exhaust ducts, if this is not already the case. Emergency electrical generators are not included in the definition of semiconductor manufacturing process unit, so there is no need to exclude them from the definition of process vent.

Comment: One commenter was concerned about the broad definition of "control device" in 40 CFR 63.981(a). According to the commenter, this paragraph could be interpreted to mean that certain devices that are part of the process (not an add-on control device) would be subject to the rule.

Response: We agree that there are certain devices used by the semiconductor industry that could be construed as control devices but are in fact an inherent part of the process, and that clarification is necessary in the final rule. In response, we have included the following definition to 40 CFR 63.7195: *Control device* means a combustion device, recovery device, recapture device, or any combination of these devices used for the primary purpose of reducing emissions to comply with this subpart. Devices that are inherent to a process or are integral to the operation of a process are not considered control devices for the purposes of this subpart, even though these devices may have the secondary effect of reducing emissions.

Comment: One commenter objected to the EPA's approach of using area source information to establish the MACT floor as being inconsistent with section 112(d)(3) of the CAA. The commenter believed that area sources are not part of the semiconductor manufacturing category for major sources and should not be relied on for establishing the MACT floor.

Response: Section 112(a)(1) of the CAA defines major source as "any stationary source or group of stationary sources * * * that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants." An area source is then defined in section 112(a)(2) as any stationary source that is not a major source. The facilities which we used to establish the MACT floor were "synthetic minor" sources, meaning that they reduced their potential to emit below the major source threshold (here, through the use of add-on control devices and material substitution). Without these controls, these facilities

¹ "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (January 22, 1996) (available at <http://www.epa.gov/ttn/oarpg/t5/memoranda/pte122.pdf>).