

commenters from the State of Alabama each submitted two separate and distinct sets of comments.

The final rule promulgated by this action reflects our full consideration of all the comments we received on the rule proposal. Our responses to all of the substantive public comments on the proposal are presented in the background information document (BID) titled, "National Emission Standards for Hazardous Air Pollutant (NESHAP) for Site Remediation: Background Information for Promulgated Standards." The BID is available in Docket No. OAR-2002-0021.

C. What Criteria Are Used in the Development of the Final Rule?

Under CAA section 112(d), we are directed to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires that each NESHAP reflect the maximum degree of reduction in emissions of HAP that is achievable for the source category or subcategory. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under CAA section 112(d)(3). Establishing the MACT floor ensures that each standard is set at a level that assures that all major sources within a source category or subcategory achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in the applicable source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards established for existing sources can be less stringent than standards for new sources, but the existing source standards cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing NESHAP, we also consider control alternatives that are more stringent than the MACT floor. Section 112(d)(2) of the CAA allows us to establish standards that are more stringent than those that would be established by the MACT floor level based on the consideration of costs to achieve the emissions reductions, any health and environmental impacts, and energy requirements.

To determine MACT for the affected sources regulated by the Site Remediation NESHAP, we established at proposal that the MACT floor for existing affected sources associated with site remediation activities is some level of air emission control beyond no controls. Also, we decided to not compute an emission limitation statistically or identify specific control technology that represents the MACT floor for the site remediation sources because of the uniqueness of the site remediation source category, the extent of information available to us, and the complexities of gathering additional meaningful information (see 67 FR 49414-49415). Instead, we relied on provisions of CAA section 112(d)(2) that allow us to select MACT for a source category that is more stringent than the MACT floor.

We chose to select the MACT technology directly from alternatives beyond the MACT floor for each affected source type selected to be subject to the Site Remediation NESHAP. To do this, we looked at the types of air emission controls demonstrated to achieve control levels required under national air standards for sources similar to those sources that potentially may be associated with site remediations (particularly the NESHAP for Off-Site Waste and Recovery Operations under 40 CFR part 63, subpart DD, and the air standards for RCRA hazardous waste treatment, disposal, and facilities (TSDF) under subparts AA, BB, and CC in 40 CFR parts 264 and 265). Because the air emission controls needed to achieve the control levels required under the rules applicable to sources similar to those sources subject to the final Site Remediation NESHAP are now being implemented by facility owners and operators, we concluded that this demonstrates that these control levels are technically achievable, the costs are reasonable, and there are no adverse non-air quality health, environmental impacts, or energy requirements associated with the selected control levels.

Following proposal, we reviewed our data sources to determine the availability of additional information on air pollution controls currently in use for site remediation activities. No new data or information to update and supplement our original data were provided by commenters on the proposed rule. We concluded that our original database remains the best available source of information available to us. The control levels established by the emission limitation and work practices established by the final Site

Remediation NESHAP are the same controls levels being implemented at similar sources subject to other NESHAP and related national air rules.

II. Summary of Final Rule

The final rule amends 40 CFR part 63 by adding subpart GGGGG—National Emission Standards for Hazardous Air Pollutants for Site Remediation. At proposal, we received comments stating that the organization, reliance on presenting many rule requirements in an exclusively tabular format, and extensive cross-referencing to provisions in other subparts which we used for the proposed rule made it difficult to read and understand. We have written the final rule to reflect those comments. Many of the requirements that were presented exclusively in tables in the proposed rule have been moved back into the regulatory text of the final rule, and the applicable tables were deleted. While these editorial changes to the final rule make it appear substantially different from the proposed rule, most of the technical and administrative requirements remain the same as proposed.

A. Who Must Comply With the Final Rule?

We have written the applicability requirements to clarify our intent as to what is a site remediation activity and how the final rule applies to these activities. You are subject to the final rule if you own or operate a facility that is a major source of HAP emissions and where a site remediation is conducted that meets the definitions and conditions specified in the final rule. Certain types of site remediations are explicitly exempted from being subject to the final rule.

Applicability Definitions and Conditions

In the final rule, we have added a new definition for the term "site remediation" and written our proposed definition of "remediation material" to clarify the final rule's applicability and to improve implementation of the final rule's requirements. Site remediation means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material, as defined in the final rule. Monitoring or measuring of contamination levels in media, whether by using wells, sampling, or other means, is not considered to be a site remediation.

We have written the definition of remediation material to clarify the term's meaning consistent with our