

because they have low mercury air emissions. Similarly, the commenter did not agree with EPA's decision not to regulate chemical mercury recovery and recovery in batch purification stills at mercury recovery facilities. According to the commenter, the CAA does not allow the Agency to exempt certain classes, types and sizes of sources from emission standards, unless EPA finds no potential for emissions. Therefore, the commenter stated that EPA had a legal obligation to establish standards that cover all mercury-emitting parts of chlor-alkali facilities, and the Agency must re-visit and set emission standards for the parts of the production and recovery facilities with low mercury emissions.

Response: During development of the proposed rule, we did not receive any data to indicate that mercury was emitted from chlorine purification, brine preparation, or wastewater treatment operations, and our knowledge of the process indicated that any potential emissions would be very limited (67 FR 44674). Furthermore, we did not receive any data indicating that control measures designed to reduce HAP were in use at existing facilities that had these units. The same holds true for chemical mercury recovery and recovery in batch purification stills at mercury recovery facilities. Therefore, with no reported emissions and process evidence that any emissions would be very limited, we concluded that there was no potential for emissions. Adding to this the existence of a MACT floor of no control (because none are controlled), we did not regulate these processes.

The commenter did not provide emissions data that would indicate that these sources emit significant amounts of mercury, or emit mercury at all. Therefore, the final rule does not contain standards for mercury emissions from chlorine purification, brine preparation, wastewater treatment operations, chemical mercury recovery and recovery in batch purification stills.

We point out that the final rule does contain very stringent emission limitations for all point sources that have been demonstrated to be sources of mercury emissions. Further, the work practice requirements in the final rule address fugitive mercury emissions in all areas of the facility, including the chlorine purification, brine preparation, wastewater treatment areas, as well as areas where chemical mercury recovery processes and batch purification stills are located.

B. What Issues Were Raised Regarding the HAP Addressed by the Rule as Proposed?

As noted earlier, we divided the chlorine production category into two subcategories: Mercury cell chlor-alkali plants and chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants, membrane cell chlor-alkali plants, etc.). On July 3, 2002, we issued separate proposals to address the emissions of mercury from the mercury cell chlor-alkali plant subcategory sources (67 FR 44672) and the emissions of chlorine and HCl from both the non-mercury cell chlorine production subcategory sources and the mercury cell chlor-alkali subcategory sources (67 FR 44713). Specifically, we proposed a rule for mercury emissions from mercury cell chlor-alkali plants, and we proposed not to regulate chlorine and HCl emissions from mercury cell chlor-alkali plants and non-mercury cell chlorine production plants under our authority in section 112(d)(4) of the CAA.

Comments were received regarding the proposed action not to regulate chlorine and HCl emissions (*see* Air Docket OAR-2002-0016 or Air Docket A-2002-09). The aspects of these comments related to the mercury cell chlor-alkali plant subcategory can be generally classified into two basic categories: Our statutory authority under section 112(d)(4); and the site-specific risk assessments that formed the basis for our decision.

Comments Related to the Section 112(d)(4) Authority

Comment: Several comments were received related to our decision not to regulate chlorine and HCl emissions from chlorine production under the authority of section 112(d)(4). Some commenters supported this decision and stated the interpretation of our authority under section 112(d)(4) was appropriate and supported by the legislative history. In contrast, other commenters disagreed with EPA's interpretation of section 112(d)(4). Finally, some of the commenters stated that EPA should use its authority under section 112(c)(9)(B)(ii).

One commenter stated that EPA conducted an appropriate analysis to determine that human exposures from ambient concentrations are well below threshold values with an ample margin of safety. According to another commenter, any further regulation of chlorine and HCl emissions from the chlorine production industry would have no environmental benefits, but

would result in costs for monitoring, recordkeeping, and reporting efforts to certify compliance with any requirements. The commenter was concerned that a regulation would also stretch EPA's limited resources in monitoring for compliance. Three commenters stated that EPA's interpretation of their authority under section 112(d)(4) was supported by the legislative history, which emphasizes that Congress included section 112(d)(4) in the CAA to prevent unnecessary regulation of source categories. The commenter agreed that under section 112(d)(4), once EPA establishes that a pollutant has a health threshold and that exposure to that pollutant's emissions are below the health threshold, EPA should refrain from setting MACT standards for that pollutant. The commenter further suggested that EPA should use section 112(d)(4) whenever setting emission standards under section 112(d).

Three commenters disagreed with EPA's interpretation of section 112(d)(4). They did not believe that section 112(d)(4) could be used as an alternative to setting MACT standards under section 112(d)(3). One commenter noted that the phrase "in lieu of" was not included in the section 112(d)(4) provisions and that its absence was intentional. In support of their claim, the commenter pointed to section 112(d)(5), which does contain the phrase "in lieu of." The commenter interpreted section 112(d)(4) to mean that health-based thresholds can be considered when establishing the degree of MACT requirements, but not in place of the requirement to establish a MACT floor pursuant to section 112(d)(3).

The commenter also pointed to the provisions of section 112(c)(2) which require the Administrator to establish NESHAP for listed source categories and subcategories. The commenter was concerned that EPA evaluated emissions from chlorine production plants and concluded that since they do not pose a threat to human health and the environment, the Administrator is relieved of her responsibilities to establish a MACT standard. The commenter maintained that this position is not supported by section 112(c)(2).

The commenter also referred to section 112(d)(1), stating that EPA did not have the authority to "make a determination of no regulation for a listed source category or pollutant."

Finally, the commenter referred to section 112(d)(3), which contains the MACT floor provisions. According to the commenter, the intent of the NESHAP program is to develop a MACT