

being made under our authority in CAA section 112(c)(9)(B)(ii). This final action does not impact the other subcategory of the Chlorine Production Source Category: Mercury Cell Chlor-Alkali Plants. A final rulemaking addressing the Mercury Cell Chlor-alkali Plant subcategory is contained in a separate section of today's **Federal Register**.

### III. Summary of Major Comments

On July 3, 2002 (67 FR 44713), we proposed not to regulate chlorine and HCl emissions from all chlorine production processes (mercury and non-mercury cell) under the authority of CAA section 112(d)(4). We based that decision on our determination that no further control is necessary because chlorine and HCl are health threshold pollutants, and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety, and they do not result in adverse environmental effects.

For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "National Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions from Chlorine Production: Summary of Public Comments and Responses" in Docket No. A-2002-09 or OAR-2002-0016.

#### *A. What Issues Were Raised Regarding the Statutory Authority for This Final Action?*

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

Several commenters supported the decision not to regulate chlorine and HCl emissions from chlorine production plants under the authority of CAA section 112(d)(4). 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 rulemaking would also stretch EPA's limited resources in monitoring for compliance. Three commenters stated that EPA's interpretation of their authority under CAA 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 CAA 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 CAA section 112(d)(4) whenever setting emission standards under CAA section 112(d).

Three commenters disagreed with EPA's interpretation of CAA section 112(d)(4). They did not believe that CAA section 112(d)(4) could be used as an alternative to setting MACT standards under CAA section 112(d)(3). One commenter noted that the phrase "in lieu of" was not included in the CAA section 112(d)(4) provisions, and that its absence was intentional. In support of their claim, the commenter pointed to CAA section 112(d)(5), which does contain the phrase "in lieu of." The commenter interpreted CAA 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 CAA section 112(d)(3).

The commenter also pointed to the provisions of CAA 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 CAA section 112(c)(2).

The commenter also referred to CAA section 112(d)(1) which states ". . . the Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section. . . ."

Thus, the commenter stated 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 CAA 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 floor, and EPA is not fulfilling the requirements of the CAA by not performing such an analysis. The commenter stated that a majority of facilities identified in the analysis have adequate controls due to State regulations and these controls should be incorporated into the MACT floor evaluation. The commenter was particularly concerned that by not developing a MACT floor, no new source MACT standards were created. The commenter requested that EPA perform a MACT floor analysis, and develop a NESHAP for new sources.

Two commenters stated that they believe that EPA should support their decision not to regulate the chlorine production source category by citing the provisions of CAA section 112(c)(9)(B)(ii) in addition to the provisions of CAA section 112(d)(4). The commenters stated that the evaluation performed by EPA would also be sufficient for deleting sources under CAA section 112(c)(9)(B)(ii), and that EPA's proposal to not regulate chlorine production is similar to deleting a subcategory of the chlorine production source category (*i.e.*, all chlorine production sources other than those using the mercury-cell chlor-alkali production process). Therefore, in addition to using the authority under CAA section 112(d)(4), the commenters suggested that EPA delete the subcategory using the authority under CAA section 112(c)(9)(B)(ii) to avoid any uncertainty over the use of its authority under CAA section 112(d)(4).

*Response:* The chlorine production source category was initially listed as a category of major sources of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). Our analysis shows that the only HAP emitted in significant quantities from sources within the chlorine production source category are chlorine, HCl, and mercury, and mercury is only emitted from mercury cell chlor-alkali plants. Because of the differences in the production methods and the HAP emitted, we decided to divide the chlorine production category into two subcategories: (1) mercury cell chlor-alkali plants, and (2) chlorine production plants that do not rely upon mercury cells for chlorine production (diaphragm cell chlor-alkali plants,