

HALOGENATED SOLVENTS INDUSTRY ALLIANCE

UPDATE

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LEGISLATIVE AND REGULATORY NEWS FOR THE SOLVENTS INDUSTRY

Industry Responds in Drycleaning Litigation

HSIA and other industry petitioners submitted two briefs in recent weeks in their legal challenge to the amendments to the national emission standards for hazardous air pollutants (NESHAPs) for perchloroethylene drycleaning promulgated by the US Environmental Protection Agency (EPA) in July 2006. The first brief, filed in mid-January, responds to the arguments put forth by Sierra Club in their opening brief challenging the standard. The second brief, replying to EPA's defense of its July 2006 rule, was submitted in early February.

The NESHAP amendments imposed requirements on area and major source cleaners, including the elimination of transfer equipment, requiring that all new equipment be 4th generation or higher, and additional leak detection and repair provisions. While the amendments are not expected to significantly impact most cleaners, HSIA, the Drycleaning and Laundry Institute (DLI), National Cleaners Association (NCA), and Textile Care Allied Trades Association (TCATA) challenged EPA's decision to phase out the use of perchloroethylene equipment in cleaning plants located in residential buildings by 2020. Sierra Club also challenged the EPA rule, arguing that the phaseout should have been extended to all drycleaning operations. The two challenges were consolidated into one case by the US Court of Appeals for the DC Circuit. Final briefs in the consolidated case are due at the end of February and oral argument is scheduled in mid-May.

In replying to EPA, the industry brief explains -

EPA's argument suffers from two fundamental flaws. First, EPA entirely ignores the distinct two-stage process that Congress established and that this Court specifically recognizes for reviewing and revising NESHAPs. Second, EPA . . . refuses to acknowledge that Congress placed parameters on what EPA can take into account to determine what NESHAP revisions are necessary. The result is that EPA's interpretation . . . is directly at odds with the [Clean Air Act's] plain language and Congress' intent.

Under §112, Congress carefully delineated a two-stage process for NESHAP review and revision, where the first stage adopts technology-based standards [Section 112(d)(6)] and the second stage adopts risk-based standards [Section 112(f)(2)] to address any residual risks that are not eliminated by the technology-based standards. . . . These two subsections contain entirely different factors for EPA to take into consideration . . . Further, for major sources that are subject to maximum achievable control technology ("MACT") standards, EPA is required to conduct the residual risk review . . . whereas EPA is not required to conduct this residual risk review for area sources subject to generally available control technology ("GACT") standards.

[In the drycleaning amendments], EPA specifically proposed, but ultimately declined to conduct a residual risk analysis . . . for the GACT standards it adopted. Despite EPA's decision to promulgate the GACT standards solely under its Section 112(d)(6) authority, the standards for co-residential sources were driven by risk considerations. As Industry has explained, EPA's approach

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for phasing out perc for co-residential facilities was an unauthorized hybrid that focused solely on whether technology sufficiently would reduce risk, rather than on whether technology generally was available based on developments in practices, processes, and control technologies. EPA even admits that its approach for co-residential sources was “unique.” The [Clean Air Act], however, does not authorize this type of “unique,” hybrid approach.

In addressing the Sierra Club’s arguments for a more stringent standard for cleaners not located in residential buildings, the industry brief argues -

Industry and Sierra Club agree on one thing: [Clean Air Act Section] 112(d) does not authorize EPA to consider risk in setting, reviewing or revising MACT and GACT standards. That issue, however, is irrelevant to whether the Court should uphold EPA’s 2006 standards for non-co-residential sources. That inquiry should focus on EPA’s review of alternative perc technologies and associated costs, which amply supports the non-co-residential standards.

Assuming EPA’s consideration of risk is relevant to evaluating non-co-residential standards, EPA’s analysis adequately considered the potential risk from exposure to perc emissions from those dry cleaners. The evidence on which Sierra Club relies overstates the risks of perc exposure and fails to undermine EPA’s risk analysis for non-co-residential sources. Thus, EPA’s risk analysis (if authorized under § 112(d)) further supports the non-co-residential standards. The Court therefore should uphold those standards.

HSIA Comments on Degreasing Proposal

In its comments on EPA’s proposal to reconsider amendments to the NESHAP for halogenated solvent cleaning (HSC or degreasing), HSIA argues that no additional control of HSC sources is necessary. The HSIA comments explain that there is abundant evidence in the record that the Agency’s May 2007 amendments satisfy the requirements of the MACT and residual risk reviews required under Section 112 of the Clean Air Act.

In response to objections raised by environmental groups and the Pennsylvania DEP about the decision not to require additional control for narrow tube, aerospace, and web cleaning, EPA issued a notice in October 2008 requesting comment on options for revising the regulation. HSIA’s comments note, however, that the estimated risks presented by the HSC source category after the May 2007 amendments have been reduced to an acceptable level, with an ample margin of safety as required by the Act, and that the technologies proposed by EPA as part of the proposed reconsideration do not represent “developments in practices processes and control technologies” as specified under Section 112(d)(6).

In the event the Agency decides additional reductions are necessary, however, HSIA suggests that EPA specify a percent-reduction requirement instead of, or as an alternative to, facility-wide emission limits. This compliance alternative should be extended to all three exempted sectors and should consider reductions from a baseline of uncontrolled emissions, as with the original 1994 NESHAP. Because of the considerable variability in the processes, EPA also may need to consider a reduction that is somewhat less than the 80 percent suggested by EPA.



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