October 12, 2007

Air and Radiation Docket
US Environmental Protection Agency
Mail Code: 6102T
1200 Pennsylvania Ave., NW.
Washington, DC, 20460

Attention: Docket ID No. EPA–HQ–OAR–2005–0526

Dear Sir or Madam

The National Steering Committee for the national network of state Small Business Environmental Assistance and Small Business Ombudsman Programs thank you for the opportunity to comment on the proposed National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, which were published in the *Federal Register* on September 17, 2007 in Docket ID No. EPA–HQ–OAR–2005–0526. The state Small Business Environmental Assistance and Small Business Ombudsman Programs (SBEAP/SBO) were created under s. 507 of the Clean Air Act Amendments of 1990. For over 15 years, the SBEAP/SBO have provided extensive, hands-on assistance to small businesses to help them understand environmental regulations such as the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and similar standards.

The SBEAP/SBOs have indicated to EPA, through the small business liaison at OAQPS, that we are interested in helping to investigate the business impact for as many of the area source NESHAP rules as we have volunteers with time to participate. Our goal is help EPA issue area source NESHAPs that are clear and easy for small businesses to comply with and are also rules that the SBEAP/SBOs and states can implement with minimal resources. The SBEAP/SBO, through their Technical Subcommittee, stand ready to work with EPA to develop implementation tools and templates that will benefit all affected small businesses. Comments from the National Steering Committee on the proposed rule reflect the experience of SBEAP/SBOs with the efforts of small business to comply with such standards.

*The preamble section entitled "**Does this action apply to me?**" is concerning for two main reasons.*

First, while we understand the area source categories are intended to cover anyone below major source levels, unless this rule has exemption levels or de minimus thresholds to exclude those who have extremely low emissions it will take more resources to implement the rule, or even just provide a minimal level of compliance assistance and outreach to all of them, than states have available. Without any sort of de minimus in this rule, the universe of affected sources as stated in the proposal will climb to over one hundred thousand nationally and possibly tens of thousands for individual states, when you consider all the NAICS identified.

Second, we believe that in switching from the SIC to NAICS industry classification systems in defining the area source categories in this rule that EPA has included sources they may not have intended to include, and therefore did not evaluate in their small business impact analysis. Did EPA staff conduct information requests or perform site visits to evaluate the impact for these additional surface coating operations? If not, they did not conduct a complete small business impact analysis. Including unintended sources will impact the ability of states to implement the rule as well as provide the proper compliance assistance.

The Technical Subcommittee for the SBEAP/SBOs has made every effort to assist EPA in determining the true business impact for this rule as we understood it. Those efforts are summarized here to explain our logic for the proposed exemptions or de minimus levels as well as our reasoning for believing many unintended businesses will be impacted.

Possible exemptions or de minimus levels.

The SBEAP/SBO National Steering Committee opened a dialogue with the rule writer for the Autobody Refinishing rule in May 2004. In discussions with the rule writer in 2005 and 2006, members of the Technical Subcommittee learned that the surface coating standards were intended to address the heavy metal content in spray coatings used at autobody refinishing shops. All of the control requirements in the proposed rule do point to a focus on particulate based emissions as opposed to volatile hazardous air pollutants (VHAPs). We would like to propose that one solution to excluding unintended sources would be to **include an exemption for those who can certify, either on their own or through their vendor(s), that they do not spray apply any coatings with the heavy metal HAPs of concern**. Through conversations with coating manufacturers, the Technical Subcommittee learned that many of the coatings used by autobody refinishing shops already have been replaced or reformulated to exclude these heavy metals. The technology is there to avoid these pollutants and should be transferable to many other surface coating industries.

Another solution may be to use exemption levels similar to two draft Control Technology Guidance (CTG) documents issued by EPA in June 2007 (Metal Furniture and Large Appliance Coating) where EPA recommends using minimum applicability levels of 15 pounds per day and 3 tons per year of VOCs, based on actual emissions, because limited emissions reductions will result. The CTGs primarily serve as an example to represent recent EPA publications. Emissions based exemptions are extremely burdensome for the very small businesses impacted by this rule. An exemption more easily tracked than emissions would be based on purchases, such as allowing their annual purchase of coatings to include no more than some set percentage of coatings with the heavy metal HAPs of concern.

Unintended sources included in the rule?

In July 2005, fourteen states SBEAP/SBO compiled an inventory of affected sources for some of the area source categories. This inventory was provided to the Small Business Liaison in OAQPS at EPA. Related to this rule, the SBEAP/SBO listing captured only the autobody refinishing and plastic parts and products surface coating (not including metal parts and products). Individual state data was gathered from a variety of business directories but national estimates we provided were taken from InfoUSA's directories as of June 2005. The list showed that the sum of just 14 states' inventories was close to EPA's national estimates, and national estimates found by the SBEAP/SBO were more than four times higher than EPA's. For example, where EPA's inventory of area source Autobody Refinishing shops was around 21,000 the 14 state total was nearly 17,000 and national total was 95,000 shops. For plastic parts coating it was 4,000 in EPA's inventory versus the SBEAP/SBO national count of 18,000. That increases the universe of affected sources to 113,000 without even considering the thousands of metal parts coating that will also be covered. A review of the InfoUSA directories in September 2007 for the autobody refinishing SIC/NAICS shows 126,000 sources, and for plastic parts and products shows 10,800 sources. Looking just at the major NAICS for metal products industries (336 and 332), the InfoUSA directory shows another 110,000 small businesses. The total impact of this rule, as written, will be over 200,000 small businesses nation-wide.

Technical Subcommittee discussions with the rule writer were focused on autobody refinishing shops. At the same time, we were not directly invited to participate in rule development activities that were taking place for the plastic parts and products and metal surface coating sectors. If we were aware that heavy metals from surface coating operations was a focus for regulation beyond the autobody refinishing sector we would have provided additional information on the impact of such a requirement. Focusing on heavy metals in coatings from sources beyond autobody refinishing in this rule is ultimately inequitable and excessive because none of the major source MACTs for surface coating operations have requirements on non-volatile HAPs. It is for these reasons that we believe there was not a sufficient impact analysis done for plastic and miscellaneous metal surface coating operations, so we propose that those operations be addressed in a separate rule package.

There are a number of inconsistencies or lack of clarity in the applicability of this rule. We would like clarification on whether the following sources would be affected by this rule:

- homeowners, schools, or hobbyists stripping small items like furniture, as well as painting plastics or metals parts such as furniture, fences, siding, and similar products
- spray application of temporary coatings that cannot take place within a booth or structure, such as deicing of airplanes
- spray application of adhesives, which usually are all VOCs and don't have the heavy metal hazardous air pollutants (HAPs) of concern
- small mobile repair operations conducting "spot repair", as referenced in the preamble
- cultured marble manufacturers, or other similar operations, that spray a gel or other coating on a plastic or metal mold prior to processing – again this goes back to whether the rule's intent was to regulate the heavy metal HAPs in coatings
- boats or ships at marinas, etc., that cannot be repaired within a structure
- coatings that are applied with a roller or brush
- temporary outdoor painting operations such as bridges, water towers, etc. that are generally covered under other requirements like lead abatement

We suggest that one solution to addressing some of these unintended sources, like homeowners, hobbyists, and temporary operations, would be to provide a definition of a facility to mean only a stationary source that performs these operations in a commercial or other setting for profit. It could also include the IRS definition of a business versus hobby which says: "An activity is usually considered a business if it makes a profit during at least three of the last five tax years, including the current year." (Taken from the IRS website: http://www.irs.gov/newsroom/article/0,,id=172833,00.html) This way it would not necessarily exclude from the rule those autobody refinishing operations often found being conducted out of someone's garage, assuming they report related income on their taxes accurately and are a big enough operation to be above any exemption level (such as we have proposed including).

Additional Comments on the preamble:

Another section of the preamble specifically requests comment on what technical assistance states might need to develop equivalency determinations under the 112(L) alternative program approach. While most of our programs are not usually involved with such policy decisions, we are directly impacted by them. We strongly encourage EPA to develop as many tools as possible, such as templates and guidebooks and checklists, and also to take advantage of programs already in practice that provide an efficient and effective means to improve compliance among small businesses to make it easier to establish equivalency for the states. It is in the best interest of affected small businesses that these rules are implemented at the state level.

One tool that works well for large sectors of small businesses, such as those affected by this rule, would be the Environmental Results Program (ERP) as designed by the Massachusetts Department of Environmental Protection and adopted by nearly 20 other states so far. ERP is an innovative, cost-effective and flexible approach to improving the environmental performance of business sectors characterized by numerous small pollution sources. An implementing authority—whether a state or EPA (as is likely to be the case for many of these area source rules)—will need help managing these sectors with high numbers of hard to reach small sources. The ERP tools form an integrated system that includes: plain-language compliance assistance that promotes pollution prevention; facility self-audit and self-certification; agency inspections; and statistically based performance measurement. A comparison of requirements in this proposed rule and ERPs developed for autobody refinishing shops show many commonalities. If used strictly to implement the NESHAP, the ERP materials would need some adjustments but it would take much less effort than creating implementation materials from scratch.

Results achieved in states using ERP to address compliance at autobody repair and refinishing operations show significant improvement in air quality measures that line up well with requirements in this rule, averaging 79% compliance across all indicators. For those same indicators, shops showed 13% improvement during the most recent verification cycle. These auto repair and refinishing ERPs are just in their first or second year of implementation, and can expect additional improvements in the future. The biggest advantage to using ERP for any implementing agency is that limited inspection resources are required to obtain these statistical results. The statistical nature of ERP works particularly well the larger a sector gets. Yet, even though ERP can be done with limited resources most states are stretched thin to meet even their core compliance program goals. Whatever means EPA can use through this rule to make it easy to use ERP or other flexible programs within the current compliance structure will give states more motivation to take delegation, as opposed to leaving it up to EPA. One way to do this would be to allow **an ERP self-certification to satisfy the annual compliance certification so long as it includes, at a minimum, the elements required to be certified for the annual compliance demonstration**. This may make it easier for states to make ERP self-certification a mandatory requirement and then use the program to submit equivalency applications under section 112(L).

The preamble discusses paint stripping operations and alternatives to using methylene chloride or MeCl. The rule has **not** addressed the impact on businesses that might make a switch to mechanical or thermal stripping operations and find themselves affected by state particulate matter or other emissions standards as well as possible permitting requirements to modify their operations. The impact of going through a permitting process on small businesses is great in both time and fees.

Two different sections of the preamble discuss the elements required in a training program for spray painters. There appear to be conflicts within these two sections, as only one of them mirrors what is stated in s. 63.11173(f)(2) of the rule. Broad topics of “safety precautions” and “environmental compliance” appear in the rule and one section of the preamble. These are very broadly stated and could be considered so vague and all-encompassing that some low cost resources for training, like local trade associations, may avoid offering it because they see it as beyond their capability to fully certify spray painters on those topics. We suggest removing those two items and focus the training specifically on best practices related to the spray operation itself. If eliminating these elements is not an option, we suggest clarifying them by changing the training criteria to read "safety precautions that should be addressed when mixing and matching coatings and operating and maintaining spray equipment, spray booths, and prep stations" and similar language on environmental compliance.

The proposal is very vague about who can provide the spray application training. It mentions the STAR® program but because funding for that program was cut, it is no longer being offered. Trade

associations, vocational and technical colleges, as well as vendors and paint suppliers are all excellent sources to offer the training. Sources for the training should not be limited to any one type of program or it will create a limited market and costs that may not be affordable for the very small shops. While a process to establish an "approved" training program would provide a comfort level to the shops that EPA won't come in and find the training inadequate, we also don't want the process to limit the ability of different sources to conduct the training. We suggest that the rule language be much more specific about the criteria that would indicate a training program meets the minimum requirements. It will also be essential to the success of training all spray painters to restore and enhance funding for the STAR® program.

We also have a major concern about the requirement to have **all** spray painters at all affected surface coating operations go through such detailed training. There is no MACT standard for similar source categories for major sources in which we could find training requirements. Rule language for Aerospace, Automobile & Light Duty Trucks, Metal Furniture, Miscellaneous Metal Parts and Products, Plastic Parts, and Reinforced Plastic Composites Production were searched for "training" and no such language was found. Not only that, but the universe of spray paint operators that have to be trained within two years presents an immense task. To ease the burden of complying with the training requirement, we propose that the compliance deadline be increased to three years for existing sources and one year for new sources. In addition, we propose an alternative to certification through the development of an operator performance test similar to that used in the NESHAP for halogenated solvent cleaning. As proof of EPA's support for an operator performance test, the final rule document for the Halogenated Solvent NESHAP stated: "EPA believes that the best method for EPA to determine compliance without excessive burden to an owner or operator is to test during inspections."

EPA states in the preamble that they made a finding of no small business impact because OSHA requires spray painting operations to take place within a spray booth [there is a huge definitional difference in spray booth – see comment under specific rule language below]. OSHA's requirements for utilization of a booth are predicated on the need for ventilation and control of flammability should ventilation and flammability thresholds be exceeded. This cannot be considered to apply to every painting or spray operation covered under this proposed rule. There is yet a third federal agency involved when you consider the NFPA 33 requirements for using spray booths when spraying flammable materials. NFPA interpretations indicate that meeting their requirements will not satisfy compliance with Clean Air Act requirements. OSHA often relies on the NFPA requirements to justify violations of the need for a spray booth. Multiple layers of overlapping yet inconsistent rules can quickly put the small business owner in trouble with one or more federal agencies.

Estimates on the annual reporting time and costs appear to be underestimated. "The average hours and cost per facility would be 6.4 hours and $219." Unless simple materials are developed to help streamline the efforts of small businesses to complete this reporting, it is the experience of SBEAP/SBO staff that small businesses will spend closer to 15 hours or more to develop something on their own. There is nothing that guarantees simple materials will be developed on a national basis by EPA. The time to compile all the information alone will probably take 6-8 hours. If a small business owner tries to minimize his or her time spent on the report, they will have to hire a consultant at $100 per hour or more. The consultant may take just 6 hours to complete the work, but that total cost is $600 instead of $219. With a national universe of affected sources closer to 200,000 the costs rise to $120,000,000.

Given the level of impact of these reporting requirements, we believe EPA should clearly state what environmental benefits will be achieved through these reports and if not significant they should be reduced or eliminated. In addition, the level of burden on the delegated authorities to collect and

review the reports will be quite excessive. These requirements do not meet EPA stated area source program goals, specifically:

- The need to balance addressing the requirements and the high risk areas with resource and practical restraints for implementation
- Need to provide for states that need regulations and states with existing programs
- Need to maximize co-benefit reductions
- Many states don't have resources to take delegation
- Need to minimize burden for all levels – especially small businesses
- Development user friendly and cost-effective control options
- Develop innovative compliance measures
- Simplified monitoring plans, reduced recordkeeping, self-certification for permitting

One solution is that the recordkeeping burden may be offset by the use of ERPs and the related self-certification process as explained previously.

We have a series of comments on specific rule language, as follows:

- Section 63.11170(b) is very unclear about the types of surface coating operations that are affected. Please clarify the language to say "Miscellaneous surface coating is the spray application of a coating to a substrate ~~using, for example, spray guns, brushes, or rollers.~~ of either plastic, metal, or plastic and metal combined."

- We find section 63.11173(a) and (b) rather vague on the MeCl minimization plan requirements and obligations. In particular, the requirement to "investigate waste minimization techniques" will be difficult to implement and enforce without additional clarification and/or minimum criteria. We propose that EPA develop an example waste minimization plan.

- In section 63.11173(e)(1) it says "all painters must be certified." If paint application utilizing brushes and rollers is excluded from coverage of this rule, the language needs to clearly exclude those painters who only use brushes or rollers. Suggested clarifying language would read "all persons performing spray painting ~~painters~~ must be certified."

- Sections 63.11175(a) and (b) and 63.11176(a) all indicate that all submittals must be sent to the Administrator but do not mention a state or local delegated authority. The delegated authority language should be included and it should be an OR statement rather than AND to avoid the burden of double reporting. In those same sections EPA is requiring that the business include an email address. Unless you have **analyzed the costs** for many of these really small businesses **to purchase a computer** to satisfy the requirement to provide an email address, then the email address should be optional.

- The cross references in section 63.11179(c) do not go to actual rule language and should therefore be corrected.

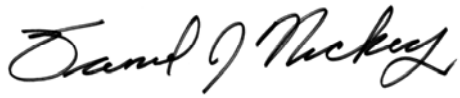
- For the sake of overall clarity of the rule applicability, the following definitions should be included in s. 63.11180: facility, spray booth, prep area, air brushing, and negative pressure. There is clarifying language for each of these within the preamble language so we suggest that the preamble language be used to create clear definitions within the rule. Also, where these definitions affect the applicability and are not clearly outlined in the applicability language in s. 63.11170 they should be included there as well.

- We also think that EPA's definitional usage of "a preparation area and spray booth" as adequate structures in which to conduct spraying and painting operations is directly at odds with the definitional boundaries of OSHA regulations 1910.94 and 1910.107. These OSHA requirements are very specific as to their definition of a "spray booth" and do not comport with the definitional boundaries provide by this proposed rule. Spray painting operations compliant with EPA's definition allowing painting to take place in a Prep area may not qualify under OSHA regulations and consequently put the facility at odds with two federal agencies regulating the same operation, even though from different perspectives.

Given the expanded scope and impact of this proposed rule on both the regulated community and the regulatory agencies, the SBEAP/SBO would be in a position to provide significantly more detailed and constructive comments if the comment period were extended by 60 days from the original proposal.

Thank you for your consideration of our comments on the proposed revisions to the National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources. Please contact me at 319/273-8905 if you need clarification or would like to discuss any of these issues.

Sincerely,



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