

Owners or operators of the affected facilities must make a one-time-only report of the date of construction or reconstruction, notification of the actual date of startup, notification of any physical or operational change to existing facility that may increase the rate of emission of the regulated pollutant, notification of initial performance test; and results of initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative. Performance tests are the Agency's records of a source's initial capability to comply with emissions standards and not the operating conditions under which compliance was to achieve. An annual summary report is also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least two years following the collection of such measurements, maintenance reports, and records.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart DD, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information; and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel

to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:**

Owners and operators of grain elevators.

**Estimated Number of Respondents:** 200.

**Frequency of Response:** On occasion, initially and annually.

**Estimated Total Annual Hour Burden:** 2,070.

**Estimated Total Annual Cost:** \$167,108, which is comprised of labor costs inclusively, with neither capital/startup costs nor O&M costs.

**Changes in the Estimates:** There is no change in the labor cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR was used in this ICR, and there is no change in the burden to industry.

Dated: January 15, 2009.

**John Moses,**

*Acting Director, Collection Strategies Division.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-8766-7]**

### **Proposed Settlement Agreement, Clean Air Petition for Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Settlement Agreement; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address petitions for review filed by the Sierra Club, Desert Citizens Against Pollution, Downwinders At Risk, Friends of Hudson, Huron Environmental Activist League, Montanans Against Toxic Burning, the Portland Cement Association, the State of New York, the State of Connecticut, the State of

Delaware, the State of Illinois, the State of Maryland, the Commonwealth of Massachusetts, the State of Michigan Department of Environmental Quality, the State of New Jersey, and the Commonwealth of Pennsylvania Department of Environmental Protection (collectively "Petitioners") in the U.S. Court of Appeals for the District of Columbia Circuit. *Portland Cement Association v. United States Environmental Protection Agency*, No. 07-1046 and consolidated Nos. 07-1048, 07-1049, and 07-1052. The various petitions for review challenge an EPA rule entitled "National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry," published at 71 FR 76518 (Dec. 20, 2006) ("2006 Rule"). EPA has negotiated a proposed settlement agreement with the petitioners. Under the terms of the proposed settlement agreement, EPA has agreed to sign a notice of proposed rulemaking described in paragraph 1 of the agreement no later than March 31, 2009. EPA has agreed to take final action concerning the notice of proposed rulemaking described in paragraph 1 of the agreement no later than March 31, 2010.

**DATES:** Written comments on the proposed settlement agreement must be received by February 25, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2009-0026, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564-5523; fax number (202) 564-5653; e-mail address: [silverman.steven@epa.gov](mailto:silverman.steven@epa.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Settlement Agreement

On December 20, 2006, EPA issued the 2006 Rule which establishes emission standards pursuant to section 112(d) of the Act for mercury and total hydrocarbons from new and existing Portland cement kilns. The 2006 Rule does not establish further controls for hydrogen chloride ("HCl") emissions because EPA concluded that present controls on Portland cement kilns' emissions of HCl are already protective of human health with an ample margin of safety. Petitions for review of this rule were filed in the District of Columbia Circuit by a large number of entities including representatives of the regulated industry, States, and environmental groups. These petitions have been consolidated for purposes of judicial review but further litigation has been held in abeyance by court order.

In March 2007, EPA granted Sierra Club's administrative petition to reconsider the standards for mercury and total hydrocarbons, the decision that no further controls for HCl are required, and the decision not to set beyond-the-floor standards for mercury or for total hydrocarbons. EPA had itself already granted reconsideration *sua sponte* of the new source standard for mercury. 71 FR 76553 (Dec. 20, 2006).

EPA has negotiated a proposed settlement agreement with the various petitioners. Under the proposed settlement agreement, EPA agrees that it will prepare a notice of proposed rulemaking which will address all the issues raised in Sierra Club's petition for reconsideration. This notice is to be signed no later than March 31, 2009, EPA is to take final action concerning the notice of proposed rulemaking no later than March 31, 2010. The sole remedy under the proposed settlement agreement should EPA fail to propose or take final action by these dates is for any of the petitioners to withdraw their consent to any order of the DC Circuit Court of Appeals holding the litigation in abeyance and to move the court to vacate any such order.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who are not parties or intervenors to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or

the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

### II. Additional Information About Commenting on the Proposed Settlement Agreement

#### A. How Can I Get a Copy of the Settlement Agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2009-0026) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through <http://www.regulations.gov>. You may use the <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

#### B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <http://www.regulations.gov> Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through <http://www.regulations.gov>, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 16, 2009.

**Richard B. Ossias,**

*Associate General Counsel.*

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