OFFICE OF THE ADMINISTRATOR

WASHINGTON, D.C. 20460

January 10, 2025

Mr. David M. Friedland
Beveridge & Diamond
1900 N Street, NW, Suite 100
Washington, D.C. 20036

Dear Mr. Friedland:

I am responding to your September 13, 2024, petition for reconsideration on behalf of the National Lime Association regarding the U.S. Environmental Protection Agency's final rule titled *National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Technology Review*, published in the *Federal Register* on July 16, 2024 (89 FR 57738). The 2024 rule finalized maximum achievable control technology standards for four previously unregulated hazardous air pollutants: hydrogen chloride, mercury, organic HAP, and dioxin/furans (D/F).

This letter addresses NLA's request that the EPA reconsider its decision to not set a health-based emission limit under Clean Air Act section 112(d)(4) in regulating HCl and to instead establish emission limits under CAA sections 112(d)(2) and (3) (known as "maximum achievable control technology" or "MACT" emission limits). *See* 42 U.S.C. 7412(d)(2)-(4). The petition alleges that because NLA's objections go to the lawfulness of the final rule, they are of central relevance to the outcome of the rule and therefore satisfy the criteria and requirements of CAA section 307(d)(7)(B) regarding mandatory reconsideration.

After careful review of the objections raised in the petition for reconsideration, the EPA denies reconsideration of the decision in the 2024 final rule to not establish an HBEL for HCl. Under section 307(d)(7)(B) of the act, "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment . . . may be raised during judicial review." 42 U.S.C. 7607(d)(7)(B). However, "[i]f a person raising an objection can demonstrate . . . that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment . . . and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule." *Id.* Thus, the requirement to convene a proceeding to reconsider a rule is based on the petitioner's demonstration both that it was impracticable to raise its objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review and that the objection is of central relevance to the outcome of the rule. *Id*.

Looking first at the statutory requirement that the objection be of central relevance to the outcome of the rule, the EPA considers an objection to be of "central relevance" to the outcome of a rule "if it provides substantial support for the argument that the regulation should be revised." *See Coal. For Responsible Regulation, Inc. v. the EPA*, 684 F.3d 102, 125 (D.C. Cir. 2012) (internal citation and quotation omitted). Although NLA claims that its objections are of central relevance to the outcome of the rule because they "go to the lawfulness of the final rule," the EPA disagrees that it must grant any petition for reconsideration that raises a legal objection to a rule.

The EPA assessed the information received from NLA against the backdrop of a decision by the D.C. Circuit regarding the establishment of an HBEL for HCl in 2015. Nothing in the petition for reconsideration from NLA supports its request to set an HBEL for HCl as it does not address any of the issues identified by the court in *Sierra Club v. Environmental Protection Agency*, 895 F.3d 1 (D.C. Cir. 2018). Similarly, nothing in the petition for reconsideration provides any information of central relevance regarding the question of whether mutagenicity should or could be used as the sole test for determining whether a pollutant has a threshold. NLA's objections in its petition for reconsideration are thus not of "central relevance," because the petition does not provide any additional scientific or technical support that would justify the use of an HBEL for HCl. The EPA presented its reasons and rationale for these decisions in both documents referenced earlier: the "Summary of Public Comments and Responses for National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments" (Docket ID EPA-HQ-OAR-2017-0015-0249) and the 2024 final rule preamble (89 FR 57738, July 16, 2024). As the EPA stated in the final rule:

> "The EPA acknowledges comments received on whether it is appropriate to consider HCl a threshold pollutant as defined under the CAA section 112(d)(4). The EPA is mindful that, in *Sierra Club v. Environmental Protection Agency*, 895 F.3d 1 (D.C. Cir. 2018), the court determined that the rulemaking record did not show that HCl is not a carcinogen. 895 F.3d at 11. Based on the science and methods developed over the last 33 years, we believe the issue in setting a standard under CAA section 112(d)(4) is not necessarily whether HCl is a carcinogen but rather whether HCl has a threshold with an ample margin of safety. Thus, in the supplemental proposal, we stated that a chemical's mechanism of action (e.g., mutagenic, or non-mutagenic) is an important consideration when determining if a pollutant has a threshold.
>
> The EPA agrees with commenters' assertions that we cannot claim that mutagenicity is the sole test to determine whether a pollutant has a threshold, for cancer or other adverse health effects.
>
> We acknowledge industry comments in support of an HBEL and that current HCl emissions based upon the 2020 RTR are at levels that were acceptable with an ample margin of safety. However, considering the other comments received, we have decided not to promulgate an HBEL for HCl."

The EPA affirms its conclusions and the rationale presented in these documents.

Nor does NLA meet the first requirement set by Congress in this framework, concerning the ability to comment. Indeed, the EPA considered information provided by NLA regarding setting an HCl HBEL both

during the comment period and after the comment period closed. Specifically, the EPA considered information on this topic including the following information submitted by NLA:

- June 11, 2021, report by Ramboll titled "Evaluation of the Carcinogenicity of Hydrochloric Acid (HCl) and HCl Mist."
- Comments submitted by NLA dated, February 21, 2023, regarding the January 5, 2023, proposed rule amendments.
- Comments submitted by NLA dated March 11, 2024, regarding the February 9, 2024, supplemental proposal. The comments included a February 23, 2024, report by Ramboll titled, "Support for Public Comments Relevant to the US-EPA Pre-proposed Health-based Exposure Limit for HCl."

In addition, after the close of the comment period for the February 9, 2024, supplemental proposal, the EPA accepted and reviewed the following report submitted by NLA.

- April 23, 2024, report by Ramboll titled "Response to the Comments of California Communities Against Toxics, Sierra Club, and Earthjustice Regarding EPA's Proposed Health-Based Exposure Limit for Hydrochloric Acid."

NLA had ample opportunity to provide information to the EPA regarding the use of HBEL for HCl, including a 45-day comment period for the January 5, 2023, proposal, and a 30-day public comment period for the February 9, 2024, supplemental proposal. And although NLA claims that it lacked an opportunity to comment on arguments submitted by other stakeholders, the EPA in fact accepted and considered the April 23, 2024, Ramboll report submitted after the close of the comment period for the supplemental proposal, as well as the reports submitted earlier by NLA. The EPA's consideration of these submittals by NLA are included in the record of in the agency's action finalizing the MACT standards for HCl. The EPA addressed the objections that NLA raises in its petition both in the document titled "Summary of Public Comments and Responses for National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments," which is included in the docket for the 2024 final rule (Docket ID EPA-HQ-OAR-2017-0015-0249) and in the preamble of the 2024 final rule. Because NLA did have the opportunity to comment in a meaningful way, NLA has not shown that it was impracticable to raise any of the objections identified in the petition for reconsideration.

After careful review of the objections raised in the petition for reconsideration regarding the use of an HBEL for HCl rather than MACT standards and for the reasons identified in this letter, the EPA denies the petition. The petition fails to establish that the objections meet either criterion for reconsideration set forth by section 307(d)(7)(B) of the CAA.

We appreciate your comments and interest in this matter.

Sincerely,

Jane Nishida
Acting Administrator