

**Comments of the Corn Refiners Association, National Oilseed Processors Association, and Institute of Shortening and Edible Oils on EPA's Proposed Reconsideration of the 2008 Fugitive Emissions Rule, 87 Fed. Reg. 62,322**

**I. Introduction**

The Corn Refiners Association (“CRA”), the National Oilseed Processors Association (“NOPA”), and the Institute of Shortening and Edible Oils (“ISEO”) appreciate the opportunity to comment on EPA’s proposed reconsideration of its 2008 Fugitive Emissions Rule. The Associations represent members in the following industries:

- CRA is the national trade association representing the corn wet milling industry. Its members manufacture sweeteners, starch, advanced bioproducts, corn oil, and feed products from corn components such as starch, oil, protein, and fiber.
- NOPA is a national trade association that represents the U.S. soybean, canola, flaxseed, safflower seed and sunflower seed crushing industries. NOPA’s membership includes 12 companies that operate 65 solvent extraction plants across 21 states to produce meal and oil which are further utilized in the manufacture of food, feed, renewable fuels, and industrial products. Importantly, NOPA members crush 94 percent of all soybeans processed in the U.S., which amounts to approximately two billion bushels of soybeans annually.
- ISEO represents U.S. refiners who produce 95 percent of domestic edible fats and oils from the following commodities: U.S.-grown soybean, U.S.-grown corn, U.S.-grown cottonseed, U.S.-grown canola, U.S.-grown sunflower, U.S.-grown safflower, U.S.-grown rice bran, U.S.-produced lard, tallow, and wheat germ, as well as imported commodities such as: olive, palm, palm kernel, coconut, canola and sunflower used for baking, frying, cooking and also as ingredients in a wide variety of foods and personal care products from confections to cosmetics to renewable energy sources.

The Associations’ members would be negatively impacted by the proposed rule in two primary ways.

First, the proposed rule is likely to cause certain agricultural processing facilities undergoing modifications to trigger NSR review requirements. Contrary to EPA’s assertion in the proposed rule, the costs and time commitment associated with PSD or NNSR permitting could be prohibitive for many of the Associations’

members. The result is that some members would be forced to forego facility upgrades that would have both economic and environmental benefits.

Second, the proposed rule is likely to exacerbate confusion in permitting, particularly when implemented by state regulators. The Associations' members are not in one of the source categories for which fugitive emissions must be considered in determining the thresholds for new facilities, so the proposed rule would make their permitting thresholds for plant modifications different from the requirements for new construction. That situation has already caused inconsistent permitting requirements following EPA's 2009 stay of the 2008 Fugitive Emissions Rule and its subsequent interim rule.

EPA should therefore re-adopt its approach from the 2008 Fugitive Emissions Rule. Alternatively, if EPA determines it is important to implement a different approach for modifications to facilities in certain source categories, it should do so for those categories only.

## **II. Including fugitive emissions in major modification determinations would cause agricultural processing facilities to forego economically and environmentally beneficial upgrades.**

EPA's proposal would likely cause a greater number of modifications at agricultural processing facilities to trigger NSR. That would require the Associations' members to both deal with the effort and expenses of NSR permitting itself and absorb the increased costs of implementing any BACT or LAER requirements.

Undergoing NSR permitting (either PSD or NNSR) is a significant burden for the Associations' members. The cost of obtaining an NSR permit for the Associations' members is typically at least twice the cost of a minor permit, and it can be even more depending on the specifics of any required modeling. And the time cost of permitting can present just as serious of an issue—members report the NSR permitting process taking twice or three times as long when accounting for additional preparation time and the time to approval.

The costs of complying with BACT or LAER requirements has the potential to be even greater, and it is also subject to significant uncertainty. That uncertainty would make it difficult for the Associations' members to plan for and budget for upgrades. For example, if a corn wet mill or soybean crush plant plans an upgrade that would expand capacity at an existing facility, it is far from clear what a state permitting agency might determine to be BACT or LAER. One option sometimes used to control fugitive emissions is a Leak Detection and Repair ("LDAR") process used to identify and fix leaks. But implementing and continually operating such a system is particularly costly, and it is not clear how it would be

implemented for some of the unique equipment at the Associations' facilities. Alternatively, a state regulator might determine that using the facility's existing process and monitoring emissions is BACT. That would be less costly for the facility, but it would result in minimal environmental benefits at the still-substantial cost of going through the NSR permitting process. Moreover, EPA's recent proposal to revise the primary annual PM<sub>2.5</sub> standard would likely result in more areas in the U.S. being designated as non-attainment, requiring more facilities that trigger NSR review to comply with the costlier LAER requirements and other obligations under NNSR.

Significantly, the proposed rule's assumption that all facilities that undergo major modifications have significant resources to comply with additional permitting requirements is incorrect. The Associations' members have many facilities for which even a small increase in costs would necessitate foregoing a planned upgrade. Many of the Association's members are small entities that operate single facilities. And even the larger companies in the agricultural processing industry operate under tight margins, meaning that a facility upgrade might not be economically viable if there is a small increase in costs. Similarly, a delay caused by compliance with permitting requirements can prevent an upgrade by itself if the market conditions or other circumstances warranting the upgrade change.

Forgoing upgrades that would otherwise be beneficial would have several negative consequences. Most obviously, reducing the output of the Association's facilities would cut jobs and increase food prices at a time at which the country is already experiencing high inflation. In addition, it could have harmful environmental consequences to the extent the Association's members are forced to continue operating older facilities.

### **III. Different requirements for new and modified facilities are an obstacle to regulatory clarity.**

The proposed rule suggests that there is no inherent problem with creating a different system for fugitive emissions between new facilities and modified facilities. But that ignores the potential for misunderstanding in such a dual system. There is a significant risk that both permitting authorities and the regulated community would be confused by the differential treatment of fugitive emissions for new and modified facilities, particularly when there is no obvious policy rationale for treating those facilities differently.

Indeed, such confusion has already happened. While the proposed rule assumes that the industry has been working under clear guidance since 2009, that has not been the case—regulated entities, consultants, and even state regulators have not always understood the current state of the law after EPA's 2008 rule, repeated stays, and subsequent interim rule. As just a few examples:

- A permit recently issued by the San Joaquin Valley Air Pollution Control District did not consider fugitive emissions in making a major modification determination. The permit explicitly noted that it was not including fugitive emissions because the source was “not included in the 28 specific source categories specified in 40 CFR 51.165.” (See Ex. A.)
- Guidance from the Nebraska Department of Environment and Energy instructs permittees to calculate emissions for modifications based on its instructions for new facilities, which provide that fugitive emissions only need to be considered for the 28 listed source categories. (See Ex. B.)
- Guidance from the Illinois Environmental Protection Agency notes that fugitive emissions must be considered only “if the source is one of the 28 specified source categories,” without distinguishing between new and modified sources. (See Ex. C.)

The proposed rule therefore is not necessarily just preserving the status quo. It would represent a regulatory change in many instances where states have not considered fugitive emissions in major modification determinations. And it would likely continue to cause further confusion in application, potentially resulting in permitting requirements that vary by state or even among air districts or other permitting authorities within a state.

#### **IV. Conclusion**

The Associations strongly recommend that EPA re-adopt the approach it articulated in its 2008 Fugitive Emissions Rule. That approach would both improve regulatory clarity and reduce negative economic and environmental impacts at agricultural processing facilities.

Alternatively, EPA could require consideration of fugitive emissions for specific additional source categories rather than establishing a blanket rule for all modifications. To be clear, the Associations are not aware of a compelling rationale for adding any particular source category to the 28 source categories listed for new sources. But to the extent EPA’s proposal is driven by a concern with fugitive emissions in major source determinations for modifications at certain types of facilities, it should limit the scope of the final rule to only those categories. Doing so would allow EPA to achieve those specific policy objectives without having unintended consequences for agricultural processing.

If you have any questions about these comments, please feel free to contact John Bode, President and CEO of CRA, at 202-331-1634.

**Respectfully Submitted,**  
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