

# Principal Regulatory Issues Facing the U.S. Coke Industry

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## **ACCCI MEMBERSHIP**

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- **“Merchant” Producers of Metallurgical Coke**
- **Steel Manufacturers that Produce Coke**
- **Coke Sales Agents**
- **Producers/processors of chemicals derived from distillation of coal and coal tar**

## **PRESENTATION OVERVIEW**

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- **Sector-Specific Regulatory Issue Facing the U.S. Coke Industry**
- **General Industry Regulatory Issues of Concern to the Coke Industry**
- **Other Regulatory Concerns for the Coke Industry**
- **Regulatory Concerns for the Coal Chemicals Industry**

# CURRENT STATUS OF THE U.S. COKE INDUSTRY

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- 17 coke plants (54 batteries)
  - 6 integrated steel “by-product recovery” plants (20 batteries)
  - 6 “merchant” “by-product recovery” plants (11 batteries)
  - 5 “merchant” “heat-recovery” plants (20 batteries)
- ACCCI addresses key regulatory issues facing the U.S. coke industry.
- ACCCI-managed “Coke Oven Environmental Task Force” (COETF) addresses key environmental issues facing the U.S. by-product recovery coke industry.

# **SECTOR-SPECIFIC REGULATORY ISSUE FACING THE U.S. COKE INDUSTRY**

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- **EPA's Risk and Technology Review (RTR) of 2003  
MACT Standards for Coke PQBS**

# EPA'S RISK AND TECHNOLOGY REVIEW (RTR) OF 2003 MACT STANDARDS FOR COKE PQBS

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- On April 14, 2003, EPA promulgated “maximum achievable control technology” (MACT) standards for coke pushing, quenching and battery stacks (PQBS).
  - Standards are to limit “hazardous air pollutants” (HAPs) from PQBS (e.g., benzene, toluene, “coke oven emissions”).
- Clean Air Act (CAA) requires EPA to determine within eight years of promulgation (i.e., by 2011 for PQBS) whether tighter standards should be issued, based on:
  - risks to public health associated with MACT-level emissions (risk review); and,
  - whether any improvements in control technology have occurred since the MACT standards were issued (technology review).
- EPA is behind schedule on the risk and technology review (RTR) for coke PQBS, having just kicked off the multi-year (three-to-four year) RTR in early 2015.
- The COETF is engaging EPA during the RTR to ensure that any tighter standards for by-product recovery plants are justified and fair.

## **EXPECTED COETF ISSUES ON THE PQBS RTR**

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- **Unit risk estimate for Coke Oven Emissions**
- **Underlying exposure assumptions for EPA's risk estimates**
- **Dispersion modeling**
- **Emission factors**
- **Cost to comply**

## INITIAL EPA EFFORTS ON THE PQBS RTR

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- EPA provided the COETF with a draft “Information Collection Request” (ICR) during August 2015 for comment.
  - Enclosure 1: Questionnaire, which asks questions about the company and all of the operations at its coke plant(s) (to be completed/returned within 3 months after issuance)
  - Enclosure 2: Testing request, which includes all of the details of where and how to test (to be completed by mid-2016)
    - Testing to be required of 6 by-product recovery plants and 3 heat recovery plants

## INITIAL COETF EFFORTS ON THE DRAFT ICR

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- On September 30, the COETF met, via conference call, with the EPA Project Officer to raise serious concerns about EPA's proposed source testing requirements, including concerns about:
  - the need for testing of non-categorical emission sources, non-HAPs, and many pollutants that pre-MACT testing and prior risk assessments indicate will have little or no impact on the MACT II risk assessment;
  - severe safety concerns, logistical problems and staffing demands for source testing personnel;
  - unreasonable and unattainable demands on plant operations and on emissions capture/control equipment that likely exceed the design parameters intended to meet existing performance standards;
  - unreasonable and burdensome scheduling and reporting demands;
  - testing that would be an extreme cost burden to the industry; and
  - testing that exceeds EPA's authority under Section 114 of the Clean Air Act.

## **MAJOR “TAKE AWAYS”/“NEXT STEPS” FROM SEPTEMBER 30 CALL**

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- **The rulemaking is NOT subject to a court-ordered deadline, but is a high priority of EPA’s Acting Assistant Administrator for Air and Radiation, Janet McCabe.**
- **The EPA-OAQPS Project Officer, Dr. Donna Lee Jones, is willing to work with the COETF to adjust/“pare back” the testing requirements, on the basis of justified safety, timing and expense issues.**
- **Dr. Jones wants to engage with us “issue by issue” on a “real time” basis, rather than waiting for us to come back to her in a few months with a formal, comprehensive document discussing our issues.**
- **Existing, site-specific source-testing data may yield a significant reduction in the scope/amount of testing required at individual plants.**

# **PRINCIPAL GENERAL INDUSTRY REGULATORY ISSUES OF CONCERN TO THE U.S. COKE INDUSTRY**

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- **EPA's Greenhouse Gas Policies**
- **EPA's SSM Policies**
- **EPA's NAAQS Reviews/Rulemakings**
- **EPA's WOTUS Final Rule**
- **PEER Petition Regarding EPA's RCRA Corrosivity  
Characteristic**

# EPA'S GREENHOUSE GAS POLICIES

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- On August 3, 2015, EPA took three separate but related actions to address carbon pollution from power plants:
  - Final “Clean Power Plan,” President Obama’s signature effort to combat carbon emissions from existing power plants;
  - Final Carbon Pollution Standards for new, modified and reconstructed power plants; and,
  - Proposed Federal Implementation Plan associated with the final Clean Power Plan.
- The Clean Power Plan, originally proposed by EPA in June 2014, is the country’s first regulation of carbon emissions from the Nation’s 1,500 existing power plants. the largest source of the nation’s GHG pollution. Other sectors could be addressed at any time as sector-specific NSPSs are revised.

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## **EPA'S GREENHOUSE GAS POLICIES *(Concluded)***

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- **The associated standards could lead to the shutdown of coal plants before there is enough alternative power to replace them and, ultimately, to soaring electric bills, power blackouts and years of legal battles.**
- **If the Clean Power Plan and the other final rules survive judicial review without substantial change, they will significantly alter the way states and utilities design, plan, and operate our bulk power electric grid for decades to come.**
- **ACCCI has joined a new multi-association coalition being led by the National Association of Manufacturers (NAM, of which ACCCI is a member) and the U.S. Chamber of Commerce, which plans to challenge the new rules.**
- **ACCCI has been a party to numerous comment letters to various Federal agencies on the social cost of carbon (SCC) estimates being used by the Administration to justify numerous proposed GHG rules.**

# EPA'S SSM POLICIES

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- In 2008, in *Sierra Club v. EPA*, a three judge panel of the U.S. Court of Appeals for the D.C. Circuit, with one judge dissenting, vacated three provisions in the Part 63, Subpart A of EPA's General Provisions that set forth the general duty to minimize emissions during SSM events and exempted sources from MACT emission standards during SSM events.
- Since then, EPA has promulgated multiple rulemakings that are re-shaping the way emission standards under Clean Air Act sections 112 and 129 apply during SSM events. The new approach is affecting virtually all source categories subject to MACT standards, including those that apply to coke plants.
  - EPA's position is that "SS" events are routine and predictable operating conditions and should be treated the same as normal or steady-state operating conditions (that is, subject to MACT floor or beyond-the-floor emission standards).
  - EPA's position is that "M" events are not distinct operating conditions, and so it will not set unique standards for M events.

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## **EPA'S SSM POLICIES (Concluded)**

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- **In June 2015, EPA issued a final rule in which it asserted that the State Implementation Plans (SIPs) of 38 states were inadequate because of the relief they provide for SSM events (the “SSM SIP Call rule”).**
  - **EPA issued SIP calls for specific, limited language in each state’s SIP.**
  - **EPA’s findings of inadequacy are based on inconsistency with EPA policies, not some specific air quality problem.**
  - **EPA’s statements about what SIPs can and cannot say about SSM events are in guidance, not regulation.**
  - **This summer, ACCCI joined an SSM Coalition which, during August, filed a petition for review of the SSM SIP Call rule in the U.S. Court of Appeals for the D.C. Circuit.**

# **EPA'S NAAQS REVIEWS/RULEMAKINGS**

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- **On October 1, 2015, EPA released its final National Ambient Air Quality Standard (NAAQS) for ozone, lowering the current 2008 standard of 75 parts per billion (“ppb”) down to a level of 70 ppb for both the primary and secondary standards.**
  - **EPA is lowering the ozone standard despite calls from numerous states, unions, and economic development agencies to retain the current standard.**
- **EPA's new ozone standards will place an enormous burden on the still-recovering American economy, causing a estimated 400% increase in nonattainment areas.**

# EPA'S WOTUS FINAL RULE

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- On June 29, 2015, EPA and the U.S. Army Corps of Engineers issued their final “Waters of the U.S.” final rule (80 Fed. Reg. 37,054). The rule became effective on August 28.
- The rule has implications for any entity regulated under the Clean Water Act (CWA), including construction, manufacturing, mining, agricultural, and energy development.
- It dramatically expands the number and types of waters subject to regulation under the CWA, as this definition establishes the scope of federal jurisdiction over U.S. waters.
- Where federal jurisdiction exists, federal permits will be necessary for a number of activities impacting these waters, including filling, dredging, discharging into, or modifying flow.
- This new definition of “waters” will also be incorporated into regulations under several other environmental laws, including the Clean Air Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act.

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## **EPA'S WOTUS FINAL RULE *(Concluded)***

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- Numerous states have filed suit over the rule. Additional litigants are a virtual certainty.
  - On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the rule nationwide in order to preserve the long-time status quo understanding of CWA jurisdiction while motions to dismiss on jurisdictional grounds are pending. The Sixth Circuit becomes the second federal court to signal that the WOTUS Rule may not survive judicial review on the merits.
  - Currently, the parties are engaged in arguments over which court or courts will hear the merits of the case and issue decisions. Ultimately, however that gets resolved, it is very likely that the challenges will be briefed and argued before the Supreme Court. That may take several years.
- Congress continues to consider legislation to scrap the final rule.

## **OBAMA ADMINISTRATION'S EFFORTS ON PRESIDENT OBAMA'S EXECUTIVE ORDER (EO) 13650 TO IMPROVE CHEMICAL FACILITY SAFETY AND SECURITY**

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- EPA and OSHA, respectively, are moving forward aggressively to implement significant revisions to their Risk Management Plan (RMP) and Process Safety Management (PSM) rules that apply to facilities that use extremely hazardous substances.
- The agencies' actions are in response to an Executive Order (EO), EO 13650, which President Obama issued on August 1, 2013, in response to an April 2013 explosion at a fertilizer facility in West, Texas, that killed 15 people and injured many others.
- In December 2013, OSHA announced that it was considering significant revisions to its PSM rule ("Process Safety Management and Prevention of Major Chemical Accidents"), which contains requirements for the management of hazards associated with processes using highly hazardous chemicals.
- On July 31, 2014, EPA announced that it was considering significant revisions to its RMP rule, which requires facilities that use extremely hazardous substances to develop an RMP.
- Both announcements came as a request for information (RFI). An RFI is frequently a federal agency's first public acknowledgment that it intends to pursue rulemaking.

## **OBAMA ADMINISTRATION'S EFFORTS ON PRESIDENT OBAMA'S EXECUTIVE ORDER (EO) 13650 TO IMPROVE CHEMICAL FACILITY SAFETY AND SECURITY (*Concluded*)**

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- ❑ OSHA, EPA, and DHS are leading a Working Group established by EO 13650 to identify areas for regulatory reform.
- ❑ Given the broad applicability of the PSM and RMP standards across many industrial sectors, including the coke industry, future rulemakings of the sort contemplated by OSHA and EPA, respectively, could have significant operational and economic effects.

# PEER PETITION REGARDING EPA'S RCRA CORROSIVITY CHARACTERISTIC

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- **The Public Employees for Environmental Responsibility (PEER) has petitioned EPA to lower the upper limit of the RCRA Corrosivity Characteristic (used to identify hazardous wastes) from pH 12.5 to pH 11.5, a 10-fold reduction; and, and to extend the standard to solid, as well as liquid materials.**
- **ACCCI has joined a 17-association coalition that is “assisting” EPA in evaluating the petition.**
- **In a September 30, 2015, letter to EPA, the coalition argued that:**  
**“a rule that met the petitioners’ requests needlessly would subject an enormous quantity of materials, many of which currently are safely used for productive purposes, to RCRA hazardous waste requirements with no corresponding benefit in the form of improved worker, public, or environmental safety. In fact, amending the corrosivity characteristic as requested would result in classifying as “hazardous” millions of tons more material than could be accommodated in currently available Subtitle C landfills.”**

# REGULATORY CONCERNS FOR THE COAL CHEMICALS INDUSTRY

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- Legislation that would ban use of coal tar-based sealants has been enacted or is being considered in various states/localities (e.g., NY, MI, MN, IL, ME, Chicago).
  - Legislation is being driven by USGS scientists and handful of environmental activists and media.
- The Pavement Coatings Technology Council (PCTC) continues to push back aggressively on proposed bans, adverse publicity.
- ACCCI's Coal Chemicals Committee is considering potential projects the Committee might undertake regarding the human health risks of "PAH-containing complex mixtures."

# QUESTIONS?

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