COMMENTS ON THE

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: FERROALLOYS PRODUCTION

RECONSIDERATION OF NESHAP PROPOSED RULE COMMENTS

(40 CFR PART 63) RIN 2060-AS90

TO U. S. ENVIRONMENTAL PROTECTION AGENCY

DOCKET EPA-HQ-OAR-2010-0895

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SUBMITTED BY

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Highlights/Executive Summary:

- EPA failed to correctly comply with the Administrative Procedure Act by making arbitrary and capricious regulatory requirements for a new and undemonstrated technology when the old opacity reading "technology" of human eye, paper, pen or pencil worked perfectly well.
- EPA failed to give all other regulated industries full opportunity to file comment on the Agency's expectation that the new camera technology (DOCs) would be used by other industries to demonstrate compliance with opacity reading requirements and data retention as required under the Administrative Procedure Act (APA).
- The anticipated costs for these companies is $72,900 per year projected as permanent annual expense. By comparison this regulatory cost means a new $200,000 annual administrative cost to a company located in the Washington, D. C. area.
- **EPA failed to follow President Obama's Executive Order 13563.** That Executive Order is designed for Agencies to "tailor regulations to impose the least burden on society..taking into account costs of cumulative regulations and to.. maximize net benefits including potential economic, environmental, public health, safety, and other advantages, distributive impacts and equity". On this point, EPA has advantaged one company over its competitors. EPA has failed to publicly notify all possible regulated industries that will one day they must use this camera technology. This failure of clear public notification is both a violation of the Executive Order and of the APA. It also excludes new vendors into the process early on in the use and creates a winner v loser situation.

RECOMMENDATION: EPA should allow companies to make their own decision whether continued use of opacity readings by human eye (Method 9) or a new camera technology (not exclusively from one company) based upon their own localized circumstances, staff size, administrative costs, and operations. Nothing in these comments is intended to preclude parties from the voluntary use of Virtual Technology's digital camera opacity technology (or other technologies from additional vendors) that might be commercially demonstrated, desirable and effective in the future. Perhaps in time, Virtual Technology's technology will improve and not run the risk of false positive readings with 'trees, steam and shadows' appear in the camera's scope[1]. Perhaps the company, or for any future competitors, would be able to improve on the technology for rooftop readings since this technology was designed for plume readings at smoke stacks. EPA has many opportunities to review this camera technology for future NESHAP reviews for other industries but should first address Virginia DEP 2011 letter about false positives or inaccurate readings during those rulemakings. No industry should be expected to adopt a pollutant detection device that, when giving false readings, forces the industry to incur more control costs. Nor should industries be forced to buy proprietary papers on which the EPA appears to be justifying its claims about effectiveness of technology. Transparency is a term this Administration has asserted is a guiding principle for governing. Regrettably it was not followed here.

[1] Memo from Mr R. David Hartshorn, Virginia Dept. of Environmental Quality, Northern Regional Office, page 1, May 31, 2012. May 31, 2012.

The Clean Air Act requires review of the appropriateness of technology under the continued RTR or residual risk regulations. This is not EPA's only bite at the apple.

Introduction

EPA's July 12, 2016 Notice of Response to the Petition for Reconsideration of the NESHAP for the ferroalloys industry by EPA contains several errors. These comments seek to point out those errors and offer corrections to improve the language for the Agency's final rule. **Many of these errors are procedural under the Administrative Procedures Act and place the Agency in a position of vulnerability to litigation.** Many of these actions also fly in the face of the Administration's push for transparency and good government. Further, these are errors that should not be repeated in subsequent rulemakings under the Clean Air Act for any industry.

EPA HIDES THE BALL SETTING PRECEDENT FOR USE OF NEW DIGITAL CAMERA FOR OPACITY READINGS. THIS IS A VIOLATION OF THE ADMINSITRATIVE PROCESDURE ACT.

The final rule for ferroalloys companies is obscure and hides the importance of the issue in a rule appearing to affect only two companies. EPA never published an Advanced Notice of Proposed Rulemaking and called for all other potentially regulated parties to offer commentary on the new DOCs requirement in the ferroalloy NESHAP. EPA hid the change from Method 9 to the new camera technology in a small manufacturing rulemaking where both manganese production companies have less than 500 employees. Neither company appears to have a Governmental Relations staff in Washington, D.C. Nor does this small industry sector have a trade association. Eramet Marietta of Ohio and Felman of West Virginia are both smaller subsidiaries of larger companies. They are the only domestic providers of manganese for steel. Steel is critical U. S. good essential for many other industries including defense, transportation, ship building, construction and many other products. The two competing companies each have approximately 200 employees each.

EPA made no public announcement of possible changes from Method 9 to a new technology and did not seek comments from the broader industrial community that has relied upon the Method 9 option for almost 30 years. There is no reason that these other industries including refineries, power generation sector, smelting, chemical plants, and pipeline compressor stations to have any reason to review a ferroalloy regulation (affecting only two companies) in order to offer comments. Failure to solicit the comment by the EPA in a clear manner with a broader solicitation of comments affects those business sectors and as a result is a violation of the Administrative Procedure Act. EPA is clear in the proposal and in final rule that they expect the DOCs technology to be adopted by other industries with its statement:

"Regarding the comment that there is only one vendor, we believe there will be an increase use of DCOT in the future and an increased market and therefore other vendors will begin offering these service. We believe that once other vendors learn that EPA is starting to require DCOT in various rule and other actions that other vendors will become available, which will likely keep prices approximately the same, or possibly lower. We are not aware of any evidence that the vendor has raised or will raise, its prices due to Ferroalloys Production final rule". EPA, July 12, 2016, Page 45093, Federal Register.

While EPA held a public hearing on July 27, 2016 the affected industries would have had to have read the Federal Register reconsideration announcement on July 12th about the NESHAP for ferroalloy sector in order to be aware of their opportunity for public comments. This too is a violation of the

Administrative Procedure Act. Nor did EPA hold the hearing in Washington, D. C. where most trade associations and businesses affected by revisions to Method 9's use reside.

Agencies are required by the APA to provide, for the most part, advance notice and an opportunity for the public to comment on a proposed rule before adopting a final rule[2] including "either the terms or substance of the proposed rule or description of the subjects and issues involved."[3] Following notice, "the agency shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation."[4] This requires that the rule be made public, together with the substantial supporting documentation that the agency considered. At the first formal stage of rulemaking, the proposed rule, an electronic public docket system is generally required by both statute and Executive Order.[5] As noted above, the critical E-Government Act, Pub. L. No. 107-347, § 207(d)(1), 116 Stat. 2899, 2916 (2002) [hereinafter E-Gov't Act]. See Cal. Cmtys. Against Toxics v. EPA, 688 F.3d 989, 993 (9th Cir. 2012) It does not appear that EPA's failure to include all documents in the electronic docket was an error. The E-Government Act requires online disclosure only 'to the extent practicable, as determined by the agency in consultation with the Director' of [OMB] …. We defer to the EPA on what is practicable to post on its online docket."). "Practical" is changing rapidly, which is one reason animating this study and analysis. 62 5 U.S.C. § 553(c). Theresa Pugh Consulting agrees with findings[6] by the Administrative Conference of the United States (ACUS):

"To facilitate the comment process, agencies should include in a publicly available electronic docket of a rulemaking proposal all studies and reports on which the proposal for rulemaking draws, as soon as practicable, except to the extent that they would be protected from disclosure in response to an appropriate Freedom of Information Act request."[7] To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking

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[2] 5 U.S.C. § 553(b), (c).

[3] Id. at § 553(b).

[4] Id. § 553(c).

[5] E-Gov't Act, Exec. Order No. 13,563, Improving Regulation and Regulatory Review, § 2(b), 76 Fed. Reg. 3821-822 (Jan. 21, 2011) ("To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.")

[6] "Agency Practices and Judicial Review of Administrative Records in Informal Rulemaking" slide presentation, May 14, 2013 referencing the ACUS paper found on website at https://www.acus.gov/sites/default/files/documents/Agency%20Practices%20and%20Judicial%20Review%20of%20Administrative%20Records%20in%20Informal%20Rulemaking.pdf

[7] Administrative Conference of the United States, Recommendation 2011-1, Legal Considerations in e-Rulemaking (Adopted June 16, 2011), 76 Fed. Reg. 48,789 (Aug. 9, 2011) (Recommendation 4); see, generally, Administrative Conference of the United States, Recommendation 2011-2, Rulemaking Comments (Adopted June 16, 2011), 76 Fed. Reg. at 48,791. 64 5 U.S.C. § 553(b), (c). 65 Id. at § 553(b). 66 Id. § 553(c). 67 E-Gov't Act, Exec. Order No. 13,563, Improving Regulation and Regulatory Review, § 2(b), 76 Fed. Reg. 3821-822 (Jan. 21, 2011). 14 May 14, 2013

docket, including relevant scientific and technical findings."). Documents that formed the basis for the Agency's preliminary judgment in a proposed rule must be subjected to public comment and this requirement means that a wide range of material, discussed below, is placed on a public rulemaking docket.

In this case, EPA did not make it clear in an Advanced Notice of Proposed Rulemaking (ANPRM) or Proposed Rule or a separate 2015 or 2016 OMB Regulatory Agenda indicating EPA intended to revise Method 9 or apply the DOCs to other industries. Yet, they stated their intent or expectation in the July 12, 2016 notice on reconsideration:

"Regarding the comment that there is only one vendor, we believe there will be an increase use of DCOT in the future and an increased market and therefore other vendors will begin offering these service. We believe that once other vendors learn that EPA is starting to require DCOT in various rule and other actions that other vendors will become available, which will likely keep prices approximately the same, or possibly lower. We are not aware of any evidence that the vendor has raised or will raise, its prices due to Ferroalloys Production final rule". Federal Register, July 12, 2016, Page 45093-45094

II. EPA IS PUSHING "DEMONSTRATED "TECHNOLOGY WHEN THE EXISTING OPACITY TESTING METHOD IS LESS EXPENSIVE, HAS BEEN DEMONSTRATED FOR MORE THAN 20 YEARS AS AN ACCURATE TEST.

EPA's proposed rule forces these two small companies to adopt the use of a complicated and non-demonstrated new camera reading rather than allowing the sector the option of using either the existing Method 9 (optical reading for opacity readings for Particulate Matter) or to voluntary use of this new camera technology. **It is arbitrary and capricious under the Administrative Procedure Act for an Agency to require the adoption of a new technology for one sector when that single camera or optical technology (Virtual Technology) has never been by any other industry**. There is considerable case law on "demonstrated" and this demonstration does not meet that test.

EPA has shown no technical or human health benefit reason why these two companies in the ferroalloy industry must adopt a new opacity reading technology simply because the camera and software is available in commerce.

Further, while EPA's docket contains a detailed memo from the Virginia Department of Environmental Quality's R. David Hartshorn, Air Compliance Manager, that the technology had serious flaws in 2012. Nothing in the public docket corrects those earlier findings by the air agency of Virginia. Any documents or technical papers used to justify the adoption of this product should be available for all parties to read and provide comment on. Documents that might respond to Mr. Hartshorn's 2012 concerns are not available in the docket. If EPA is using an EPRI document, it seems terribly unfair to a small entity that they should have to purchase the EPRI or other private laboratory research to confirm or refute the accuracy of the camera. EPRI is not a public institution and their work, while admirable, is not available for free. The regulated parties would have to purchase the document. Often these documents costs in the many thousands of dollars.

III. EPA IMPLIES THIS RULE WOULD ESTABLISH PRECEDENT FOR OTHER INDUSTRIES AND APPLICATION OF CAMERA INSTEAD OF EYE BALL TEST:

Page 45093 of U. S. EPA's announcement of the reconsideration of the rule suggests that while there is only one camera technology vendor now that more companies will emerge to provide other products

once the EPA. This clearly indicates EPA's plans to justify the application of this technology, while not commercially demonstrated and proving that the 2012 design flaws have been corrected, to other non-ferroalloy industries that must use opacity readings. EPA's EIA states that only two states have certified camera operators and this seems hardly reasonable to expect that this industry (or others) may quickly adopt the usage of this camera technology inexpensively with certified camera operators in two states (Pennsylvania and California).

IV. ARE THERE OTHER TECHNOLOGY OPTIONS AND ADDITIONAL VENDORS?

EPA silent on whether the single company owns any patents or other proprietary terms that would preclude other vendors to enter into the market and provide alternatives. EPA is silent on costs where there is only one product manufacturer. In fact, it is very unlikely that if other vendors are not able to bring additional choices to the market that the costs would shrink over time as is EPA's assertion.

Despite Virginia's Department of Environmental Quality's optimism in using a more accurate camera device, they were dismayed at the many errors in the camera usage. Virginia's 2012 memo[8] demonstrates that there are only a few certified parties (Pennsylvania and California) who were qualified to administer the camera and meet EPA's expectations. It appears that neither West Virginia nor Ohio have local engineering staff or vendors who are certified to operate this camera technology at this time. Further, in the 2012 memo, it is quite clear that high false positives in use of the new camera technology. If the vendor has improved the accuracy of the tests this is not shown in the EPA docket materials.

V. **EPA PICKS WINNER AND LOSERS IN GIVING THE "NOD" TO ONE COMPANY.**

It hardly seems fair to other technology vendors that if they were not reviewing every obscure regulatory action under the Clean Air Act (with no insult meant to these two ferroallow companies intended) that they would not know that they should be in pursuit of a camera device to replace Method 9. **Nor would the competitors to VI have the advantage that VI has for this market demand**. EPA should not be in the business of working hand in glove with one vendor. If only one vendor is available with a technology after adequate notice and comment or public statements in seeking a new technology, that would be another matter. <u>But here it appears the EPA has failed to be transparent to either the companies that will have to install the technology (especially those that are not ferroalloy companies) and also not to the camera technology or device companies that might want to compete.</u> This picking and choosing of vendors for an entire industry to use a single product is not what regulatory agencies should do.

VI. EPA'S FAILURE TO HAVE PROVIDED DOCUMENTATION TO PROVE THAT THE TECHNOLOGY WORKS FOR ALL INDUSTRIES, ALL STACKS, AND ALL CONDITIONS AND LOCATIONS.

In fact, it appears from the proposed rule that the EPA is using confidential studies that are not available for public review and commentary in this rulemaking. Any documentation or study that refutes a document, already in the EPA docket from a state regulatory agency (such as Virginia's DEQ document) that tried the camera and found that it provided false positives for opacity should be easily found in the docket. It appears EPA has allowed a **subscription-only** EPRI paper to be used as justification for

[8] Virginia Department of Environmental Quality, Northern Regional Office, memo from Mr. R. David Hartshorn, Air Compliance Manager and Bill Gillespie, Air Compliance Specialist, to Mr. Michael C. Dowd, Air Program Manager.

requiring the new opacity camera (available by only one company in the U. S. This seems especially unfair to small businesses that should have had access to all technical documentation to read, confirm or refute the findings.

VI. EPA FAILS TO MEET SPIRIT AND LETTER OF EXECUTIVE ORDERS:

Failure to meet the obligations and spirit of Executive Order 13610 (Issued by President Obama on May 10, 2012 and Executive Order 13563 (that replaced EO 12866). It appears from the 2012 proposed rule and the July 12, 2016 re-proposal that EPA has not met its obligations under Executive Orders 13610 and 13563. Executive Order 13610 addresses whether a new regulatory approach might minimize regulatory burdens. Nothing in the docket for the re-proposal indicates that the EPA convened any outreach meetings or communication under Executive Order 13610 with the broader business community that either uses Method 9 alternatives or might want to use this camera device—or might want to offer other camera devices as vendors. The docket does not indicate any vetting of possible ways to reduce regulatory burden on the two companies that make up the entire sector affected by this proposed rule. And, more critically, while EPA's own re-proposal mentioned that they anticipate requiring this camera technology for other industries, it does not appear from the docket's materials that any other industries were invited in to meet with EPA to discuss this alternative to Method 9's opacity reading by naked human eye. EPA should act by announcing an advanced notice of proposed rulemaking (ANPRM) that solicits commentary by both the regulated industries that would be affected by changes in opacity reading devices and by competitors who might want to be certain they have equal opportunity to sell products. **Unless one was reading this proposed rule on one would have had no indication that EPA plans to change the opacity reading system for many hundreds of manufacturing industries including power plants, aluminum, metal smelters, steel, pulp/paper, chemical plants, and refineries**.

VII. EPA'S PROPOSED RULE FAILS TO RECOGNIZE THAT ALL SIGNIFICANT COSTS TO SMALL BUSINESSES ARE ONLY POLLUTION CONTROL COSTS.

Ironically, EPA's proposed rule increases regulatory burden rather than to minimize burden because it requires two small entities to learn how to use new camera technology that is not broadly used or commercially demonstrated for all physical locations, weather conditions and varying stack heights. Nor does EPA' re-proposal make it clear for how long the two small businesses must maintain camera readings in computer storage using memory/space on the company's computers. Nor is it clear if the camera readings, where verified by other parties, might indicate continuous non-compliance if the camera reading results take 3-10 days from when the camera reading initially took place and must be reviewed by a third party. Virginia's Department of Environmental Quality memo, dated May 31, 2012, states that the camera technology also is not accurate in plume opacity readings where there is tree movement, background steam, or smoke. Operating these cameras takes finesse—perhaps even third party vendors. EPA's proposed rule did not anticipate these costs to small businesses. Taking camera readings with this nuanced skill is not accounted for in EPA's cost estimate, training time, or risks for inadvertent noncompliance simply because of the camera's complexity.

These added implications could add considerable regulatory burden in the NESHAP and were not identified in any way for the small entities (or other parties affected in subsequent rulemakings). EPA's slap dash approach on the regulatory costs and obligations under this proposed rule and throwing out the prior human eye test for opacity readings hardly seems consistent with what Congress intended with

the subcategorization option that allows for work practices. Method 9 can be a work practice if a company believes that the camera technology is not yet accurate.

VIII. Costs of Camera Technology and Whether the Requirement is Justifiable

Theresa Pugh Consulting does not have opinions on the selection of various control technologies to meet the NESAP. Nor are these MACT floor issues pertinent to this July 12, 2016 announcement. Our comments point out that EPA's cost estimates for new hoods, venting, and polishing baghouses run between $7 million and $13 million**.** But these costs are driven, in part, by the determination that the facility has failed to pass the opacity test. So it is not possible to tease apart the camera technology investment, staff training time, costs to administer and the costs of the related Information Technology (IT) storage of the camera film with the ultimate costs of compliance. If the camera might offer false positives, the companies would take corrective actions to add on new pollution controls to reduce precursors to particulate matter and/or ozone. Or perhaps they would be subject to enforcement actions and fines for exceeding their Title V operating permit limits. Clearly the camera devices are an inherent part of the costs to comply with this regulation because they can dictate more additive pollution controls.

EPA falsely asserts that the new camera reflects just a fraction of those overall compliance costs of approximately $72,900 annually[9]. This $72,900 annually is no small figure when contemplating the additional pollution controls resulting from false positives or confusing camera readings due to trees, steam and other factors. At least one of these companies is a true small business and both appear to have faced economic hardship and imports. In Ohio (or West Virginia) it is likely that this **$72,900** might reflect at least one or perhaps jobs that could be retained—or perhaps a new job added.

Ohio's median household income increased by only 1 percent to $48,081 in 2013[10]. (These are most current figures available). In fact, Ohio ranks 35th in the U. S. for median household income[11]. To offer a comparison and contrast, the metropolitan Washington D. C. area has a median household income of $122,294. **For policy makers who reside in the Washington, D. C. area to understand what this regulatory cost might mean to a company in our area, the cost of $72,900 would be more like $200,000 small business cost.** Theresa Pugh Consulting defers to either of these companies if they have offered more current details about the costs of training and administration of these cameras on an annual basis. Perhaps these two companies might offer insight if EPA's $72,900 in annual costs is accurate.

At least one of these companies have current economic difficulties and are subject to competitive imports from other countries. EPA's own economic analysis suggests that the two companies are subject to trade competition from India and China and that they have only a thin margin of between 3 and 5 percent before they could be seriously affected by trade.

Theresa Pugh Consulting cannot find any human health protections that justify the additional $72,900 in annual costs for administration of the camera (and additional IT costs for storing the film). The NESHAP requirements of baghouse technology and other fugitive pollutant controls would not be

[9] Page 47, Section 4-17, EPA Economic Impact Analysis IEIA) for the Manganese Ferroalloys RTR, Final Report, EPA-452-/R-15-004, May 2015.
[10] Lancaster Eagle Gazette, September 20, 2014.
[11] Website address www.cleveland.com for newspaper materials on local Ohio statistics

altered if EPA allowed the use of existing "eye ball" technology. Theresa Pugh Consulting questions the benefit-cost analysis underlying the mandatory use of the new camera technology since no human lifetime would be enhanced by the use of the camera over the existing "eyeball" test, a simple pen or pencil and paper forms.

IX. UNFUNDED MANDATES: EPA's documentation asserts there is no Unfunded Mandates Act implication for state or local air agencies staff. This is not true. In order to inspect for opacity or undertake enforcement, the staffs of state or local air agencies would need to be trained to use a certified camera. To "perform Method 9, an inspector would only need a Method 9 run form and a pen or pencil with them. To be clear, the administration of Method 9 is not free. Both state agencies and private parties would have to get training to use Method 9. But to use the camera, the private parties (or state/local agency personnel) would need to download the pictures to his/her computer and analyze the plume photographs they have taken. In simple analysis mode, the analysis of pictures on a homogeneous background, the time required to analyze the photographs is minimal, about a minute per second. In complex analysis mode, the analysis of pictures with a heterogeneous background, the time required to analyze the photographs can be expensive (as much as five minutes per picture). *See Virginia DEQ memo, page three.*

Theresa Pugh Consulting points out that virtually all visible background would be "heterogeneous" because virtually all camera shots near industrial facilities would have trees or other items in the background. These trees would be especially problematic in locations east of the Mississippi. Further, the Virginia DEQ letter did not mention the cost to state agencies to retain the documentation or camera data on state agency computers. Because of this heterogeneous nature of the camera readings, state and local inspectors would need a sophisticated training to make certain that the industrial party was using the camera correctly and that the camera was not misreading shadow when, in fact, the shadow from the trees was pollution.

Theresa Pugh Consulting concurs with EPA's assertion that Executive Order 13211 is not applicable.

EPA's EIA is Flawed: EPA's EIA asserts that the U. S. has adequate supplies of the manganese commodities to ensure domestic manufacturing with no distributional effects. However, EPA did not explain what happens to that current supply (retained in storage for emergency steel manufacturing) should one of both of these companies cease to operate because of a variety of factors. The EPA is asked under President Obama's Executive Order 13563.

Additionally, EPA's EIA stated that one or both of these ferro manganese companies have obtained (or are likely to obtain) temporary electricity pricing alternatives through their petitions to the WV and OH Public Utility Commissions or PUCs. There is nothing to suggest that these reduced electricity rate arrangements will be long lasting or permanent. Both PUCs in West Virginia and Ohio have indicated (along with their utilities) that the price of electricity is expected to rise over the next 20 years. EPA's analysis for the ferroalloy manufacturing industry did not address these short term rate arrangements and the implications after 2020 and past 2030. EPA's own analysis shows that Ohio and West Virginia will reduce CO_2 under the Clean Power Plan (CPP). This EPA analysis is a disappointment since EPA has learned a great deal about the price of electricity and the relative inelasticity of that cost to many industries including steel, aluminum, pulp/paper, and chemical manufacturing over the last five years. These two issues point to flaws in EPA's EIA implying that a State PUC might give a permanent rate reduction to an industrial customer of a major electric utility provider.

RECOMMENDATION: It would be far better for both of these companies for EPA's final rule to allow companies to make their own decision whether continued use of opacity readings by human eye or this new camera technology based upon their own localized circumstances, staff size and operations. Nothing in these comments is intended to preclude parties from the use of Virtual Technology's digital camera opacity technology (or other technologies from additional vendors) that might be commercially demonstrated, desirable and effective in the future. Perhaps in time, Virtual Technology's technology will improve and not run the risk of false positive readings with 'trees, steam and shadows' appear in the camera's scope[12]. EPA has many opportunities to review this camera technology for future NESHAP reviews for other industries but should respond to the Virginia DEP 2011 letter about false positives or inaccurate readings during those rulemakings. No industry should be expected to adopt a pollutant detection device that, when giving false readings, forces the industry to add more controls and more costs.

Thank you for reviewing these comments. I remain available to discuss these issues should you or your staff desire.

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[12] Memo from Mr R. David Hartshorn, Virginia Dept. of Environmental Quality, Northern Regional Office, page 1, May 31, 2012. May 31, 2012.

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