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## EPA's New Airborne Lead Standard: What Lies Ahead and How Will it Affect Business

On October 16, 2008, the U.S. Environmental Protection Agency ("EPA") boldly strengthened the national air quality standard for air borne lead, making the new standard ten times more stringent than the existing one. This move is expected to impact a broad array of industries, as areas not meeting the new levels will have reduction requirements if found to be in nonattainment. This standard, established by the final rule, is one of many standards collectively referred to as National Ambient Air Quality Standards ("NAAQS"), the set of air quality standards established by the Clean Air Act ("CAA") for specific air pollutants called "criteria" pollutants, including lead.

The CAA calls for EPA to establish both primary and secondary standards. Primary standards are levels protective of human health, while secondary standards protect "welfare" such as effects on crops, soils, wildlife, etc. EPA's rulemaking made the primary and secondary standards identical, at 0.15 micrograms per cubic meter (0.15 ug/m<sup>3</sup>). Critical to EPA's decision was an analysis of studies showing that the more stringent standard would avert IQ loss in children under seven years old; it would also provide other health benefits. As a result of the rulemaking, levels of airborne lead will be reviewed throughout the country and areas not meeting the new standard, called nonattainment areas will become subject to requirements enabling compliance by established dates.

### Components of the Rule

#### ▪ The New Air Quality Standard

The new lead standard has 3 components: (i) level; (ii) averaging time and form; and (iii) an indicator.

**Level.** As stated above, EPA has set the airborne level standard at 0.15 ug/m<sup>3</sup>, based upon studies concerning air pollutant-related mean-IQ loss and other risk analyses.

**Averaging Time and Form.** EPA took steps to ensure that the measurement of the standard would be more refined than was the case under the prior rule. Under the 1978 rule, the air quality standard was measured on a value not to be exceeded over a **calendar quarter**. The new method of averaging will again look at a three month time period, but it will be a **rolling** three-month period where each month within the quarter will be evenly weighed to establish the average. EPA believes that the new approach will be more protective of human health because it will give greater weight to individual months. Thus, it better controls both the likelihood that an exceedence would occur in a specific month and the severity of any exceedence.

**Indicator.** The indicator, i.e., the means of measurement chosen by EPA to detect airborne lead is known as the Pb-TSP (lead-total suspended particulates). While other means of measurement were considered, EPA believed the TSP methodology would better address and identify larger coarse lead particles, than other methodologies would do.

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## ■ **Monitoring**

The rulemaking will require additional lead monitoring by state and local authorities. EPA will require that monitors be established in locations where emissions from existing sources of lead exceed one ton per year. Monitors will also be placed in urban areas having populations exceeding 500,000. Further, EPA is planning to implement an audit program for monitoring agencies.

## ■ **Establishment of Classification of Nonattainment Areas**

The boundary for a nonattainment area is presumptively the perimeter of the county in which the air monitor is located having an exceedence. Individual states may submit a request to utilize different boundaries, based upon specific factors. In the final rule, EPA chose not to “subclassify” nonattainment areas, based upon relative degrees of severity. States must recommend nonattainment areas as expeditiously as possible, but not later than October 2009.

## ■ **Compliance Timeline**

States having a nonattainment area must submit plans to achieve compliance known as State Implementation Plans (“SIPs”) no later than June 2013, and the SIPs must show that compliance with the new airborne standard will be established by January 2017.

## **Practical Effects of the Rule**

Currently, there are only two areas in the county designated as nonattainment areas for lead. It is likely that additional areas will be designated as nonattainment areas based upon the new rule. Under the CAA, each state having a nonattainment area must develop a SIP that contains Reasonably Available Control Measures (“RACM”) to address lead emissions in areas exceeding the standard, including reasonably available source control technology. Historically, mobile sources of emissions were significant sources of airborne lead. Because lead has been phased out of gasoline, stationary sources are the primary focus of the rule. EPA believes that states will need to conduct a control technology analysis on at least all stationary sources that emit just 0.5 TPY of lead. Affected industries likely will include those using commercial or industrial boilers, smelters and foundries, metal processors, waste incinerators, and cement and glass manufacturing plants. EPA also identified *former* industrial facilities as airborne lead sources based upon the deposition of particulates that historically became airborne and have been deposited on the surface of the ground. In light of this, it is possible that SIPs will call for additional control measures on both active and inactive industrial sources. Active sources may need to implement particulate matter fabric filter control devices and related measures. Controls on process-related fugitive emissions will likely include stabilizing storage piles, increasing building enclosures and airflow in hoods, as well as establishing more restrictive operation and maintenance procedures. Active and inactive industrial sites may need to establish fugitive dust control measures to address land affected by lead deposition. EPA believes that other operational changes to affected industrial facilities may be necessary including reducing hours of operation for stack sources, and reducing the lead content of feed material.

These measures will be implemented through permit modifications and other regulatory requirements including more stringent emissions monitoring and more comprehensive inventorying of emissions. At this time it is difficult to ascertain how many facilities will be affected, but EPA estimates that the cost of implementing the standard could be up to \$2.8 billion.



*Please contact any of the following members of our Environmental practice if you have any questions regarding this development:*

Gerald J. Pels	713.470.6135	<a href="mailto:gerry.pels@sutherland.com">gerry.pels@sutherland.com</a>
Peter H. Rodgers	202.383.0883	<a href="mailto:peter.rodgers@sutherland.com">peter.rodgers@sutherland.com</a>
Gerald D. Higdon	713.470.6134	<a href="mailto:jerry.higdon@sutherland.com">jerry.higdon@sutherland.com</a>
Randy Quintrell	404.853.8366	<a href="mailto:randy.quintrell@sutherland.com">randy.quintrell@sutherland.com</a>
Charles Flickinger	202.383.0405	<a href="mailto:charles.flickinger@sutherland.com">charles.flickinger@sutherland.com</a>
Susan G. Lafferty	202.383.0168	<a href="mailto:susan.lafferty@sutherland.com">susan.lafferty@sutherland.com</a>
Jennifer T. Foringer	713.470.6161	<a href="mailto:jenn.foringer@sutherland.com">jenn.foringer@sutherland.com</a>
Gregory R. Staiti	202.383.0833	<a href="mailto:greg.staiti@sutherland.com">greg.staiti@sutherland.com</a>