Lilly

Eli Lilly and Company

Lilly Corporate Center
Indianapolis, Indiana 46285
(317) 276-2000

January 11, 1994

RBLC Subgroup

I am telecopying to each of you a copy of the RBLC subgroup's draft final report. Since time is of the essence in order to allow other NSR Advisory Subcommittee members an opportunity to digest our recommendations, I would appreciate that any comments be faxed to me, with suggested language revisions, by noon on Wednesday, January 12, at the latest.

I tried to keep the report as short as possible. In several places, I incorporated the background discussion on the RBLC from our interim report presented this fall. The interim report's recommendations, with one exception, were rewritten to reflect our December and early January deliberations. I did include in this draft final report our earlier agreed to recommendation regarding pilot plant technology which was presented at the last NSR Advisory subcommittee meeting as a consensus recommendation from our subgroup.

Catherine Ehlhardt and I both examined our notes in order to ensure that this draft final report is consistent with the consensus reached by the subgroup in our last few meetings. Therefore, there should be no major issues to delay our submittal to EPA. If any of you do have any significant comments or feel that a consensus recommendation was inadvertently omitted, please call me at 317-276-3753 at your earliest convenience.

I am sending only Appendix B with this draft. It is the only appendix which required discussion.

Thank you again for your participation.

Sincerely,

David R. McAvoy

David R. McAvoy
Attorney

lc

DRAFT

Final New Source Review (NSR) Subcommittee, Subgroup Report Containing Recommendations for Improving the RACT/BACT/LAER Clearinghouse (RBLC) and for Whether Establishment of Presumptive Technologies is Appropriate

To: Lydia Wegman and David Solomon, U.S. EPA
From: David McAvoy, Chairperson, RBLC Subgroup
Date: January 11, 1994

Introduction

The NSR Subcommittee for Rule Reform created a RBLC subgroup last year and charged it with the task of simplifying the technology determination aspects of the prevention of significant deterioration/nonattainment new source review permitting process. The subgroup was challenged to produce consensus recommendations, and its final membership included many diverse interests:

Name	Affiliation
1. David McAvoy	Eli Lilly and Company
2. Robert Blaszczak	U.S. EPA, OAQPS
3. Pat Raher	Hogan & Hartson
4. Dennis Crumpler	U.S. EPA, NSRS
5. Larisa Deobriansky	U.S. Department of Energy
6. Larry Feldcamp	Baker & Botts
7. David Hawkins	NRDC
8. Mark Kataoka	U.S. EPA, OGC
9. Vivian McIntire	Eastman Chemical Co.
10. Ray Menebroker	California Air Resources Board
11. Mark Carney	U.S. Generating Co.
12. Gregg Worley/Bruce Miller	U.S. EPA, Region IV
13. John Bunyak/John Notar	National Park Service
14. John Paul	Ohio Regional Air Pollution Control Agency
15. Joe Steigerwald	U.S. EPA, RBLC

The subgroup's primary responsibility was to evaluate methods of shortening the lengthy process that typifies most control technology assessments and to more clearly describe what the relative obligations are on the applicant, the public, the

local permitting authority and EPA with regard to the research process associated with these control technology assessments.

Issues identified by the subgroup for analysis were: whether and to what extent technologies listed in the RBLC could serve as presumptive with regard to the RACT, BACT, LAER determination, thereby shifting the burden of proof as to what is RACT, BACT, or LAER from the permit applicant to those who recommend technologies outside of the clearinghouse; what type of data should be submitted to the RBLC; how best to improve participation with the RBLC and increase the quantity and quality of data entered into the clearinghouse; how to generate increased funding for EPA to allow for development and QA/QC of a clearinghouse which is as comprehensive as possible as to the technologies it summarizes; and, finally, whether more guidance is needed to inform new source review participants about what is required of each during the permit application process.

The subgroup deliberated these issues during five lengthy phone conferences beginning in November 1993, and preliminary position papers were circulated among the group in late December. On January 5, 1994, the subgroup met in Washington, D.C. to finalize its recommendations and to encourage consensus building.

The subgroup did not analyze or redefine what the criteria should be for certifying a technology as RACT, BACT, or LAER; this was deemed to be outside the scope of the subgroup's assignment.

This memorandum is organized as follows. A brief history of the RBLC is discussed for background perspective and recommendations are grouped around five aspects of EPA's clearinghouse which underlie the issues our subgroup explored: (1) function/purpose,[1] (2) content, (3) funding, (4) improving quality and participation, and (5) training/guidance. For each of these aspects of the clearinghouse, a description of how EPA perceives that part of the RBLC as it now exists is given. This discussion, as well as the description of the history of the RBLC, is intended to provide context for this subgroup's recommendations and why reform is needed.

History of the RBLC

Clients of the RBLC were initially state and local air pollution control agencies. EPA agreed to establish a clearinghouse at the request of these agencies to help identify relevant permit decisions and information on control technology applications and to promote the sharing of information among permitting agencies.

[1]The issue of presumption is considered here.

In essence, the RBLC was intended to be a tool used by permitting agencies to aid in the process of making control technology determinations. It was not created to be the controlling precedent for technology determinations in major new source permitting.

As the clearinghouse evolved, it became evident that the RBLC client base was not limited to state and local agencies. Once more user-friendly features were added to the RBLC's computer data base, and users were given expanded search opportunities, it was determined that the bulk of clearinghouse users were not government agencies, but the private sector. In fact, 66 percent of those who use the clearinghouse are from industry, consulting companies, or law firms involved in some aspect of permit application preparation. The following indicates clearinghouse activity in fiscal year 1993 --

Total Accesses: 11,013 (excludes RBLC staff and contractor)
Accesses by group:
- Local/Regional agencies: 8%
- State agencies: 16%
- Federal agencies: 10%
- Private sector: 66%

Information downloads:
- Document summaries: 386
- User's manual: 438
- Informational flyer: 235
- User generated files: 3,296
- SIC/SCC code list: 271
- Process code list: 276

Function and Purpose of the RBLC

I. Current Status

The RBLC is not, and is not intended to be, the answer to all control technology determinations. It is not the main EPA data base to store facility and operating permit information. The RBLC was not designed to provide on-going current information on facilities. Instead, it provides a snapshot of individual permitting decisions and, when available, follow-up information concerning the construction and compliance verification of the source. The function and purpose of the RBLC as it now exists is to:

- Provide a national data base with initial, quick-reference, basic, summary information on control technology determinations for new and modified sources subject to BACT and LAER and source-specific RACT determinations.

- Encourage cooperation and information sharing among permitting agencies.

- Provide computer information in an accessible and user-friendly manner.

- Alert users to where more comprehensive data might be located; for example, provide references to a permitting agency contact and telephone number, and the Aerometric Information Retrieval System (AIRS) Number.

- Complement - not duplicate or compete with - AIRS, EPA's comprehensive data base for facility and operating permit information.

- Encourage the participation of permitting agencies by providing support and features helpful to participating agencies. (Note: The CAA requires only LAER determinations to be submitted to the RBLC; other submittals are voluntary).

II. Summary of Subgroup Deliberations

Recommendation 1: The subgroup considered whether to shift the focus of the RBLC so that it purports to chronicle all aspects of a state's permit decision; it even considered whether EPA should obtain copies of all relevant permit decisions and then scan these into its computer data base. However, this potential reform was determined to exacerbate, not remedy, the problems of data completeness now associated with the RBLC. For example, the subgroup learned that even with the current level of detail the RBLC is capable of containing, it is still necessary for users of the clearinghouse to conduct background checks in order to obtain meaningful information. However, the sheer quantity of data to be entered under the current format is a real disincentive for agencies to enter data into the clearinghouse; many feel that their costs exceed the benefits they can derive. Some feel that since participation with the RBLC is voluntary, it is not worth their time to submit data since other agencies are failing to contribute or submitting incomplete information. Others told the subgroup that the volume of information now requested by EPA was too time-consuming to compile for all permit decisions

and that not all of the data EPA wants is known at the time the permit is issued or is information not easily accessible to the agency involved. Thus, for the RBLC to work at all and to create an incentive for increased participation, the clearinghouse must contain only information sufficient to allow the user to determine whether the permit decision is sufficiently similar to its own proposed project to justify further inquiry.

Consequently, the current mission of the RBLC must remain unchanged. The clearinghouse should serve only as a screening tool to identify candidate RACT, BACT, and LAER technologies and limits. It should not attempt to contain all information relevant to a particular historical analysis. The RBLC user must expect to follow-up on several clearinghouse entries in order to obtain the detailed information necessary to complete the control technology analysis.

Although EPA's present view of what its RBLC should do is appropriate, it is clear that the RBLC is not living up to its expectations. Comments from subgroup members included that there is no confidence that the RBLC will catch relevant technologies, that it is often difficult to track down background information from the entry in the clearinghouse, and that it is often difficult to know whether an existing RBLC data entry should be investigated further because key information that was requested is missing. Thus, EPA is encouraged to re-evaluate its present procedures for implementing the existing function of the clearinghouse. Ensuing recommendations in this report are geared toward making this task easier.

Recommendation 2: The RBLC should be redesigned to ensure that it comprehensively catalogs all RACT/BACT/LAER determinations which are issued by the various states and EPA regions. The current clearinghouse provides a good foundation to begin with; its present inventory is over 3300 entries. By focusing on the truly important aspects needed in the RBLC and making that data comprehensive, the result for everyone involved would be a reduction in uncertainty over appropriate technologies and simplification of now existing transaction costs and delays in conducting a technology search. The subgroup recommends that EPA not try to uncover permitting decisions that in the past were omitted from the clearinghouse but instead should focus on ensuring future entries are made for all newly-issued major new source review permits and that accurate and complete information is provided. In addition, EPA should also renew its efforts to fill in any missing information from those permit decisions which have already been input into the clearinghouse.

Recommendation 3: The subgroup was asked to consider whether a presumption could be defined for RACT, BACT, or LAER technologies which would assure a permit applicant that if a sufficiently stringent level of control were chosen, based on a known universe of data, that the chosen level of control would be deemed RACT, BACT, or LAER as appropriate, or at least would shift the burden of proof as to what is RACT, BACT, or LAER to those who recommend technologies outside of the defined universe of data. Such an approach would allow applicants to proceed in their project design and planning without fear of being undercut late in the permit process. The subgroup, however, was unable to reach a consensus on recommending that any broad presumption should apply that would shift the burden of proof from the permit applicant to others who argue that technologies or limits not contained in the RBLC are nonetheless RACT, BACT, or LAER.

For instance, states and environmentalists oppose any attempt to create a presumption regarding a technology's status as RACT, BACT or LAER that depends on whether the technology has been reported in the RBLC. These groups believe even with attempts to make the RBLC comprehensive that some technologies will still be omitted. They believe it is not reasonable to require the public to bear the burden of establishing that a technology is RACT, BACT or LAER for a source and any such attempt would be an indirect restriction on the right of the public to participate. In addition, these groups believe a presumption tied to the quality of the RBLC would be difficult to implement in practice and would likely perpetuate the types of disputes that RBLC reform is intended to reduce. Finally, these groups believe that a presumption would over time conflict with the objective of making the RBLC a comprehensive database, in that whenever the presumption is successful in preventing the use of a non-RBLC technology in the permit decision, that technology, no matter how good or generally applicable, would not appear in the RBLC since it was not in a permit.

Other subgroup members, including industry, EPA Region IV, and the Department of Energy, believe that the states/environmentalists overstate the impact of the presumption as defined above. First, no presumption would be implemented until EPA had made RBLC input mandatory and sufficient time had passed to have a quality database. Second, the limited presumption would not prohibit the public from participating in permitting; it would only require them to produce evidence that a technology different from ones contained in the clearinghouse is RACT, BACT, or LAER for the source involved. Third, arguments over the quality of the RBLC would not occur because if a technology is entered into the RBLC whether as part of a permit or by EPA as part of its quality function (see recommendation 17a) then the

source would still have the burden to show it is not RACT, BACT or LAER and the source (not the public) would have to confront EPA over a less than complete database. Fourth, the limited presumption would not automatically lead to making the RBLC not comprehensive. If a non-RBLC technology or limit is truly RACT, BACT or LAER and as long as the public is allowed to obtain information from the source, then the public raising it should be able to meet the shifted burden of proof and get the technology or limit included in the permit being negotiated. This then would lead to entry into the RBLC. Those technologies in which the public cannot meet the shifted burden of proof would by definition not be RACT, BACT or LAER and should not be in the clearinghouse.

The group was able to agree that a complete, high quality RBLC should provide sufficient data base to allow a source's application to be deemed complete as long as it addresses the contents of the RBLC in its technology analysis. Persons or agencies wishing to require that additional technologies are considered must provide at least the information appearing in recommendation 6.

Recommendation 4: The only consensus reached as to the issue of presumption was with regard to a narrow approach advocated by EPA, Region IV[2] -- EPA should select a single industry and conduct a technology profile for that industry in a guidance document available for public comment. The profile would entail research into more than the RBLC and would, in part, include looking at foreign technologies, newly introduced or developed control devices, and permitting decisions generally omitted from the RBLC. See, e.g., Appendix A (example from California guidance designed to provide such a profile). EPA would in this profile make a national determination that for a certain time period (i.e., 18 months) a certain technology or emission limit is RACT, BACT and/or LAER for that industry or similar groups. This determination would mean that EPA would not second-guess a state or permit applicant who chose the level of control picked by EPA in its profile. The profile would, however, be updated at the time EPA sets for re-evaluation of its decision (and EPA should provide the public with the right to petition for a revision at any time). This recommendation is that a technology profile be created for a single industry on an experimental basis only which would allow EPA to evaluate whether such an approach works and whether, after the trial project is completed, EPA would have the resources to perform profiles on multiple industries.

---

[2]In fact, EPA, Region IV, has begun implementing this recommendation for the _____ industry within the states Region IV oversees.

It was noted that if EPA resources are lacking in the future for this project, another possibility would be to ask a trade group to conduct a profile for its industry and then give the profile to EPA to review, publicly notice and to make a policy decision as to RACT, BACT, and LAER. Everyone in the subgroup also agreed that EPA, if able, should produce technology profiles even if no national RACT, BACT, LAER determination could be made from them alone.

Recommendation 5: The subgroup agreed that if information becomes available indicating the existence of a relevant technology that is not in the RBLC, it should be the responsibility of the permitting authority, not the public or the permit applicant, to determine whether the technology should be considered in determining the permitted emission limit for the source. If a public comment identifies a technology that is claimed to be relevant to the permit proceeding, it is the responsibility of the permitting authority to respond adequately and timely to the information presented.

Recommendation 6: The subgroup recommended that the permitting authority should establish reasonable requirements for submission of information regarding the existence of technologies that commenters seek to have considered. The permitting authority should require commenters to make reasonable efforts to:

(a) provide a description of the type of control technology proposed for examination;
(b) provide the name, phone number, and address (or other means of identification) for a reliable contact person, company, or permitting authority concerning that technology;
(c) identify the type of emitting process to which the recommended control technology has been applied; and
(d) identify the company, location, source, site or address where the recommended control technology has been demonstrated to be technically feasible.

Information that would show reasonable efforts by a commenter, depending on the circumstances of a particular case, would include, in part, copies of permits, news articles, public notices, conference papers, advertisements by users or vendors of technology, guidance materials prepared by permitting authorities, and names of firms using or manufacturing a technology.

Recommendation 7: EPA should provide that questions arising regarding the relevance of technologies not included in the RBLC for a source, or questions

pertaining to the feasibility (or practicality) of transferring a technology in the clearinghouse from one source category to another one claimed to be similar, ought to be resolved by the permitting authority within thirty days of receiving or raising the question(s). The thirty day deadline would be triggered only upon information that meets the minimal descriptive requirements described in recommendation 6. The permitting authority should respond to the commenter and the permit applicant in writing with a decision as to the relevance of the suggested technology, and the reasons for such decision. EPA should provide incentives in its §105 grant agreements for permitting authorities to observe this deadline by including compliance with the deadline as a precondition to receiving some or all of the next year's grant money available to the state.

Recommendation 8: Pilot plant application of control technology should only serve as required precedent of RACT/BACT/LAER for the source utilizing it. Such technology should not be transferred to similar sources, even those within the same source category, until the experimental technology is proven on a full production scale. This does not mean that a source could not voluntarily choose to experiment with another source's pilot application and negotiate this as RACT, BACT, or LAER.

Content of the RBLC

I. Current Status

The RBLC data base contains about 3,300 control technology determinations. In the last upgrade of the system, cost and compliance verification fields were added in response to needs expressed by state and local agencies. **Even though EPA has tried to make data demands on the suppliers as minimal as possible, fields are often left empty.** Completion of the current format requested by the RBLC would require entry of at least four pages of information for each relevant permit decision.

Currently the information content of the clearinghouse reflects basic information needs concerning the source and emissions, peripheral information requested by EPA's clients, information intended to facilitate the query process, and data intended to encourage the entry of information early in the permitting process. Basic information in the clearinghouse includes the following: source name and location; agency name, permit number, contact and telephone number; dates for permit issued, source start-up, compliance verification, etc.; process name, size, pollutants emitted; applicable NSR requirement (BACT, LAER, etc.); and several different

variations on emission limits; and identification of the control equipment or pollution prevention method. Examples of peripheral information includes the following: cost information and whether it has been verified by the agency; compliance demonstration date and method; and clarifying notes. Information intended to enhance search capabilities include the following: process, SIC, and SCC codes; EPA facility number; and AIRs information and output formats intended to aid permitting managers in tracking permitting activity and encourage early entry of permitting actions in progress.

Information is stored by EPA in one of three discrete data bases: main data base - determinations submitted within the most recent 5 years; historical data base - determinations over 5 years old (based on date of permit); and the transient data base - new/modified or incomplete determinations that are being processed by the permitting agency. When complete, transient data base determinations are promoted to the main data base.

The transient data base was designed to allow direct on-line entry of determinations by the permitting agency and encourage entry of data as early as possible in the permitting process. If the agency can identify all emission sources and at least one pollutant from each process, it can enter information into the transient data base and upgrade it as the permitting process is completed. This also allows RBLC users to be aware of on-going permitting actions that might be of importance at the earliest possible time.

II. Results of Subgroup Deliberations

Recommendation 9: In keeping with the recommended goal that the RBLC serve as a screening tool rather than being expected to contain highly detailed information, and, in order to ensure that the burden of data entry into the clearinghouse is minimal, EPA should convert the data entry fields used in the existing RBLC computer system to a simple written form that can be given to permitting agencies to fill out. The subgroup agreed that EPA should limit the request for information on state permit decisions to only basic items that allow the RBLC user to determine (a) whether its proposed source is similar to other sources in the clearinghouse, (b) what limitation was imposed on the source being researched, and (c) where detailed information can be obtained on the permit decision contained in the clearinghouse. Included as Appendix B to this report is a proposed form developed by the subgroup to simplify the burden on the permitting authority entering data into the clearinghouse, and it would greatly increase the likelihood of ensuring participation by more permitting authorities. Of the current 65 computer fields that now confront those who provide input into the

clearinghouse, the subgroup's questionnaire narrows the information requests to 18 items for the permitting authority to fill out.[3] See Appendix B (recommended RBLC questionnaire). In addition, the subgroup recommends that EPA retain primary responsibility for locating and entering certain screening data developed after the permit decision is rendered. See infra recommendation 16. Therefore, a second form for EPA to complete was developed by the subgroup and is included in Appendix B.

Recommendation 10. The clearinghouse should use standardized emission units defined by EPA for each source and process type. EPA has been working to develop such units and has included them in the user information available for the RBLC. But standardized units are not available for all possible source types at this time. EPA should aggressively pursue the inclusion of additional standardized emission units.

Funding The RBLC

I. Current Status

The RBLC expends the following resources to support, maintain, and improve its data base:

EPA Staff: 1 to 1.5 person years/year; 3 staffers devote varying portions of their time to support the RBLC.

Contractor: 0.8 person years/year

---

[3]A minority of the group (i.e. NPS, NRDC, some states) desired EPA to input not only the date of the first performance test which demonstrates compliance but also to include actual performance stack results. The subgroup was divided as to whether this truly fit the stated scope of the RBLC and also whether the benefits from doing this would outweigh the costs of acquiring such detailed data. Industry representatives feared that including partial information from a performance test could prove misleading and would be taken out of context. Many stack test reports are hundreds of pages long and full of data. Others, however, wanted this information to determine whether an approved technology could achieve emissions reductions more stringent than the permit limit which was negotiated. Industry felt that providing the name of the source and permitting agency in addition to the date of initial successful test results would allow an interested party to locate a copy of the relevant stack test report.

Other items for which there was partial but not complete consensus included: (1) a request that the permitting authority input data into the clearinghouse asking about whether an incremental cost-effectiveness analysis had occurred and considered in the permit decision and (2) a request for identification of the attainment designation for the pollutant that is the subject of the RBLC data entry.

Budget: $100,000/year to contractor; approximately $100,000/year in EPA personnel costs

Other: State and local permitting agencies provide resources by completing RBLC data forms or directly entering data into the clearinghouse. No estimate of the resources expended by these agencies in this effort is available. From 1991 to the present, approximately 1,000 determinations have been submitted representing 47 of the 55 states and territories included in the data base. However, the frequency of response by each state and territory varies widely. See Appendix C.

II. Results of Subgroup Deliberations

Recommendation 11. The subgroup recommends that sufficient resources should be devoted to the RBLC to allow for one person in each EPA region and five persons at Research Triangle Park to quality assure the data submitted, perform any follow-up necessary to ensure all data is entered, to provide training on the RBLC, and to develop necessary guidance. Contractor support at $1 million/year is also recommended.

Recommendation 12. The subgroup recommends that EPA request in its 1995 budget testimony before Congress that Congress appropriate to EPA the necessary funds to implement this subgroup's recommendations. The subgroup favors getting additional funds to serve the RBLC rather than EPA diverting money away from existing programs (i.e. MACT promulgation).

Note -- The subgroup considered suggesting that to help fund the RBLC EPA charge a fixed fee for each state major new source review permit issued or that EPA charge initial access or per search charges for using the clearinghouse. Both of these attempts to enable EPA to collect its own funds (as opposed to petitioning Congress) were rejected. The subgroup's analysis indicates that there is no apparent legal basis to allow EPA to collect fees on state-issued permits. In addition, state participants indicated it would be politically impossible to assess any additional fees from permit applicants.

Furthermore, the subgroup could find no legal basis for EPA to charge user fees for accessing the clearinghouse. Although NTIS has told the subgroup it can legally charge fees if it were to manage the RBLC on EPA's behalf, this option was rejected because of a prior experience by EPA with using NTIS in this capacity. Apparently it took an inordinate amount of time to establish an account with NTIS, which consequently discouraged user participation.

EPA observed a ten-fold increase in use of the RBLC when it was administered through the BLIS bulletin board system as opposed to NTIS. Another reason for rejecting user fees was that a uniform fee applied to all users could prove to be an inequitable barrier to its use by some state agencies and the public. Also, it would not be practical to set high user fees solely on industry because industries and their representatives should be able to access information simply as private citizens.

Recommendation 13. Under EPA's general penalty policy, proposed penalties can be credited against the cost of environmentally beneficial projects. See Appendix D ("Policy On the Use of Supplemental Enforcement Projects In EPA Settlements," memorandum from James Strock, Assistant Administrator, to Regional Administrators (Feb. 12, 1991)). The subgroup believes that EPA has the ability to designate the RBLC as an environmentally beneficial project. Accordingly, the subgroup recommends that EPA revise its existing penalty guidance to allow, at the request of a party, a reduction in the proposed penalty in a Clean Air Act enforcement case by up to 25 percent with a cap set at $5 million and the reduction in penalty being paid to a fund set up to operate the RBLC or to provide contractor support[4] to it. The exact structure of the fund and who, other than EPA, would administer the fund (i.e. see also, TSCA funded toxicity research fund) will need to be developed by EPA/OGC. Obviously EPA can set settlement limits or guidelines for such credits but the guidelines should be such that they do not impede the use of this alternative. This is why EPA needs to revise its 1991 penalty policy referred to above. That policy only allows penalties to be shifted to environmentally beneficial projects if the project is reasonably related to remedying the violation which occurred. Acceptable supplemental environmental projects ought to include the RBLC for any CAA violation in addition to projects having a nexus with the violation. However, certain members of Congress may be uneasy with this approach since the original 1991 policy has had critics such as Congressman Dingell. It may be more acceptable to Congress if EPA allowed the penalties to be given to a private contractor rather than to itself to administer the RBLC. Keeping the choice of diverting penalty money to the RBLC voluntary additionally ought to lower opposition. And courts are likely to extend EPA much latitude in the agency's prosecutorial discretion.

Recommendation 14. A second funding alternative is available under §304(g) of the Clean Air Act (42 U.S. C. §7604(g)). See Appendix E. This provision provides for the establishment of a fund in the U.S. Treasury for "licensing and other

[4]Presumbly, NTIS would not be the contractor unless it agreed to provide better services and to remedy past problems.

services" that is derived from penalties resulting from Section 7604 citizen suit civil actions. This congressionally approved fund is a potential source of funds to "license" (i.e. permit) sources and to provide for "services" such as the RBLC. The statute is clear that all §304 penalties "shall" be deposited in such a fund unless a court, in its discretion and after consultation with the EPA Administrator, provides otherwise. The subgroup recommends that EPA issue guidance that under §304(g)(1) the Agency will use up to a specified sum each year for operation of the RBLC. Currently there is no money available for a §304(g) fund but several §7604 citizen suit settlements are pending before various courts. The subgroup advises EPA to establish the fund now and provide procedures in advance for directing some or all of the §304(g) fund to the RBLC before money is available and the temptation is there for it to be applied to other projects.[5]

Recommendation 15. The subgroup recommends that EPA contact various industry trade groups whose members are frequently affected by CAA permitting in order to explore their willingness to share funds through a joint venture dedicated to reform and improvement of the RBLC.

Oversight and Management of the RBLC

I. Current Status

The RBLC is a completely voluntary data base. As seen in Appendix C, from October 1992 through October 1993, sixteen states provided no data entries into the RBLC for permitting decisions issued under their jurisdiction. Much of the data which is submitted is incomplete, especially with regard to cost information. Although existing RBLC staff members do undertake some QA activities, no formalized procedure for correcting these omissions or ensuring or improving participation by states has been established by EPA.

II. Results of Subgroup Deliberations

Recommendation 16. The RBLC support staff at EPA is expected to conduct an annual review of data in the clearinghouse to identify the several most stringent permits in each source category. For these permits, the RBLC staff

---

[5]Section 304(g)(2) also illustrates a willingness by Congress to allow Clean Air Act penalties to be diverted to environmentally beneficial mitigation projects of the type suggested in recommendation 13 and could be used as partial legal support for that recommendation. However, §304(g)(2) applies only to penalties resulting from citizen suits and a $100,000 cap must be observed. Recommendation 13 goes further.

will contact the states to identify the actual startup date and date of first performance test showing compliance and then enter the appropriate information into the data base. If a project has been abandoned or proved to be unsuccessful, EPA shall either delete the entry from the RBLC or reflect this information as a general comment to the entry.

It is suggested that EPA set up a system whereby its computer data base provides it with reminder notices on what sources to renew contact with in order to answer these last two data inquiries. Such a tickler file would be based on the permitting authority's entry for expected start-up.

Recommendation 17. Within 30 days of permit issuance, the permitting authority is responsible for ensuring the RBLC questionnaire suggested in recommendation 9 is completed and submitted to the RBLC,[6] except for startup and performance test information which will later be filled in by EPA. It should be within each state's discretion on how to obtain the information necessary to do this.

Recommendation 18a. EPA has an ongoing responsibility to seek out, research and enter demonstrated emerging and foreign control technologies to the RBLC.

Recommendation 18b. Where a foreign technology in RBLC is raised as a candidate in a permit process, EPA-RBLC should be obligated to use its resources and contacts to supply timely technical support to the reviewing office.

Recommendation 19. EPA must establish procedures to make participation with the RBLC mandatory upon all state and local air permit agencies. EPA should provide an incentive for participation by linking participation to receipt of §105 grant monies. EPA, Region IV, currently is doing this in the §105 grant agreements it negotiates. See Appendix F. Conversely, EPA could ensure full data entries by states into the clearinghouse by making this obligation a mandatory enforceable part of an approvable SIP or delegation agreement. If this course is chosen, EPA should issue guidance calling for SIP revisions in this regard, or, if appropriate, unilaterally reopen existing delegation agreements. Any guidance should indicate that states failing to timely file RBLC data with EPA will be subject to appropriate actions under the Clean Air Act.[7]

---

[6]Or, instead, the permitting authority could enter data directly into the clearinghouse assuming EPA would know which data entries it needs to QA/QC.

[7]In addition to making mandatory RBLC participation an enforceable requirement of a §105 grant agreement or SIP or delegation agreement, EPA should, as suggested earlier, include the

Recommendation 20. EPA should issue guidance stating that it will not second guess state RACT, BACT, LAER determinations if a state has fully participated in the RBLC during the previous year and if the determinations made are consistent with RBLC data.

Recommendation 21. EPA should revise its existing RBLC user's manual to more clearly explain the options and searches available to users, and EPA should disseminate the manual more widely. In addition, EPA needs to conduct formal training sessions or seminars periodically to educate the public and states about the benefits of participation with the RBLC and how to gain access and efficiently search for information. EPA should use education as a means for mounting a continuing effort to persuade permitting authorities to participate in clearinghouse activities. Training, outreach, and focus on quality improvements will help states better justify participation.

Recommendation 22. In order to make it easier to fill out the cost-effectiveness section of the RBLC data entry form, EPA should update and consolidate its existing guidance on how to conduct an economic feasibility study for a particular control technology being considered for RACT, BACT, or LAER and clearly state in one document what is the approved method for estimating or calculating costs in major new source review permitting. California has done this. Furthermore, such guidance ought to devote discussion to the different types of costs that can be calculated (i.e. average vs incremental cost-effectiveness) and when each could be important or should be the deciding factor in the economic analysis.

Recommendation 23. EPA also should develop guidance to states describing what factors are important (or needed) in order for a permit applicant to show that control costs are unreasonable. Such guidance ought to include hypothetical or real case studies where EPA, for that scenario, would agree that a technology is cost-prohibitive.

In addition, within the same guidance proposed by recommendation 23, the subgroup agreed that EPA should state that in order to obtain a finding of unreasonableness the source should not be required to show the costs would bankrupt it or lead to employee lay-offs, although proof of this would meet the source's burden. Instead, guidance should be developed for when a cost

would be unreasonable to incur regardless of the relative wealth of the source involved.[8]

Finally, although the subgroup does not recommend that EPA establish national maximum cost guidelines by pollutant, it does recommend that EPA provide guidance and assistance to states who wish to set such thresholds at a local level. For example, California has done this for limited circumstances. See Appendix G.

requirement for the permitting authority to take the lead on addressing technologies not included in the RBLC and for responding in 30 days.

[8]The subgroup agreed that if, for example, $10million/ton to remove 3 tons of pollutant in an attainment area would be an inefficient allocation of resources it should be irrelevant whether the source is a small family-run business or a Fortune 500 company.

Appendix B

INITIAL FORM, TO BE COMPLETED AND RETURNED WITHIN 30 DAYS OF PERMIT ISSUANCE

Company Name:
Plant Site Physical Location/Mailing Address:
County Plant is Located in:
SIC code(s)/Main Business(es) of Plant:

Determination made by:

Agency Name and Office: Agency Code:

Contact Person: Contact Phone:

Permit Number: Is this a revised permit? Y/N
Date Application Received: Date Final Permit Issued:

Complete one copy of this section for each process and/or equipment subject to a permit limitation:

Process name and/or equipment: (choose from list in Appendix C of Users Guide)

Additional descriptor:
Process type code (from Appendix B of Users Guide): SCC Code:
Throughput capacity: (use abbreviations in Appendix A of User's Guide, and NSPS units where applicable)
Point, Fugitive, or Area Source:
Were any technologies excluded from review for technical or economic infeasibility? Y/N

Pollutant Limits: See Appendix D or AP-42 for appropriate units. Use abbreviations from App. A.

Pollutant	Regulatory Requirement for Limit	Primary Limit	Standardized Limit	Control Equipment Description	Control Equipment Manufacturer Name	Control or Reduction Efficiency used for Permit, %	Averaged Cost Effectiveness $/ton
PM							
SO2							
NOx							
CO							
VOC							
VE							
TRS							
F							
Be							
H2S							
Hg							
VC							

EPA FOLLOWUP FORM

Use same numbering as in Initial Form for the following list, one page per process:
Source Name:
Agency Issuing Permit: Permit Number:
EPA ID No.: AIRS No.:
Process Name and/or Equipment:
Additional Descriptor:
Date of start-up:

Pollutant	Stack test Y/N	Date of completion of first performance test which showed compliance:
PM		
SO2		
NOx		
CO		
VOC		
VE		
TRS		
F		
Be		
H2S		
Hg		
VC		