

BMACT/112(j)(g) INDUSTRIAL PERSPECTIVE

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Boiler MACT Decision (June 19, 2007)

- Vacated CISWI Definition Rule
 - Inconsistent with plain language of section 129
- CAA language is unambiguous; solid waste incineration unit = distinct operating unit of any facility which combusts any solid waste
- Vacated Boiler MACT
 - Court concluded that the Boiler MACT must be substantially revised due to vacatur of CISWI Definition Rule
- Did not address merits of "other" Boiler MACT issues



Does 112(g)/(j) apply in the case of vacated standards?

- 3 possible answers:
 - No; it was a one-time provision that became moot when EPA adopted standards, regardless of their adequacy, and the CAA established a window of 18 months following the deadline for standards during which it would apply.
 - Yes; any standards adopted by EPA under the Act must meet the statutory requirements and if a court vacates the standard in its entirety, it follows that EPA failed to promulgate [approvable] standards by the deadline and 112(g)/ (j) applies until such time as EPA remedies the deficient standard.
 - No; The vacated standard essentially removes the source category. Therefore, no category exists for which the hammer may fall!



Applicability of 112(g)/(j)

- Intended to come into play if EPA failed to promulgate MACTS for source categories
 - Not really intended for rule promulgation/vacatur
 - **But EPA believes 112(g)/(j) apply**
 - Industry has never conceded that point.
- Case-by-case MACT implementation by delegated authorities
 - CAA Section 112(j) – existing sources
 - CAA Section 112(g) – new sources



EPA Steps Toward Future Revised Boiler MACT

- EPA seeking Paperwork Reduction Act (OMB) approval to implement 112(g)/(j)
- EPA seeking Paperwork Reduction Act (OMB) approval to issue CAA Section 114 Request for data from Boiler MACT covered sources to write revised Boiler MACT
- This creates the so-called “train wreck” of having multiple standards placed on a facility
- Many resources spent to comply with a rule (either SC State rule or Hammer rule) that is going to be re-written. What is the benefit of that?



Train Wreck

- **If common sense does not prevail, industry could have 4 different standards potentially regulating their boilers:**
 - SC Boiler MACT Standard
 - EPA 112(g)/(j) – Hammer Process
 - Re-written Federal Boiler MACT Standard (will the MACT floors be lowered?)
 - Re-written Commercial Industrial Solid Waste Incinerator (CISWI) Standard



If 112 (j) Applies, what will emission source owners have to do to comply?

- Part 1 applications:
 - Immediately in the owner or operator can reasonably determine that one or more sources at the major source belong in the category of subcategory subject to 112(j)
 - Within 30 days following notification by the State that a permit is required
- Part 2 applications:
 - 60 days following the deadline for submission of Part 1 application



What will States have to do to comply with 112(j)?

- Determine completeness within 60 days after receipt of Part 2 application, or application is deemed complete
- If found incomplete, State must provide a reasonable period for the source to 6 months to cure deficiencies
- Issue Title V permit incorporating section 112(j) requirements within 18 months after submission of complete application



State Activity Under 112(g)/(j)

- No consistency among states or EPA Regions
 - Some states claim does not apply
 - Some have requested Part 2 submissions saying prior Part 1's are effective (IL, MN)
 - SC has its own State Regulation which references the vacated federal Boiler MACT standard
- States anticipating EPA guidance, and some are delaying action pending that guidance
- EPA guidance rumored to be forthcoming
 - But may only cover "process" such as timing of submissions following state requests, not basis



NACAA "Model Rule"

- Development of a "Model Rule" intended to be used with 112(g)/(j) case-by-case MACT process
 - NACAA (National Association of Clean Air Agencies)
 - ICAC (Institute of Clean Air Companies)
 - States
 - Environmental NGOs
- Aim to be done by end of 2007 into early 2008
- Likely to not include HBCA
- May include limits on SO₂ and NO_x



NACAA “Model Rule” Areas of Concern

- MACT-ON-MACT
- Data Link Between Surrogates and HAPs
- MCR Compliance Data Points for CO & PM
- Expanded Limits to Include SO₂ & NO_x
- Health Based Compliance Alternative (HBCA)
- CIBO will be providing detailed comments to NACAA.

