



AIR/COMPLIANCE NEWS UPDATE

EPA ADDRESSES RECENT COURT DECISION ON EMISSIONS DURING START UP, SHUT DOWN, AND MALFUNCTIONS

In the August 26, 2009, Federal Register, EPA issued a notice of availability for an EPA-issued letter, dated July 22, 2009, from Adam Kushner, Director, Office of Civil Enforcement, addressing concerns that have been raised regarding the impact of the decision in *Sierra Club v. EPA*, 551 F.3d 1019 (DC Cir. 2008). In that court decision, rules at 40 CFR 63.6(f)(1) and (h)(1) were vacated. These two provisions in EPA's General Provisions Rule, promulgated under section 112 of the Clean Air Act (CAA), exempt sources from the requirement to comply with otherwise applicable section 112(d) emission standards during periods of *startup, shutdown, and malfunction*.

Industry groups appealed the December 2008 Sierra Club decision by filing petitions for rehearing. On July 30, 2009, the DC Circuit denied these petitions. On August 5, 2009, EPA filed a motion seeking a 60-day stay of the mandate. On August 6, 2009, industry intervenors also filed a motion to stay the mandate, pending their appeal of the decision to the United States Supreme Court. Until the D.C. Circuit issues a mandate upholding the vacatur, 40 CFR 63.6(f)(1) and (h)(1) remain in effect. The aforementioned EPA letter can be found at <http://www.epa.gov/compliance/civil/caa/ssm-memo080409.pdf>

BOILER MACT CASE-BY-CASE UPDATE

The U.S. Court of Appeals for the District of Columbia Circuit vacated the U.S. EPA's National Emission Standard for Hazardous Air Pollutants (NESHAP) standard, also referred to as the MACT, for Industrial, Commercial, and Institutional (ICI) Boilers and Process Heaters (commonly called the Boiler MACT) on July 30, 2007.

Since the vacatur of the Boiler MACT, the states have been divided as to applicability of Section 112(j) of the Clean Air Act (CAA) (known as case-by-case MACT or the MACT Hammer). The MACT Hammer requires case-by-case MACT determinations for those source categories in which EPA failed to promulgate a standard.

The Pennsylvania Department of Environmental Protection has just recently "dropped the hammer" on the Boiler MACT and is requiring Part 1 Applications no later than 30 days from publication in the Pennsylvania Bulletin (August 29, 2009), and Part 2 applications within 60 days after submission of the Part 1 application and will incorporate the changes into the Title V permits. A number of other states, including Illinois, Maryland & Minnesota have also "dropped the hammer" and are requiring case-by-case MACT.

However, many states are waiting for EPA guidance regarding implementation of Section 112(j) and are not requiring case-by-case MACT, including Ohio, Georgia, Virginia and Louisiana. Some states are adhering to the vacated Boiler MACT standards with no plans to implement Section 112(j), such as Kentucky. Other states, including North Carolina, take the position that neither the Boiler MACT or Section 112(j) requirements are applicable since the vacatur. Information concerning the ICR, along with several guidance documents and reporting requirements can be found at: <http://www.epa.gov/ttn/emc/guidlnd/gd-051.pdf> and <http://www2.ergweb.com/projects/combustion/combustiontesting.html>



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EPA FINALIZES THE GHG REPORTING RULE

The EPA signed the Mandatory Greenhouse Gas Reporting Rule on September 22, 2009. The rule requires most stationary emitting at least 25,000 metric tons CO₂-equivalent per year to submit annual reports to EPA. Greenhouse gas emissions monitoring will begin January 1, 2010, with the first report due in 2011. Approximately 10,000 facilities around the country will be affected, representing about 85% of the US GHG emissions. For more information on the new reporting system and reporting requirements: <http://www.epa.gov/climatechange/emissions/>

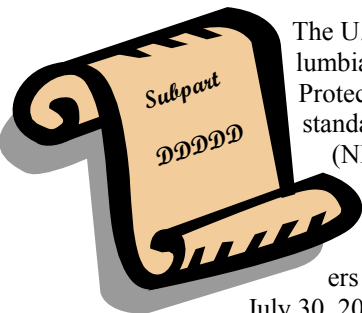
WVDEP will require certified emission statements by April 30, 2010 for 2009 reporting year.

PADEP Releases CEMDPS Disconnected Client Application Version 2

Version 2 of the CEMDPS Disconnected Client was made available on DEP's Air Quality website on September 2, 2009.



PADEP: PART 1 AND 2 MACT APPLICATIONS FOR BOILERS AND PROCESS HEATERS REQUIRED



The U.S. Court of Appeals for the District of Columbia Circuit vacated the U.S. Environmental Protection Agency's (EPA) National emission standards for hazardous air pollutants (NESHAPs), also referred to as maximum achievable control technology (MACT) standards for Industrial, Commercial, and Institutional Boilers (ICI) and Process Heaters (Boiler MACT, Subpart DDDDD), on July 30, 2007.

With the vacatur of EPA's Boiler MACT Rule, the Department of Environmental Protection (Department or PA DEP) is required under section 112(j) of the CAA, section 6.6(b) of the Pennsylvania Air Pollution Control Act and 25 Pa. Code § 127.35(c) to make MACT determinations on a case-by-case basis for all affected ICI boilers and process heaters. The resulting MACT determinations shall be incorporated into the Title V permits issued to the owners and operators of the affected facilities according to procedures established under Title V. Any stationary air contamination source or group of sources located on contiguous or adjacent properties and under common control that emits or has the potential to emit 10 tons per year or more of a single HAP including fugitive emissions or 25 tons per year or more of a combination of HAPs including fugitive emissions, is considered a major source.

The owners and operators of affected existing sources must submit a Part 1 MACT Application to the appropriate Department of Environmental Protection's Regional Office and to the EPA Region III Office no later than 30 days from August 29, 2009 (the date of publication of this notice in the Pennsylvania Bulletin).

Part 2 MACT Applications must be submitted to the Department of Environmental Protection and the EPA within 60 days after submission of the Part 1 MACT Applications. The Part 2 MACT Applications must include the relevant process, pollutant and control information to allow permitting authorities to establish MACT standards for the facility equivalent to what EPA would have established for the source category.

The EPA submittals should be sent to the attention of Kathleen Anderson, Chief of the Permits and Technical Assessment Branch, Air Protection Division (3AP11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-3029.

The Department's Part 1 and Part 2 MACT Applications and instructions are available on the web site at <http://www.dep.state.pa.us>. Applications and instructions can also be obtained by contacting any of the Department's Regional Offices. Contact Krishnan Ramamurthy for additional information at (717)787-4325 or kramamurth@state.pa.us.

D.C. COURT REJECTS EPA OZONE WAIVERS

On July 10, 2009, a Federal Court of Appeals rejected Bush administration rules that allowed



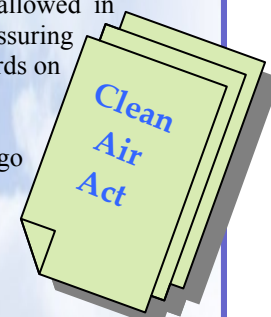
major power plants and factories to emit uncontrolled pollution in cities that already have severely polluted air. The U.S. Court of Appeals for the D.C. Circuit found the EPA rules illegally let plants buy rights to pollute instead of installing modern emission controls. In addition, the court invalidated parts of the rule that had weakened pollution limits for major new or modified factories and power plants in cities with unhealthy air.

The case came out of the air pollution trading program (CAIR) aimed at reducing pollution that travels between states. The overturned EPA rule created loopholes by allowing power plants in already polluted communities to avoid installing controls by buying pollution credits from other facilities, in some cases not even in the same region. Twenty-two states are members of this interstate trading program, and most of them contain areas that are already in non-attainment of the ozone standards. Environmental advocates and affected states are not the only ones who took issue with the power plant exemption. The National Petrochemicals and Refiners Association also filed a brief objecting to this waiver.

The ruling also rejected weakening Clean Air Act limits on new and modified factories in non-attainment areas. The law requires new plants to have a net decrease in emissions, by arranging for excess pollution reductions from other facilities in the area. Yet the challenged Bush rules let new plants claim offset credit for historical pollution reductions from plants that closed down many years ago. The court ruled that the reduction credits could not be allowed in cities that lacked approved plans assuring that they would meet clean air standards on time.

To view the complete court ruling, go to:

<http://pacer.cadc.uscourts.gov/common/opinions/200907/06-1045-1195613.pdf>





40 CFR PART 63 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AREA SOURCES: CHEMICAL PREPARATIONS INDUSTRY, SUBPART BBBBBBB

On August 5, 2009 the EPA published in the Federal Register, Volume 74, Number 149, a proposed rule for establishing national emissions standards for control of HAPs from the Chemical Preparations area source category. The proposed subpart BBBBBBB standards would apply to all existing or new manufacturing operations located at an area source that produce chemical preparations by mixing, milling, blending and/or extruding chemical compounds containing the target HAPs. The standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

The target HAPs include metal compounds of chromium, lead, manganese, or nickel. Some categories and entities likely affected by these standards are Spice and Extract Manufacturing, Basic Organic Chemical Manufacturing, Paint and Coating Manufacturing, and all other Miscellaneous Chemical Product and Preparation manufacturing. Comments on the proposed rule must be received on or before September 4, 2009. The proposed Standards include:

1. Requiring all process vent streams from mixing, blending, milling and extruding equipment in target HAP service to be routed through a PM control device that meets the specified efficiency requirement.
2. Operation and maintenance of the control device shall be in accordance with the manufacturer's specifications. The system and control devices shall be maintained and inspected on a regular basis.
3. Owner or Operator of both new and existing sources shall submit both an Initial Notification of Applicability within 120 days of the effective date of the rule and a Notification of Compliance Status within 60 days after the applicable compliance date to demonstrate initial compliance with the proposed standards.
4. Maintain continuous compliance (3-hour rolling average basis) with the standards, which are to route emissions to a control device that achieves 95% PM emission reduction during all operations that emit target HAP.
5. PM control device compliance demonstrations shall be through performance testing, manufacturer's guarantee, or engineering calculations. Existing sources may use the aforementioned options, or use previous performance testing results to determine compliance, provided that testing was conducted in accordance with the specified reference test method and within the last 5 years.
6. Semi-Annual Compliance Summary reports, including periodic inspection procedures for vent collection systems and control devices and deviations from compliance.

Recordkeeping requirements, including PM control device operating parameters; for a fabric filter, the pressure drop across the device; for a wet scrubbers, the water supply pressure and water flow rate; records of periods of target HAP processing; records of control device make, model, and installation date; copy of performance guarantee; inspection records; calibration records; and, engineering calculations.

You can view the proposed rule at <http://www.epa.gov/fedrgstr/EPA-AIR/2009/August/Day-05/a18537.htm>

ACHD WINS RECOVERY ACT FUNDING TO REDUCE EMISSIONS FROM DIESEL EQUIPMENT

On August 13, 2009, the USEPA announced that Allegheny County would receive \$3.49 million in Recovery Act funding to help clean the air in the Pittsburgh area by replacing and retrofitting engines and equipment in four types of diesel fleets: transit buses, dump trucks, locomotives, and non-road construction equipment. Diesel engines used in the aforementioned fleets may operate 30 years; EPA estimates that by using the newest, clean-diesel technology built to meet higher air-quality standards, diesel emissions can be cut by up to 90 percent, drastically reducing fine particle pollution and other pollutants that contribute to ozone smog.

The grant to the ACHD will support the Port Authority Transit, Constructors Association of Western PA, Diamond Head Trucking, MultiServ Corporation and CSX Transportation.



The ACHD partnered with Group against Smog and Pollution and Clean Water Action in selecting projects to compete for a share of \$16.1 million. EPA's mid-Atlantic region received 40 grant applications. Allegheny County is one of seven applicants that won funding.

EPA LAUNCHES THE EMISSION STANDARDS REFERENCE GUIDE WEBSITE

EPA has announced a new Emission Standards Reference Guide website (<http://www.epa.gov/otaq/standards/index.htm>) which contains federal emission standards for on-road (light-duty and heavy-duty) and non-road vehicles and engines as well as related fuel sulfur standards. The website includes information such as applicable standards; useful life; warranty period; and the availability of averaging, banking, and trading (ABT).

NEW NOx NAAQS PROPOSED

Based on its review of the air quality criteria for oxides of nitrogen and the primary National Ambient Air Quality Standard (NAAQS) for oxides of nitrogen (NOx) as measured by nitrogen dioxide (NO₂), EPA proposed on July 15, 2009 to make revisions to the primary NO₂ NAAQS in order to provide requisite protection of public health. Specifically, EPA proposes to supplement the current annual standard by establishing a new short-term NO₂ standard based on the 3-year average of the 99th percentile (or 4th highest) of 1-hour daily maximum concentrations. EPA proposes to set the level of this new standard within the range of 80 to 100 parts per billion (ppb) and solicits comment on standard levels as low as 65 ppb and as high as 150 ppb. EPA also proposes to establish requirements for a NO₂ monitoring network that will include monitors within 50 meters of major roadways. In addition, EPA is soliciting comment on an alternative approach to setting the standard and revising the monitoring network. Consistent with the terms of a consent decree, the Administrator will sign a notice of final rulemaking by January 22, 2010. With this rule, EPA is proposing a new NO₂ network that focuses on roadways – but this data will not be available until approximately 2016. EPA will promulgate initial designations by January 2012 using the existing NO₂ monitoring network from the years 2008 – 2010. Comments are due to EPA on September 14, 2009. The proposed rule can be found at <http://edocket.access.gpo.gov/2009/pdf/E9-15944.pdf>



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