



MACT Standards Litigation and Regulatory Implications

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2007 Decisions

- *Sierra Club v. EPA*, 479 F.3d 875 (D.C.Cir. 2007) (“Brick and Clay Ceramics”)
- *NRDC v. EPA*, 489 F.3d. 1250 (D.C. Cir. 2007) (“Boilers”)
- *NRDC v. EPA*, 489 F.3d. 1364 (D.C. Cir. 2007) (“Plywood”)



Brick and Ceramic Clay Mfr.

(Mandate issued June 18, 2007)

- MACT “floors” must reflect what is achieved in practice, considering all factors, regardless of reason or whether achievable by all sources
- Consideration of emissions variability in setting standards must be limited to the best performers
- Work practice standards must be accompanied by a showing that control equipment is infeasible or that measurement of emissions is technologically or economically infeasible.



Commercial and Industrial Solid Waste Incineration/Industrial, Commercial, and Institutional Boilers

(Mandate issued July 30, 2007)

- CAA language is unambiguous; solid waste incineration unit = distinct operating unit of any facility which combusts any solid waste
 - EPA may not depart from definition based on the purpose for which waste is burned
- Since determination of MACT is affected by EPA response to the remand of the CISWI definition, boiler rule is vacated in its entirety
- Low risk source issues unresolved



Plywood and Composite Wood Products

(Mandate issued 10/4/07)

- EPA received partial remand and partial vacatur of portions involving “no-control” floors
- Low risk exclusions of sources conflicts with plain language, congressional intent, and the statutory scheme
 - EPA “has no authority to create a low-risk subcategory scheme that allows harmful emissions in a manner contrary to Congress’s statutory scheme”
- EPA may not extend compliance deadlines beyond what the CAA provides, regardless of rationale
 - States may grant extensions of up to one year



Clean Air Act Section 112(j): “Equivalent emission limit by permit”

- Permit applications by source owners or operators within 18 months after EPA failure to adopt MACT.
- Emission limitations to be equivalent to the limitation that would apply if MACT had been adopted in a timely manner.
- Timetable for incorporating later EPA limits into permits depends on the timing of the standard vis a vis when or whether a 112(j) permit application has been approved.
- Rules implementing sec. 112(j) adopted at 40 CFR Part 63.50-56



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

- “Yes, but”
 - EPA has held 112(j) applicable in cases of complete vacatur
 - Cement Kiln Recycling Coalition, et al. v. EPA 255 F.3d. 855 (D.C. Cir. 2001) (“Joint Motion of All Parties for Stay of Issuance of Mandate”)
 - Information collection request pursuant to Paperwork Reduction Act must be renewed prior to implementation of 112(j) regulations



What will States and emission source owners have to do to comply with 112(j)?

- Source owners or operators:
 - Part 1 applications:
 - Immediately if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to 112(j)
 - Within 30 days following notification by the State that a permit is required.
 - Part 2 application:
 - 60 days following the deadline for submission of Part 1 application
- States:
 - 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 sec. 112(j) requirements within 18 months after submission of complete application



Other Questions related to Vacatur

- Section 112(j) is considered an applicable requirement for purposes of Title V
 - Therefore, source owners need to include description of compliance status
- Permittees may seek modification of existing Title V permit conditions based on vacated standards, but EPA recommends removal of existing provisions be concurrent with new 112(j) limits



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