

# North Carolina's Implementation of 112(j)

CAPCA  
Fall 2009

# MACT under 112(j)

- ▶ Congress adds “Permit Hammer”
  - “requires sources to negotiate with an engineer and the State agency for an appropriate standard of technology if EPA does not issue the MACT...on time.” (*Legislative History, 1990, p. 1062*)
- ▶ Missed MACTs
  - Boilers
  - Brick

# Boiler MACT

- ▶ 9/13/04 EPA “Promulgated” Final Boiler MACT
- ▶ 7/20/07 D.C. Cir. Court Vacated Rule
- ▶ 2/24/09 NC DOJ issued advisory memorandum saying,
  - Vacatur is failure to promulgate
  - Triggers 112(j) Case-by-Case MACT Hammer as if promulgation never occurred
  - Part 1 and Part 2 applications already overdue
  - Prompt Remedial Action Necessary

# Boiler MACT

- ▶ 4/9/09 NCDAQ Memo on 112(j) Procedures
- ▶ 6/17/09 NCDAQ Letters Requesting Applications
  - Part 1 deadline July 15, 2009
  - Part 2 deadline September 11, 2009
- ▶ To date DAQ has received approximately 112 Part 1 applications

# Boiler MACT

- ▶ August 1, 2009 DAQ posts on website:
  - Part 2 applications
  - Application Guidance
- ▶ Application
  - Unit specific
  - Health based compliance alternative
  - Model limits
  - Other

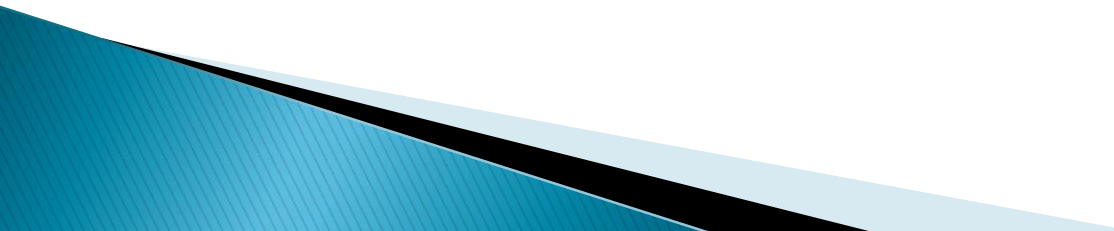
# Boiler MACT

## ▶ Application Guidance

<http://daq.state.nc.us/permits/112j/>

- Emission Rates based on actual stack test data
- Limited to NC sources (NC has no authority to collect information from other states)
- MACT Standard Setting
  - Top 12 percent
  - If less than 30 sources then average emission limitation achieved by the best performing 5 sources
  - Consistent with EPA practice, 99.9% CI was used

# Boiler MACT and CISWI

- ▶ To ensure NC did not violate DC decision, CISWI had to be considered
  - ▶ NC decoupled CISWI units from boilers
  - ▶ Spawned secondary question of what “discard” means.
  - ▶ AG’s memorandum defines steps for query
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# Boiler MACT

- ▶ Health Based Compliance Alternatives
  - Allowed under the Act (CAA Sec. 112(d))
  - Misconception that the Court's rejected this approach
  - Common Sense – Senate Report
- ▶ Approach similar to the HCl and Manganese approach used in the vacated boiler MACT

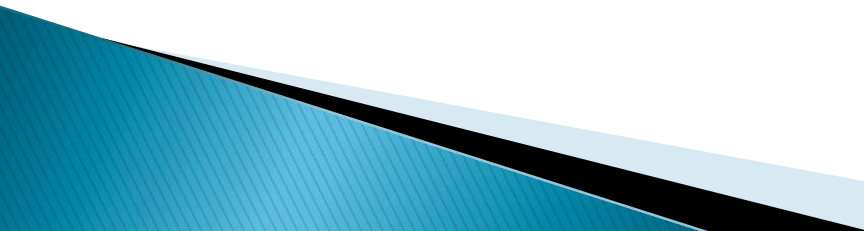
# Boiler MACT

- ▶ Senate Report – “The Administrator is authorized by section 112(d)(4) to use the no observable effects or NOEL (again with an ample margin of safety) as the emissions limitation in lieu of more stringent “best technology” requirements. Following this scenario, only those sources in the category which present a risk to public health (those emitting in amounts greater than the safety threshold) would be required to install controls, even though the general policy is “maximum achievable technology” everywhere.”

# Boiler MACT

- ▶ Process
  - Not a General Rule – Permit Specific
- ▶ DAQ will propose the 112(j) in the Title V permit
  - Public Notice
  - EPA Review (EPA does have Veto...but ...)
- ▶ 112(j) supplants EPA rule (if and when it is promulgated) for up to 8 years

# EPA Review

- ▶ EPA review is limited to that of the title V process (simply being different is ok)
  - ▶ EPA must object if the proposed permit does not comply with the CAA
  - ▶ If 112(d) has been proposed, then it must be considered
  - ▶ If not, difficult to compare with what 112(d) might look like
  - ▶ Database is limited to NC – National database not available
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# EPA Review

- ▶ Question might be – whose rule is being implemented?
  - ▶ Is the Federal rule actually constitutional?
  - ▶ State rule is certainly constitutional, but it's the State rule.
  - ▶ The State rule is not part of the SIP – passed under state sovereignty
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