

**RECENT DEVELOPMENTS
IMPACTING AIR PERMITTING
IN THE MIDWEST**

Consultant Perspective

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TWO TOPICS

- ❖ Impact of Court vacating two USEPA rules
 - Emission standards for hazardous air pollutants pertaining to industrial, commercial, and institutional boilers and process heaters (40 CFR 63, Subpart DDDDD)
 - 8-hour ozone implementation rule (69 Fed. Reg. 23951)

“BOILER” MACT

- ❖ Refers to the source category consisting of industrial, commercial, and institutional boilers and process heaters
- ❖ One of 174 categories of sources for which EPA was to develop an emission standard per 1990 Clean Air Act
- ❖ The technology-based standard is often referred to as the Maximum Achievable Control Technology (MACT)

§112(d)EMISSION STANDARDS

- ❖ Apply to the hazardous air pollutants defined in §112(b) of the Clean Air Act (CAA)
- ❖ EPA was to promulgate standards for various source categories by Nov. 2000 with source compliance by Nov. 2003
- ❖ Generally referred to as the National Emission Standards for Hazardous Air Pollutants (NESHAP)

“THE ISSUE?”

- ❖ EPA promulgated the Boiler MACT on September 13, 2004 (signed on 2/28/04)
- ❖ Compliance date of September 13, 2007 for existing boilers and process heaters
- ❖ US Court of Appeals, on June 8, 2007, ordered the rule vacated
- ❖ Now what?

MACT “HAMMER”

- ❖ §112(j) of CAA requires case-by-case MACT if USEPA misses a deadline (aka MACT hammer)
- ❖ Requires “Equivalent Emission Limitation by Permit”
- ❖ USEPA missed Nov. 2000 deadline for 31 standards covering 59 source categories
- ❖ MACT hammer applied May 15, 2002 (November 15, 2000 + 18 months)

SIERRA CLUB SETTLEMENT

- ❖ Sierra Club sued USEPA and ultimately agreed to a settlement
- ❖ Boiler MACT due by February 28, 2004
- ❖ Case-by-case permit application due 60 days later (April 28, 2004) if deadline not met
- ❖ USEPA signed Boiler MACT February 28, 2004 and published it on September 13, 2004

CURRENT STATUS

- ❖ Has been much confusion
- ❖ USEPA believes MACT hammer applies
- ❖ USEPA has promised guidance but has hit a snag as of 10/11/07
 - Information collection request expired in 2005
 - No authority to collect or require states to collect information under MACT hammer

STATE RESPONSE

- ❖ Some waiting for USEPA guidance
- ❖ Some requiring Part 2 applications from affected sources per 40 CFR 63.53
- ❖ Illinois EPA issued letter dated August 31, 2007 requiring Part 2 applications by October 1, 2007
- ❖ Stated they don't intend to issue case-by-case MACT until action is taken on Title V permit renewal

MACT CONSIDERATIONS

- ❖ Environmental groups believe vacated MACT is weak
- ❖ National Association of Clean Air Agencies is planning to develop a model Boiler MACT rule for air agencies to use
- ❖ First case-by-case determinations will receive close scrutiny by interest groups

CONSULTANT PERSPECTIVE

- ❖ Facilities with Title V permits under review must undergo case-by-case MACT as part of the permit renewal process
- ❖ Part 2 applications do not require the applicant to suggest case-by-case MACT but providing a proposal at some stage of the review process can be beneficial

**CONSULTANT PERSPECTIVE
(continued)**

- ❖ Some existing facilities may be eager to quickly address this matter and lock-in a reasonable "rule"
- ❖ Use the vacated rule as a basis if it makes since in your case
- ❖ New affected facilities must address MACT before permit issuance
- ❖ Stay tuned!!! Expect new developments.

NEW SOURCE REVIEW ISSUE

- ❖ US Court of Appeals has ruled that USEPA improperly determined that areas not meeting the 1-hour ozone standard would not be subject to the 1-hour New Source Review (NSR) requirements
- ❖ USEPA has formerly notified its regional Administrators to "...have states comply with the court decision as quickly as possible."

POTENTIAL IMPACT

- ❖ Chicago ozone non-attainment area
 - Major source threshold of 25tpy and not 100 tpy
 - Emission offsets are 1.3 to 1 rather than 1.15 to 1
 - Lowest Achievable Emission Rate (LAER)
 - Title V permitting applies at the lower level
 - Public notice and public hearing for permit transactions are more likely
 - \$185 penalties apply

WHAT HAPPENED?

- ❖ US Court Court of Appeals ruled on December 22, 2006 that USEPA's April 30, 2004 ozone implementation rule (69 Fed. Reg. 23,951) was flawed in several ways and ordered it vacated
- ❖ USEPA asked for a rehearing and, on June 8, 2007, the court reaffirmed its previous decision

PRINCIPAL POINTS

- ❖ §172 of CAA: anti-backsliding provision
 - Court says NSR is a control strategy and areas are subject to 1-hour NSR until they attain
 - Contingency plans remain in affect
 - Motor vehicle conformity budgets must remain
- ❖ §185: major source penalties apply for non-attainment of 1-hour standard

STATE RESPONSE

- ❖ Have requested USEPA to designate previous 1-hour non-attainment areas as attaining
- ❖ Are continuing to treat permit applications as if the 1-hour non-attainments areas no longer exist
- ❖ Have advised that the situation is volatile and their approach could change quickly

CONSULTANT PERSPECTIVE

- ❖ Permit applicants need to be aware of the issue
- ❖ Case-by-case approach is logical but state may be concerned with consistency. That is, if company is willing to meet more stringent NSR requirements the state may still not wish to acknowledge that the 1-hour NSR applies IF a re-designation request is pending

**CONSULTANT PERSPECTIVE
(continued)**

- ❖ If area can't meet 1-hour ozone standard, be prepared to comply with 1-hour NSR
 - USEPA is restoring 1-hour NSR requirements through immediately-effective final rule
 - USEPA is proposing a rulemaking to address longer-term 1-hour NSR applicability requirements
