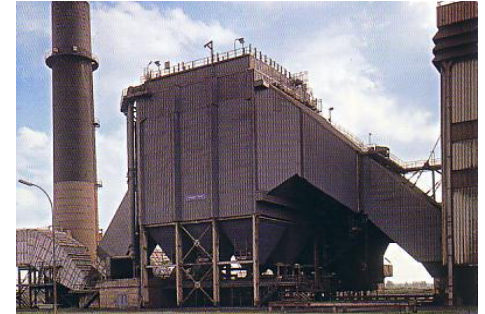


Case-by-Case MACT – State/Local Perspectives



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Case-by-Case MACT – State/Local Perspectives

- What is it?
- Does it really apply?
- What sources would be affected?
- Would it really be that bad?
- Why do it now?
- Why wait?



What is 112(j) of the 1990 CAAA?

- “equivalent emission limitation by permit”
a.k.a. the “MACT hammer”
 - Intended to be a backstop so that implementing agencies (SLTs) would be required to regulate a source category for HAPs within 18 months of US EPA failing to promulgate a MACT
 - Part 70/Title V includes language requiring the facility to submit a 112(j) application, even if the agency fails to request it

Does it really apply?

- Yes...
- No...
- Maybe...



112(j) applies if a MACT standard is vacated

- US EPA legal interpretation that 112(j) applies even if a MACT has been promulgated, and then subsequently vacated
 - Supporting Statement in ICR for Control Technology Determinations for 112(g) & 112(j) - April 17, 2008 (73 FR 20920)
 - US EPA vs. SLT authority to do 112(j)
- Still no official written statements or guidance from US EPA



Source Categories for Which MACT standards have been vacated

- Polyvinyl Chloride & Copolymers Mfg
 - 40CFR63, Subpart J
- Brick and Structural Clay Products Mfg
 - 40CFR63, Subpart JJJJJ
- Clay Ceramics Mfg
 - 40CFR63, Subpart KKKKK
- **Industrial, Commercial & Institutional Boilers, and Process Heaters**
 - **40CFR63, Subpart DDDDD**

What Sources Would be Affected by 112(j)?

- 112(j) different from 112(g)
 - 112(g) for new or reconstructed affected sources that are major for HAPs in and of themselves
 - 112(j) for new and existing affected sources *located* at a major HAP facility
- “New” Affected Sources
- “Existing” Affected Sources

Boiler MACT dates

Jan. 13, 2003	Proposed rule
Sept. 13, 2004	Final rule
Nov. 12, 2004 or startup	New Source Compliance
July 30, 2007	US Court of Appeals for the District of Columbia vacature and remand
Sept. 13, 2007	Existing Source Compliance

Would 112(j) really be that bad?

- Resources – thousands of affected sources at hundreds+ of facilities
- Case-by-case reviews are always resource-intensive
 - Sub-categories for which US EPA did not set a standard
- Many possible sub-categories – sizes, fuel types
- Many HAPs (surrogate approach)
- Litigation



Main categories of permitting scenarios

- Boilers or process heaters that were
 - *Existing* at the time the Boiler MACT was in effect
 - *Existing* at the time the Boiler MACT was in effect and who have submitted (unsolicited) 112(j) case-by-case permit applications
 - *New* at the time the Boiler MACT was in effect
 - *New **after*** the Boiler MACT was vacated

112(j) Timeline - 18-26 month review period

- 40CFR63.52(e) establishes up to 26 months

Jan. 30, 2009 Part 1 112(j) application due
using the 18-months after July 30, 2007 vacature interpretation

Mar. 31, 2009 Part 2 112(j) application due

Sept. 30, 2009 up to 6 months to determine
completeness

Mar. 31, 2011 18 months from a complete
application to determine case-by-
case standard and issue Title V permit
*or, as early as Sept. 30, 2010, depending on when completeness
determined)*

112(j) Process - 40CFR63, Subpart B

- “Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j)”
 - *Approval process for new and existing affected sources, 40CFR63.52*
 - *Permit application review timelines, 40CFR63.52(e)*
 - *Application content for case-by-case MACT determinations, 40CFR63.53; US EPA must be copied*
 - *Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard, 40CFR63.56*

What happens if US EPA promulgates the MACT before a state issues the Title V permit with the 112(j)?

- Then the federal rule takes over, and the state review is moot

What happens if US EPA promulgates the MACT after a state issues the Title V permit with the 112(j)?

- Then the federal rule takes over eventually
 - If the federal rule is *less stringent*, then the facility will likely request the federal rule sooner rather than later
 - If the federal rule is *more stringent*, then the facility will likely want to wait as long as provided for by rule
 - May be a mixed bag to determine stringency in terms of emission standard, monitoring, recordkeeping, recording and testing
 - See 40CFR63.56

What will happen next?



- Using a March 31, 2011 (or Sept. 30, 2010) 112(j) review and Title V permit issuance deadline

and

- Given US EPA is under a court-ordered deadline to propose a rule by July 15, 2009, and promulgate a rule by July 15, 2010

Then

- SLT 112(j) reviews **should** be a non-issue

If

- US EPA meets its deadlines

Why do it now?

- May be a shield from litigation
- May help the facility
- It's the law (maybe)
- Environmental benefit



Why wait?

- National consistency
- Saves resources and time to use on other issues
- Lack of authority
- Litigation



WV's approach

- For all Title V major HAP facilities at Renewal, or with Permit Revisions that specifically address a change to a boiler or process heater
 - Permit condition requiring a Part 1 submittal after July 10, 2010 but no later than Aug. 15, 2010 if US EPA has not already promulgated the Boiler MACT
 - Attempt to provide some coverage in the possible case of a Title V permit petition from a citizen group



- Requiring 112(j) for new affected sources located at major HAP facilities
- Processing (slowly) four unsolicited 112(j) applications
- Attempt to manage 112(j) so that it doesn't overtake our resources

Other Issues

- Non-Hazardous Solid Waste definition
 - CISWI (§129) vs Boiler MACT (§112) applicability issue
 - January 2, 2009 ANPR (74 FR 41)
- Health-Based Compliance Alternative (HBCA) requests
- Area source (non-major) air toxics standard also to be proposed and promulgated by US EPA for boilers at GACT level of control

For additional information

- **US EPA's** Industrial/Commercial/Institutional/ Boiler and Process Heaters air toxics website:
<http://www.epa.gov/ttn/atw/boiler/boilerpg.html>
- **NACCA** –Committees - Air Toxics – Important Documents: <http://members.4cleanair.org/>
 - EPA Boiler MACT Testing List – 176 facilities –June '09
 - **Survey Results of State/Local Responses on 112(j)** – Dec. '08
 - Model 112(j) permit guidance – June '08
- Council of Industrial Boiler Owners (**CIBO**):
<http://www.cibo.org/newsletters/main.htm>

Any Questions?

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www.wvdep.org/daq/, choose the Air Toxics Webpage link

