



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 13 2012

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Re: No Action Assurance Regarding Certain Work Practice or Management Practice Standard Deadlines in the March 2011 Area Source Boiler Rule

Dear Sir/Madam:

Today, the EPA is providing a no action assurance (No Action Assurance) to all owners and/or operators of existing industrial boilers and commercial and institutional boilers at area sources that are subject to the requirement to conduct a tune-up by March 21, 2012 in the final rule discussed below. This No Action Assurance is being issued in response to a request from Assistant Administrator for Air and Radiation Gina McCarthy. As explained more fully below, this No Action Assurance addresses provisions of the final rule to regulate industrial boilers and commercial and institutional boilers at area sources of hazardous air pollutant emissions (the "Area Source Boiler Rule"), 76 Fed. Reg. 15,554 (March 21, 2011). Specifically, this No Action Assurance establishes that the EPA will exercise its enforcement discretion to not pursue enforcement action for failure to complete a tune-up required by a work practice or management practice standard by the compliance date of March 21, 2012 established in 40 C.F.R. § 63.11196(a)(1), subject to certain specified terms and conditions.

Under the Area Source Boiler Rule, area sources that fall into two subcategories of boilers – existing or new coal units with heat input capacity of less than 10 million Btu per hour, and existing or new biomass or oil units – are required to comply with work practice or management practice standards that consist of undergoing biennial tune-ups. 40 C.F.R. § 63.11201(b) (requiring compliance with the work practice or management practice standards specified in Table 2 to Subpart JJJJJ of Part 63 of the C.F.R.); 40 C.F.R. Part 63, Subpart JJJJJ, Table 2 (listing requirements by boiler subcategory). For existing affected boilers, the Area Source Boiler Rule established that the first of these tune-ups must be completed by March 21, 2012. 40 C.F.R. § 63.11196(a)(1).

Over 180,000 existing area source boilers are required to do tune-ups under the Area Source Boiler Rule. However, many facilities with older affected boilers have indicated that it is not possible to meet the March 21, 2012 compliance date. Entities particularly affected include those with large numbers of facilities with affected boilers, such as in the telecommunication sector; those with a large number of affected boilers, such as military installations; and those with seasonal boilers, such as the sugar cane industry and facilities in Alaska. These industries' representatives have identified specific problems with testing required to comply with the tune-up requirement in the final rule. Specifically, the final rule requires stack testing to measure carbon monoxide and oxygen as a component of the tune-up. 40 CFR 63.11223(b)(5). The rule further requires that combustion be optimized consistent with manufacturers'

specifications. 40 CFR 63.11223(b)(3). However, many facilities with area source boilers have indicated that they are not equipped to measure carbon monoxide and oxygen, and must undergo alterations such as the installation of a sampling port or platform before stack testing would be possible. Other facilities with older affected boilers have noted that many boilers will need to be repaired before they will be able to meet manufacturer specifications, such as the proper air-to-fuel ratio, and be ready to undergo the testing needed to comply with the tune-up requirements. Given the limited number of individuals qualified to conduct and complete these repairs, industry representatives assert that they are unable to schedule and complete the repairs, in addition to scheduling and completing the tune-ups, during the one-year initial compliance period specified in the final rule. At this time, the EPA continues to evaluate these assertions and observations. While we have not concluded that each of these points is valid, the Agency has sufficient concern at this time about these issues to question whether compliance by March 21, 2012 is feasible for a significant number of parties.

In addition, the EPA recently published a proposed reconsideration of the Area Source Boiler Rule that would adjust the relevant initial compliance date for compliance with work practice or management practice standards from March 21, 2012, to March 21, 2013, which would provide affected sources subject to the tune-up requirement with an additional year to demonstrate initial compliance with that requirement. National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Proposed Rule; Reconsideration of Final Rule, 76 Fed. Reg. 80,532 (Dec. 23, 2011). The regulated community is aware of the EPA's proposed extension to the compliance date, and this has caused confusion and uncertainty in the regulated community. The EPA stated that this change was proposed in part because the EPA recognized that some sources – particularly those with large numbers of affected boilers or seasonal boilers – cannot timely complete the testing needed to comply with the tune-up requirements. 76 Fed. Reg. at 80,535.

Finally, the only way for sources to avoid being in noncompliance if they cannot meet the tune-up compliance date would be for sources to stop operating their boilers until the tune-up can be completed. However, the affected categories of sources include many for which shutdown would be problematic and possibly dangerous, such as hospitals, clinics, nursing homes, and schools. It would not be in the public interest for such sources to shut down.

For the reasons discussed above, this No Action Assurance establishes that the EPA will exercise its discretion not to pursue enforcement for violations of the deadline to complete an initial tune-up identified in 40 C.F.R. § 63.11196(a)(1). This No Action Assurance applies only to the timeliness of the tune-up, and I note that nothing in this No Action Assurance affects any other provisions in the Area Source Boiler Rule.

This exercise of discretion is subject to the following conditions:

- The No Action Assurance is to remain in effect until either (1) 11:59 PM EDT, October 1, 2012, or (2) the effective date of a final rule addressing the proposed reconsideration of the Area Source Boiler Rule, whichever occurs earlier. The EPA has proposed new deadlines for initial tune-ups in its proposed reconsideration of the Area Source Boiler Rule, and, if the Agency takes final action to adopt those proposed deadlines, they will control.
- The EPA reserves the right to revoke or modify this No Action Assurance.

The issuance of a No Action Assurance for this period of time is in the public interest to ensure all existing sources have sufficient time to complete their initial tune-ups. I believe this action is consistent with the protections afforded under the proposed reconsideration of the Area Source Boiler Rule.

If you have any further questions regarding this matter, please contact Sara Froikin of my staff at (202) 564-3187 or froikin.sara@epa.gov.

Sincerely,



Cynthia Giles  
Assistant Administrator

Cc: Gina McCarthy  
Steve Page  
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Robert Wayland