
Status of the *Air Toxics* Program

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June 11, 2008

Drivers

- Programmatic Goals

- Air Toxics

- attain a 75% reduction in incidence of cancer attributable to exposure to HAPs
 - attain a substantial reduction in public health risks (such as birth defects and reproduction effects) posed by HAP emissions from area sources; and
 - address disproportionate impacts of air toxics hazards across urban areas

- NAAQS

- Protect public health and welfare from the adverse effects of common air pollutants – primary and secondary standards
 - Review and revise (if necessary) NAAQS for six pollutants – ozone, lead, particulate matter, nitrogen dioxide, sulfur dioxide, and carbon monoxide – every 5 years

- Statutorily Mandated Regulations

- Risk and Technology Review

- 112(d)(6) – (t)he Administrator shall review, and revise as necessary...emission standards promulgated under this section no less often than every 8 years.
 - 112(f)(2)(A) – ...the Administrator shall, within 8 years after promulgations of standards for each category...promulgate standards if such promulgation is required in order to provide an ample margin of safety...

- Area Source Rules

- 112(c)(3) – The Administrator shall...ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health...are subject to regulation...

- NSPS Strategy

- 111(b)(1)(B) – The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards...
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Drivers (cont'd)

- External pressures

- Recent Court Decisions and Vacatur

- *Sierra Club v. EPA*, (“Brick and Clay Ceramics”),
 - *NRDC v. EPA*, (“Boilers/CISWI”), and
 - *NRDC v. EPA* (“Plywood”)

- CAMR

- HON Litigation

- Emerging issues

- Climate

Risk and Technology Review

■ Old Approach

- Conducted first 8 residual risk and technology reviews separately under Court ordered schedules
- Reviews took significant resources and we generally found that we did not need additional standards to meet our CAA requirements

■ New RTR Approach

- Group actions together and base actions on existing data to save time and resources
 - Model each MACT category to obtain cancer, non-cancer, environmental, and multi-pathway (if necessary) risks for decision making
 - Propose and promulgate standards quickly to avoid future schedule lawsuits
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Where Are We In Implementing The New RTR Process?

- Low risk group - proposed 12/07
 - 1st ANPRM - published 3/07
 - Proposals – 2 groups in 2008, 1 group in 2009
 - Next ANPRM
 - Summer 2008
 - 17 source categories emitting metals and PM
 - Public comment on emissions data and risk
 - Public comment on existing controls and developments in practices, processes and control technologies
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Area Sources Current Status

May 2003 and March 2006 court orders set a schedule for completing the Area Source Program:

- ❑ Standards have been promulgated for 40 area source categories
 - ❑ 30 source categories remain to be addressed
 - ❑ Program to be completed on June 15, 2009, except for promulgation of boilers and sewage sludge incineration. These categories are under litigation.
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NSPS Strategy

■ The Process...

- Evaluate NSPSs not currently under review by the Agency by considering:
 - Magnitude of current and future emissions from source category (NO_x, SO₂, PM₁₀, and VOC)
 - Estimated economic growth for source category
 - Likelihood of more stringent emission limits
 - Requirements imposed by other CAA programs (e.g., MACT, BACT)
 - Sort NSPSs into two bins for rulemaking:
 - Individual rulemakings for rules likely to be updated and revised
 - Advances in control technology
 - Potential for significant emissions reductions
 - One batch rulemaking for rules not expect to updated or revised
 - Existing NSPS represents best demonstrated technology
 - ANPR planned later this year
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Implications of Court Decisions

- Disallowed many of our approaches for setting MACT and narrowed our flexibility in setting these standards
 - Issues to consider regarding the MACT floor:
 - How to determine the “average emissions limitation” achieved by the best performers (the average of the top 12 percent)?
 - Standards must reflect what is “achieved,” not what is “achievable”
 - How and under what circumstances may EPA subcategorize?
 - How do we establish appropriate bases for work practice standards?
 - How much data do we need
 - To establish subcategories?
 - To set numerical limits?
 - To account for variability among the best performers?
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Addressing the Vacatur

- Scope of the court decisions will require new information
 - MACT floors
 - Process, feedstock, and controls
 - May require testing
 - Classification of sources as “boilers” or “incinerators”
 - Establish bases for subcategories and variability
 - Options for getting data are under discussion
 - ICR to collect boiler & CISWI data proposed December 7, 2007; comment period closed February 5, 2008
 - Next step revised ICR to OMB
 - First phase – completed ICR – should publish in FR in early May
 - Second phase – testing at specific sites
 - 60-day extension to negotiate schedule for proposal and final rulemaking
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Clean Air Mercury Rule (CAMR)

- On Feb. 8, D.C. Circuit Court of Appeals issued decision in *State of New Jersey v. EPA*:
 - Court vacated EPA's removal of utilities from the § 112(c) list of source categories
 - Court said that EPA could only remove source categories from the list if it makes the findings required by § 112(c)(9)
 - Court also vacated CAMR, but did not reach the merits of challenges to CAMR
 - On March 14, the court issued its mandate making the vacatur effective.
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CAMR (continued)

- On March 24, EPA filed a motion for rehearing en banc, asking the full court to reconsider the Feb. 8 decision. UARG filed a separate motion for rehearing en banc
 - On April 22, state and environmental petitioners filed responses to EPA's and UARG's motions for rehearing, arguing the court's decision was consistent with the language of the CAA and with the court's past precedent
 - On May 20th, rehearing petition denied, triggering 90 day window to appeal to Supreme Court
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HON Litigation Update

- NRDC filed suit on HON Residual Risk Rule alleging that:
 - Under Section 112(f)(2), EPA must reduce MIR to less than 1 in a million, and that EPA must at least set additional standards if MIR exceeds 1 in a million
 - Under Section 112 (d)(6), EPA must not use risk as a factor in reviewing technology, and EPA must revisit the MACT floor determination every 8 years
 - The NRDC lawsuit also questions:
 - The quality and extent of the data upon which the risk assessment is based
 - Whether EPA has included all relevant emissions data in its risk assessment, alleging the omission of allowable versus actual emissions, upset emissions, clustered facility emissions, and background ambient concentrations
 - Oral arguments occurred on April 10
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Example Application of CAA to Address GHG Emissions

- Example looks at using Section 111 – NSPS
 - EPA must list categories of stationary sources which “cause or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”
 - Standards must reflect “the degree of emission limitation achievable through the application of the best system of emission reduction...”
 - What are the important features of Section 111?
 - Process
 - Identify sources that contribute to the air pollution – EPA determines size threshold
 - EPA determines BDT (which only needs to be adequately demonstrated)
 - Conduct technology review to identify technologies and emission reductions
 - Consider technologies in light of costs, secondary (dis)benefits related to energy, and non-air quality impacts
 - Based on this analysis, EPA sets emission rates for new, modified and reconstructed sources in the source category as a performance standard
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Example Application of CAA to Address GHG Emissions

- Time frame
 - New Sources
 - Identify source categories for regulation, timeline starts from listing or may be part of 8-year review
 - Generally, one year from listing to proposal, however experience has shown this may take longer depending on the availability and quality of information
 - One year from proposal to final action
 - Existing sources
 - States submit plans for existing sources in that category within 9 months
 - Typically up to 3 years for compliance, but States may provide longer or shorter timeframes
 - May set multiple targets over time, such as under CAMR
 - Implications for Other Programs
 - Generally, independent of other parts of CAA
 - Trigger permitting requirements under NSR
 - May preclude use of Section 112 and regulating under Section 112 may preclude use of Section 111
 - Standards developed under Section 108 or 112 may supersede Section 111(d) standards
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Questions?
