

EPA Proposes Technical Corrections to MATS

DECEMBER 23, 2014

EPA has released a pre-publication version of a proposed rule that would make over 80 technical corrections to MATS. For example, EPA is proposing to revise the emissions averaging provisions to clarify that sources may use either a 30-day averaging period to demonstrate compliance with the Hg limit of 1.2 lb/TBtu or a 90-day averaging period to demonstrate compliance with an alternate Hg limit of 1.0 lb/TBtu. EPA has also proposed to alter the required elements of the report that must be submitted with the Notification of Compliance Status in order to use the alternate startup definition. Specifically, EPA is proposing to allow the report to be prepared by an in-house professional engineer and to remove the requirement to identify changes from the original EGU or PM control device design that could have changed PM emissions.

EPA has also proposed to address various implementation questions raised by industry. EPA is clarifying that units do not need to be operated solely for the purpose of conducting a performance test if the unit has been inoperable in the previous three quarters of the calendar year. EPA has also proposed to allow units to switch between input-based and output-based emission limits if they submit a Notification of Compliance Status that arrives to EPA at least 30 days before the switch and satisfy other requirements.

EPA has also proposed to remove the affirmative defense to civil penalties for exceedances caused by malfunctions in light of the D.C. Circuit's recent decision in *NRDC v. EPA*, which vacated the affirmative defense provision in the Portland cement MACT. The court held that EPA lacked authority to establish an affirmative defense to civil penalties because the authority to determine civil penalty amounts in enforcement actions lies exclusively with the courts under the Clean Air Act. EPA noted that it may use its enforcement discretion to provide flexibility in cases where exceedances are caused by malfunctions, and courts have discretion to consider malfunction defenses to determine whether civil penalties are appropriate in EPA or citizen enforcement actions.

EPA will take 30 days of public comment on its proposal after publication in the Federal Register.

1 Min Read

Related Locations



Chicago

Related Topics

MATS

Air

Rulemaking

Related Capabilities

Environmental

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.