

EPA Releases Draft Amendments to Boiler MACT Following D.C. Circuit Remand

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In response to three separate decisions to remand by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), the EPA has issued a pre-publication draft of its amendments to the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler MACT). The proposed amendments revise 34 different emission limits for various subcategories of boilers and pollutants, 28 of which would become more stringent and six of which would become less stringent. Relying on the “co-benefits” of the rule in controlling ancillary emissions of particulate matter and sulfur dioxide, EPA estimates these amendments will cost the industry \$21.5 million per year with estimated annual benefits of \$95-\$250 million. As we previously wrote, EPA has signaled its intent to move away from the practice of relying on co-benefits in rule development.

Originally promulgated in 2011 with amendments in 2013 and 2015, the federal Boiler MACT standards located at 40 C.F.R. Part 63 JJJJJ require existing and new major sources to control emissions of hazardous air pollutants (HAPs) using Maximum Achievable Control Technology (MACT) based standards. The Boiler NESHAP applies to a broad group of industrial, commercial, and institutional boilers and process heaters located at major sources of HAP emissions.

Environmental and industry groups sought judicial review of the Boiler MACT in three different proceedings before the D.C. Circuit, ultimately resulting in three decisions to remand portions of the Boiler MACT back to the EPA. The first decision in *U.S. Sugar Corp. v. EPA* issued on July 29, 2016, held that the EPA had improperly excluded certain units in establishing the MACT floor emission standards. A second decision in *U.S. Sugar Corp.* remanded the rule to EPA for further explanation regarding its decision to use carbon monoxide (CO) as a surrogate for organic HAPs. In March 2018, the third and final remand in *Sierra Club, et al. v. EPA* asked EPA to better explain its analysis supporting its decision to set a limit of 130 parts per million (ppm) CO as a minimum standard for certain subcategories.

EPA revised 34 emission limits in response to the first *U.S. Sugar Corp.* decision by incorporating into its MACT floor analysis units that had previously been excluded. To address the second and third remands in *U.S. Sugar Corp.* and *Sierra Club*, EPA explained that alternative “recovery (non-combustion) technologies would be ineffective” at controlling organic HAP levels generated and emitted from a boiler, and CO emissions limits remained an appropriate surrogate for organic HAPs. Further, EPA reaffirmed its conclusion that a 130-ppm CO concentration threshold represents MACT for organic HAP for the relevant subcategories.

Once finalized, regulated sources will have three years from the effective date of the rule to comply with the stricter emissions limits. Comments to the proposed Boiler MACT amendment at Docket ID No. EPA-HQ-OAR-2002-0058 will be accepted once the rule is published in the *Federal Register* for a period of 60 days. Major sources subject to the Boiler MACT should continue to follow the development of EPA's proposed amendments.

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