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## MACT Hammer and Combustion Units

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The recent promulgation of new regulations addressing the so-called “MACT Hammer” has resulted in a wave of “permit applications” submitted by owner/operators of facilities that fall within one or more source categories for which the U.S. Environmental Protection Agency has failed to promulgate the MACT standard. One of those source categories is “Industrial/Commercial/Institutional Boilers and Process Heaters” (Subpart DDDDD), and the broad manner in which the Agency is currently planning to define affected sources subject to the regulation has caught many facilities by surprise.

### **MACT Hammer**

On April 5, 2002, the U.S. Environmental Protection Agency promulgated a final rule amending its regulations that implement Section 112(j) of the Clean Air Act — the MACT Hammer regulations. Those regulations require that owners/operators of a major source in a source category for which EPA failed to promulgate a MACT standard submit a permit application within 18 months of the missed deadline. 42 U.S.C. 7412(j)(2); 40 C.F.R. §§63.50 - .56.<sup>1</sup> The “Hammer date” for source categories in the 10-year MACT bin is May 15, 2002 — this includes the Subpart DDDDD MACT referenced below. Major sources in those source categories for which EPA has not promulgated standards are required to submit a [Part 1 Title V application](#) to their permitting authorities on or before that date.

EPA has suggested that sources that are unsure as to whether they are covered by the Section 112(j) rule should contact the state permitting agency and request an applicability determination. In some states, the permitting authority has sent notices to major sources

suggesting that they may be subject to the requirements of Section 112(j). In these instances, EPA has provided that Part 1 applications are due within 30 days after being notified by the state agency.

The Part 1 application is a simple notification that provides very basic information with respect to the source and the applicable MACT source category. Part 2 of the application, which is due by May 15, 2004, will contain more detailed, comprehensive information about the source. As indicated in Footnote 1, EPA and the Sierra Club are engaged in negotiations seeking to resolve the Sierra Club's challenge to the regulations. One of the issues that is the subject of intense negotiations is the May, 2004 deadline for Part 2. It is possible that this deadline will move up as a result of those negotiations.

The permitting authority would then have up to 18 months after receipt of a complete Part 2 application to prepare and issue a Title V permit containing terms and conditions of case-by-case MACT. If a MACT standard is promulgated during this permit development process, the case-by-case MACT development is discontinued and the permit would ultimately incorporate the MACT standard.

### **Boiler MACT**

The MACT for this source category (which was a 10-year MACT standard) will include *all* boilers (defined as any enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water), regardless of size or fuel burned. In addition, all process heaters (the primary purpose of the unit is to transfer heat to a process stream or to a heat transfer material, instead of generating steam) will be covered as well. EPA will likely exempt waste heat boilers and hot water heaters from the MACT.<sup>2</sup>

The MACT standard will apply to all boilers and process heaters at a facility that is a major source of hazardous air pollutants (HAPs). This is a critical point — the boiler or heater *does not* itself have to be a major source; rather, if any part of the facility is a major source of HAPs, all boilers will be subject to the Subpart DDDDD MACT. In fact, in an EPA guidance document, the Agency offers the following example:

For example, an industrial boiler emitting 4 tons of HAP per year would be considered a

major source if it were located at a refinery that emitted a total of 40 tons of HAP per year.

In terms of the substantive requirements that will be contained in the MACT, EPA expects to regulate particulate matter (as a surrogate for metals), mercury, hydrogen chloride, and carbon monoxide (as a surrogate for organic HAPs), depending on the material burned. The Agency currently expects to propose the Subpart DDDDD MACT around August of 2002.

### **Action Items**

If you own or operate a facility that is a major source of HAPs, and you have one or more boilers or process heaters that fall within the scope of the Subpart DDDDD MACT, you must file a Part 1 application with your state permitting authority. In addition, it would be prudent to monitor EPA's development of the MACT standard and, to the extent practicable, participate as the Agency goes forward to set the MACT emission standards.

[Kenneth Meade](#)

[kenneth.meade@haledorr.com](mailto:kenneth.meade@haledorr.com)

<sup>1</sup> The Sierra Club has filed a petition for review of the April 5th rule; negotiations between EPA and the Sierra Club are ongoing as of the date of this Alert.

<sup>2</sup> EPA also expects to exclude combustion units subject to NSPS or other MACT standards — municipal waste combustors, medical waste incinerators, fossil-fired electric utility steam generating units, commercial and industrial solid waste incineration units, recovery boilers or furnaces, or hazardous waste combustion units.