
MACT Hammer Update

2002-09-09

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. That rule set certain deadlines by which affected sources must submit 112(j) applications to permitting authorities. In response to a judicial challenge to those regulations, EPA has negotiated and entered into a Settlement Agreement that will significantly expedite the timeframes within which certain submissions must be made pursuant to Section 112(j).^{112(j)}

Rulemaking Background

Section 112(j) of the Clean Air Act states that the owners/operator of a major source in a source category for which the EPA failed to promulgate a MACT standard must submit a permit application to the state permitting authority within 18 months of the missed deadline. 42 U.S.C. 7412(j)(2). The permitting authority is then required to issue “case-by-case MACT determinations” for each applicant’s facility. EPA’s April 5, 2002 Final Rule amended the 112(j) implementing regulations, 40 C.F.R. §§63.50 - .56, in essence bifurcating the 112(j) process by setting requirements for submission of Part 1 and Part 2 applications.

A Part 1 application¹, which is a simple notification providing very basic information with respect to the source and the applicable MACT source category, is due by the deadline set forth in Section 112(j) -- 18 months from the date EPA was required to promulgate the MACT standard.² Thus, for so-called 10-year MACT standards, which were due to be promulgated by November 15, 2000, the Part 1 applications were due May 15, 2002.

Part 2 applications, which must contain more detailed, comprehensive information about the

source, including emission data, control technology information, etc., are due within 2 years of submission of the Part 1 application (i.e., by May 15, 2004, for the 10-year MACT standards). It is only after receiving the Part 2 application that permitting authorities are required to issue case-by-case MACT determinations for permit applicants.

Litigation

On April 25, 2002, the Sierra Club filed a petition for review of the April 5th rule in the United States Court of Appeals for the District of Columbia Circuit (*Sierra Club v. U.S. Environmental Protection Agency*, No. 02-1135 (D.C. Cir.)). The petition sought review of a number of aspects of the final rule, including the 24-month deadline for filing Part 2 applications. The Sierra Club objected to the 24-month period for filing Part 2 applications, stating that the relevant provisions in Section 112(j) of the Act did not authorize any extension of the statutorily provided for 18 month deadline.³

After months of negotiations EPA and the Sierra Club have reached agreement resolving the challenge to the final rule, including the issue of the deadline for Part 2 application. On August 26, 2002, EPA published a Notice of Proposed Settlement Agreement and Request for Public Comment regarding the settlement. The proposed settlement, which is not subject to court review and approval, would "...reduce the time period between submission of part 1 applications...and submission of part 2 applications, from 24 months to 12 months." 67 Fed.Reg. 54804 (August 26, 2002).⁴

If this settlement becomes final and EPA amends the appropriate regulations accordingly, Part 2 applications for 10-Year MACT source categories will be due no later than May 15, 2003. EPA indicates in the Notice that it expects to issue final MACT standards for all source categories by 2004, and that therefore this time period "...should be sufficient to prevent any need for actual issuance of case-by-case determinations under section 112(j) for all or virtually all affected source categories." Id.

Pursuant to the Notice, EPA will take comments on the proposed settlement through September 25, 2002.

Action Items

If you own or operate a facility that is a major source of HAPs and EPA has not promulgated a MACT standard for your source category, you should have already submitted your Part 1

application. Your Part 2 application will be due one year earlier than previously provided, and therefore, you may find yourself working with your state permitting authority to develop a facility-specific MACT standard for your facility. As has been the case throughout the MACT standard setting process, it would be prudent to monitor EPA's development of the MACT standard for your source category and, to the extent practicable, participate as the agency goes forward to set the MACT emission standards.

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¹ The Part 1 form is available at <http://www.epa.gov/ttn/atw/112j/112jaypg.html>.

² If no Part 1 application was filed and a source is notified by the permitting authority that is subject to Section 112(j), the source has 30 days to file the Part 1 application. 40 C.F.R. 63.52(a)(2).

³ A coalition of industry groups filed a motion to dismiss the challenge, arguing that because the Sierra Club did not raise the issue of the extension for Part 2 applications in the public comment period after the proposed rule, it was precluded from challenging that portion of the Final Rule.

⁴ The settlement would also require that EPA promulgate amendments to the section of the MACT General Provisions that require preparation and submittal of Startup, Shutdown and Malfunction plans (40 C.F.R. 63.6(e)).