



State of Ohio Environmental Protection Agency

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January 23, 2009

Notification of this correspondence via Ohio EPA's Air Services Electronic News Service to all registered Air Services users as of January 23, 2009

Subject: Clean Air Act Section 112(j) "MACT Hammer" options for sources in the Industrial, Commercial, Institutional Boiler and Process Heater MACT Source Category and other source categories after a MACT rule is vacated by Court mandate

Dear Air Services User/Environmental Coordinator:

As you may be aware, the D.C. Circuit Court of Appeals vacated the "Boiler MACT" rule (40 CFR Part 63, Subpart DDDDD) on July 30, 2007. Following the court decision, Ohio EPA contacted U.S. EPA requesting clarification as to what was expected of Ohio EPA and the regulated community and was told that U.S. EPA planned to issue a comprehensive guidance document related to the Boiler MACT vacatur to the states. To date, the only information that we have is a verbal statement from U.S. EPA that they believe a vacated MACT rule triggers the MACT Hammer provisions under Section 112(j) of the Clean Air Act.

The Clean Air Act (CAA) as amended in 1990 requires U.S. EPA to develop Maximum Achievable Control Technology (MACT) standards for designated source categories by specific deadlines. Section 112(j) of the Clean Air Act requires an owner or operator of a major source of hazardous air pollutants to submit a Title V permit application to add a source-specific MACT standard to its permit should the U.S. EPA fail to promulgate emission standards for an applicable source category within 18 months after the promulgation deadline specified in the Act. The Boiler MACT rule was promulgated before the deadline passed, but it was later vacated by Court mandate. U.S. EPA takes the position that the vacated rule should be treated as if the agency had failed to promulgate the standard in the first place. This could trigger obligations under the MACT Hammer for sources in the Industrial, Commercial, Institutional Boiler and Process Heater source category (40 CFR Part 63, Subpart DDDDD), as well as others in source categories that were subject to rules now vacated by a Court mandate (e.g., Brick MACT (Subpart JJJJJ), Clay Ceramics MACT (Subpart KKKKK)).

If triggered, the MACT Hammer requires a complete and timely permit application for sources in the affected source categories. The MACT Hammer rules at 40 CFR 63.50 through 63.56 did not anticipate the present situation, so they do not set clear deadlines for filing a permit application when a rule is vacated. CAA Section 112(j)(2) requires

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

submission of a permit application within 18 months of the missed deadline for promulgating the MACT rule. If the date that the original Boiler MACT rule was vacated (July 30, 2007) is interpreted to be the missed deadline, a "timely" permit application would be due January 30, 2009, which is 18 months after the vacatur.

An alternate interpretation based on 40 CFR 63.52(a)(2) would set the obligation to submit a permit application 30 days after being notified in writing by the permitting authority. Ohio EPA is not providing such notice in this general communication with interested persons, and it intends to exercise its discretion to not make such written notifications at this time.

We are aware that some companies may choose to file protective permit applications by January 30, 2009 in order to meet this interpretation of the statutory deadline for Section 112(j). The purpose of this communication is to inform you of the federal notification requirements under Section 112(j) of the Clean Air Act and of Ohio EPA's position as to what constitutes a timely and complete permit application.

Applications for 112(j) are submitted in two parts. Part 1 of the application requests basic information from the source, such as the name and address and a brief description of the major source along with an identification of the types of emission points belonging to the relevant source category. Part 2 of the application requests more detailed information such as a listing of the HAPs emitted by the affected source, the control technology in place for each affected source and any other information relevant to establishing a MACT floor for that source. Part 2 applications are required within 60 days after a Part 1 application. Ohio EPA has 18 months to issue a permit in response to this application unless a final MACT standard is promulgated before the permit is issued. Ohio EPA is hopeful that U.S. EPA will promulgate a final Boiler MACT standard on or before the current court-ordered deadline of July 15, 2010.

At this time, Ohio EPA will not consider sources in the Boiler MACT source category or in other MACT source categories with rules vacated by court mandate in violation for failure to submit a permit application under Section 112(j) since the statutory deadline for submission of a permit application in this case is still unclear. Ohio EPA is asking that companies who elect to submit 112(j)-related information by January 30, 2009 only submit Part 1 forms (sample attached) and whatever additional information they deem necessary for a complete application. Ohio EPA will issue additional guidance concerning Part 2 applications in the near future. If the Responsible Official has obtained a PIN for electronic submittals via Air Services, this information should be submitted through Air Services by **January 30, 2009** as: "Compliance Report/Other" and indicate the submission is a Part I notification/application in the box provided to describe the type of compliance submission. Otherwise the facility can submit a hardcopy letter and follow up with an electronic submittal at a later time

If you choose to make a hard copy submission, please download the permit application form¹ or provide equivalent information and mail it postmarked by **January 30, 2009** to the following address, with a copy to the appropriate Ohio EPA District Office or Local Air Agency and a copy to U.S. EPA Region V in accordance with 40 CFR 63.55(b).

OHIO ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
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If you have any questions, please contact Andrew Hall at (614) 644-3602.

Sincerely,



Robert Hodanbosi
Chief, Division of Air Pollution Control

cc: Air Permit Advisory Group via Ohio EPA's Electronic News Service

¹ A copy of this letter, a suggested Part I notification, and future updates to this issue can be found by searching on Answer Place Topic 1647 at <http://ohioepa.custhelp.com/>

You can also sign up to be automatically notified of updates to this Answer Place topic.