

EPA Publishes New Air Emissions Standards for Commercial, Institutional and Industrial Boilers and Incinerators

March 2, 2011

On February 21, 2011, EPA finalized several Clean Air Act air quality regulations that will have widespread effect upon industries using combustion equipment like boilers and incinerators. These new regulations set emission limits and other requirements for:

- Small and large commercial, institutional and industrial boilers (commonly called the Boiler MACT);
- Commercial/Industrial Solid Waste Incinerators (CISWI); and
- Sewage Sludge Incinerators (SSI).

Also on February 21, 2011, EPA used its authority under the Resource Conservation and Recovery Act to finalize regulations defining the terms "fuel" and "non-hazardous solid waste," so that facilities burning solid materials may be classified as either "boilers" or "incinerators."

These rules will have widespread applicability. For example, EPA estimates that over 92,000 facilities will be affected by the Boiler MACT for small or "area" sources and approximately 14,000 facilities will be affected by the Boiler MACT for larger or "major" sources. Although the CISWI and SSI regulations are expected to affect fewer facilities, the majority of those subject to these regulations will likely be faced with installing costly pollution control equipment or finding an alternate waste disposal method. These new regulations will also interest those in the utility industry who combust fuel to generate steam or electricity, as EPA has indicated that it will use these regulations as a model for emission standards for utilities (commonly called the Utility MACT), which EPA expects to propose later this year.

EPA proposed these regulations in April 2010 and finalized them on February 21st to comply with court-ordered deadlines. EPA promulgated regulations serving the same purpose in 2004; however, that rulemaking was vacated in 2007 by the U.S. Court of Appeals D.C. Circuit. EPA's April 2010 proposal prompted the filing of thousands of comments from various industries that did not believe they could comply with the proposed emission limits. EPA characterizes the new regulations as less stringent than the April 2010 proposal, which will result in a "dramatic cut in the cost of implementation, while maintaining maximum public health benefits."

EPA plans to offer additional public comment while complying with its court-ordered deadline by announcing that it will reconsider the new Boiler MACT and CISWI regulations. The agency is soliciting comments on several aspects of the Boiler MACT and CISWI rules, which EPA believes would benefit from additional public input. EPA may issue notice of reconsideration of additional aspects of these rules in the future, as well.

This reconsideration does not, however, change the effective dates or compliance obligations in the new regulations. Each rule will become effective 60 days after it is published in the federal register.

Anyone using fuel or waste burning equipment (boilers, incinerators, process heaters, etc.) should assess their exposure and/or obligations under these regulations well in advance of any deadlines for compliance. This assessment should include (a) identifying each material combusted by the equipment and determining whether it is a "fuel" or a "waste," (b) documenting the equipment's maximum heat input in million Btu per hour, (c) identifying whether the equipment is

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"new" or "existing," and (d) identifying the appropriate subcategory within the respective regulation.

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