



Industrial Boiler MACT

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$800 billion in annual sales and with more than 750,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through research, advocacy, and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemicals, refining, plastics, steel, aluminum, cement, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical and brewing.

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BACKGROUND

- EPA published the final industrial Boiler MACT rules, knowing that flaws were included, to meet a court-ordered deadline. Boiler MACT and related rules sets emission limits for boilers used in a wide range of manufacturers (forest products, chemicals, agricultural products, refineries, furniture, foundries, food processors, etc.) as well as universities, small municipal power plants, biomass power plants, hospitals, and federal facilities.
- The rules are not achievable for real-world operation of boilers across the range of fuels and operating conditions. They also require extremely costly controls in some areas where work practices would be adequate to protect public health. The rules place at risk tens of thousands of jobs when our nation cannot afford any more job losses.
- Estimates show that the capital compliance costs for Boiler MACT are at least \$14 billion for manufacturing—plus billions more in operating costs. The rules are not affordable, which, for many facilities, means they are not achievable and could lead to closures.
- Businesses and facilities across the country already have invested hundreds of millions of dollars over the past few years to upgrade and improve their boilers to meet the previous EPA Boiler MACT requirements.
- EPA did not take advantage of Congressionally-granted flexibility in the Clean Air Act that could be used to develop cost-effective rules that protect public health while still protecting jobs. Over 230 members of Congress signed letters asking EPA to strike this careful balance.
- An achievable and affordable regulation that protects health and the environment is still possible and Congress should pass legislation to give EPA the time and direction it needs to revise the rules without the threat of further litigation and uncertainty.

HOW MIGHT THE EPA RULE CHANGE?

- EPA has stayed and agreed to reconsider the Boiler and Incinerator MACT rules. This allows the Agency to take more public comments and revise the regulations.
- Sierra Club has challenged EPA to make the rules even more stringent during the administrative reconsideration. In their most recent court brief, Sierra Club told the Court, this "is part of an agency scheme to indefinitely deprive these regulations of effect." They have also stated they intend to ask the court to vacate EPA's administrative stay. Recall that last December the court rejected EPA's request for an additional 15 months based on a Sierra Club petition.

HOW MIGHT THE EPA RULE CHANGE (CONT'D)?

- EPA realizes there are still significant improvements to be made to the final rules, but the ongoing legal challenges create great uncertainty for both the EPA and the regulated community.
- Given the breadth of issues that need to be reconsidered, the enormous complexity, cost and time it will take for engineering and construction, manufacturers need assurance that the compliance clock won't restart until the final rules are settled.
- **Latest Update:** On January 9, 2012, the DC Circuit Court vacated the stay of the Boiler MACT. U.S. District Judge Paul Friedman issued an opinion declaring unlawful EPA's Delay Notice regarding its final boiler MACT regulations, which it is in the process of reconsidering. When EPA issued its Final Boiler MACT regulations in May, it also, on its own motion, stayed the effectiveness of these regulations and moved to reconsider them.

Industry and Congressional attorneys are trying to figure out exactly what it all means. Therefore, uncertainty remains. However, it is believed that the deadlines in the final rule are now in effect.

WHAT CAN CONGRESS DO?

Members of Congress should cosponsor and pass H.R. 2250 & S. 1392 to:

- Legislatively stay the rules for at least 15 months to give EPA the time they were denied by the court to rewrite the rules. This will create certainty and prevent litigation from further delaying completion of these rules.
- Provide additional time for facilities to comply once the rules are finalized, so they can plan for the significant capital investments that are contemplated.
- Direct EPA to reissue the rules in a manner that ensures achievability across the range of fuels and operating conditions and using the least burdensome approach to protect jobs, health and the environment.
- Clarify that renewable and carbon-neutral materials remain classified as fuel and not solid waste under the NHSM rule.
- **Latest Update:** In February 2012, House Republicans are pushing for the inclusion of the Boiler MACT legislation in the payroll tax extender bill.

IMPLICATIONS TO MANUFACTURING

IECA member companies are not opposing meeting the goals of the Clean Air Act. We are opposing the unnecessarily costly approach proposed by the EPA that threatens competitiveness of manufacturing facilities through costly new capital and operating costs. Also, more time is needed for compliance for several reasons, including lowering costs.

H.R. 2250 and S. 1392 do not change the Clean Air Act. They simply allow manufacturing companies to achieve new air quality standards in a more cost-effective approach and provides regulatory certainty that is absent under EPA's final rule changes. Nonetheless, implementing new stringent air quality standards under H.R. 2250 & S. 1392 will cost our companies billions of dollars.

We believe that this legislation meets the intent of President Obama's January 18, 2011 Executive Order 13563 that calls for "Our regulatory system to protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." H.R. 2250 and S. 1392 are rational alternatives and we anticipate his support.

Latest Update: Cost is not the only issue facing manufacturers in regards to Boiler MACT. We are also facing uphill battles with compliance deadlines, limited resources, and technology problems.

■ **Compliance Issues**

The Boiler MACT rule allows for three years, plus one year to implement. This is going to be challenging for complex industrial sites and for those firms that have not already lined up their engineering and OEM resources. A site facing significant equipment upgrades could easily be looking at a three-and-a-half year project duration if everything goes well. However, once the market heats up, lead times will start to stretch for equipment delivery, amongst other items.

■ **Limited Resources**

If the rule is finalized mid-2012, industry will be in direct head-to-head competition with regulated utilities facing the Utility MACT regulations. Increased competition for the finite pool of engineering, OEM and fabrication resources will drive prices up, which is bad news for any company exposed to foreign competition. And due to the finite steelmaking and fabricating capacity in the U.S., some of the valuable fabrication work will be shipped offshore.

■ **Technology Problems**

The forthcoming timeline for Boiler MACT is completely out-of-synch with the even more troubling SO₂ NAAQS. Because most counties in the U.S. do not have ambient SO₂ monitors, most of the U.S. is “unclassifiable” for purposes of determining SO₂ attainment. The EPA is addressing this gap by mandating the use of computer models to determine attainment/non-attainment designations. Once the states go through the exercise of modeling for SO₂, much of the nation will find itself in non-attainment status. Sources all across the country are going to be faced with installing controls or switching fuels to address this problem. The problem is that the lowest-cost technology available to control HCl (for Boiler MACT) is much less expensive than the lowest-cost technology to control SO₂ (for SO₂ NAAQS). But the low-cost HCl technology (duct sorbent injection) is only marginally effective for controlling SO₂. There is a real and present danger that sources will spend a lot of money to control HCl for Boiler MACT, but then have to turn around and spend even more to address SO₂ NAAQS. If the deadline for Boiler MACT were pushed out a little bit further, the Boiler MACT and SO₂ NAAQS timelines would be effectively harmonized and sources would know their obligations under both rules, and could install a suite of technologies that address their entire needs. This type of coordinated approach would be vastly more cost-effective.

Last Updated February 1, 2012