

EPA Sets New Deadlines for Case-By-Case MACT Applications

In settlement of a lawsuit brought by the Sierra Club, the United States Environmental Protection Agency (EPA) has set new deadlines for certain categories of major sources of hazardous air pollutants (HAPs) to apply for case-by-case determinations of the maximum achievable control technology (MACT) for their individual facilities.

Section 112 of the Clean Air Act requires EPA to determine MACT emission standards for all categories of major sources of HAPs. EPA was required to complete promulgation of the MACT standards, also known as National Emission Standards for Hazardous Air Pollutants (NESHAPs), by November 15, 2000. Section 112(j) of the Clean Air Act provides that, if EPA fails to promulgate a NESHAP for any category of major sources, individual facilities within those categories must apply for case-by-case MACT determinations by May 15, 2002. This provision, which is sometimes referred to as the “MACT hammer” provision, was intended to ensure that EPA would issue the necessary NESHAPs on schedule.

EPA was not able to promulgate all the required standards by May 15, 2002. Most of the unpromulgated NESHAPs were, however, in an advanced stage of development at that time. EPA believed that unnecessary administrative burdens would result if individual facilities were required to submit detailed MACT analyses shortly before EPA completed its own MACT analysis. Therefore, EPA promulgated a regulation on April 5, 2002 to provide that sources subject to the 112(j) case-by-case MACT requirements could satisfy their obligations under Section 112(j) by submitting a registration statement, known as a Part 1 Application by May 15, 2002. Much more detailed and comprehensive case-by-case MACT applications, known as Part 2 Applications, would be required only if EPA failed to promulgate the necessary NESHAP regulations by May 15, 2004.

The Sierra Club challenged the April 5, 2002 regulation in court as an improper extension of the Clean Air Act Section 112(j) deadline. In settlement of the litigation, EPA and the Sierra Club agreed to a new schedule for submitting Part 2 Applications. It is anticipated that EPA will issue all of the required NESHAPs before the new deadlines and, therefore, it will not be necessary for any individual facilities to submit any Part 2 Applications.

In the new schedule, the various categories of major sources of HAPs that are not already governed by NESHAP regulations are divided into four groups. Part 2 Applications are due from major sources of HAPs in the following source categories according to the schedule below:

October 30, 2003

- Combustion Turbines
- Lime Manufacturing
- Site Remediation
- Iron and Steel Foundries
- Taconite Iron Ore Processing
- Miscellaneous Organic Chemical Manufacturing
- Organic Liquids Distribution
- Primary Magnesium Refining
- Metal Can (Surface Coating)
- Plastic Parts and Products (Surface Coating)
- Chlorine Production
- Miscellaneous Metal Parts and Products (Surface Coating)
- Asphalt/Coal Tar Application – Metal Pipes

April 28, 2004

- Industrial Boilers, Institutional/Commercial and Boilers and Process Heaters that do not burn hazardous waste
- Plywood and Composite Wood Products
- Reciprocating Internal Combustion Engines
- Auto and Light Duty Truck (Surface Coating)

August 13, 2005

- Industrial Boilers, Institutional/Commercial Boilers and Process Heaters that burn hazardous waste
- Hydrochloric Acid Production

EPA has agreed to promulgate NESHAP regulations for each of the foregoing categories of sources no later than 60 days before the Part 2 Applications are due for each source category. In the event EPA does not promulgate the appropriate NESHAP regulations in time, however, Part 2 case-by-case MACT applications will be due from facilities within the affected categories according to the schedule set forth above.

A fourth group of categories of sources were to have submitted Part 2 Applications by May 15, 2003 and some, but not all of the NESHAPs for those source categories have been published in the *Federal Register*. In the final regulation promulgating the new schedule, however, EPA stated that all of the NESHAPs for categories with the May 15, 2003 deadline had, in fact, been promulgated (*i.e.*, signed by the EPA Administrator) and would be published in the *Federal Register* in due course and, therefore, none of those categories of sources would be required to submit Part 2 Applications. The categories with the May 15, 2003 deadline include:

- Municipal Solid Waste Landfills
- Flexible Polyurethane Foam Fabrication Operations
- Coke Ovens: Pushing, Quenching and Battery Stacks
- Reinforced Plastic Composites Production
- Semiconductor Manufacturing
- Refractories Manufacturing
- Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing
- Asphalt Roofing Manufacturing and Asphalt Processing
- Integrated Iron and Steel Manufacturing
- Hydrochloric Acid Production and Fumed Silica
- Engine Testing Facilities and Rocket Testing Facilities
- Metal Furniture (Surface Coating)
- Printing, Coating and Dyeing of Fabrics
- Wood Building Products (Surface Coating)

The regulation promulgating the new case-by-case MACT application schedule has been signed by the EPA Administrator, but has not yet been published in the *Federal Register*. A copy of the regulation can be downloaded from EPA's website:

www.epa.gov/ttn/oarpg/t3/fr_notices/gpretd_fr2.pdf

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