

EPA Amends Deadline for Case-by-Case MACT Applications

The United States Environmental Protection Agency (EPA), as part of a settlement of a lawsuit filed by the Sierra Club against EPA, has amended the schedule for facilities in certain industries to apply for a case-by-case determination of the Maximum Achievable Control Technology (MACT) for those facilities.

Section 112 of the Clean Air Act requires EPA to regulate emissions of hazardous air pollutants (HAPs) through several different programs. Under one such program, EPA is required to develop a list of industries that include “major sources” of HAPs, and to promulgate regulations to require all major sources in each industrial category to install MACT controls. Section 112(e) sets forth a schedule for EPA to issue regulations setting MACT standards for each industrial source category. Since 1990, EPA has promulgated scores of such regulations, known as national emission standards for hazardous air pollutants (NESHAPs) and met interim milestones set forth in Section 112(e) in 1992, 1994 and 1997,

EPA was required to issue regulations covering the final group of industrial source categories by November 15, 2000, but dozens of source categories remained unregulated at that time. In the event that EPA missed a deadline for promulgating MACT standards, Section 112(j) of the CAA requires firms with facilities in the affected industry categories to submit applications for case-by-case determinations of MACT requirements for each individual facility. This provision is sometimes referred to as the “hammer” provision. These applications are due 18 months after the deadline missed by EPA, or by May 15, 2002.

In April 2002, EPA amended the regulations governing the Section 112(j) case-by-case MACT applications to allow sources to submit the applications in two parts. The Part 1 applications would primarily include general identifying information about the sources and were

due May 15, 2002. Part 2 applications would include much more detailed information about industrial processes and the applicable control techniques and were not due until May 15, 2004. At the time this new schedule was promulgated, EPA anticipated that it would be able to issue all the remaining MACT standards by May 15, 2004. Therefore, EPA amended the schedule for 112(j) applications to obviate the need for industrial source to prepare, and regulators to review case-by-case MACT applications that would become moot when EPA issued the final industry-specific MACT regulations.

The Sierra Club sued EPA, arguing that the new schedule for 112(j) applications was an unauthorized extension of the deadlines set forth in the CAA. To settle this lawsuit, EPA has agreed to a new schedule for issuing the final MACT regulations and for sources to submit Part 2 case-by-case MACT applications. Under the proposal, in most cases the deadlines for submitting Part 2 case-by-case MACT applications will be earlier than May 15, 2004. The deadlines for Part 2 applications for industrial boilers, institutional/commercial boilers, process heaters and hydrochloric acid plants would be extended to August 13, 2005. Part 2 MACT applications will be required only if EPA has not already promulgated a NESHAP rule covering the relevant industry. EPA has stated that it expects to meet the new schedule and, if it does, no Part 2 applications will be required.

In the event EPA fails to meet a deadline established in its settlement with the Sierra Club, EPA has proposed the following schedule for specific industries to submit Part 2 case-by-case MACT applications.

Part 2 case-by case MACT applications due by May 15, 2003:

- 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 and Manufacturing
- Asphalt Roofing Manufacturing and Asphalt Processing
- Integrated Iron and Steel Manufacturing
- Hydrochloric Acid Production and Fumed Silica
- Engine Test Facilities and Rocket Testing Facilities
- Metal Furniture (Surface Coating)
- Printing, Coating, and Dyeing of Fabrics
- Wood Building Products (Surface Coating)

Part 2 case-by-case MACT applications due by October 30, 2003:

- Combustion Turbines
- Lime Manufacturing
- Site Remediation
- Iron and Steel Foundries
- Teconite Iron Ore Processing
- Miscellaneous Organic Chemical Manufacturing (MON)
- 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) (and Asphalt/Coal Tar Application – Metal Pipes)

Part 2 case-by-case MACT applications due by April 28, 2004:

- Industrial BOLLERS, Institutional/Commercial
- BOLLERS and Process Heaters
- Plywood and Composite Wood Products
- Reciprocating Internal Combustion Engines
- Auto and Light-Duty Truck (Surface Coating)

Part 2 case-by-case MACT applications due by August 15, 2005:

- Industrial Boilers, Institutional/Commercial BOLLERS, and Process Heaters
- Hydrochloric Acid Production

EPA is accepting comments on the proposal until January 20, 2003. 67 Fed. Reg. 72875 (Dec. 9, 2002).

S. Lee Johnson