

D.C. Circuit Court of Appeals Decision on Boiler and Commercial & Industrial Solid Waste Incinerator (CISWI) Rules



Background Boiler and CISWI Rules

- March 21, 2011: EPA Promulgated Final Rules for Major Source Boilers, Area Source Boilers and CISWI Units
- In 2013: EPA issued Final Rule Reconsideration Amendments
 - Petitions for judicial review were filed
 - On July 29, 2016 the D.C. Circuit Court of Appeals issued a decision
- On Nov 20, 2015, EPA issued a second Final Rule Reconsideration to the Major Source Boiler Maximum Achievable Control Technology (MACT) Rule
 - Petitions for judicial review were filed

Overview July 29 D.C. Circuit Opinion

- The court rejected all industry challenges and most environmental group challenges to all three rules.
- The court **vacated** the Boiler MACT standards for subcategories where EPA did not consider all sources within the subcategory to calculate the emissions standards.
- The court **remanded** five requirements, without vacatur.
 - adequately explain how CO acts as a reasonable surrogate for non-dioxin/furan organic HAPs;
 - set emission standards for cyclonic burn barrels;
 - determine whether burn-off ovens, soil treatment units, and space heaters are CISWI units and, if so, set standards for those units;
 - adequately explain the exclusion of synthetic boilers from Title V's permitting requirements; and
 - adequately explain the choice of GACT standards over MACT standards for non-Hg metals.

EPA Petition for Rehearing Boiler MACT

- On Sept 12, EPA petitioned the court for a rehearing and requested vacatur of the numeric standards be converted to a remand without vacatur to avoid the environmental consequences of vacatur.
- EPA also filed a Sept 12 Declaration. Based on preliminary analysis, EPA has identified 11 existing source standards and 9 new source standards that would be affected by the court's decision.
- **The Boiler MACT emission standards remain in effect until the court issues its mandate.**

Preliminary subcategories and pollutants affected by the court decision

Subcategory	Pollutant
Existing Solid Fuel	HCL
Existing Solid Fuel	Hg
Existing Coal Stokers	CO
Existing Wet Biomass Stokers	CO
Existing Wet Biomass Stokers	PM
Existing Biomass Fluidized Bed	CO
Existing Biomass Fluidized Bed	PM
Existing Biomass Suspension Burners	PM
Existing Liquid Fuel	HCL
Existing Liquid Fuel	Hg
Existing Heavy Fuel	PM

Subcategory	Pollutant
New Solid Fuel	Hg
New Pulverized Coal Boilers	CO
New Coal Stokers	CO
New Biomass Fluidized Bed	CO
New Biomass Fluidized Bed	PM
New Biomass Suspension Burners	PM
New Biomass Hybrid Suspension Grate	CO
New Liquid Fuel	HCL
New Heavy Fuel	PM

National Emission Standard for Hazardous Air Pollutants (NESHAP) for Area Source Industrial, Commercial, and Institutional Boilers

40 CFR Part 63 Subpart JJJJJ
September 14, 2016 Reconsideration Amendments



Area Source Boiler Amendments

- EPA amended 3 provisions
 - **New large oil-fired boilers must burn ultra-low sulfur oil, rather than low sulfur oil, as an alternative to PM standard.** Sources have 3 years to switch to ultra-low sulfur oil or meet the PM standard.
 - **Boilers which performance test for PM at 50% or less than the PM emission limit must test every 5 years, rather than eliminate future performance testing.** Such sources who have already tested have 5 years from effective date of the amendments to test. Boilers that burn a new fuel type, other than ultra-low-sulfur liquid fuel or gaseous fuels, must conduct a new performance test within 60 days of burning the new fuel type.
 - **Coal fired boilers which fuel sample for Mercury (hg) at 50% or less than the standard must fuel sample every 12 months, rather than eliminate future fuel sampling.**

Area Source Boiler Amendments

- EPA retained requirements or made other minor changes under the reconsideration
 - Retained the subcategory and requirements for limited-use boilers
 - Made minor amendments to the proposed definitions of startup and shutdown
 - Made some limited technical corrections

For More Information on Boiler Rules

- <https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-standards-and-guidelines-energy-engines-and>

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