



D.C. Circuit Upholds Boiler MACT

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If there's any good news for industry in the recent 162-page decision issued by the United States Court of Appeals for the D.C. Circuit on the Boiler MACT, we can't find it. The court rejected all challenges by industry groups and handed environmental groups a major victory. At issue were approximately 30 challenges to what is commonly-known as the Boiler MACT, EPA's maximum achievable control technology standards for emissions of hazardous air pollutants ("HAPs") from large industrial "major source" boilers. The Boiler MACT applies to approximately 14,000 boilers nationwide. In addition to the major source standards, the court also considered challenges to the standards for smaller "area source" boilers and to standards applicable to commercial and industrial solid waste incinerators.

The "smack down" for industry includes the following:

- The court rejected the argument that malfunctions must be taken into account in setting emissions standards that apply continuously and agreed with environmental groups that EPA may address excess emissions resulting from malfunctions only through enforcement discretion.
- The court vacated the emissions standards for all subcategories of major source boilers where EPA decided that certain unusually high performing boilers did not have to be considered in calculating the so-called MACT floor, i.e., the minimum emission standards for a subcategory based on its best-performing sources.
- The court remanded to EPA for further explanation its selection of carbon monoxide as a surrogate for non-dioxin/furan organic HAPs, and questioned EPA's reasoning that good combustion would minimize emissions of both.

We could go on and on, but what's clear is that environmental groups are pleased with the decision, and industry groups are not. Industry groups believe they worked with EPA over many years to fashion pragmatic and achievable rules that protect the environment, yet the court held either that EPA was wrong or failed to justify its conclusions. Much of the court's decision remanded portions of the rules to EPA for further consideration or explanation, which means that there is still room for more litigation by both sides. Stay tuned.

United States Sugar Corp. v. EPA, No. 11-1108 (D.C. Cir. July 29, 2016).

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