



AIR and WASTE REGULATIONS to WATCH out for in 2011

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While [politicians](#) debate the impact of government regulation on job creation and economic growth, federal agencies such as the U.S. Environmental Protection Agency ("EPA") continue to move forward on significant rulemaking efforts that will likely result in promulgation of final regulations in 2011. Among the more significant of these rulemakings, EPA is scheduled to finalize several stringent air quality and waste regulations that have broad implications for in-house counsel advising business and industry clients.

One such regulation that has been the subject of the business community's ire is the "[Boiler MACT](#)." Pursuant to Section 112 of the federal [Clean Air Act](#), EPA must finalize the regulation of hazardous air pollutants ("HAPs") from various sources. Among the sources of HAP emissions targeted for regulation by EPA in 2011 are [industrial and commercial boilers](#). These regulations will impose maximum achievable control technology ("MACT") requirements for fossil fuel-fired combustion sources located at both major (generally industrial sources) and non-major "area" sources of HAPs (potentially impacting boilers at schools and universities, hospitals, municipal buildings and smaller manufacturing businesses). [Industry generally criticized](#) EPA's proposed new Boiler MACT regulations as imposing significant costs without corresponding environmental benefits. If promulgated in accordance with EPA's proposed rule, this Boiler MACT regulatory package may result in substantial additional costs for many owners and operators of fossil fuel-fired boilers.

EPA is also poised to promulgate significant additional regulations applicable to air emissions from electric generating units. The proposed utility MACT would primarily address the control of mercury emissions, following the vacatur by the Circuit Court of Appeal for the District of Columbia of EPA's prior mercury control regulation for the utility sector. The same Appellate Court also previously invalidated EPA's regulations governing the interstate transport of criteria pollutants generated by electric generating units (known as the [Clean Air Interstate Rule](#), or "CAIR"). EPA is therefore pursuing a replacement rule for CAIR, now known as the "Transport Rule," designed to also limit emissions of sulfur dioxide and nitrous oxides from these facilities. EPA continues to re-evaluate its approach toward this rulemaking, but nonetheless hopes to finalize the Transport Rule during 2011.

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AIR and WASTE REGULATIONS to WATCH (cont'd)

EPA is also scheduled to finalize and promulgate its new regulation of air emissions from [commercial and industrial solid waste incineration](#) ("CISWI") units. In conjunction with this air quality regulation, EPA is reevaluating the scope of its definition of "solid waste" for purposes of its CISWI air regulatory standards. EPA has proposed to substantially revise its characterization of solid waste for these purposes. Significantly, the combustion of many materials previously beneficially used as fuels may now be regulated as solid waste incineration under these federal standards. Further, because of EPA's associated reconsideration of the definition of solid waste for these purposes, these federal rulemaking packages may consequentially impact solid waste regulatory programs at both the state and federal levels.

In accordance with a judicial directive and statutory standards, EPA is also scheduled to finalize its determination regarding regulation of the management and disposal of ash generated by the combustion of coal, including for electricity generation. This issue has received significant national attention, as interested stakeholders have argued strenuously in favor of alternative regulatory schemes. Various environmental interests have pressed for regulation of coal combustion ash as a hazardous waste; by contrast, electric generating facilities and energy consumers insist that coal ash can be safely managed and disposed as nonhazardous waste, and the regulation of this material as hazardous waste would result in unnecessary and exorbitant costs that would adversely affect all aspects of the economy. EPA's pending proposal would regulate the material as nonhazardous waste.

Keeping abreast of complicated federal rulemakings like the proposed air and waste regulations described above can be a daunting task for in-house counsel, particularly given the restrictions on outside counsel budgets imposed by many companies in the last several years. Nonetheless, in-house counsel can rely on a variety of other sources to stay current on future rulemakings including industry trade groups, [chambers of commerce](#), [bar associations](#), and even [law firm websites](#). By understanding the implications of proposed regulations, corporate counsel can make informed decisions on the costs of commenting or challenging the regulations and/or mitigating the costs of compliance.