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The EPA's Proposed Area Source Boiler Rule: *Stringent Requirements Sought For Broad Array of Facilities*

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Special to the Legal

On June 4, 2010, the Environmental Protection Agency published in the Federal Register the new proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) for major sources for industrial, commercial, and institutional boilers and process heaters, (the Proposed Boiler MACT). (See 75 Fed. Reg. 32006.) The Proposed Boiler MACT would apply to existing and new industrial, commercial and institutional boilers and process heaters located at major sources of hazardous air pollutants (HAPs). Facility owners and operators and industry groups have been anticipating the issuance of the Proposed Boiler MACT since June 2007, when the D.C. Circuit Court of Appeals vacated the original NESHAP for boilers and process heaters at major sources.

Also on June 4, the EPA published in the Federal Register proposed NESHAP for industrial, commercial, and institutional boilers located at *area sources* of HAPs, (the Proposed Area Source Boiler Rule). (See 75 Fed. Reg. 31896.) The Proposed Area Source Boiler Rule would apply to thousands of facilities, such as schools and universities, hospitals, municipal buildings and small manufacturing facilities, that were not subject to the original NESHAP for major source boilers and, therefore, might not have been aware that new standards for area sources were forthcoming. This article will focus on the Proposed Area Source Boiler Rule.

According to Section 112(a) of the Clean Air Act (CAA), which governs HAPs, the term "area source" is defined as a stationary source of HAPs that is not a major source.



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The term "major source" is defined as a stationary source or group of stationary sources located in a contiguous area and under common control that emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAPs.

The EPA is required, under CAA Section 112(k)(3)(B), to identify at least 30 HAPs which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. The EPA identified the 30 HAPs from area sources that pose the greatest potential health threat in urban areas (the 30 urban HAPs) in its Integrated Urban Air Toxics Strategy, which provides an overview of the EPA's national program to reduce air toxics. CAA Section 112(c) requires EPA to list sufficient categories/subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAPs are subject to regulation. Under CAA Section 112(d), the EPA may establish NESHAP for area sources based on the performance of the maximum achievable control technology (MACT), which is determined by evaluating

the best-performing similar sources, or, alternatively, the use of generally available control technologies (GACT) including management practices.

The Proposed Area Source Boiler Rule applies to existing and new industrial, commercial and institutional boilers. The Proposed Area Source Boiler Rule defines the term "boiler" as "an enclosed combustion device in which water is heated to recover thermal energy in the form of steam or hot water." (This definition expressly excludes devices that combust solid waste, as defined under the Resource Conservation and Recovery Act, or RCRA, and waste heat boilers.) (See 75 Fed. Reg. 31930.)

Boilers combust coal and other materials, such as oil or biomass (e.g., wood) to produce steam or hot water, which is then used for energy or heat. Industrial boilers are generally used in manufacturing, processing, mining, and refining industries, and most industrial boilers are located at major sources of HAPs. By contrast, commercial boilers are typically used in commercial establishments, such as stores/shopping malls, laundries, apartments, restaurants, and hotels/motels. Institutional boilers are generally used in medical centers, such as hospitals and nursing homes, educational and religious facilities, and municipal buildings, such as courthouses and prisons. Most commercial and institutional boilers are located at area sources of HAPs.

Under the Proposed Area Source Boiler Rule, a boiler that burns at least 10 percent coal on a total fuel annual heat input basis is considered a coal-fired unit. A boiler that burns oil, or oil in combination with gaseous fuel, is considered an oil-fired unit (except if the boiler burns oil only during periods

of gas curtailment). And a boiler that burns biomass, or biomass in combination with a liquid or gaseous fuel, is considered a biomass-fired unit.

The Proposed Area Source Boiler Rule would establish emission limits and monitoring, recordkeeping and reporting requirements for existing and new affected boilers. These requirements represent both MACT and GACT for affected boilers, depending on the boiler's fuel-type classification — i.e., the proposed emission limits mercury and carbon monoxide, or CO, (as a surrogate for polycyclic organic matter) are based on MACT, while the proposed emission limits for particulate matter, or PM, (as a surrogate for certain HAP metals) are based on GACT.

Specifically, for new boilers, the Proposed Area Source Boiler Rule would impose emission limits for mercury, CO, and PM for coal-fired units, and emission limits for CO and PM for oil- and biomass-fired units. For existing boilers, the proposed rule would impose emission limits for mercury and CO for coal-fired units, and a CO emission limit for oil- and biomass-fired units; however, these emission limits for existing boilers would only apply to units with a designed heat input capacity of 10 million British thermal units per hour (MMBtu/hr) or greater. Owners and operators of affected boilers would be required to demonstrate initial compliance with the emission limits for mercury, CO and PM, as applicable, by performing stack tests, fuel analyses, and/or other testing requirements, depending on the unit's particular scrubber technology.

At least in some cases, existing boilers likely would not be able to meet certain emission limits in the Proposed Area Source Boiler Rule without installing add-on control technologies, modifying equipment components and/or affecting operational methods. These steps could result in substantial economic and practical implications for owners and operators of affected boilers.

In addition to these emission limits, the Proposed Area Source Boiler Rule would

require owners and operators of affected boilers to satisfy certain work practice standards. In particular, owners and operators of existing boilers with a designed heat input capacity of 10 MMBtu/hr or greater would be required to perform an energy assessment on the boilers to identify cost-effective energy conservation measures. In the preamble to the Proposed Area Source Boiler Rule, the EPA explains that it did not have sufficient information to determine whether implemen-

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tation of cost-effective measures would be economically feasible; therefore, the EPA is seeking comment on this issue. Alternatively, owners and operators of existing boilers with a designed heat input capacity of less than 10 MMBtu/hr would be required to implement a boiler tune-up program.

Owners and operators of existing affected boilers would be required to comply with the standards in the Proposed Area Source Boiler Rule no later than three years after the date of publication of the final rule in the Federal Register. Owners and operators of new affected boilers

would be required to comply upon the date of publication of the final rule in the Federal Register. The EPA is expected to finalize the NESHAP for area source boilers by December 2010.

The EPA estimates that the Proposed Area Source Boiler Rule would result in total costs for existing units of nearly \$700 million, and more than \$300 million for new units. The EPA also estimates that the Proposed Area Source Boiler Rule would result in approximately \$1 billion in total annualized costs for existing and new units for installing necessary emission controls, conducting biennial tune-ups, performing required energy assessments and implementing testing and monitoring requirements.

As highlighted above, the Proposed Area Source Boiler Rule would apply to a wide variety of facilities, even including those with minor HAP emissions and/or small boilers. Owners and operators of these facilities may be required to meet stringent emission limits and other requirements, which could result in meaningful costs and practical challenges for many sources. Accordingly, potentially affected boiler owners and operators may wish to submit comments to the EPA on the potential implications of the Proposed Area Source Boiler Rule, including comments on the applicability of the proposed rule, technical and economic feasibility considerations, and anticipated operational hurdles, among others. The EPA is accepting comments on the Proposed Area Source Boiler Rule until Aug. 3. •

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