

## **Q & A: BOILER MACT AND OTHER REMANDED FEDERAL STANDARDS**

September 28, 2007

### **Background:**

On June 8, 2007, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the NESHAP for Industrial, Commercial and Institutional Boilers and Process Heaters ("Boiler MACT," 40 CFR 63 Subpart DDDDD). The court decision also vacated and remanded the CISWI Definitions Rule, i.e., parts of the NSPS for Commercial And Industrial Solid Waste Incineration (CISWI) Units constructed after 11/30/1999 or modified/reconstructed on or after 6/1/2001 (40 CFR 60 Subpart CCCC) and the Emissions Guidelines for CISWI Units constructed on or before 11/30/1999 (40 CFR 60 Subpart DDDD). Prior to this court decision, 40 CFR 60 Subpart CCCC and 40 CFR 63 Subpart DDDDD had been incorporated by reference into DEQ's Air Quality Rules under OAC 252:100, Subchapter 2 and Appendix Q. The CISWI guidelines in 40 CFR 60 Subpart DDDD were incorporated into Subchapter 17 of the AQ Rules. DEQ will propose removing these references in the OAC in 2008.

In addition, EPA remanded all or part of several other MACT standards (See Table 1 at the end of the document) in response to other court decisions.

Of particular concern to some facilities is the compliance date (9/13/07) for existing boilers and process heaters under the Boiler MACT. In addition, some facilities may have submitted eligibility demonstrations for health-based compliance alternatives under the Boiler MACT.

A number of Title V Operating Permits have been issued that incorporate the requirements of the standards that have now been vacated. The following questions and answers attempt to communicate AQD's understanding and position on the status of these rules and permits.

**Q: Does the DEQ consider the Boiler MACT a vacated standard even though it has been adopted by reference?**

A: Yes.

**Q: My Title V Operating Permit has Boiler MACT language in it, can we take it out or should we continue to comply with all requirements of the permit?**

A: If the condition(s) in the permit are specifically referenced to a vacated section of the rule, we suggest you request a minor modification of your permit to remove the reference. If the condition references the rule but the requirement is requiring a test, specific monitoring or some other variable that is also being used to satisfy another underlying requirement (e.g., NSPS requirement) then you should continue to comply with the permit condition.

**Q: We are installing a new boiler...what applies?**

A: If the boiler is being installed at an existing source that is already major for HAPs and/or the boiler being installed is itself major for HAPs, it will be subject to a Case-by-Case MACT (112(g)) determination. We are waiting for guidance from EPA as to what would apply if the new boiler/project is not major for HAPs.

If a new facility is being constructed and HAP emissions for the facility are above the major source threshold, all boilers and/or process heaters should go through a Case-by-Case MACT determination.

**Q: Does the “MACT Hammer” (i.e. 112(j)) apply to us?**

A: It is our understanding that EPA staff believes that the “MACT Hammer” is an applicable requirement. We are currently waiting on guidance on how to implement the requirements. More information will be available once EPA releases a guidance document they are currently working on.

**Q: In the event it is determined the “MACT Hammer” does apply, what is the timeline for implementing these requirements into a permit?**

A: The requirement to submit a Part 1 MACT application is not triggered until the DEQ notifies a facility that the “Hammer” now applies to them. Once this notification occurs, the facility has thirty (30) days to submit the Part 1 MACT application. After submitting the Part 1 MACT application, the facility has sixty (60) days to submit the Part 2 application. DEQ will then have sixty (60) days to notify the facility whether the application is complete or not. There is a period of about six months built into this section of the rule to allow incomplete letters/responses to be traded back and forth. However, if and when the permitting authority notifies a facility the application is complete, the DEQ has eighteen (18) months to issue a permit addressing the requirements of the rule.

Since we currently do not believe the rule applies, we do not intend to make this official notification. However, TV permitting actions associated with existing facilities with boilers may force a resolution to this issue.

**Q: I submitted a Part 1 MACT application several years ago...will I have to do it again?**

A: EPA stated they believe the Part 1 applications submitted previously may satisfy the requirement to submit. They were hoping to address this issue in a forthcoming guidance document.

**Q: We already have Boiler MACT language in our permit. If it is determined later that 112(j) does apply, can that language remain in our permit “as is” and, as a result, satisfy the 112(j) requirements (provided the references are modified)?**

A: The forthcoming EPA guidance document should address this issue.

**Q: What if my boiler burns wood waste?**

A: It is our understanding that the definition of an “affected source” in the CISWI rule will be revised to include any boiler that burns a solid waste. If this revision is made, units that burn solid wastes will then be subject to the CISWI rule and not the Boiler MACT. EPA has been asked to examine whether these materials that are burned for energy recovery are solid wastes within the meaning of the Solid Waste Disposal Act (SWDA). In such a review, EPA could determine whether wood wastes or other biomass materials that are burned for energy recovery

are actually discarded or reused as products. If a material is not a solid waste within the meaning of the SWDA, the unit in which it is burned would not be covered under the CISWI rule.

**Q: Should we make official notification that we would like to withdraw the application we submitted to modify our Title V Operating Permit for use of the Health-Based Compliance Alternative (HBCA)?**

A: We are currently advising sources not to do so. More on this will come at a later date.

**Q: When will a new boiler rule be proposed?**

A: It is our understanding that a new rule will have to be developed to address the new universe of affected units. Our best guess would be between two and three years.

**Q: When will we know what we should do?**

A: The DEQ intends to keep this document updated with information as it changes or becomes known. Please check our web site regularly for these updates. The footnoted date will change each time we update the document with new information, and we will also provide a mechanism in the document to alert you to a change in an answer from an earlier version of the document.

**Q: I have applied for the risk-based exemption under the Plywood MACT. What are my options for complying with the rule?**

A: On June 19, 2007, the risk-based exemption was remanded, but the standards were left in place. Since the risk-based exemption no longer applies, sources must comply with the standard by the applicable date stated in the rule. Note: In February 2006, EPA extended the compliance date for existing sources from October 1, 2007 to October 1, 2008 (71 FR 8342). DEQ recognizes that complying with the standard by this date may present hardship for some facilities. Sources that need additional time should request an extension under 40 CFR § 63.6(i). This extension must be submitted as a significant modification to the TV permit, and contain the information required by AQD rules and 40 CFR § 63.6(i)(10).

All questions and/or comments should be directed to Richard Kienlen at 405-702-4100 or [Richard.Kienlen@deq.state.ok.us](mailto:Richard.Kienlen@deq.state.ok.us).

## *Court Actions to Vacate MACTs*

<b>MACT Category ( Subpart ) Compliance Date</b>	<b>Date of Court Decision</b>	<b>Type of Decision</b>	<b>Effective Date and Type of Court Mandate</b>	<b>Date of 112(j) Applicability</b>
<i>Brick</i> ( JJJJ ) May 2006	3/13/07	Full Vacatur	6/18/07 Full Vacatur	6/18/07
<i>Clay Ceramics</i> ( KKKKK ) May 2006	3/13/07	Full Vacatur	6/18/07 Full Vacatur	6/18/07
<i>Boiler</i> ( DDDDD ) Sept. 2007	6/08/07	Full Vacatur	7/30/07 Full Vacatur	7/30/07
<i>CISWI Definition Rule</i> ( NSPS CCCC & DDDD )	6/8/07	Full Vacatur of 9/22/2005 definition – the 12/1/2000 rule remains effective	7/30/07 Partial Vacatur	Not applicable for Part 60 NSPS rules
<i>Plywood</i> ( DDDD ) July 2007	6/19/07	Partial (low risk subcategory & compliance extension)	Pending Partial Vacatur	Not applicable on partial vacaturs

Court Actions Table provided by NACAA (& updated by DEQ).

DEQ's Web Address:

<http://www.deq.state.ok.us/>

AQD Factsheets Web Page:

<http://www.deq.state.ok.us/factsheets/index.htm#AQfactsheets>

This Q&A was based on a similar document developed by the Mississippi DEQ, and adapted by permission for Oklahoma.

MDEQ's Web Address: [http://www.deq.state.ms.us/MDEQ.nsf/page/Main\\_Home?OpenDocument](http://www.deq.state.ms.us/MDEQ.nsf/page/Main_Home?OpenDocument)