



David Shanks, Boeing Policy Analysis  
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# FEDERAL INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL (ICI) BOILER RULE UPDATE

# Final Rules

- NESHAP for ICI Boilers and Process Heaters at Major Sources
  - Published Jan. 31, 2013
  - Preceded by March 2011 rule, court stay, and EPA reconsideration.
- NESHAP for ICI Boilers at Area Sources
  - Published Feb. 1, 2013
  - Preceded by March 2011 rule, “no action assurance letter,” and EPA reconsideration
  - *Note that gas-fired boilers are outside this rule*
    - *Fuel oil backup for gas curtailment still “gas-fired”*

# Final Rules

- Two related CISWI rules:
  - NSPS and Emission Guidelines (existing sources) for Commercial and Industrial Solid Waste Incineration (CISWI) Units
  - Identification of Non-Hazardous Secondary Materials that are Solid Waste, when used as fuel or ingredients in combustion units.
    - Both published March 21, 2011
    - Preceded by partial vacatur and remand of Dec. 2000 rules

# Unsettled Issues

- Parties filed at least 13 administrative petitions for reconsideration
  - Including industrial associations, Council of Industrial Boiler Operators, and environmental advocates
- Many also filed suit in D.C. Circuit Court.
- EPA agreed to propose reconsideration rules for specific issues, other issues remain in the lawsuits.

# Reconsideration Proposals

- On Jan. 21, 2015, EPA published reconsideration proposals for:
  - Major Source NESHAP—3 issues and numerous “corrections”
  - Area Source NESHAP—5 issues and corrections
  - CISWI—4 issues and corrections
- Also proposed to remove affirmative defense for malfunctions, to address court ruling
- March 9 comment deadline
  - Next Monday

# Major Source NESHAP

## Reconsideration

- Definition of startup and shutdown, and expanded “clean fuel” list at startup
- 130 ppm CO limit for certain subcategories (surrogate for formaldehyde)
  - Environmental groups claim not = MACT floor
- Use of PM continuous parameter monitoring systems to indicate emission exceedances
  - For solid/liquid fuel units > 250 mmBtu
  - Jan 2013 rule allows some parameter exceedances
  - EPA proposes no change, but accepting comment

# Major Source NESHAP

## Reconsideration, cont.

- 3 full pages of “technical corrections”
  - Including *removal* of requirement for Gas 1 (e.g. natural gas) units to record:
    - total operating time and
    - date, time, occurrence, and duration of each startup and shutdown, and type/amount of fuel burned during each startup and shutdown
      - drafting error that served no purpose for Gas 1 units
    - “Gas 1” allows for fuel oil backup during gas curtailments

# Area Source NESHAP Reconsideration

- Definitions of startup and shutdown
- No PM limit if burning low sulfur oil (0.5%)
  - Require 15 ppm ultra low sulfur oil or PM limit?
- Environmental group concerns about:
  - Lesser requirements on limited-use boilers
  - Exempting units with low PM emissions in initial performance test from further testing
  - Exempting further Hg sampling if initial coal sampling show  $< \frac{1}{2}$  the Hg limit



# CISWI Reconsideration

- Use of CEMS data during startup needs review due to partial waste feed
  - MACT floor analysis review due to changes in waste-burning kiln inventory
  - MACT floor review for coal-fired CISWI
  - Compliance calculation method for waste-burning kilns that combine emission streams prior to discharge
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# Lawsuits

- Major Source NESHAP (*US Sugar Corp v EPA*)
  - Final briefs filed Feb. 11
  - Environmental groups challenge MACT floor calculations and CO as surrogate for HAP
  - Boiler owners challenge “energy assessment” as beyond statutory authority
- Area Source NESHAP (*ACC v EPA*)
  - Final briefs filed Feb. 18
  - Environmental groups seek numeric limits, not work practices
  - Boiler owners challenge “energy assessment”

# Lawsuits

- CISWI Emission Rules (*American Forest & Paper Assoc. v EPA*)
  - Briefs filed Feb. 9
  - Arguments are primarily about MACT floor calculations
- Secondary Materials Rule for CISWI (*EcoServ. Operations LLC v EPA*)
  - Briefing concluded in Nov. 2014
  - Arguments about materials eligible for CISWI vs. hazardous waste combustors



# Lawsuits

- On Feb. 19, petitioners in all suits asked for expedited oral argument and a remand of rules back to EPA.
    - On Feb. 26, the Court denied these and set oral argument for all 4 cases in Fall term 2015
    - Fall term generally begins in early September
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# Compliance Deadlines

- Final rules are effective now for new or reconstructed units.
- Compliance deadlines for existing units:
  - Area source NESHAP—all deadlines have passed
  - Major source NESHAP—Jan. 31, 2016.
    - EPA estimate of capital costs to comply more than \$4.7 billion. Significant modifications and construction schedules involved for solid fuel boilers.
  - CISWI—March 21, 2016 or 3 years after state plan approval

# Deadline Problem

- Reconsideration rules likely not final until summer 2015
- Ruling from D.C. Circuit Court might not occur until after Jan. 2016 compliance deadline for major source boilers
- Affected parties are seeking deadline reset in reconsideration rule comments and lawsuit briefs
  - No indication from EPA that it will voluntarily reset compliance deadlines (cites 1 year case- by-case extension available in rules)
  - Full or partial judicial remand could trigger reset



# In the Meantime

- Parties least affected (boiler tuneups and energy assessments) have met or plan to meet compliance deadlines.
- Parties most affected (major capital investments required) face tough decisions
  - Weighing any remedies found in reconsideration proposals
  - Weighing specific elements in lawsuits that could provide relief or move the emission goalpost further away
  - Do preliminary design now and hold construction, or build to best estimate of outcome?