

# **BMACT/112(j)(g) INDUSTRIAL PERSPECTIVE**

**The State Bar of Michigan and the East-Michigan and West-Michigan Chapters of the**

**Air & Waste Management Association**

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# Boiler MACT Decision (June 19, 2007)

- Vacated CISWI Definition Rule
  - Inconsistent with plain language of section 129
- CAA language is unambiguous; solid waste incineration unit = distinct operating unit of any facility which combusts any solid waste as defined under RCRA-OSW
- Vacated Boiler MACT
  - Court concluded that the Boiler MACT must be substantially revised due to vacatur of CISWI Definition Rule
- Did not address merits of "other" Boiler MACT issues



# Does 112(g)/(j) apply in the case of vacated standards?

- 3 possible answers:
  - No; it was a one-time provision that became moot when EPA adopted standards, regardless of their adequacy, and the CAA established a window of 18 months following the deadline for standards during which it would apply.
  - Yes; any standards adopted by EPA under the Act must meet the statutory requirements and if a court vacates the standard in its entirety, it follows that EPA failed to promulgate [approvable] standards by the deadline and 112(g)/ (j) applies until such time as EPA remedies the deficient standard.
  - No; The vacated standard essentially removes the source category. Therefore, no category exists for which the hammer may fall!



# Applicability of 112(g)/(j)

- Intended to come into play if EPA failed to promulgate MACTS for source categories
  - Not really intended for rule promulgation/vacatur
  - **But EPA believes 112(g)/(j) apply**
  - Industry has never conceded that point.
- Case-by-case MACT implementation by delegated authorities
  - CAA Section 112(j) – existing sources
  - CAA Section 112(g) – new sources



# EPA Steps Toward Future Revised Boiler MACT

- EPA continues seeking Paperwork Reduction Act (OMB) approval to implement 112(g)/(j)
- EPA received OMB approval to issue CAA Section 114 Request for data from Boiler MACT covered sources to write revised Boiler MACT (8/01/08)
- EPA has proposed a Rule Making time line for Boiler, CISWI and Area Source MACTs with a Proposed Rule by July 2009 and a Final Rule by July 2010
- Earth Justice has until (11-15-08) to accept the timeline
- OSW is working on a NOPR on a Fuel/Waste Definition



# To Do What????

- **If common sense does not prevail, industry could have 5 different standards potentially regulating their boilers:**
  - State Boiler MACT Standards
  - EPA 112(g)/(j) – Hammer Process
  - Re-written Federal Boiler MACT Standard (will the MACT floors be lowered?)
  - Re-written Commercial Industrial Solid Waste Incinerator (CISWI) Standard
  - Area source MACT Standard



# If 112 (j) Applies, what will emission source owners have to do to comply?

- Part 1 applications:
  - Immediately in the owner or operator can reasonably determine that one or more sources at the major source belong in the category of subcategory subject to 112(j)
  - Within 30 days following notification by the State that a permit is required
- Part 2 applications:
  - 60 days following the deadline for submission of Part 1 application (NACAA's complication... )



## What will States have to do to comply with 112(j)?

- Determine completeness within 60 days after receipt of Part 2 application, or application is deemed complete
- If found incomplete, State must provide a reasonable period for the source to 6 months to cure deficiencies
- Issue Title V permit incorporating section 112(j) requirements within 18 months after submission of complete application



# State Activity Under 112(g)/(j)

- No consistency among states or EPA Regions
  - Some states claim does not apply
  - Some have requested Part 2 submissions saying prior Part 1's are effective (IL, MN)
  - SC has its own State Regulation which references the vacated federal Boiler MACT standard
- States anticipating EPA guidance, and some are delaying action pending that guidance
- EPA guidance rumored to be forthcoming
  - But may only cover "process" such as timing of submissions following state requests, not basis



# NACAA "Model Rule"

- Development of a "Model Rule" intended to be used with 112(g)/(j) case-by-case MACT process
  - NACAA (National Association of Clean Air Agencies)
  - ICAC (Institute of Clean Air Companies)
  - States
  - Environmental NGOs
- Completed May 2008
- Does not include HBCA
- No Consideration for Alternative Fuels

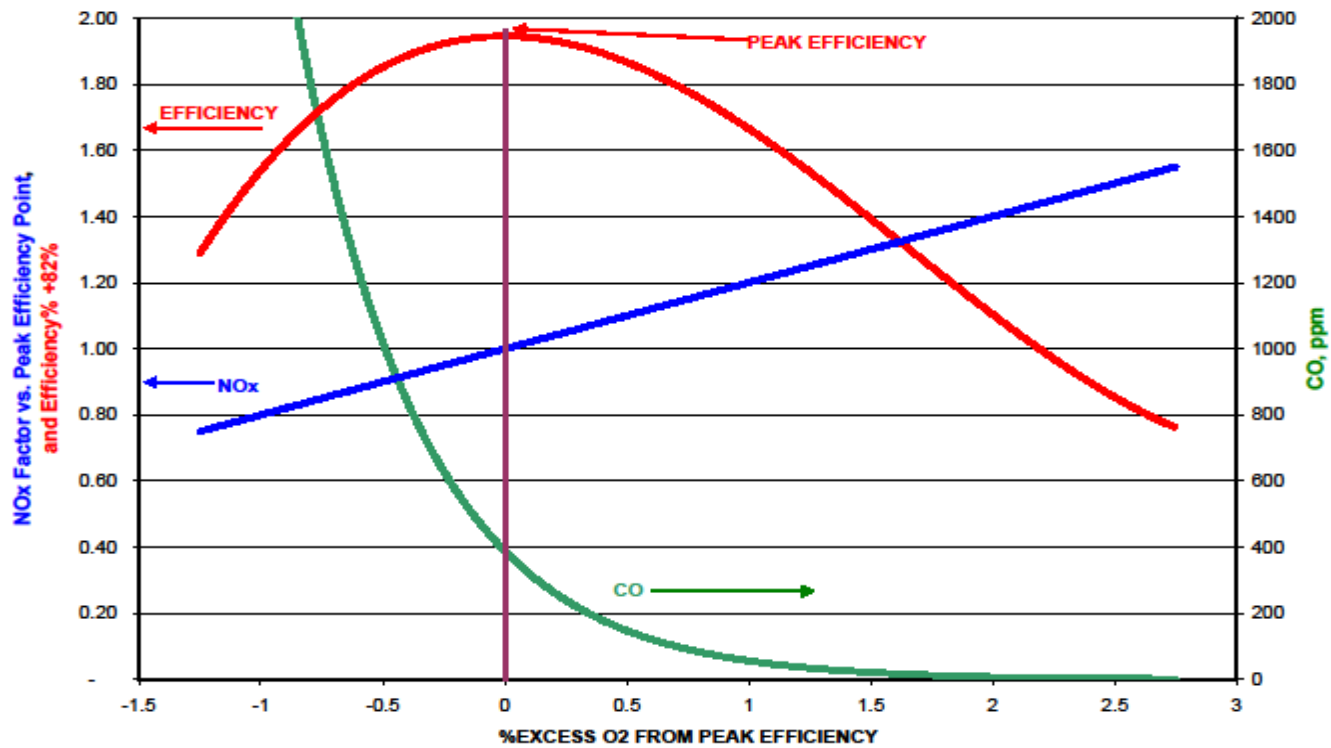


# NACAA “Model Rule” Areas of Concern

- MACT-ON-MACT
- Data Link Between Surrogates and HAPs
- MCR Compliance Data Points for CO & PM
- Conclusions Based on Numbers Not Performance
- Health Based Compliance Alternative (HBCA)



### COMBUSTION PERFORMANCE AS A FUNCTION OF EXCESS O<sub>2</sub>



## *Complicating Factors*

- EPA Boiler MACT ICR Part 1, Due Oct. 6 & 26, 2008
- CAIR Rule Vacated July 11, 2008 (Litigation)
  - Is It In or Out?
- Ever-Changing NAAQS – PM & Ozone (Litigation)
- Beginning Process for NO<sub>x</sub> and Sulfur NAAQS
- State SIP Requirements -- The Modeling Conundrum
- High Energy Prices Continue
- November 4, 2008 – A New Administration???
- Few Know the “WHY”; and, Everyone’s a Boiler Expert

