

March 11, 2002

## **EPA Revises the Requirements of the “MACT Hammer”<sup>©</sup>**

By David M. Friedland and Justin A. Savage, Beveridge & Diamond, P.C.\*

### **Introduction**

The U.S. Environmental Protection Agency (“EPA” or “Agency”) recently amended the so-called “MACT Hammer” regulatory requirements under Section 112(j) of the Clean Air Act (“CAA” or “Act”). See “National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with the Clean Air Act Sections 112(g) and 112(j)” (signed Mar. 4, 2002) (the “Rule”) (copy available from Beveridge & Diamond’s website). This rule significantly lessens permitting burdens for States and regulated entities, as explained in detail below.

### **An Overview of Section 112(j)**

Under the Act, EPA must promulgate emission standards -- known as Maximum Achievable Control Technology (“MACT”) standards -- for certain categories of stationary sources that emit hazardous air pollutants (“HAPs”). See 42 U.S.C. § 7412(d). Generally, MACT standards are aimed at “major sources” of HAPs, namely those stationary sources that have the potential to emit 10 tons per year of any single HAP, or 25 tons per year of any combination of HAPs. See, e.g., 42 U.S.C. § 7412(a)(1).

The CAA established a ten year schedule for EPA’s promulgation of MACT standards. See 42 U.S.C. § 7412(e). Pursuant to that statutory schedule, EPA was to have completed its issuance of MACT standards by November 15, 2000. See *id.* § 7412(e)(1)(E). Failure to meet that deadline triggers the “MACT Hammer” of Section 112(j). It requires major sources subject to untimely MACT standards to submit permit “applications” to a state permitting authority “beginning 18 months” after November 15, 2000. 42 U.S.C. § 7412(j)(2). Because EPA missed the November 15, 2000 deadline for over twenty five source categories, major sources in those categories are required to submit permit applications “beginning” 18 months later, which is May 15, 2002. See <http://www.epa.gov/ttn/atw/mactupd.html> (listing late MACT standards such as standards for numerous coating categories, heaters and boilers, *etc.*).

Based on those applications and other information, state permitting authorities must impose emission limitations that are “equivalent to” the limitation that would apply to the source

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\*Mr. Friedland is a Director and Mr. Savage is a Senior Associate in Beveridge & Diamond, P.C.’s Washington, D.C. office. The views expressed in this paper are solely the authors’ personal views, and they do not constitute legal advice.

if a MACT standard had been timely promulgated. See 42 U.S.C. § 7412(j)(2). To determine this equivalent emission limit, state permitting authorities perform a "case-by-case" MACT analysis for a particular source. See 42 U.S.C. § 7412(j)(5). The resulting case-by-case MACT standard is incorporated into a "Title V" permit under the Act. Id.; see also CAA, Title V, 42 U.S.C. § 7661-7661f; 40 C.F.R. Parts 70-72 (2001) (EPA's Title V regulations).

### **The Rule's Interpretation of the MACT Hammer Deadline**

Under the Rule, affected sources need only submit "Part 1 Applications" by the MACT Hammer deadline of May 15, 2002. See Rule, at 157-58 (to be codified at 40 C.F.R. § 63.52(a)). The Part 1 Application contains only "basic information." EPA, "Fact Sheet: Final Amendments to the 'General Provisions' of National Emission Standards for Hazardous Air Pollutant Emissions," at 2 (Feb. 5, 2002) (copy available from Beveridge & Diamond's website). Such information includes, for example, the name and address of the major source, and an identification of the relevant source category (e.g., semiconductor production). Rule, at 177-78 (to be codified at 40 C.F.R. § 63.53(a)); see also id. at 61-62.<sup>1</sup>

Part 2 Applications are due 24 months after Part 1 Applications, i.e., by May 15, 2004. See Rule, at 168 (to be codified at 40 C.F.R. § 63.52(e)). The Part 2 Application must contain information necessary to develop a case-by-case MACT standard equivalent to the standard EPA would have promulgated. For example, a Part 2 Application must include a source's HAP emission rates, existing emission limitations applicable to the source, and information regarding emission controls or techniques used in plants in the same source category. See Rule, at 178-180 (to be codified at 40 C.F.R. § 63.53(b)); see also id. at 62-63.

For both Part 1 and Part 2 Applications, permitting authorities may grant an extension of up to six months to remedy any deficiencies in a submitted application. See, e.g., 42 U.S.C. § 7412(j)(4); Rule, at 172; EPA, "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Act Sections, Sections 112(g) and 112(j): Background Information for Promulgated Standards," at 55-56 (Feb. 2002) ("BID") (copy available from Beveridge & Diamond's website).

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<sup>1</sup>Specifically, a Part 1 Application must also include the following: (1) an "identification" of any affected source for which a MACT determination pursuant to Section 112(g) of the Act has been made; (2) a "brief description" of the major source; and (3) an "identification of the types of emission points belonging to the relevant source category . . ." Id. Significantly, identifying the types of emission points "belonging" to the source category does not require a source "to list every valve, flange" or other piece of equipment at the plant covered by the source category. BID, at 68. EPA believed that such a requirement would be "burdensome . . ." Id. So, the Part 1 Application need only note that "there are valves, flanges," or other "types" of equipment at a facility covered by a relevant source category. Id. at 68-69.

Once a complete Part 2 Application has been submitted, a state has eighteen months to issue or revise a Title V permit to incorporate the case-by-case MACT standard. See, e.g., 42 U.S.C. § 7661b(c); BID, at 56.

### **The Importance of EPA's Approach**

The Rule alleviates enormous and unnecessary permitting burdens that would have been foisted upon States and regulated entities as a result of EPA's failure to timely promulgate numerous MACT standards. EPA estimates that over 80,000 sources would have been required to submit full blown permit applications by the MACT Hammer deadline of May 15, 2002 absent the amendments in the Rule. See Rule, at 48. That permitting process would have required substantial State and private resources in an attempt to discern case-by-case MACT "equivalent" to a MACT standard that EPA never issued. Assuming that it withstands any legal challenges, the Rule mitigates these concerns by requiring that only basic information be submitted by the Hammer Deadline as part of the Part 1 Application. See, e.g., BID, at 65 ("The Part 1 application is intentionally brief so that completing it will not be a complicated, burdensome requirement.").

As noted, the information necessary to develop case-by-case MACT standards must be submitted on May 15, 2004 as the Part 2 Application. This will hopefully provide the breathing room necessary for EPA to promulgate MACT standards for the remaining source categories. If EPA were able to do so, case-by-case MACT determinations would become unnecessary. See, e.g., 42 U.S.C. § 7412(j)(6).

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For further information, contact David M. Friedland, [dfriedland@bdlaw.com](mailto:dfriedland@bdlaw.com), (202) 789-6047, or Justin A. Savage, [jsavage@bdlaw.com](mailto:jsavage@bdlaw.com), (202) 789-6094.

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