

Determining whether the replacement alters the basic design parameters of the process unit may be one of the stickier points of the new rule. Basic design parameters include the maximum rate of fuel consumption or heat input for combustion sources and the maximum raw material/fuel input for most other types of sources. Efficiency of a process unit is expressly excluded from the definition of basic design parameters.

In mid-September, during a tour of a Detroit Edison power plant, President Bush strongly defended the new rule citing the recent blackout in the Northeast as one reason to eliminate government interference with industry efforts to sustain safe and reliable operations. However, the rule has not been universally well received. Within hours of EPA's announcement of the rule, environmental groups and state officials across the Northeast began preparing legal challenges.

So when does the rule take effect? First, most states must revise their State Implementation Plans (SIPs) to officially adopt and incorporate the new rules. However, unlike most other rules, the new RMRR language doesn't actually change the existing regulation; it only clarifies a concept about which the NSR rule is vague. Consequently,

if a state chooses to do so, it can use the new RMRR rule as guidance in applying Federal NSR even before the SIP is amended.

Do the new changes portend a "weakening of a key Clean Air Act safeguard to the point where it becomes meaningless", as characterized by a prominent environmental group, or is it "a sound win for ...increased energy supplies, economic growth and continued environmental improvement", as described by an industry trade association? EPA's bold move in promulgating this rule has the potential to provide substantial regulatory relief, but will no doubt be the center of continued high stakes legal challenges.

- Jennifer Seinfeld

- Zephyr Environmental Corporation

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Changes to Federal Air Permitting Rule bring *Clarity* but no less *Controversy*

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New Modeling Shows Additional Benefits from Proposed Clear Skies Act. This July, EPA released updated modeling results showing that the Clear Skies Act would result in greater health benefits than estimated in 2002. The updated analysis was based on more recent air quality data, census information, and dispersion modeling techniques and considered the effect of Clear Skies, EPA's proposed non-road diesel emission rule, and other existing federal and state measures such as pollution controls for cars, trucks, and industrial boilers.

Penalties Increase for HazMat Transportation Violations. In September, the Department of Transportation (DOT) revised its rules to increase the penalties for violations of the federal hazardous materials transportation regulations. For example, failure to develop or adhere to security plans required under DOT's new security planning regulation would result in a penalty of at least \$6,000. And the fine for offering hazardous materials for transport without the required shipping papers, labels, and placards begins at \$15,000. The maximum penalty that can be assessed for knowing violations of the hazardous materials transportation regulations is \$32,500.

Since the inception of the Federal New Source Review (NSR) air permitting program, routine maintenance, repair, and replacement (RMRR) activities have generally been excluded from the requirements of NSR. Until now, such activities have never been defined by rule; regulators and the regulated alike have relied on EPA policies and precedents to define, on a case-by-case basis, what constitutes RMRR.

Unfortunately, this approach has evolved into a complex, multi-factor test resulting in progressively narrower interpretations of RMRR and increased enforcement actions. The regulated community has long argued that uncertainties and potential risks of using the RMRR exclusion have impeded its ability to maintain and improve reliability, safety, and efficiency.

EPA's new RMRR rule, announced on August 27, attempts to reduce these uncertainties by providing a category of equipment replacement activities that automatically qualify as RMRR. As

such, it sets forth certain criteria that replacement activities must meet to avoid NSR review:

- The replacement components must be identical or functionally equivalent;
- The fixed capital cost of the replaced component(s) must not exceed 20 percent of the current replacement value of the process unit;
- The replacement(s) must not alter the basic design parameters of the process unit; and
- The replacement(s) must not cause the process unit to exceed any emission limitation or operational limitation.



Obviously, the precise definitions of the rule's key terms are critical. Components

are considered functionally equivalent if they serve the same purpose as the replaced components. EPA offers several options for determining replacement value. "Process unit" is defined as a collection of structures and equipment that produces or stores a product, but usually does not include pollution control equipment or administrative facilities and warehouses. The rule contains specific examples of process units at electric generating facilities, petroleum refineries, and incinerators.

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national news continued

EPA Reports Significant Improvements in Air Quality. Good news seldom makes the front page. However, on September 15, EPA released its annual air trends report and new acid rain data, both showing steady and significant air quality improvement. The trends report demonstrates that, since 1970, emissions of criteria pollutants have been cut by almost 50 percent -- in spite of increases in the Gross Domestic Product of 164 percent, increases in energy consumption by 42 percent, and increases in vehicle miles traveled by 155 percent. For more information, contact Julian Levy at 410.312.7913 or jlevy@zephyrenv.com.

EPA Finalizes Site Remediation NESHAP. On October 8, EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) for site remediation activities became effective. This rule applies to site remediation activities that are not performed under the authority of RCRA or CERCLA and are co-located at a facility with stationary sources subject to another NESHAP or that is a major source of hazardous air pollutants (HAPs). The new rule sets limits on HAP emissions and establishes work practice standards for process vents and material storage and handling equipment. For more information, contact Jerry Kung at 512.329.5544 or jkung@zephyrenv.com.

Court Settlement Requires EPA Visibility Rules for Class I Areas. As a condition of the possible settlement of a lawsuit filed by Environmental Defense, EPA would have until April 15, 2004 to propose Best Available Retrofit Technology (BART) and guidelines for certain major stationary sources, including utilities, as components of an initiative to reduce regional haze. Environmental Defense alleges that EPA has not promulgated rules to protect visibility in federal Class I areas (most National Parks) as required by the CAA. A federal appeals court overturned EPA's past attempt at regional haze rulemaking in 2002 as a result of an industry challenge. After public comment, the court can finalize the current settlement. For more information, contact Roger Brower at 410.312.7907 or rbrower@zephyrenv.com.

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DOE Addresses Natural Gas Issues. In June, the Department of Energy (DOE) and the National Petroleum Council (NPC) hosted a summit to discuss ways to address short-term constraints on natural gas storage and supply. As a follow-on to that meeting, DOE will chair regional conferences around the country, inviting input on these issues from both consumers and producers. Also, later this year, DOE will host a Global Liquefied Natural Gas Summit to discuss more long-term issues involving LNG markets. The DOE has asked the NPC to conduct a comprehensive and wide-ranging study of natural gas in the U.S. during the 21st century. The study, to be completed later this year, will examine resources for capital investment, new sources of supply in Alaska and Canada, LNG imports, and the long-term potential of developing unconventional resources (e.g., methane gas hydrates). For more information, contact Lou Corio at 410.312.7912 or lcorio@zephyrenv.com.

EPA Clarifies Used Oil Rules. Since the original promulgation of EPA's used oil rules, confusion has existed for generators and marketers of used oil containing polychlorinated biphenyls (PCBs) about whether RCRA or TSCA regulates the recycling and/or energy recovery burning of this waste. To help clarify matters for the regulated community, and, especially for generators and marketers of used oil, EPA revised its used oil regulations in July. In particular, the revised rule explains the differences between recordkeeping and reporting requirements for PCB-contaminated used oil burned for energy recovery and used oils recycled in other ways and defines the regulatory programs to which each type of activity is subject. The rule also clarifies that mixtures of wastes from conditionally exempt small quantity generators and used oil are regulated by RCRA's used oil regulations regardless of how the used oil is recycled. For more information, contact Betty Moore at 512.329.5544 or bmoore@zephyrenv.com.

Combustion Turbine MACT is Final. On August 29, EPA issued the MACT standard for stationary combustion turbines. Applying to units built after January 14, 2003, this new NESHAP is designed to reduce combustion turbine emissions of formaldehyde, benzene and other hazardous air pollutants (HAP). In particular, emissions of formaldehyde, the HAP emitted in the greatest quantity from turbines, are limited to 91 parts per billion in the exhaust for certain categories of combustion turbines. Although the rule specifies the use of catalytic oxidation systems to reduce emissions, other emissions control approaches approved by EPA can be substituted. For more information, contact David Cabe at 512.329.5544 or dcabe@zephyrenv.com.

EPA Denies Petition to Regulate Vehicle Greenhouse Gas Emissions. In late August, EPA signed a notice denying a petition by the International Center for Technology Assessment and a number of other organizations to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act. In its notice, EPA stated that Congress has not granted it authority under the Act to regulate greenhouse gases for the purpose of climate change, and that it does not believe that greenhouse gas emission standards for motor vehicles are appropriate at this time. However, EPA also emphasized that there

are many effective non-regulatory programs that address climate change such as Climate Leaders, Energy Star, and Green Power. For more information, contact Bill Jones at 410.312.7910 or bjones@zephyrenv.com.

Chlorine v. Contamination - EPA Weighs What's Worse in Drinking Water. According to EPA, when chlorine is used to disinfect water, certain potentially toxic chemicals can be formed. These disinfection byproducts, or DBPs, include groups of chemicals known as trihalomethanes and haloacetic acids. Health effects from long-term or chronic exposure to high levels of such DBPs include an increased risk for cancer. Beginning January 1, 2004, all community and non-transient, non-community water systems will be required to monitor for DBPs. Corrective measures may be required following the monitoring period for facilities that exceed maximum contaminant level goals and maximum contaminant levels that were established for DBPs. For more information, contact Dave Sorrells at 512.329.5544 or dsorrells@zephyrenv.com.

MACT Standard Issued for Miscellaneous Organic Chemical Manufacturing. On August 25, EPA issued the National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing. This final rule requires facilities to install emissions controls on process vents, storage tanks, equipment leaks, wastewater systems, and transfer operations at facilities covered by this rule. The rule covers 22 of the original 174 source categories and is defined broadly enough to also cover other organic chemical manufacturing processes not addressed by another MACT standard. It affects both continuous and batch process vents and both organic and halogenated HAPs. For more information, contact Ed Fiesinger at 713.977.8787 or efiesinger@zephyrenv.com, or Shahjabeen Hanif at 713.977.8787 or shanif@zephyrenv.com.

EPA's Office of Solid Waste Encourages the Use of EMSs. EPA is promoting the use of Environmental Management Systems (EMSs), such as those suggested by the International Standards Organization, in the belief that EMSs can improve environmental performance. Specifically, EPA's Office of Solid Waste is encouraging owners and operators of RCRA facilities to adopt EMS programs as a component of transforming the RCRA permitting program into one that stimulates more pollution prevention, improved environmental performance, and better compliance. For more information, contact Brad Watson at 512.329.5544 or bwatson@zephyrenv.com.

Beware Section 185! This little-known Section of the Clean Air Act could make it even more costly to be a large emissions source in areas not meeting the federal air quality standard for ozone. Under Section 185, major stationary sources of VOCs and/or NOx located in areas that do not meet the standard by the applicable attainment date will have to "pay a fee to the State as a penalty" for the failure to attain. Under this rule, a source that meets all applicable rules and consistently emits 100 tons per year of NOx and VOCs would have to pay an annual fee of \$140,000. This requirement will apply to all major sources regardless of their compliance records or any other factors. EPA plans to begin imposing the fee in the Baltimore, Philadelphia, Washington, and Baton Rouge areas in 2006, and in the Houston, Chicago, New York, and Milwaukee areas in 2008. For more information, contact Julian Levy at 410.312.7913 or jlevy@zephyrenv.com.

texas news

TCEQ Finalizes "Innovative Programs" Rule. On August 14, the TCEQ finalized a rule (30 TAC 90, Subchapter D) that rewards industry for innovative initiatives to control pollution and benefit the environment. For example, facilities that adopt Environmental Management Systems pursuant to the previously promulgated "Texas EMS Rule" (30 TAC 60) may qualify for various incentives. Other such "strategically directed regulatory structures," which the agency defines as industry programs "designed to use innovative ways to provide maximum environmental benefit," can also be rewarded using incentives such as technical assistance by the agency and flexibility in regulatory processes. For more information, contact Joe Zupan at 512.329.5544 or jzupan@zephyrenv.com.

TRRP Rule Applies to Leaking Petroleum Storage Tanks. Beginning September 1, newly reported leaking petroleum storage tank (LPST) releases are regulated under TCEQ's Texas Risk Reduction Program (TRRP, 30 TAC 350). For those LPST cases, TRRP replaces significant portions of the State's existing rules. The TRRP rule was originally promulgated in September 1999 and was broadly applied to several regulatory programs, but applicability to LPST releases had been postponed until September 2003. TCEQ has issued detailed guidance that compares how LPST sites will be treated under TRRP to how they were previously regulated. For more information, contact Joe Zupan at 512.329.5544 or jzupan@zephyrenv.com.

EPA Withdraws Approval of Texas NOx Rule for Cement Kilns. Last year, the TCEQ promulgated new rules to regulate NOx emissions from the cement manufacturing industry. These rules, initially approved as a direct final rule by EPA on July 30, 2003, would have required at least a 30-percent reduction in NOx emissions from 1996 baseline emissions levels for cement kilns in the I-35 corridor. However, in response to adverse comments received by the public, the EPA withdrew this rule on September 15. EPA is now further reviewing the rule and the public comments and will conduct additional rulemaking before the rule is re-issued. For more information, contact Art Bedrosian at 512.329.5544 or abedrosian@zephyrenv.com.

maryland news

MDE Has a New Air Director. The Maryland Department of the Environment has a new Director of its Air and Radiation Management Administration. Tom Snyder has assumed the position that Anne Marie DeBiase vacated earlier this year. For more information, contact Julian Levy at 410.312.7913 or jlevy@zephyrenv.com.