

March 2, 2011

EPA Issues Air Emissions Rules for Combustion Units

Agency Will Reconsider Several Aspects of Rules Almost Immediately

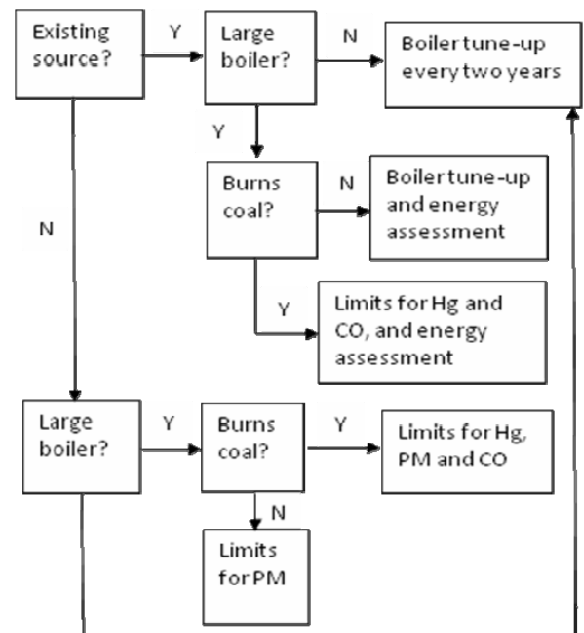
On February 23, the U.S. Environmental Protection Agency (EPA) issued notices exceeding 1800 pages, promulgating final rules to control emissions from combustion units, including: (1) boilers and process heaters; (2) commercial and industrial solid waste incineration (CISWI) units; and (3) sewage sludge incinerators. To clarify applicability of these categories, EPA promulgated a new definition for solid waste under RCRA. As previously announced, EPA also commenced a process to reconsider aspects of these rules.

Boilers and Process Heaters

The new rules provide standards to reduce specific emissions from industrial, commercial, and institutional boilers. The requirements vary depending on whether the source is an area source or a major source, the size of the boiler, and the fuel burned. EPA has also included a work practice standard for startup/shutdown periods and an affirmative defense for periods of malfunction. Compliance deadlines for specific requirements range from 60 days to 3 years after publication in the *Federal Register*.

Area Sources

An “area source” emits less than 10 tons per year (TPY) of any single air toxic and less than 25 TPY of all air toxics combined. A “source” includes not only the boilers, but also all other emissions sources at a facility. Typical area sources include medical centers, stores and malls, office and municipal buildings, hotels, food service establishments, churches and educational institutions.



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EPA set the limits for mercury and CO for coal-fired boilers based on maximum achievable control technology (MACT). For CO emissions from oil- and biomass-fired boilers and for PM emissions, EPA set limits based on generally available control technology (GACT). Area source boilers burning natural gas are not subject to this rule, unless they switch to solid fossil fuels, biomass or liquid fuels.

Major Sources

A “major source” emits at least 10 tons per year (TPY) of any single air toxic or at least 25 TPY of all air toxics combined, from all emissions sources at a facility. Typical major sources include steel manufacturing, pulp and paper mills, chemical manufacturing, refineries, utilities, rubber and plastics plants, and automobile manufacturers.

The combustion units at issue in this rule are boilers and process heaters. In addition to the distinctions outlined in the flowchart, emission limits may vary for additional subcategories, including those based on the type of solid fuel and location of the facility.

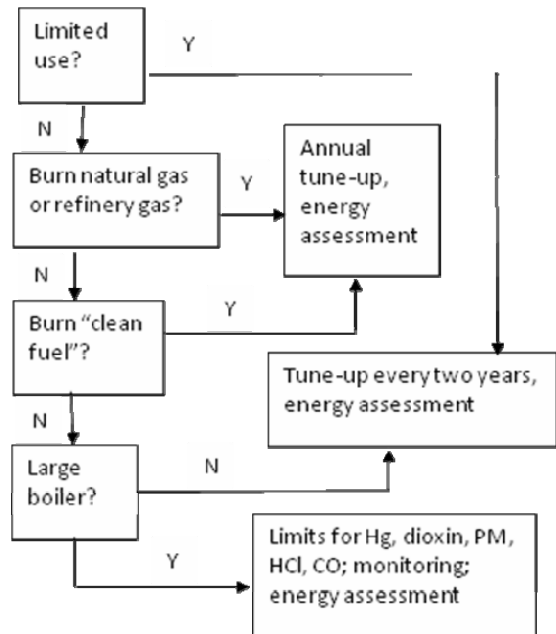
Also, as with other recently established MACT standards, EPA set the major source emission limits on a pollutant-by-pollutant basis.

Commercial & Industrial Solid Waste Incinerators

This rule provides standards for combustion units—including incinerators, energy recovery units and cement kilns—that burn solid waste. Typical locations of CISWI units are oil and gas and pipeline facilities, utilities, and manufacturers of wood products, pulp and paper, chemicals, plastics rubber, cement and other minerals, machinery and transportation equipment.

Existing and new CISWI units must comply with limits on the following substances:

- HCl
- CO
- Pb
- Cd
- Hg
- PM
- Dioxins/Furans
- NO_x
- SO₂



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The rule also establishes monitoring requirements and performance demonstration parameters. Compliance deadlines for specific requirements range from 60 days to 5 years after publication in the *Federal Register*. States have one year to incorporate this rule into their state programs.

Definition of Solid Waste

Purpose

In order to provide direction as to which of the above rules apply to specific combustion units, EPA has also defined which “non-hazardous secondary materials” are “solid wastes” under RCRA. Units burning such wastes must comply with the CISWI rule, and units burning other materials must comply with the MACT/GACT standards for major or area source boilers.

Key Provisions

In this rule, EPA clarified that the following materials are NOT “solid wastes” under RCRA when used as fuels or ingredients in a combustion unit:

- Non-hazardous secondary materials legitimately used as fuels within the control of the generator
- Scrap tires legitimately used as fuel that are removed from vehicles and managed in an established tire collection program
- Resinated wood legitimately used as fuel
- Non-hazardous secondary materials legitimately used as ingredients
- Discarded non-hazardous secondary materials processed to produce legitimate fuel or ingredients
- Non-hazardous secondary materials granted a non-waste determination

“Legitimacy” under this rule requires management as a valuable commodity, meaningful heating value, use in a unit to recover energy, and contaminant levels lower than or comparable to traditional fuel contaminant levels. Moreover, “traditional fuels”—coal, oil, natural gas, petroleum coke, bituminous coke, coal tar oil, refinery gas, synthetic fuel, heavy recycle, asphalts, blast furnace gas, recovered gaseous butane, coke oven gas, and virgin wood, as well as alternative fuels developed as fuel products (used oil meeting specific specifications, coal refuse now usable as coal, and clean cellulosic biomass)—do not constitute solid wastes under this rule. Units that stop burning solid waste remain subject to the CISWI standards for six months.

Sewage Sludge Incinerators

This rule provides standards for combustion units located at waste water treatment facilities that burn sewage sludge. [Combustion units burning sewage sludge at other facilities are covered under the boiler or CISWI rules.] Existing and new SSI units must comply with limits on the following substances:

- | | | |
|-------|------|-------------------|
| ▪ HCl | ▪ Cd | ▪ Dioxins/Furans |
| ▪ CO | ▪ Hg | ▪ NO _x |
| ▪ Pb | ▪ PM | ▪ SO ₂ |

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The rule also establishes monitoring and operator training requirements and performance demonstration parameters. Compliance deadlines for specific requirements range from 60 days to 5 years after publication in the *Federal Register*. States have one year to incorporate this rule into their state programs.

Reconsideration of Combustion Rules

EPA has already announced that it will reconsider aspects of the Boiler/Process Heater and CISWI rules, given the technically complex issues as well as issues that arose after the close of the normal comment period. Examples of issues slated for reconsideration include:

- Subcategorization of combustion units in one or more rules
- Fuel specification for gas-fired boilers not using natural gas
- Work practice standards for limited use boilers
- Use of GACT
- Fuel switching limitations between CISWI and Boiler rules
- Affirmative defense for malfunctions
- Monitoring for CO
- Dioxin limits and testing

EPA does not intend to reconsider the sewage sludge incinerator rule.

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King & Spalding counsels companies and industry groups on the applicability and feasibility of Clean Air Act regulatory programs, compliance and enforcement issues, and regulatory challenges. Please call us if you have any questions about whether and how the combustion rules will impact your business.

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