



west virginia department of environmental protection

Division of Air Quality
601 57th Street SE
Charleston, WV 25304
Phone 304/926-0475 • FAX: 304/926-0479

Joe Manchin, III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

September 7, 2007

John K. Pitner
ESH Air Team Leader
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, WV 25311

Re: Interim Guidance for Existing Sources - Boiler and Process Heater MACT Vacature

Dear Mr. Pitner:

This letter is in response to your August 16, 2007 request on behalf of the West Virginia Manufacturers Association and its affected members, for guidance regarding the July 30, 2007 vacature of 40 CFR 63, Subpart DDDDD (Boiler and Process Heater MACT). I understand that you will be disseminating this response to your members as well as other trade associations and interested groups. As a result of the court's recent decision, US EPA and many states are struggling to understand the consequences of implementing the MACT for this source category whether it be via 112(j) or a subsequent 40 CFR 63 proposal.

The agency has incorporated by reference 40 CFR 63, including the Boiler and Process Heater MACT, when promulgating current state rule 45CSR34. Further, several Title V permits contain placeholder boilerplate language identifying specific existing affected sources (those existing prior to January 13, 2003), and including the compliance date of September 13, 2007 for the Boiler and Process Heater MACT. In most cases this placeholder language has included the citation of both the state IBR rule and federal rule.

While there are several possible interpretations of the interplay among the court action, federal rule, and the state rulemaking process, the agency has found no court cases that give clear guidance regarding the effect of the federal court action on the state requirements. Due to this uncertainty, along with the timing and potential stringency issues that will be addressed via the 112(j) process, the agency does not intend to implement the provisions of the Boiler and Process Heater MACT for existing sources at this time.

Please be aware the US EPA will be issuing guidance regarding the 112(j) case-by-case MACT determination of equivalent emission limitation in the near future. DAQ will be keeping the regulated community apprised of those developments.

In the meantime, if you have any questions or concerns you may contact Renu Chakrabarty,
Air Toxics Coordinator at (304) 926-0499, ext. 1246.

Sincerely,



John A. Benedict
Director