

CLEAN AIR ACT RESIDUAL RISK AND TECHNOLOGY REVIEW

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WHAT'S RTR?

- Residual Risk + Technology + Review = RTR
- What does the Clean Air Act require for air toxics? EPA must
 - (1) Identify significant source categories of emissions and develop technology-based standards for each category based on the performance of the best facilities – Section 112(c), (d)(2), (d)(3)
 - (2) Every 8 years after MACT standards are developed, perform a “Technology Review” for the MACT standards – Section 112(f)(2)(A)
 - (3) Within 8 years of the MACT standard, perform a “Risk Review” – Section 112(d)(6)

WHAT'S THE TECHNOLOGY REVIEW?

- EPA identifies and evaluates advances in practices, processes, and control technologies
 - If it finds cost-effective approaches to further reduce emissions, it revises the MACT standards to take those into account
- EPA also assess the current MACT standard to:
 - Address significant unregulated emission points
 - Require consistent monitoring and add electronic compliance reporting
 - Fix administrative requirements that are duplicative or inconsistent

WHAT'S THE RISK REVIEW?

- EPA assesses the remaining risks from air toxics emissions after implementation of the current MACT standard
- If current standards do not provide an ample margin of safety to protect public health → EPA revises the standards
- EPA adjusts standards based on risk when:
 - Cancer risk is > 100 in 1 million – costs don't matter
 - If cancer risk is between 1 and 100 in 1 million, then EPA adjusts the standards if it's cost-effective

WHAT'S THE STATUS?

- 96 standards require RTR – 45 done to date
- On its own, EPA working on Large Municipal Waste Combustors and Coke Ovens
- Deadline suits are a common vehicle to force EPA to conduct RTRs
 - Petroleum refineries – suit requires final rule 12.1.15 (under recon and litigation)
 - Nutritional yeast (in progress) – suit requires final rule 10.1.17
 - Pulp and paper combustion sources (in progress) – suit requires final rule 10.1.17
 - POTWs (in progress) – suit requires final rule 10.16.17
 - Portland cement (in progress) – suit requires final rule 6.15.18

WHAT'S THE STATUS?

- Deadline suit schedules are now very aggressive
- Agency has heavy burden to show that a remedial timeline is too strict: it must show that the timeline is “an impossibility”
- In two recent cases:
 - EPA wanted 4-5 years
 - ENVs wanted 2 years
 - Court split the difference...3 years

WHAT'S NEW?

CASE	RTRs
<i>CA Communities Against Toxics v. EPA</i> 15-0512 (D.D.C Mar. 13, 2017) Order on Summary Judgment	20 RTRs including Stationary Combustion Turbines (YYYY), Municipal Solid Waste Landfills (AAAA), Integrated Iron and Steel Manufacturing Subpart (FFFFF) Final rules by March 2020
<i>Blue Ridge Environmental Defense League v. EPA</i> No. 16-0364 (D.D.C. Mar. 22, 2017) Order on Summary Judgment	13 RTRs including Rubber Tire Manufacturing (XXXX), Lime Manufacturing Plants (AAAAA), Iron and Steel Foundries (EEEE) Final rules by March 2020
<i>Community In-Power and Development Assoc. v. EPA</i> No. 16-1074 (D.D.C. filed Jun 8, 2016) Briefing Summary Judgment through May 19, 2017	9 RTRs including Primary Copper Smelting (QQQ), Semiconductor Manufacturing (BBBBB) Final rules by December 2020?

WHAT'S NEXT?

- EPA has limited resources and competing demands
- But...unlikely to miss court-imposed deadlines
- What agency does will depend on data
- EPA likely lacks the man power to gather new data for all 42 source categories

KEY TAKEAWAYS

- EPA leaning heavily on the technology review to support new requirements
- To save time, EPA likely to choose from a menu of options used in prior RTRs:
 - Reset MACT floor using newer UPL methodology
 - Review use of surrogates
 - Set standards for previously unregulated source categories
 - Set limits on previously unregulated HAPs
 - Reset dates for what is “existing” vs. “new” source
 - Set standards for startup and shutdown periods (Sierra Club (D.C. Cir. 2008))
 - Eliminate malfunction affirmative defense (NRDC (D.C. Cir. 2014))

KEY TAKEAWAYS

- Compliance deadlines may vary:
 - Compliance timelines may differ by pollutant or subcategory
 - Compliance with some new standards may be upon effective date
 - Compliance with revised startup and shutdown provisions required upon effective date
 - Compliance with electronic reporting requirements required upon effective date

EXPECT LITIGATION

- “If EPA is required to act on a shorter schedule, the Agency would be forced to take procedural or analytical shortcuts that I believe could jeopardize both the soundness of the regulatory actions and their legal defensibility.”
- - Peter Tsirigotis, OAQPS

THANK YOU!



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