

Utility MATS rule status

McIlvaine Hot Topic Hour

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Power plant air toxics regs

- What's CAA require for new and existing major sources?
 - emissions limits based on maximum achievable control technology (MACT)
 - Based on best performing similar source (new sources)
 - Based on top 12 percent of best performers (existing)

- MATS: EPA's rule sets performance requirements, does not 'require' specific control technologies.

- EPA's 2011/12 estimates of anticipated existing source control applications likely overestimate need for new scrubbers, fabric filters. More likely upgrades to existing equipment, more utilization of cleaner fuels (cheap gas), reliance on EPA's flexibility/averaging provisions.

Perspective: Public Health Benefits

EPA estimates that controlling utility air toxics through MATS – once implemented on new and existing sources – will result **annually** in:

- *Up to 11,000 fewer premature deaths*
- *2,800 fewer cases of Chronic Bronchitis*
- *4,700 fewer Heart Attacks*
- *130,000 fewer Asthma Attacks*
- *5,700 fewer Hospital and Emergency Room Visits*
- *3,200,000 fewer Restricted Activity Days*
- *540,000 avoided sick days*

Monetized Public Health Benefits (alone, not including environmental benefits): between \$37-90 billion annually. EPA 'for every \$1 spent, \$3 to \$9 in public health improvement'

A history

- After years of required study culminating in 1997 and 1998 utility air toxics and mercury reports to Congress:
 - EPA listed coal- and oil-fired EGUs/power plants in Dec. 2000 because identified harms to public and environmental health made regulation “appropriate and necessary. Under CAA: MACT standards due 2002.
- EPA: Collected Data/ICR, Convened MACT Work Group, but changed course in 2004, CAMR and delisting rule issued 2005.
- CAMR and delisting rules vacated as unlawful (*New Jersey v. EPA*, 517 F.3d 574 (D.C.Cir. 2008). Court: power plants remain listed.
 - case-by-case MACT required for new sources
 - Section 112 MACT standards by then 5 years overdue.

2008 to 2012

- Environmentalists brought deadline suit in 2008 seeking firm deadline for MACT rules.
- EPA in response issued another ICR, set schedule for rules issuance.
- 3/2011 – proposed rule reaffirming determination to regulate and proposing standards (and NSPS).
- 12/2011 – final rule, published 2/2012.
- Multiple lawsuits filed: *White Stallion v. EPA*, No. 12-1100.

Lawsuit status

- **“Omnibus case”** -- existing source MACT rules, EPA appropriate and necessary determination/ listing decision – all issues but new source issues:
 - Opening, response and all *amici* briefs are filed.
 - Replies due late March 2013.
 - Argument – ? Summer/Fall 2013.
- **NSPS Case** (NO_x, PM, SO₂) separate schedule
- **New source standards** reconsidered, case and rules stayed (case-by-case MACT still required). Comments on new proposal were due Jan 7, 2013. Final rule March or April.

Implementation

- **New Source MATS Standards:** will effective on promulgation of final rule on reconsideration. Currently, national rules are stayed, but Meanwhile, case-by-case assessment of maximum achievable control based emissions limits required for new EGUs prior to construction
- **Existing Source Standards:** not stayed. Must be implemented within 3 years of final rule promulgation by early 2015) unless statutory prerequisites are met case-by-case for one year extension, which EPA suggests will be 'broadly available' on demonstrated need for more time.