From: Aubrey Baldwin
To: GINSBURG Andy
Cc: CAPP Carrie Ann
Subject: Re: Will this go forward?
Date: Friday, July 29, 2011 1:29:56 PM

Yes, thanks, that helps a lot. And just asking a question. I'm sure we'll have some comments within the deadline, but wanted to get a sense of how this is intended to work! Thanks,

ab

_____
Aubrey Baldwin
Staff Attorney and Assistant Clinical Professor
Pacific Environmental Advocacy Center (PEAC)
at Lewis and Clark Law School
10015 SW Terwilliger Blvd.
Portland, OR 97219
T. 503-768-6929 F. 503-768-6642

www.PEAClaw.org

On Jul 29, 2011, at 1:24 PM, GINSBURG Andy wrote:

> Hi Aubrey. Were you commenting on the rule proposal, or just asking
> a question? At any rate, here is the answer. Oregon's constitution
> prohibits prospective rulemaking, so we can only refer to a federal
> rule as it exists on the date we adopt a state rule. Subsequent
> changes would not be automatically incorporated. So, if Congress
> repealed the boiler NESHAP after EQC adopts the rules, those boilers
> would still be exempt from heat smart. I'm not personally concerned
> about this for several reasons. First, the bill probably can't pass
> the Senate and probably would be vetoed if it did. Second, most of
> the opposition to the NESHAP is aimed at the major source MACT
> standard, and nearly all of the exempt boilers would be subject to
> the area source NESHAP. Third, the area source NESHAP mainly
> requires a biennial tune-up, and they would arguably still have to
> do that under the registration rule (which also points to the NESHAP
> as of 12/16/11). Alternately, we could amend the program to make
> that a requirement of exemption. Fourth, boilers would still be
> subject to grain loading and opacity.
>
> One other point of interest - we tied the exemption to those boilers
> subject to the NESHAP mainly to ensure that no residential boilers
> would be exempt (the NESHAP only applies to industrial, commercial
> and institutional boilers). Our main goal was to prohibit high
> polluting hydronic outside wood fired boilers in residential areas.
> That wouldn't change if anything happens to the NESHAP. Before Heat
> Smart, our woodstove rules only applied to woodstoves (not boilers),
> and the application of Heat Smart to industrial, commercial and

> institutional boilers wasn't the intended target of the bill. So,
> the current rulemaking is really just trying to restore the prior
> status quo, where our industrial, institutional and commercial rules
> (grain loading, opacity) apply to industrial sources and our
> residential rules (heat smart) apply to residential sources.
>
> Hope that helps.
>
> Andy
>
>
> Andy Ginsburg
> Air Quality Administrator
> Oregon Department of Environmental Quality
> (503) 229-5397 - Office
> (503) 572-7195 - Mobile
>
>
> -----Original Message-----
> From: Aubrey Baldwin [mailto:abaldwin@lclark.edu]
> Sent: Friday, July 29, 2011 12:57 PM
> To: GINSBURG Andy; Comment-SmBoilerPerm
> Subject: Will this go forward?
>
> Hello,
>
> There are bills in Congress currently that would postpone or avoid
> entirely the industrial boiler MACT regulations finalized in
> February. If that is true, will be DEQ rule still exempt small and
> mid sized boilers from compliance with Heat Smart, or will it only
> exempt those boilers that are IN FACT covered by the boiler MACT? I'm
> trying to clarify this statement in the rulemaking announcement:
>
>
> The proposed permanent rules would exempt small-scale commercial,
> industrial and institutional boilers from the Heat Smart regulations
> if they are subject to federal emissions standards for hazardous air
> pollutants and the user complies with existing construction approval
> requirements
>
>
> So, this new rule would ONLY apply if the boiler MACT is applied to a
> particular source? Would heat smart apply until then? Would heat smart
> re-apply if the MACT is overridden by congressional action?
>
> The language in the proposed rule: "The owner or operator of a boiler
> that is subject to [the MACT] as in effect on December 16, 2011,"
> seems confusing because a source could be "subject to [MACT] as in
> effect on December 16, 2011," but that MACT may go away soon after, or
> before, resulting in a need to amend the rule. For example, if the
> MACT is overridden by congressional action before December 16, 2011,
> but before EQC adopts the rule, DEQ will perhaps want to make changes
> to the rule - as no one will be "subject to" 40 CFR part 63, subpart
> JJJJJJ or DDDDD. Similarly, if the MACTs overridden after December
> 16, 2011, and after EQC approval, those that were subject will no
> longer be, thus the rule will not be applicable to them. If that's
> the case, it seems that small and mid-sized boilers will still be

> subject to heat smart.
>
> Just trying to clarify what might happen to this rule during the
> comment period.
>
> Thanks,
>
> Aubrey
>
> _____
> Aubrey Baldwin
> Staff Attorney and Assistant Clinical Professor
> Pacific Environmental Advocacy Center (PEAC)
> at Lewis and Clark Law School
> 10015 SW Terwilliger Blvd.
> Portland, OR 97219
> T. 503-768-6929 F. 503-768-6642
>
> www.PEAClaw.org
>
>
>
>
>