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## **BOILER MACT CASE-BY-CASE UPDATE**

The U.S. Court of Appeals for the District of Columbia Circuit vacated the USEPA's National Emission Standard for Hazardous Air Pollutants (NESHAP) standard, also referred to as the MACT, for Industrial, Commercial, and Institutional (ICI) Boilers and Process Heaters (commonly called the Boiler MACT) on July 30, 2007.

Since the vacatur of the Boiler MACT, the states have been divided as to applicability of Section 112(j) of the Clean Air Act (CAA) (known as case-by-case MACT or the MACT Hammer). The MACT Hammer requires case-by-case MACT determinations for those source categories in which EPA failed to promulgate a standard.

The Pennsylvania Department of Environmental Protection has just recently "dropped the hammer" on the Boiler MACT and is requiring Part 1 Applications no later than 30 days from publication in the Pennsylvania Bulletin (August 29, 2009), and Part 2 applications within 60 days after submission of the Part 1 application and will incorporate the changes into the Title V permits. A number of other states, including Illinois, Maryland & Minnesota have also "dropped the hammer" and are requiring case-by-case MACT.

However, many states are waiting for EPA guidance regarding implementation of Section 112(j) and are not requiring case-by-case MACT, including Ohio, Georgia, Virginia and Louisiana. Some states are adhering to the vacated Boiler MACT standards with no plans to implement Section 112(j), such as Kentucky. Other states take the position that neither the Boiler MACT or Section 112(j) requirements are applicable since the vacatur.