

# KIRKLAND ALERT

December 2011

## EPA Announces Final Rule Regulating Power Plant Emissions

On December 21, 2011, the U.S. Environmental Protection Agency (EPA) released its controversial and long-pending rule limiting power plant emissions of mercury and other toxic air pollutants.<sup>1</sup> The Mercury and Air Toxics Standards (MATS, or Utility MACT) establishes national emissions standards for new and existing coal- and oil-fired electric utility steam generating units (EGUs) larger than 25 megawatts (MW). Signed by EPA on the court-ordered December 16, 2011, deadline, the Utility MACT has been the subject of litigation, congressional scrutiny, and both strong support and criticism. Although much of the debate has generally fallen along predictable political and environmentalist/industry lines, the energy industry has split somewhat between companies that are better positioned to comply with the new standards and those that are not. Critics charge, among other things, that EPA has underestimated the cost of the final rule to industry and the economy and that the final rule would force the shutdown of many power plants and result in reduced grid reliability. EPA received more than 700,000 comments on its March 2011 proposed rule.

### Requirements

The rule requires installation of maximum achievable control technology (MACT) to limit emissions of mercury and other toxics, including arsenic, chromium, nickel, hydrochloric acid, and hydrofluoric acid within three years. EPA estimates that this rule affects approximately 1,400 units located at 600 facilities.

The Utility MACT regulates emissions with a combination of numerical emissions limits and work practices. Significant provisions of the rule:

- ♦ Establish numerical emission limits for mercury, particulate matter (as a surrogate for toxic non-mercury metals), and hydrogen chloride for all new and existing coal- and oil-fired EGUs;
- ♦ Establish numerical emission limits for hydrogen fluoride for new and existing oil-fired EGUs;
- ♦ Establish alternative numerical emission standards for certain subcategories of power plants; and
- ♦ Set work practices in lieu of numerical limits to limit emissions of organic air toxics.

The Utility MACT has changed little from EPA's March 2011 proposal. Key revisions from the proposal include:

- ♦ Adjustments to some emissions limits and using only filterable particulate matter, instead of both filterable and condensable particulate matter, as a surrogate for the metals toxic limit;
- ♦ Work practice standards, instead of numerical emissions limits, for startup and shutdown periods, including startup standards that require the burning of clean fuels, *i.e.*, either natural gas or distilled oil or a combination of clean fuels for ignition;
- ♦ Revised and additional subcategories to clarify which units are covered by particular requirements;
- ♦ Enhanced monitoring provisions; and
- ♦ Some compliance flexibility, including the option of averaging across multiple units and available extensions of up to two years to comply with the rule.

### Compliance Deadlines

All existing sources have three years from the effective date of the rule to meet the standards and the possibility of obtaining up to two additional years to comply with the standards. *First*, state permitting authorities, on an as needed basis, can grant sources one additional year for technology installation. EPA expects that state authorities will make this broadly available. *Second*, through a separate enforcement document issued on December 16, 2011, EPA will provide up to an additional year for reliability critical units. EPA, however, expects that this fifth year option will be necessary in few, if any, instances.

### Implications and Future Activity

Administration officials and certain Democratic legislators have voiced strong support for the Utility MACT. Some legislators on the other side of the aisle, however, have strongly criticized the measure. For example, on the day the rule was released, Sen. Leahy, D-Vt., released a statement strongly supporting the rule. That same day Sen. Inhofe, R-Okla., announced that he intends to soon introduce a joint resolution of disapproval under the Congressional Review Act, and he called for an IG investigation of EPA's process for finalizing the Utility MACT and other rules. Sen. Inhofe already has introduced S. 1971, the Comprehensive Assessment of Regulations on the Economy Act of 2011, which would force further EPA review of its rules.

It remains unclear whether any opposition will lead to a formal challenge of the final rule. The Utility MACT becomes effective 60 days after it is published in the *Federal Register*.

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<sup>1</sup> For access to the final rule information, see National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, available at <http://www.epa.gov/mats> (last visited December 28, 2011).

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

Granta Y. Nakayama  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
[www.kirkland.com/gnakayama](http://www.kirkland.com/gnakayama)  
+1 (202) 879-5074

Granta focuses on the areas of environment, energy and consumer product safety. Formerly, Granta served as Assistant Administrator, Office of Enforcement and Compliance Assurance at EPA and led the national enforcement and compliance program in all media (air, water, waste, toxic chemicals, pesticides).

Ilana Saltzbart  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
[www.kirkland.com/isaltzbart](http://www.kirkland.com/isaltzbart)  
+1 (202) 879-5286

Ilana focuses on the area of environmental law. Ilana has over nine years of experience as an enforcement attorney at EPA in air, waste, toxic chemicals, and pesticides. Most recently, Ilana enforced EPA's Clean Air Act New Source Review program in the coal-fired power plant sector, and negotiated several settlements, including the landmark agreements with TVA and AEP.

Joseph A. Eisert  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
[www.kirkland.com/jeisert](http://www.kirkland.com/jeisert)  
+1 (202) 879-5136

Joe focuses on the areas of environmental and consumer product safety law. He represents numerous companies on MACT rulemakings and related issues.

Elaine M. Walsh  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005-5793  
[www.kirkland.com/ewalsh](http://www.kirkland.com/ewalsh)  
+1 (202) 879-5044

Elaine concentrates her practice in energy law. She counsels energy industry clients regarding energy acquisitions, development of electric generation and fuel transportation and storage projects, emission allowance and offset trading and marketing activities and supply contracts. She also represents clients before FERC, regional transmission organizations, independent system operators, the CFTC, and state utilities commissions.

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