

Legal Lookout: Court Sides with EPA on MACT

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U.S. Court of Appeals denies environmentalist group's petition, upholds EPA's new HON rule

On June 6, 2008, the U.S. Court of Appeals for the District of Columbia denied the Natural Resources Defense Council's (NRDC) petition for review of EPA's 2006 national emissions standards for hazardous air pollutants (NESHAP) for the synthetic organic chemical manufacturing industry (SOCMI).

Background

The NRDC challenged EPA's residual-risk rulemaking and their periodic review of emission control technologies for the hazardous organic NESHAP (HON rule). NRDC v. EPA, No. 07-1053.

On Dec. 21, 2006, EPA issued a final rule affirming the existing NESHAP for the SOCMI. The HON rule was issued in 1994 and established maximum achievable control technology (MACT) standards to regulate emissions of hazardous air pollutants (HAPs) for production processes at major sources. The Clean Air Act (CAA) directs EPA to assess residual risks after the application of the MACT standards and to promulgate new standards when the maximum individual lifetime risk after implementation of the technology exceeds one in a million. The law also requires the agency to review and revise MACT technology standards, "as necessary," every eight years, considering developments in practices, processes and control technologies.

In mid-2006, EPA proposed several options to amend the current emission standards for SOCMI units. The final rule reflected the agency's decision not to impose further controls and not to revise the existing standards based on its review of residual risk and technology.

The NRDC challenged EPA review under Section 112(d)(6). The council claimed that EPA was required to revise the NESHAP so that the lifetime excess cancer risk to exposed persons would be no greater than one in a million. The group also argued that, EPA violated Section 112(d)(6) by failing to make a new "MACT floor" determination.

The decision

The court rejected NRDC's reading of Section 112(f), instead finding support for EPA's interpretation that requires the agency to promulgate a residual risk standard that provides an "ample margin of safety," but does not require them to achieve any specific target risk level. The 1990 CAA amendments, the court determined, expressly incorporate EPA's Sept. 14, 1989, NESHAP for benzene, in which the standard was set "at a level that provides 'an ample margin of safety' in consideration of all health information . . . as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision."

The court also rejected the environmental group's interpretation of the MACT floor.

In response to the claim that the rule was "arbitrary and capricious," – the court stated that the agency appropriately "compensated" for uncertainties arising from the somewhat limited data by erring on the side of protecting public health.

Conclusion

The decision is a critically important affirmation of EPA's interpretation of its statutory duty under the CAA. The court concluded, with clarity and conviction that Section 112(f) requires the agency to issue a residual risk standard that provides an ample margin of safety, but require them to reduce risk to a one-in-a-million risk standard. PE

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