



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 18 2012

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Extension of the March 13, 2012, No Action Assurance Regarding the Area Source Boiler Rule to Apply to the Deadline for Submitting the Notification of Compliance Status Regarding Initial Tune-Ups for Certain Area Source Boilers, and Amendment to the No Action Assurance Expiration Date

TO: Gina McCarthy
Assistant Administrator, Office of Air and Radiation

FROM: Cynthia Giles 
Assistant Administrator, Office of Enforcement and Compliance Assurance

Under the Area Source Boiler Rule, 76 Fed. Reg. 15,554 (March 21, 2011), owners and/or operators of certain types of boilers are required to complete biennial tune-ups of those boilers.¹ For existing boilers of these types, the Area Source Boiler Rule requires that the initial tune-up be completed by March 21, 2012. 40 C.F.R. § 63.11196(a)(1).

The Area Source Boiler Rule also requires that sources subject to the initial tune-up requirement, and not required to conduct a performance stack test, must submit a Notification of Compliance Status regarding the initial tune-up by 120 days after the compliance date of March 21, 2012. 40 C.F.R. 63.11225(a)(4). This means that sources must submit such a Notification by July 19, 2012. The Notification must include, among other information, a certification that states: "This facility complies with the requirements in § 63.11214 to conduct an initial tune-up of the boiler."

On March 13, 2012, the EPA issued a no action assurance to all owners and/or operators of existing industrial boilers and commercial and institutional boilers at area sources of hazardous air pollutant emissions stating that EPA would not enforce the requirement to conduct an initial tune-up by March 21, 2012. Letter from Cynthia Giles, Assistant Administrator, to Kate Williams et al. (March 13, 2012) ("No Action Assurance") (see copy attached to this letter). As discussed more fully in that document, the No Action Assurance was primarily based upon EPA's concern that sources were reporting a shortage of qualified individuals to prepare boilers for tune-ups and then conduct those tune-ups by the regulatory

¹ 40 C.F.R. § 63.11201(b) (requiring compliance with the work practice or management practice standards specified in Table 2 to Subpart JJJJJ of Part 63 of the C.F.R.); 40 C.F.R. Part 63, Subpart JJJJJ, Table 2 (listing requirements by boiler subcategory).



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deadline, as well as upon the uncertainty in the regulated community resulting from the pending reconsideration of the Area Source Boiler Rule. The No Action Assurance states that it remains in effect until either (1) 11:59 PM EDT, October 1, 2012, or (2) the effective date of a final rule addressing the proposed reconsideration of the Area Source Boiler Rule, whichever occurs earlier.

To date, a final rule addressing the proposed reconsideration of the Area Source Boiler Rule has not been issued, and thus the No Action Assurance continues to remain in effect. Nothing that EPA has learned since the issuance of the original No Action Assurance letter has led EPA to question its original concerns about the feasibility of all sources timely completing an initial tune-up. Sources that did not complete a tune-up cannot now certify that they conducted one. Thus, we are now extending the No Action Assurance for sources required to complete an initial tune-up by March 21, 2012, to also include the deadline for submitting the Notification of Compliance Status regarding the initial tune-up. This extension of the March 13, 2012, No Action Assurance is being issued in response to your request.

This extension of the No Action Assurance applies only to the requirement to submit a Notification of Compliance Status regarding the initial tune-up by July 19, 2012, and does not affect or apply to any other provisions in the Area Source Boiler Rule.

This exercise of discretion is subject to the following conditions:

- This extension of the March 13, 2012, No Action Assurance is to remain in effect until either (1) 11:59 PM EST, December 31, 2012, or (2) the effective date of a final rule addressing the proposed reconsideration of the Area Source Boiler Rule, whichever occurs earlier. The EPA has proposed new deadlines for initial tune-ups, and thus for the Notification of Compliance Status, in its proposed reconsideration of the Area Source Boiler Rule, and, if the Agency takes final action to adopt those proposed deadlines, they will control.
- The EPA reserves the right to revoke or modify this extension of the March 13, 2012 No Action Assurance.

In addition, given that no final rule addressing the proposed reconsideration of the Area Source Boiler Rule has been issued to date, but EPA still expects to issue such a final rule, the pending reconsideration continues to create uncertainty in the regulated community. Thus, this letter also amends the expiration date of the March 13, 2012, No Action Assurance, such that the No Action Assurance will remain in effect until either (1) 11:59 PM EST, December 31, 2012, or (2) the effective date of a final rule addressing the proposed reconsideration of the Area Source Boiler Rule, whichever occurs earlier. The conditions of the earlier March 13, 2012, No Action Assurance are otherwise unaffected.

As discussed in the March 13, 2012, No Action Assurance, the issuance of this amendment and extension of the No Action Assurance is in the public interest and is consistent with the protections afforded under the proposed reconsideration of the Area Source Boiler Rule.

If you have any further questions regarding this matter, please contact Sara Froikin of my staff at (202) 564-3187 or froikin.sara@epa.gov.

Attachments: March 13, 2012, No Action Assurance

Cc:

Steve Page, US EPA
Peter Tsirigotis, US EPA
Robert Wayland, US EPA
Kate Williams, Alaska Oil and Gas Association
Randy Rawson, American Boiler Manufacturer's Association
Leslie Hulse, American Chemistry Council
David Darling, American Coatings Association
Tim Hunt, American Forest & Paper Association
Bill Perdue, American Home Furnisher's Association
Pete Pagano, American Iron and Steel Institute
Matt Todd and John Wagner, American Petroleum Institute
Debra Jezouit, Class of '85 Regulatory Response Group
Robert Bessette, Council of Industrial Boiler Owners
Felix Mestey, Department of Defense
Grif Bond, Environmental Health & Safety Communications Panel
David Buff, Florida Sugar Industry
Dan Bosch, National Federation of Independent Business
Jennifer Youngblood, National Tribal Air Association
Renee Lesjak Bashel, National Steering Committee, Small Business Ombudsman / Small Business
Environmental Assistance Programs
Daniel Moss, Society of Chemical Manufacturers & Affiliates



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WASHINGTON, D.C. 20460

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Kate Williams
Alaska Oil and Gas Association
121 W. Fireweed Lane, Ste. 207
Anchorage, Alaska 99503-2035

Randy Rawson
American Boiler Manufacturer's Association
8221 Old Connecticut Rd., Ste. 202
Vienna, VA 22182

Leslie Hulse
American Chemistry Council
700 Second St., NE
Washington, DC 20002

David Darling
American Coatings Association
1500 Rhode Island Avenue NW
Washington, DC 20005

Tim Hunt
American Forest & Paper Association
1111 19th St., NW #800
Washington, DC 20036-3652

Bill Perdue
American Home Furnisher's Association
317 W. High Ave., 10th Floor
High Point, NC 27260

Pete Pagano
American Iron and Steel Institute
1140 Connecticut Ave., NW, Ste. 705
Washington, DC 20036

Matt Todd and John Wagner
American Petroleum Institute
1220 L St., NW
Washington, DC 20005-4070

Debra Jezouit
Class of '85 Regulatory Response Group
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
Washington, DC 20004

Robert Bessette
Council of Industrial Boiler Owners
6801 Kennedy Rd., Ste 102
Warrenton, VA 20187

Felix Mestey
Department of Defense
1000 Navy Pentagon
Washington, DC 20350-1000

Grif Bond
Environmental Health & Safety
Communications Panel
14111 Capital Boulevard
Wake Forest, NC 27587

David Buff
Florida Sugar Industry
6026 NW 1st Place
Gainesville, FL 32607

Dan Bosch
National Federation of Independent Business
1201 F St. NW #200
Washington, DC 20004

Jennifer Youngblood
National Tribal Air Association
4520 Montgomery Blvd. NE, Suite 3
Albuquerque, NM 87109

Daniel Moss
Society of Chemical Manufacturers & Affiliates
1850 M Street, NW Suite 700
Washington, DC 20036-5810

Renee Lesjak Bashel
National Steering Committee
Small Business Ombudsman / Small Business
Environmental Assistance Programs
101 South Webster (AM/7)
Madison, WI 53703

Re: No Action Assurance Regarding Certain Work Practice or Management Practice Standard Deadlines in the March 2011 Area Source Boiler Rule

Dear Sir/Madam:

Today, the EPA is providing a no action assurance (No Action Assurance) to all owners and/or operators of existing industrial boilers and commercial and institutional boilers at area sources that are subject to the requirement to conduct a tune-up by March 21, 2012 in the final rule discussed below. This No Action Assurance is being issued in response to a request from Assistant Administrator for Air and Radiation Gina McCarthy. As explained more fully below, this No Action Assurance addresses provisions of the final rule to regulate industrial boilers and commercial and institutional boilers at area sources of hazardous air pollutant emissions (the "Area Source Boiler Rule"), 76 Fed. Reg. 15,554 (March 21, 2011). Specifically, this No Action Assurance establishes that the EPA will exercise its enforcement discretion to not pursue enforcement action for failure to complete a tune-up required by a work practice or management practice standard by the compliance date of March 21, 2012 established in 40 C.F.R. § 63.11196(a)(1), subject to certain specified terms and conditions.

Under the Area Source Boiler Rule, area sources that fall into two subcategories of boilers – existing or new coal units with heat input capacity of less than 10 million Btu per hour, and existing or new biomass or oil units – are required to comply with work practice or management practice standards that consist of undergoing biennial tune-ups. 40 C.F.R. § 63.11201(b) (requiring compliance with the work practice or management practice standards specified in Table 2 to Subpart JJJJJ of Part 63 of the C.F.R.); 40 C.F.R. Part 63, Subpart JJJJJ, Table 2 (listing requirements by boiler subcategory). For existing affected boilers, the Area Source Boiler Rule established that the first of these tune-ups must be completed by March 21, 2012. 40 C.F.R. § 63.11196(a)(1).

Over 180,000 existing area source boilers are required to do tune-ups under the Area Source Boiler Rule. However, many facilities with older affected boilers have indicated that it is not possible to meet the March 21, 2012 compliance date. Entities particularly affected include those with large numbers of facilities with affected boilers, such as in the telecommunication sector; those with a large number of affected boilers, such as military installations; and those with seasonal boilers, such as the sugar cane industry and facilities in Alaska. These industries' representatives have identified specific problems with testing required to comply with the tune-up requirement in the final rule. Specifically, the final rule requires stack testing to measure carbon monoxide and oxygen as a component of the tune-up. 40 CFR 63.11223(b)(5). The rule further requires that combustion be optimized consistent with manufacturers'

specifications. 40 CFR 63.11223(b)(3). However, many facilities with area source boilers have indicated that they are not equipped to measure carbon monoxide and oxygen, and must undergo alterations such as the installation of a sampling port or platform before stack testing would be possible. Other facilities with older affected boilers have noted that many boilers will need to be repaired before they will be able to meet manufacturer specifications, such as the proper air-to-fuel ratio, and be ready to undergo the testing needed to comply with the tune-up requirements. Given the limited number of individuals qualified to conduct and complete these repairs, industry representatives assert that they are unable to schedule and complete the repairs, in addition to scheduling and completing the tune-ups, during the one-year initial compliance period specified in the final rule. At this time, the EPA continues to evaluate these assertions and observations. While we have not concluded that each of these points is valid, the Agency has sufficient concern at this time about these issues to question whether compliance by March 21, 2012 is feasible for a significant number of parties.

In addition, the EPA recently published a proposed reconsideration of the Area Source Boiler Rule that would adjust the relevant initial compliance date for compliance with work practice or management practice standards from March 21, 2012, to March 21, 2013, which would provide affected sources subject to the tune-up requirement with an additional year to demonstrate initial compliance with that requirement. National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Proposed Rule; Reconsideration of Final Rule, 76 Fed. Reg. 80,532 (Dec. 23, 2011). The regulated community is aware of the EPA's proposed extension to the compliance date, and this has caused confusion and uncertainty in the regulated community. The EPA stated that this change was proposed in part because the EPA recognized that some sources – particularly those with large numbers of affected boilers or seasonal boilers – cannot timely complete the testing needed to comply with the tune-up requirements. 76 Fed. Reg. at 80,535.

Finally, the only way for sources to avoid being in noncompliance if they cannot meet the tune-up compliance date would be for sources to stop operating their boilers until the tune-up can be completed. However, the affected categories of sources include many for which shutdown would be problematic and possibly dangerous, such as hospitals, clinics, nursing homes, and schools. It would not be in the public interest for such sources to shut down.

For the reasons discussed above, this No Action Assurance establishes that the EPA will exercise its discretion not to pursue enforcement for violations of the deadline to complete an initial tune-up identified in 40 C.F.R. § 63.11196(a)(1). This No Action Assurance applies only to the timeliness of the tune-up, and I note that nothing in this No Action Assurance affects any other provisions in the Area Source Boiler Rule.

This exercise of discretion is subject to the following conditions:

- The No Action Assurance is to remain in effect until either (1) 11:59 PM EDT, October 1, 2012, or (2) the effective date of a final rule addressing the proposed reconsideration of the Area Source Boiler Rule, whichever occurs earlier. The EPA has proposed new deadlines for initial tune-ups in its proposed reconsideration of the Area Source Boiler Rule, and, if the Agency takes final action to adopt those proposed deadlines, they will control.
- The EPA reserves the right to revoke or modify this No Action Assurance.

The issuance of a No Action Assurance for this period of time is in the public interest to ensure all existing sources have sufficient time to complete their initial tune-ups. I believe this action is consistent with the protections afforded under the proposed reconsideration of the Area Source Boiler Rule.

If you have any further questions regarding this matter, please contact Sara Froikin of my staff at (202) 564-3187 or froikin.sara@epa.gov.

Sincerely,



Cynthia Giles
Assistant Administrator

Cc: Gina McCarthy
Steve Page
Peter Tsirigotis
Robert Wayland