



Environmental and Utilities Legal Update

Another RICE Crop: EPA Proposes Additional Rules for Stationary Reciprocating Internal Combustion Engines

On February 25, 2009, EPA proposed a new set of rules and rule revisions applicable to a broad universe of existing stationary reciprocating internal combustion engines (RICE). These engines are typically used for a variety of purposes at commercial and industrial facilities, such as providing back-up electricity and powering fire pumps. The proposed rule for existing engines would supplement (and in certain instances, modify) the 2004 and 2008 rules for new engines. Collectively, these rules address "hazardous air pollutants" (HAPs) and are formally known as the RICE National Emission Standards for Hazardous Air Pollutants (NESHAPs).

Like the 2004 and 2008 rules, the proposed rules are dense and complex. They would apply to engines in three basic categories of stationary RICE:

- *Existing smaller (≤ 500 horsepower) engines at "major sources" of HAPs (i.e., facilities with potential emissions of at least 10 tons/year of an individual HAP or 25 tons/year of any combination of HAPs)*
- *Certain new or reconstructed engines at "major sources"*
- *Existing engines at "area sources" (i.e., non-major sources)*

The definition of "existing" and "new or reconstructed" varies depending on such factors as the design type, power rating, fuel type, and usage of a particular engine. Similarly, such factors also would determine whether and how the engine would be subject to various proposed numeric emission limits or other requirements regarding fuels, emission controls, periodic emission testing, operating and maintenance practices, and associated recordkeeping and reporting.

Notably, EPA is proposing that RICE sources would not have the benefit of the "startup, shutdown, and malfunction" exemption that traditionally has been part of numerous NESHAP regulations, including the existing RICE NESHAP. (The legal status of this exemption is currently uncertain, following a December 2008 court ruling that struck it down.) However, EPA is also "co-proposing" an alternative limited exemption for certain engines that use catalytic controls: such engines would be subject to more relaxed emission limits during startup and malfunction, but not shutdown.

Public comments on this proposed rule must be received on or before the later of May 4, 2009, or 30 days after EPA holds a public hearing on the proposal.

The scope and complexity of the proposed rules present significant challenges in determining if and how the rules would apply to any individual engine. From our experience in counseling clients regarding the 2004 and 2008 rules, we stand ready to assist with the regulatory analysis, or with preparing public comments to EPA about the proposed rules and revisions. If you would like to discuss the proposed rules, please contact any of these attorneys in our Environmental and Utilities Practice Group:

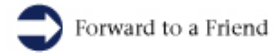
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