

**Maximum Achievable Control Technology (MACT) Standards
Fact Sheet for Small Business Trade Association Meeting
with EPA Deputy Administrator**

Background: In 2007 the D.C. Circuit Court ruled that several maximum achievable control technology (MACT) standards for hazardous air pollutants (HAP) violated the requirements of the Clean Air Act. The most significant of these rulings was the Sierra Club v. EPA "Brick MACT" decision, where the Court addressed EPA's methodology in setting MACT limits. The Court's ruling said:

EPA must:

- Reasonably estimate levels of toxics emitted by the best performing sources.
- Base minimally stringent "MACT floors" on what best performers achieve.
- Set limits for each listed air toxic, whether or not controlled by technology.
- Consider non-technology factors that affect emissions.

EPA may:

- Estimate variability in emissions achieved by best performing sources.
- Base standards on technology alone where no other factors affect emissions.
- Distinguish between classes, types and sizes of sources.
- Set work practice standards if measuring emissions is technologically and economically infeasible.

EPA may not:

- Regard costs or "achievability" by all sources in identifying MACT floors.
- Set "no control" floors due to the absence of technological controls.
- Rely on data from worst-performing sources where not linked to levels achieved by best performers when addressing emissions variability.
- Claim lack of quantifiable data to justify floors based only on technology.

Current Status/Stage of Development:

For the brick and structural clay products industry, EPA is beginning the process of developing new proposed rules, which would apply to new and existing tunnel kilns and periodic kilns located at major sources of air toxics. For other industries subject to EPA's MACT program, EPA is analyzing the impact that the Court's rulings may have on existing regulations, and is ensuring that MACT rules in development comply with the Court's rulings.

Impact on Small Business:

An estimated 82 percent of the companies operating brick kilns are small businesses. At this time, we don't know what impact any future rules may have on small businesses in the brick and structural clay products industry. EPA addresses impacts on small entities in other industries subject to MACT standards as those rules are developed or reviewed. While EPA may not exempt sources from MACT floors based on consideration of costs or economic impacts, EPA

may consider such factors in determining whether to impose more stringent "beyond floor" requirements, and has substantial flexibility to distinguish among classes, types and sizes of sources when identifying categories and subcategories for regulation.

Implementation and Outreach:

Regarding the brick and structural clay products industry, for the first time, EPA has issued a press release inviting small businesses to nominate themselves to participate in the Small Business Advocacy Review Panel. The panel will offer an opportunity for affected small businesses to provide input into the development of the agency's upcoming proposed rule. In addition, we are working with manufacturers and the industry trade associations to identify issues and alternatives. For other industries, EPA conducts appropriate stakeholder involvement to ensure that small entity impacts are considered. For all MACT standards, EPA provides a full opportunity for public participation in the rulemaking process.

Next Steps: Emissions testing at well controlled sources is being conducted. This testing will give EPA the information needed to establish numerical limits for hazardous pollutants emitted by the brick and structural clay products industry. For other industries with MACT standards in development, EPA is obtaining necessary data to enable us to reasonably estimate the emission limitations achieved by best performing sources and develop limits that comply with the Court's rulings.