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FROM MAIN STREET TO WALL STREET
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ENVIRONMENTAL NOTES
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MANAGEMENT OF SPILLS UNDER THE SITE REMEDIATION MACT

On October 6, 2003, EPA promulgated the final National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Site Remediation, which can be found at 40 C.F.R. Part 63, Subpart GGGGG (a/k/a the "Site Remediation MACT"). The rules regulate air emissions from site remediation activities, including emissions from tanks and roll-off boxes, separators, strippers, thermal treatment devices and other equipment used to manage remediation wastes that are excavated from a spill or leak site. These rules become effective for existing "affected sources" on October 6, 2006 but are effective currently for new "affected sources."

There are several tricky features to compliance with the Site Remediation MACT which warrant close attention by both major and minor sources of Hazardous Air Pollutants ("HAPs"); particularly the documentation requirements for exemptions, and the special "once in always in" provisions for minor sources of HAPs to avoid becoming a major source for the purposes of other MACT standards. The rule has three basic applicability criteria: 1) the site must be engaged in remediation activities involving remediation waste (contaminated soil, groundwater, etc.); 2) the site must be contiguous or adjacent and under common control with major sources of HAPs (including the emissions from the site remediation activities); and 3) the source must meet the definition of "affected source" under another MACT standard (whether exempt from that other standard or not).

A major source is one that has the potential to emit 10 TPY of any single HAP or 25 TPY of all HAPs in the aggregate. It is critical for minor sources (also known as "area sources" under the federal NESHAP rules) to understand that the emissions of HAPs from remediation activities can cause the minor source to become a major source. Normally, if a source becomes a major source for any reason, then it is subject to all applicable MACT standards, and due to the EPA's "once in always in" policy, the source will always be subject to such MACT standards, even if emissions are controlled to below the major source thresholds. However, EPA created a special exception to the once in always in policy under the Site Remediation MACT. This special rule provides that if there is a spill and emissions from site remediation activities put the facility over the major source threshold, the facility will not be counted as a major source for purposes of other MACT rules provided that the source returns to minor source status once the remediation activities are completed. However, the remediation activities will be subject to the Site Remediation MACT during the remediation.

There are a number of important exemptions to the Site Remediation MACT, including 6 complete exemptions, and two exemptions from the control standards which require some documentation and recordkeeping. The six complete exemptions from the standards are as follows:

- The site remediation does not involve a Subpart GGGGG Table 1 HAP (only 97 HAPs listed under GGGGG –not all of the CAA 112 HAPs);
- Remediation accomplished under CERCLA orders or agreements;
- Remediation conducted under the terms of a RCRA/HSWA Permit or a RCRA/HSWA order (voluntary cleanups or cleanups under state law other than delegated state RCRA provisions *are not* exempt);
- Remediation of USTs at gasoline service stations;
- Remediation at a farm or residence; and
- Remediation of a facility meeting the R & D definition under Section 112(c) (7) of the Clean Air Act (with some limitations).

There is also a conditional site wide *de minimis* exclusion under 40 CFR 63.7881(c) for facilities where the total amount of Subpart GGGGG Table 1 HAPs removed from the entire site (all contiguous or adjacent areas under common control) is less than 1 Megagram (2200 lbs.) per year. In order to qualify for this conditional exemption, the facility must determine the expected amount of HAPs that will be removed during the remediation project *prior to initiation of any remediation activities.* In addition, the facility must document the methodology it used to estimate the HAPs and must maintain records of this determination.

Perhaps the most valuable conditional exemption for future spills is the short term project exemption found in 40 C.F.R. 63.7884 for remediation projects which are completed within 30 days. Under this conditional exemption, the remediation must be completed within 30 days from the "start date." The start date is the first date that there is any actual physical action to "remove, destroy, degrade, transfer, immobilize or otherwise manage the remediation material." The 30 day time period does not include planning and preparatory activities such as preliminary sampling, obtaining regulatory approval, contractor and equipment set-up and the like. The end date is the date of last treatment or disposal on site. A facility cannot use the short term exemption to conduct work in phases; but instead must remediate the whole area of spill within the 30 days. No extensions can be granted. EPA originally proposed a 7 day period, but determined to extend it to 30 days to account for possible weather delays, contractor issues and other such impediments to the work. In order to qualify for this exemption, the facility must document and maintain information on start date and completion date for the project.

If no exemptions apply, the rule requires that certain standards and operating practices be maintained for remediation activities and equipment used to manage remediation material, regardless of whether the remediation material will be treated on-site or off-site. The rules establish standards and monitoring, recordkeeping and reporting requirements for 1) "process vents" from treatment devices such as strippers, scrubbers, carbon adsorption systems and thermal treatment devices; 2) "remediation management units" such as tanks, separators and other storage devices; and 3) equipment leak standards for components of equipment used in remediation waste management.

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