



Representing the Interest of America's Industrial Energy Users Since 1978

Environmental, Energy & Technical Committee Meetings

March 3-4, 2009
Radisson Hotel, Reagan
National Airport
Arlington, VA
(703) 920-8600

MINUTES

TUES-WED March 3-4, 2009

CIBO MARCH 2009 COMMITTEE MEETINGS

Bob Bessette, Council of Industrial Boiler Owners opened the meeting. Bob Corbin, CIBO Consultant, introduced the guests and new members. The usual "Around the table" introductions were done. Lisa Jaeger provided the anti-trust statement. The minutes from the last meeting were approved.

ENVIRONMENTAL COMMITTEE SESSION

Maxine D. Dewbury, The Procter & Gamble Company, *Environmental Committee Chairman*
Ann McIver, Citizens Thermal, *Environmental Committee Vice-Chairman*

Boiler MACT - **Tim Hunt**, AF&PA

Tim presented the AF&PA review of the data that was available from the first round of ICR requests. AF&PA concentrated on biomass fired units. Using this information, the variability of the emissions results showed that the range of the worst over the average was a factor of 5.6 to 8.1. Thus, although the average was generally under the old proposed limits, the variability would cause some units to be over the limit some of the time. The floor setting approach is in a state of flux as limits will be needed even when the MACT floor is "no control". Sub-categories being considered are 4 fuel types (coal, liquid, gas, and biomass/non-coal), 2 sizes (large and small), and limited use. EPA is proposing to use the standard deviation of individual test runs for the lowest 12% emissions units at the 99.9% upper confidence limit. Units in the lowest 12% are generally those units with only one test. Units with multiple tests were generally not in the lowest 12%. The medical waste units had been through this process. It is interesting to note that 98% of these units have been shut down, raising a "MACT on MACT" problem. There is also the problem of emissions interactions (i.e. CO and NOx). For biomass units, the top 12% of units (usually 2 or 3 units) have very low emissions. Another concern is the concept of "cherry picking" the standard (i.e. selecting a different unit for each standard while no one unit can meet all of the standards). An alternative would be to put all of the best performing units into a pool (4-P MACT pool). Then, only units with data for all 4 HAPs would be used to generate standards levels for the individual HAPs.

Rob Kaufmann reported on the "definition of solid waste". An advanced notice of proposed rule making was put out for comment. There were 65 comments in EPA's E-Docket. A number of trade associations, material users, sanitation districts, and states provided comments. There were no



comments from environmental groups in the docket. Most comments were supportive of the concept of defining "solid waste". The concept of discarded is important. No "bright line" BTU level is really needed. The hazardous waste program is not a good model for this regulation. States should be the primary regulator. Some comments by other groups that were not supportive of CIBO interests included:

- states should be able to manage non-waste materials as wastes under some circumstances
- pressure not to go beyond federal rules
- "sham recycle"
- process materials being stored for speculative accumulation
- concerned about the volatility of secondary materials

Kentucky would like tires to be defined as solid waste (can't tell the difference on a pile of tires). Wisconsin is concerned about the impact on state programs as well as tires. Minnesota was concerned about tires and other materials that are treated as solid wastes until they are used. State law doesn't allow animal manure to be classified as a fuel (but there is a turkey litter plant in Minnesota). The Environmental Technology Council was not supportive. They expressed concern about "undermining" safeguards, RCRA classifications, and non-fuel contaminants. They supported the 5,000 BTU/lb bright line value to define alternative fuels.

Rob Kaufmann, Koch Companies Public Sector, LLC, reported on state actions regarding the MACT Hammer. Most states are waiting to hear from EPA relative to guidance on the MACT Hammer. Oregon has granted extensions on Part 2 submittals, but has not committed to the Hammer. Virginia has requested Part 1 submittals. Wisconsin is looking at Part 1. Texas has asked for MACT analysis. Iowa is looking at Part 1. North Carolina's Department of Justice has concluded in a memo that the "Hammer had fallen". Some environmental groups have announced that they plan to file law suits. Neither EPA nor OMB has issued a statement that definitively claims that the Hammer is in place (although EPA says that they think the Hammer is in force). EPA is supposed to come out with a new MACT proposal this summer. The Hammer requires "case-by-case" MACT for existing units. Since there is no EPA regulation, the states are free to propose a requirement for any particular HAP (there are 189).

A conference call will be set up to discuss the stack testing procedures and methods proposed for the Section 114 letters. One of the issues is that the testing is being required in the spring when loads are usually reduced and maintenance is often being done. Further, in the current economic climate, demand may be further reduced, making it difficult to perform testing at maximum load. The timing would be better if the testing was done over the summer.

Rob Kaufmann pointed out that Boiler MACT, CISWI, Area Source GACT, the end of SSM exemptions, CAIR replacement, climate rules, tightened NAAQS (PM2.5 and ozone), added focus on NSR and BACT, the next round of SIPS, mercury rules, CEMs and COMs, and possibly residual risk and re-opening of other MACT rules represent a serious threat to the economic health of industrial companies. A grass roots effort will be needed to educate the various interest groups of the potential consequences of all of these rules. Targets include EPA staff, the administration, governors, regulators, and labor leaders.



Ash Reclassification - **David Goss**, American Coal Ash Association

David Goss introduced Tom Adams as the new representative for ACAA. Tom was formerly with the cement industry. With the TVA coal ash spill in Tennessee, ash is back in the gun sights of the environmental groups. The ACAA is promoting beneficial use of fly ash. The ACAA still maintains that the coal ash is not a hazardous material. There may need to be some additional rules on the handling and storage of ash, but the material itself is not hazardous. Classifying the material as hazardous would be detrimental to the beneficial use of ash. Senator Boxer requested the new EPA administrator to report to her committee about what EPA intends to do to address the "ash issue".

Climate Update - **Rob Kaufmann**, Koch Companies Public Sector, LLC

The Obama team is headed up by Carol Browner with Lisa Jackson as head of EPA and Steve Chu as head of DOE. A number of climate advisors have been identified that were instrumental in Mass. vs. EPA, the decision that reported that EPA does have the authority to regulate CO₂. With the exception of Peter Orslag and Larry Summers, all of the pertinent members of the Obama team are strong advocates of climate regulation. The immediate actions of the Obama team have been to overturn the Bush administration orders. These have been the California waiver and the EPA guidance on considering CO₂ for power plant permits. The Obama budget proposes a cap and trade system with full auction of allowances. Government revenues (not called taxes) are anticipated to be over \$600 billion. A GHG reporting rule is expected to be released from OMB. There are rumors that this might be converted to a registry rule. A mobile source rule may be proposed. A new renewable fuels standard rule is reportedly drafted, but held up over land use issues. An endangerment finding could come from EPA on CO₂. Issues involving NSPS, NSR, and Title V would still need to be addressed.

Representative Waxman has indicated that a cap and trade bill would come by Memorial Day (May 25). Representative Markey has a bill. Representative van Hollen is talking about a "cap and dividend bill". Senator Boxer plans to introduce a bill with less detail. She has issued "6 principles". Senator Reid wants a bill by the summer. Senators Kerry and Bingaman have an interest in an energy bill. A renewable portfolio standard bill is expected by April 3rd. It is expected that this bill will pass before any energy bill or climate bill is brought to the floor of either the House or the Senate.

Litigation Update - **Lisa Jaeger**, Bracewell & Giuliani, LLP

President Obama took the unusual step of posting in the Federal Register (74 Fed Reg 8819) that changes will be made in the review of proposed rules and regulations. The Office of Management and Budget will still review rules. However, regulations may not be reviewed on a "one-by-one" basis anymore. Comments are due on the withdrawal of the prior rules by March 16. The Office of Information and Analysis of Regulatory Affairs (OIARA) may get cut out of the process. The Small Business Administration is also concerned. The OIARA is responsible for cost benefit evaluations. The president has asked OMB to provide input to a new executive order in 100 days.

On the NSPS case NY v EPA there has been no date set up for oral argument. The CO₂ portion was remanded to EPA. The CAMR rule was vacated as well as the de-listing rule. EPA will have to come up with MACT standards for mercury for coal fired EGUs. The CAIR rule was vacated and then



remanded to EPA without vacatur after a number of states and environmental groups complained that the vacatur left the country with no standard, while states have SIP submittals that were dependant upon CAIR. The Court did not set a deadline by which EPA must correct the flaws in CAIR. The ozone NAAQS case goes to briefing on April 1. EPA's brief is due in July. The EPA is in an awkward situation on this rule since the particulate matter case was remanded at least partly for not addressing the recommendations of CASAC. The start up, shut down, and malfunction (SSM) exemption was vacated. The Court granted EPA an extension for rehearing and stayed its mandate. Petitions are due April 3. A Court decision to grant, remand, stay, or vacate would likely occur in June. The Johnson memo was challenged by environmental groups. This memo gave guidance that CO2 was not required to be considered for a permit for new units because CO2 is not yet regulated. EPA must file status reports every 90 days. EPA has announced that it will reconsider the Johnson memo. The PM case resulted in a remand of the annual PM2.5 primary NAAQS and the secondary PM2.5 NAAQS. The Court upheld the EPA's decisions on the PM10 NAAQS. The conclusion was that EPA did not consider the studies properly in view of the various studies that were cited. The Court did not rule that the EPA must agree with CASAC. The Court asked EPA to explain better why it decided to put more weight on some studies rather than others. On the secondary standard, EPA declared the studies used by CASAC and the staff were too subjective and thus not applicable. The Court stated that the setting of the primary standard and the secondary standard was "contrary to law". The implication is that the secondary standard must be different from the primary standard. Since this ruling is a remand, the EPA can elect to redo the standard.

NSR Update - **Maxine Dewbury**, The Procter & Gamble Company

The NSR improvement rule was issued at the end of 2002. The actual to future actual provisions survived. The equipment replacement part of the rule was vacated. The "debottlenecking" rule was never promulgated. A new aggregation rule was finalized but is being reconsidered and has been stayed. Aggregation is the process of deciding whether or not multiple projects should be considered together for the purpose of determining whether there is a significant emissions increase triggering PSD. In order for projects to be aggregated, there has to be a technical or economic relationship between, or amongst, the activities. Timing does not decide aggregation. However, activities that are more than 3 years apart are a good indication that they are not aggregated. EPA also finalized the fugitive emissions rule. Fugitive emissions are included in determining major modification only for 28 source categories. Prior language of the 2002 NSR reform rule was to include all source categories. On particulates, members should ensure that permits clarify but not re-define what particulate emissions are based on – filterable particulates or both filterable and condensable particulates. Upon Title V renewal many agencies will propose to change the basis of an existing particulate limit from filterable PM to filterable and condensable PM. Prior permits were generally based on filterable particulates. Members should be sure that if condensable emissions are added to permit limits, the permit limits should be adjusted (increased) to account for the condensable particulate materials which were previously unregulated. Condensables are not required to be included in permit limits until Jan. 2011. Testing for information purposes can be done to establish the level of condensables. Although SO2 and NOx are considered precursors for condensable particulates, in Appendix S, only SO2 is included.



NAAQS - **Maxine Dewbury** , The Procter & Gamble Company

Following litigation, EPA must reclassify some “Basic” non-attainment areas for the 1997 8-hr ozone NAAQS standard to be regulated as “Subpart 2” areas. Severe/extreme non-attainment areas under the old 1 hour standard are still subject to costly fees. The new 8-hour NAAQS standard of 0.075 ppm will be used for new designations. States will make recommendations to EPA this spring. EPA will finalize the designations next years. States will have to submit SIPs by 2013. The particulate standards have been tightened as well. The new designations are now effective. The CAIR rule has been remanded rather than vacated. This action returns CAIR as the driver for reducing precursors to ozone and PM. A new test method for condensables is out of OMB and awaiting signature (OTM 28). This improved method is significantly better than prior methods, but there are additional improvements that could be made. EPA is developing an air dilution method as a “final” solution for measuring condensable particulates. There is a new lead standard that is 10 times more stringent. New monitoring requirements for lead are being planned by states.

RCRA Update – **Gary Merritt**, InterPower/AhlCon Partners, L.P.

The spill of scrubber sludge from the TVA Kingston plant has brought renewed focus on coal ash. The environmental groups have seized upon this incident to try to get coal ash designated as a hazardous waste. Congressman Rahall recognized that this was a dam failure and proposed that OSM should be responsible and introduced legislation to that effect. EPA and OSM will be proposing rules this year regarding coal combustion byproducts. Coal ash is currently classified as non-hazardous under sub-title D. The environmental groups are making every effort to add this issue to the theme that “there is no such thing as clean coal”. A task group will be set up on this issue.

Dioxin Re-assessment - **Rich Anderson**, CIBO Consultant

EPA is going through another re-assessment (3rd) on dioxin. The EPA is responding to the National Health Association criticism of the health impacts of the last assessment. Cancer and non-cancer health impacts are being assessed. In particular, the dose response curve was criticized for going through the origin rather than showing a threshold. The implication is that one molecule of exposure has some potential to cause cancer. EPA is in the risk assessment phase. The next step is the risk management phase. Food is the primary source of ingestion. However, combustion sources will likely be targets. Wood burning could be impacting.

Focus Group Meeting Survey Results - **Bob Corbin**, CIBO Consultant

At the Annual Meeting we had a meeting of Committee chairs to discuss the approach to setting up focus groups. Members were asked via surveys to identify their top 5 topics. From these a list of topics was established. The overall top 5 were Alternative Fuels, Energy Efficiency, Emission Control Systems, Carbon Footprint, and Boiler Operations. Members were also asked to identify the times or days that members would like to hold these meetings. The Tuesday morning before the Committee meetings was identified as the primary target. Although this might have some conflicts with the Hill visits, there might be some additional attendees that would come to the meetings. The alternative is to hold the Focus Group meeting as a breakfast meeting on Wednesday morning prior to the main



committee meetings. Another possibility would be to move the Hill visits to Thursday morning (or Wednesday afternoon).

GOVERNMENT AFFAIRS SESSION

Karen J. Neale, International Paper, *Government Affairs Committee Chairman*

The Senate is looking at an energy bill. The House is looking at an energy and climate bill. The president has sent a budget outline to Congress. In that budget outline, a cap and trade program on CO₂ is proposed with auctioning. The revenues would be used to offset some of the costs to consumers and industries, to fund additional R&D, and to reduce the federal deficit. Hill visits were organized on Tuesday morning focusing on the Senate energy bill. Senator Specter (R-PA) had been a co-sponsor of a climate bill in the past. That bill had a “safety valve”. The current bill does not have a “real” safety valve. The proposed energy bill has a renewable portfolio standard. The House bill has a renewable electricity standard. This concept is similar, but puts the onus on retail electricity suppliers to purchase electricity that has been generated from renewable sources. The penalty for missing the target would be that the retail utility would pay on the order of 5 cents/kwhr into a fund to be used to promote renewables. Issues include non-tradable credits, cogeneration, and the definition of biomass for renewable credits. There are also the details of what kinds of units are considered distributed power and what kinds are retail generators (i.e. a cogen unit that sells power over the fence). In order to promote more energy efficiency, CIBO proposes to exclude cogeneration, or CHP, from RPS or RES requirements on the grounds that these units are already using energy more efficiently, thus reducing CO₂ emissions. In the definition of what counts towards meeting the standard, the Senate bill allows up to 25% of the requirement to be met by energy efficiency improvements. CIBO would like to see that number increased. The House bill does not have this feature. There is another issue of existing state programs. These programs are already in place and should not be upset by any federal legislation. Additional flexibility as to what constitutes biomass would be desirable. A major concern for many CIBO members is that increase in the use of “conventional” biomass (i.e. wood and wood products), for fuel would now represent competition for feed stock from electric generation, resulting in an increase in price for these products. Unrestricted use could lead to decimation of the forests. Any program needs to take into account the healthy management of these natural resources. Additional offices that were visited included Senators Casey (D-PA), Levin (D-MI), Hagen (D-NC), Martinez (R-FL), Warner (D-VA), and Alexander (R-TN). Many of the new staff members are not particularly knowledgeable on energy issues. Some were not aware of NSR or the difference between steam and electricity generation. Many of the staff members requested additional information on a variety of topics. Florida has indicated that they really don't have biomass resources to use or much in the way of renewables. Wind does not appear to be a good option due to the hurricane threat. Solar could be a contributor. Senator Alexander (R-TN) wants nuclear to be considered as a renewable technology. Senator Alexander's climate bill would cover only utilities and autos (claimed to be 70% of CO₂ emissions). This would start with granting auctions, but ramp up to 100% auctions. When asked about the likelihood of climate bill succeeding this year during the economic crisis, it was suggested that the system would not be implemented until 2012, by which time the economy is expected to recover. It is getting more difficult to visit House staffers as there is an influx of people visiting Congress asking for stimulus money. On the House side, these visits are being limited to constituents.



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ENERGY/TECHNICAL COMMITTEE SESSION

Frederick P. Fendt, Rohm and Haas Company, *Energy Committee Chairman*
Robin Mills Ridgway, Purdue University, *Energy Committee Vice-Chairman*
Harvie D. Beavers, Colmac Clarion Inc., *Technical Committee Chairman*
Vincent M. Albanese, Fuel Tech, Inc., *Technical Committee Vice-Chairman*

Impacts on High and Volatile Energy Costs on Energy Intensive Industries
Jack Fuller, West Virginia University

In April 2008, West Virginia University held a workshop on Energy Impacts. Several universities, government agencies, and industry based representatives participated. Energy efficiency was a major part of the discussion. One of the web sites has information on "Industries of the Future". The link is www.iofwv.nrcee.wvu.edu. Breakout sessions were held to look at potential actions that industry and academia might take to cope with high and volatile energy costs. Topics included public policy/regulatory approaches, science/technology approaches, and industry planning. A follow up conference is planned for this April. Although the "high" cost has kind of fallen off the agenda, the volatility, uncertainty, and impacts are more important than ever. WVU will attempt to get research funds for areas of research deemed important.

Industrial Projections and the Stimulus Package - **David South**, Technology & Market Solution, LLC

David reported on the stimulus bill. There are \$30 billion in the stimulus bill directly related to energy. The bill gives more authority to DOE, but also gives a lot more authority to the Treasury. Energy efficiency and renewable energy has \$16.8 billion identified. Of this, \$3 billion goes to states in the form of grants. Another \$5 billion goes to weatherization or other improvements. Electricity delivery and energy reliability has \$4.5 billion identified. Some of the smart grid initiatives are this category. However, the actual implementation of the smart grid is not in the stimulus package. Loan guarantees for innovative projects are in line for \$6 billion. Rapid deployment and electric transmission projects will be provided to those that are "shovel ready" to commence construction no later than Sept. 9, 2011. These projects will not be vetted by the government. These would be commercial projects that banks would be willing to lend to provided that there is a loan guarantee. Transmission connections for renewable power will also get loans. DOE must analyze impediments or road blocks to expansion of renewable resources. There are also renewable energy tax provisions. An option to convert production tax credits into investment tax credits will be available. The investment tax credit can also be converted into cash. Smaller, onsite technologies may be eligible for optional grants. Grants and tax provisions are administered by the Treasury. There will also be \$2.5 billion in energy bonds for certain types of renewable projects. Under the clean energy tax provisions, a \$10/ton of CO2 credit will be available for CO2 captured and sequestered in a permanent storage facility (including EOR).

Energy Efficiency Resource Standards - **Neal Elliott**, ACEEE

Neal is the associate director of research for the American Council for an Energy Efficient Economy. This not for profit organization has a staff of 35 in Washington, DC with field offices in DE, IL, MI, and WI. The primary funders are foundations, along with grant money and contract research. Federal legislation impacting energy includes the stimulus bill, FY 09 omnibus funding, FY 10 budget, the energy bill, the water bill, transportation bill, and climate legislation. States and cities are contacting



the ACEEE to try to figure out how to spend the grant money that they will receive. The early projects will include weatherization and low income energy support. Detail agency budgets will be out April 1. There is a plan to actually get a budget done before FY 10 begins. The water and transportation bills will be on the order of \$100 - 150 billion. Both House and Energy bills are considering energy efficiency resource standards (EERS or "ears"). The idea is to set efficiency targets for electric or natural gas providers (similar to RPS). Currently 18 states have such programs with a total of 23 in place or pending. The savings would be normalized as savings targets as an estimated average % annual savings. The approach is to allow flexibility in meeting targets at least cost. The Markey proposal (HR 889) includes a 15% electric and 10% natural gas savings by 2020. Combined heat and power, recycled energy, building codes and standards, and appliances qualify for savings. DOE would establish measurement and verification standards. Buyout for non-compliance would be 5 cents/Kwhr. States can implement state programs and federal programs simultaneously. States can set targets higher than the federal level. These standards apply to onsite power. The savings basis is to compare marginal heat rate from combined heat and power to the net heat rate, including transmission losses, of a natural gas combined cycle plant that would be avoided.

The concept of "decoupling" in legislation is to make a utility indifferent to volumetric sales (the actual definition of which is somewhat vague). The concept has been demonstrated in the natural gas markets. The variation in electric regulatory environments by the different states makes implementation a challenge. Other alternative models exist and may be more appropriate. The "decoupling" model is based upon a vertically integrated utility. This doesn't really work in NEPOOL, PJM, MidWest ISO, Cal ISO, etc.

Next, Environmental, Energy & Technical Committee Meetings

TUESDAY & WEDNESDAY, June 9-10, 2009

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