

# Boiler MACT & CISWI Updates

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*Once in Always In,  
CO Surrogacy and 130 PPM Remand,  
NHSM Alternative Fuel Determinations,  
CISWI Technical Amendments Proposal*

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# Once In, Always In

*“Once you’re in the racket,  
you’re always in it.”*

- Al Capone



<https://www.fbi.gov/history/famous-cases/al-capone>

# History

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- **“Potential to Emit for MACT Standards – Guidance on Timing Issues” 1995 memo from John Seitz, Director of OAQPS to regional directors:**
  - Put forth the “once in, always in,” (OIAI) policy;
  - Major sources had until the first compliance date to switch to area source status – otherwise must forever comply with MACT;
  - Argued without policy, sources subject to MACT could reduce PTE below major source threshold and backslide by obtaining limits of 10/25 TPY.
- **Since 1995, EPA twice proposed, but never finalized rules that would alter or replace OIAI**
  - Regulatory Relief for Pollution Prevention (68 FR 26249)
  - OIAI Policy Replacement (72 FR 69)



<https://nancyebailey.com/2017/10/21/destroying-special-ed-sliding-backwards-in-time/>

<https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf>

## OIAI is Withdrawn

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– **“Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”**  
**Jan. 2018 memo from Bill Wehrum, AA to OAR to regional directors withdrawals OIAI policy arguing:**

- No time limit from Congress on calculating PTE with respect to source classification;
- Statutory definitions of major/area source don't reference compliance date of MACT;
- The phrase “considering controls” is not associated with any timeline; and,
- The timeline created by the 1995 Seitz memo was artificial and not supported by the CAA.



<http://www.joshuanhook.com/set-a-time-limit/>

[https://www.epa.gov/sites/production/files/2018-01/documents/reclassification\\_of\\_major\\_sources\\_as\\_area\\_sources\\_under\\_section\\_112\\_of\\_the\\_clean\\_air\\_act.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf)

## OIAI – Since Jan. 2018

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- **March 14, 2018 - Group of Senators request EPA re-instate the OIAI policy, at least until EPA has analyzed impacts and gathered public comment:**
  - Claimed EPA’s reasoning “ignores the broader framework” of the CAA, and
  - Sought response to multiple questions and data requests relating to impact of withdrawal.
- March 26, 2018 – Multiple environmental advocacy groups file petition for review in US Court of Appeals for the DC Circuit

## OIAI – Moving Forward

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- **Permit modification will be required to remove major source NESHAP requirements and establish 10/25 tpy limit with appropriate compliance demonstration**
- **There could be an area source NESHAP that applies instead**
- **Consider implications as a result of other rules**
  - Sources subject to Part 61 or Part 63 are exempt from some state air toxics rules/modeling.
  - Possibility of other state-specific requirements.

# CO Surrogacy and the 130 PPM Remand

“I changed the course of  
human history when I created  
surrogates.”

*Lionel Canter – Surrogates*



## History – Is CO an Appropriate Surrogate?

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### – EPA used CO as a surrogate for organic HAP in 2011, 2013, and 2015:

- EPA supported CO as surrogate because:
  - Lowest CO = Lowest HAP
  - Same controls reduce both CO and HAP
- In U.S. Sugar Corp. v. EPA No. 11-1108 (D.C. Cir. 2016) the Court remanded, without vacatur, EPA's use of CO as a surrogate.
- Court stated EPA failed to consider commenters suggestion that controls could reduce CO but not HAP, or vice versa.
- Court rejected petitioners claim combustion related issues preclude CO as a surrogate – i.e., breakdown in correlation below 130 PPM.
- EPA to adequately explain how CO acts as a reasonable surrogate for non-dioxin/furan organic HAPs.

### National Lime v. EPA Surrogacy Test:

- 1) HAP is invariably present in surrogate;
- 2) Controls for surrogate indiscriminately capture HAP; and
- 3) Control of surrogate is the only means facilities reduce HAP emissions.



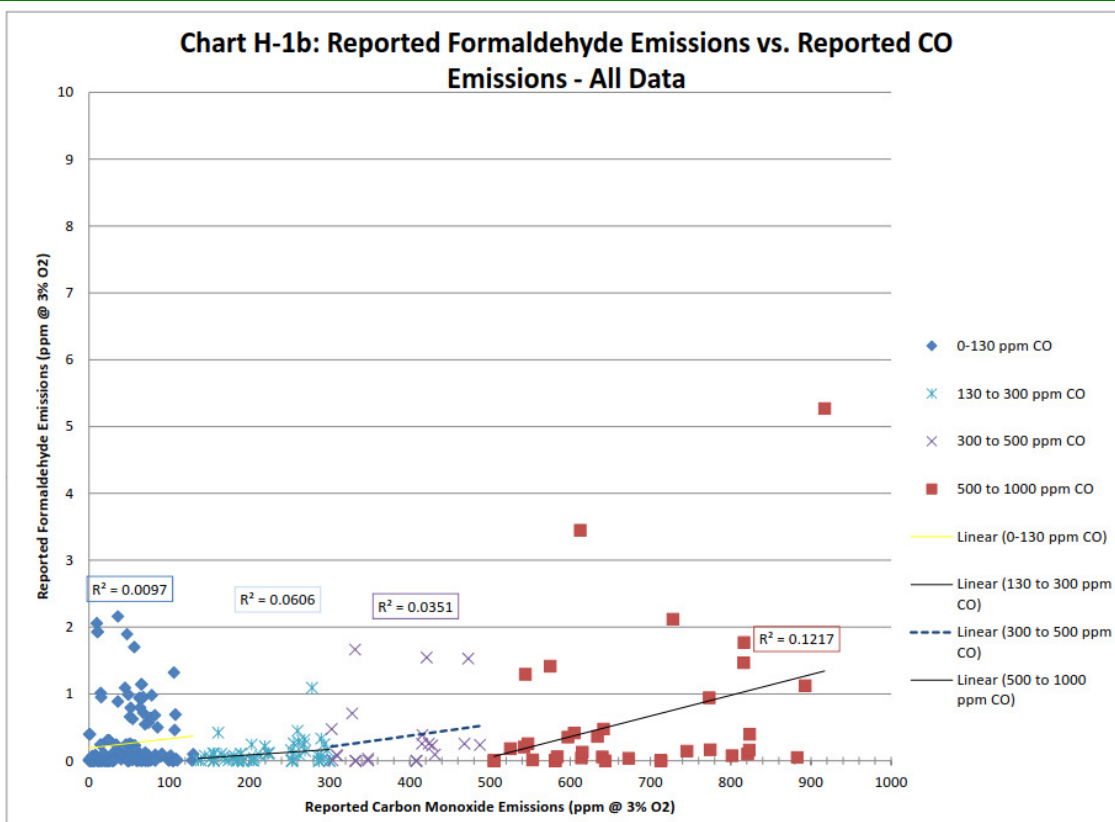
## The January 2013 Final Rule

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– EPA promulgated a “minimum” MACT floor level of 130 PPM CO where limit had previously been lower:

- Compared paired tests of formaldehyde (CH<sub>2</sub>O) and CO and concluded:
  - CH<sub>2</sub>O emissions decrease with decreasing CO to about 300 PPM CO, then around 150 PPM, CH<sub>2</sub>O start to increase
  - CO is a poor surrogate for CH<sub>2</sub>O below 130 PPM CO

# The January 2013 Final Rule



From Appendix 8 of the BMACT Floor Memo – “Revised MACT Floor Analysis (August 2012) for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants – Major Source”

## Reconsideration to Remand

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- EPA granted reconsideration of the 2013 rule, in part, for the minimum 130 PPM CO limit and eventually retained the 130 PPM level.
- Several environmental groups sued, and on March 16, 2018 the D.C. Circuit Court remanded, without vacatur the 130 PPM limit:
  - EPA failed to demonstrate/support HAPs are reduced as far as possible at 130 PPM
  - The Agency contradicted itself by claiming:
    - First- paired test data below 130 PPM CO were unreliable to set a limit, but
    - Later – those same data are indicative of no correlation

## Additional Items

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- If the CO/HAP relationship is only valid to a point, EPA must explain how that point “reflects the emission control actually achieved by the best performing sources and, further, that it is the lowest emission level achievable with existing technology”
- EPA must also consider whether beyond-the-floor standards are appropriate.

# **NHSM: Updates to Categorical Non-Waste Fuel List**

## NHSM – Other Treated Railroad Ties

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- Feb. 7, 2018 final rule amends 40 CFR 241 by adding 3 NHSM:
  - Creosote-borate treated railroad ties;
  - Copper naphthenate treated railroad ties; and,
  - Copper naphthenate-borate treated railroad ties.
- But – NHSM status depends on type of combustion unit!



<http://www.neatorama.com/2014/02/04/A-Mountain-of-Railroad-Ties/>

## NHSM – Depends on Combustion Unit

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- Creosote-borate treated railroad ties, & mixtures of creosote, borate and/or copper naphthenate treated ties combusted in:
  - Units designed to burn (DTB) biomass & F.O. as part of normal ops
  - Units at P&P mills or power producers (subject to BMACT) DTB biomass & F.O., but modified to burn natural gas
  - Can also be DTB coal, but must be DTB biomass & F.O.
- Copper naphthenate or copper naphthenate-borate treated ties combusted in:
  - Units DTB biomass, biomass and F.O., or biomass & coal.
- Trade associations working to convince EPA to abandon the DTB concept and revise NHSM rule based on recent court decisions on the definition of solid waste related to recycling of hazardous materials.

# **CISWI Technical Amendments Proposed Rule**



## CISWI Rule Updates

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- Final reconsidered CISWI NSPS and EG published June 23, 2016.
- Federal Plan proposed January 11, 2017 and not yet finalized. Some states do not have revised CISWI rule in place if they did not incorporate EG into their SIP.
- EPA has proposed additional revisions to the CISWI rules, signed on 5/9/18. 45 day comment period following FR publication, only on the changes proposed. There are 10 technical corrections/clarifications.

## Proposed CISWI Rule Updates

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1. Alternative equivalent emission limit for mercury (Hg) from the waste-burning kiln subcategory. Recordkeeping, calculation, and reporting requirements for clinker production rates, consistent with Portland Cement MACT.

Limit Type	Existing Concentration Based Limits (mg/dscm)	Proposed Production Based Limits (lb/MM ton clinker)
Existing Sources	0.011	58
New Sources	0.0037	21

## Proposed CISWI Rule Updates (cont.)

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2. EPA proposes to revise the deadline to conduct a performance evaluation of each continuous monitoring system (CMS) from 60 days to 180 days after installation to coincide with the deadline for sources to conduct an initial performance test, 180 days from the final compliance date.
3. EPA proposes to extend the submittal deadline for reports in CEDRI from 90 calendar days after forms are available to two years from publication of the final rule or one year after the forms are available, whichever is later.
4. Clarification of non-delegated authorities/cross references to reflect final rule.
5. EPA proposes to amend several sections of the rule to clarify that CEMS data may be used to demonstrate initial compliance.
6. Clarify that ERUs between 10-250 MMBtu/hr with BH/leak detector, ESP, wet scrubber, PM CPMS, or PM CEMS do not need COMS.

## Proposed CISWI Rule Updates (cont.)

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7. EPA proposes to revise 40 CFR 60.2145(j) so that CO is one of the pollutants requiring an annual test and remove CO from the list of pollutants requiring CEMS for compliance demonstrations. EPA is also proposing to remove the requirement to notify the Administrator prior to starting or stopping the use of PM CEMS as the provisions were inadvertently carried over from an older rule.
8. Clarification of skip testing requirements.
9. EPA proposes to add language in the deviation reporting requirements in 40 CFR 60.2115(a) and 60.2775(a) to include the 30-day averages allowed for energy recovery units and 30-day averages measured using CEMS that deviated from an emissions limit.
10. Clarification of air curtain incinerator requirements.

**Questions?**

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