USW’s Continued Work on Boiler MACT, Related Waste Definition Rule

Since 2010, USW has been working diligently with industry and other stakeholders to make sure EPA’s rules to regulate emissions from industrial, commercial and institutional boilers are achievable by the plants they would regulate. “Getting to achievable rules that ensure the industry can thrive is a fundamental goal for our union,” said USW President Leo Gerard. “We’ve done our own assessment, met with industry and have been working with EPA ever since the agency proposed the rules in 2010 and have made a great deal of progress.”

There are three air emissions rules, those for larger industrial boilers, called “Boiler MACT,” those for smaller industrial boilers, and those for incinerators that burn waste materials. In addition there is a rule designed to state which materials will be considered legitimate fuel and which will be considered waste. Boilers burning materials classified as waste will be subject to the much tighter standards that apply to waste incinerators.

When EPA’s rules came out, USW went right to work. The union held detailed discussions with the American Forest & Paper Association (AF&PA) and the American Iron & Steel Institute (AISI) to fully understand the industry perspective. The union also met with other stakeholders to understand concerns from all sides.

USW filed its own formal comments on Boiler MACT and the waste definition rule. The comments asked EPA to make a substantial number of changes to ensure more achievable rules and to be open to new submissions of data from industry. At the same time, the union strongly urged its industry colleagues to submit as much information as possible to EPA. In addition USW made visits to EPA to present its ideas in person, and stayed in close contact with the agency throughout the process.

EPA was under court order to issue its final rules in April 2011. The agency went to court and asked for an additional 15 months, so it could make additional improvements to the rules. The court said no. It did grant an extra 30 days, and suggested EPA could stay the rules once they were issued and re-propose them as is allowed under the Clean Air Act.

In May 2011, EPA issued the new rules as the court had ordered. There were numerous improvements, including several that had been directly suggested by USW. However, problems remained. For example in the waste definition rule, the contaminant specification for legitimate fuels had been written so tightly that it would have meant many industrial boilers would automatically have been classified as burning waste.

EPA did suspend the air rules as it had promised. However it did not suspend the waste definition rule. Because of the problem definition and a couple of additional issues that had the potential to be serious, USW scheduled a visit with the director of EPA’s solid waste office to impress upon the agency the urgent need for it to review some aspects of the waste definition rule. In addition USW International President Leo Gerard met with EPA Administrator Lisa Jackson to take the USW’s concerns to the highest level possible.

In December 2011, EPA re-proposed the three air rules: boiler MACT, the rule for smaller boilers, and the incinerator rule. It also took the nearly unprecedented step of reopening parts of the waste definition rule and making re-proposals in those areas. USW Vice President Jon Geenen, who heads the paper sector, said, “It is clear that the EPA responded positively due largely to the quality of information provided in the USW’s independent analysis by our own technical experts. Because of the level of credibility our union has established on these issues, EPA was willing to listen to our concerns and view them as legitimate.”

In the re-proposals, EPA made a number of significant modifications that address numerous concerns raised by USW and by industry. The contaminant standard in the waste definition rule was addressed. EPA made major adjustments to accommodate industry concerns around how carbon monoxide emissions were to be calculated and other changes to make compliance with organic pollutant standards more achievable.

Furthermore the agency made several significant changes to encourage the use of renewable, carbon-neutral biomass as a fuel. It also clarified the standards by which low-pollution biogas boilers can be regulated under a highly achievable work practice standard.

A court ruling in mid-January vacated EPA’s stay. Nevertheless EPA has assured all stakeholders it is on course to finalize the re-proposed rules by April or May 2012 as planned. One feature of the re-proposed rules will be more time to comply. Much of industry is backing legislation that would - if passed - give more time, among other things. Since the legislation has already been captive to a political year and political agenda, and is unlikely to find enough support, USW believes that a direct agency approach and diligence in monitoring the re-proposal process will lead to a better result.

“There are still details that we need to make sure are right, and we will be filing formal comments in those areas that are not,” said Geenen. “We also continue to meet with industry and others. EPA’s rules will be far better and far more achievable than they would have been if we had not stepped in.”