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Large Municipal Waste Combustors/Clean Air Act: Earthjustice D.C. Circuit Court of Appeals Petition for Writ of Mandamus Addressing Emission Standards

01/05/2022

Earthjustice filed a December 21st Petition for Writ of Mandamus (“Petition”) before the United States Court of Appeals for the District of Columbia Circuit (“Court”) asking that the United States Environmental Protection Agency (“EPA”) promulgate a rule updating the emission standards for large municipal solid waste incinerators (“Large Combustors”).

The Petition is filed on behalf of the following organizations:

- East Yard Communities for Environmental Justice
- Ironbound Community Corporation
- Sierra Club

The Petition requests that the Court’s Writ require that EPA finalize updated emission standards within 18 months of the Court’s Writ.

Incinerators (i.e., Combustors) are described as those combusting 250 tons or more of municipal waste per day. They are a category of incinerators described as large municipal waste combustors.

The Petition notes that Congress amended the Clean Air Act in 1990 to (among other additions) add Section 129. The provision provides that EPA is required to regulate emissions from incinerators. It is also stated to include a timetable for which EPA must issue and update those regulations. Such emission limits are required to reflect the maximum degree of emission reduction that is achievable for each category of incinerator (i.e., “MACT”).

Section 129 divided solid waste incineration units into five categories. Timeframes were imposed depending upon the category of incinerator.

Large incinerators (i.e., Combustors) were to be subject to emission standards no later than 1991. Further, EPA is required to review and revise such standards and requirements not later than five years following their initial promulgation and periodically thereafter.

The Earthjustice Petition states that EPA has failed to meet deadlines to implement and update the large incinerator standards. Relevant EPA actions cited include:

- Initial promulgation of the standards four years past the Section 129 deadline

- Alleged deficiencies in the performance control technology promulgated
- Failure to review and revise the initial standards
- Failure to review and revise periodically the standards

Earthjustice states that in 2007 EPA sought a voluntary remand of the standards from the Court because of judicial decisions addressing the standards. The federal agency is stated to have committed to review them administratively and make any necessary revisions. The Court granted EPA's motion and remanded the standards.

Earthjustice argues that because 13 years has passed since the remand without EPA action to review or update its standards, that mandamus is appropriate.

Arguments in support of the Petition cited by Earthjustice include:

- The Court has jurisdiction to enforce its mandate by issuing a Writ of Mandamus.
- EPA has a clear duty to act.
- EPA has defied the Court's mandate and thwarted the Court's jurisdiction by shielding the exemption rule from review.
- Mandamus is warranted because EPA has unreasonably delayed compliance with the Court's mandate.
- EPA's delay prejudices petitioners and communities nationwide.
- A finding of impropriety is not necessary for the Court to grant mandamus relief.

A copy of the Petition can be downloaded [here](#).