

## Natural Gas Industry Challenges EPA's Costly Rule Targeting Emissions

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[Mary Ann Poirier](#)

Natural gas producers, engine manufacturers, and other industry groups have launched an assault on the U.S. EPA's recent rule requiring operators of existing stationary natural gas-fired engines to control emissions of certain hazardous air pollutants. Among other assertions, they claim that this latest rulemaking imposes requirements on small engines that cannot be practically implemented, and that EPA's cost-benefit analysis was substantially flawed, leading to unreasonably low emission limits.

**Background:** On August 20, 2010, EPA issued its final rule targeted at reducing the emissions of formaldehyde, benzene, toluene, acrolein and other air toxins from spark-ignited (SI) reciprocating internal combustion engines (RICE), which are engines that burn gasoline, natural gas and landfill gas. SI RICES generate electric power, pump fluids or compress air for machinery. Outside the utility context, such internal combustion engines are most frequently used in natural gas transmission, gathering, underground storage tanks and processing plants.

Whether a particular RICE is subject to numerical emissions standards or merely "work practice standards" (primarily complying with a set maintenance schedule) depends on whether the engine is located at a major source or an area source of hazardous air pollutants, as well as the size of the engine itself. Generally, a "major source" is any facility that emits more than ten tons per year of an individual air toxin or 25 tons per year of any combination of air toxins, and an "area source" is any facility that is not a major source. For engines greater than 100 HP located at major sources and engines greater than 500 HP located at area sources, EPA has established numerical carbon monoxide or formaldehyde emissions standards (where the CO or formaldehyde emissions act as surrogates for other emissions EPA is seeking to reduce). Generally the other engines encompassed by the rule (as well as certain emergency engines) must only comply with work or management practice standards. The rule also establishes operational standards that must be followed during times of startup, malfunction or normal operation, as well as monitoring, recordkeeping and notification requirements.

The rule will not be fully implemented until 2013, but before then, existing SI RICE must comply with certain notification requirements, with an "initial notification" due **February 16, 2011** (120 days after the effective date of the rule). EPA estimates that the final costs of implementing the rule are \$253 million (in 2009 dollars), and that the majority of these costs will fall on the electric power sector. EPA expects that approximately 331,000 existing stationary SI engines will be affected by the new regulation. The annualized compliance costs per engine varies by engine size, estimated by EPA to be less than \$1,200 per engine for engines sized 500 HP or less, and between \$7,200 and \$8,500 for higher HP engines.

Earlier this year EPA issued a related rule setting emissions limits for air toxins from diesel compression-ignited engines sized comparably to the engines addressed by the August 2010 rule. Existing RICE with greater than 500 horsepower ratings at major sources were encompassed by a 2004 EPA rule.

**The Latest Challenge:** The week of October 18th, industry attacked the recent RICE rule on two fronts: by filing petitions for reconsideration at EPA, and by filing lawsuits at the U.S. Court of Appeals for the D.C.

Circuit. Challengers to the rule include the Interstate Natural Gas Association of America, Engine Manufacturers Association, Gas Processors Association, EnerNOC Inc., American Petroleum Institute, the National Rural Electric Cooperative Association, Dresser-Waukesha and Exterran Energy. In the petitions before the agency, industry claims that the "continuous parametric monitoring system" requirement imposed on engines at smaller sources is infeasible and was not adequately presented in the rulemaking process; EPA incorrectly used available data to derive emissions limits that are too low; EPA miscalculated benefits associated with the rule by assuming that NOx reductions would be achieved; EPA failed to account for rural locations in assessing the health benefits associated with the rule's anticipated emissions reductions; that formaldehyde is too costly and complex to be used as a surrogate; and that restrictions placed on small emergency generating units for peak shaving programs and demand reduction service should be lessened.

At this stage, the appeals before the court are mere placeholders, with issues to be fleshed out at a later date and, assuming the court follows its typical process, briefing will not be scheduled until EPA rules on the pending petitions for reconsideration. Depending on how EPA addresses industry's issues on reconsideration, those issues are likely to be argued to the court as well. The court's review of the rule, however, will be broader than EPA's; because of this, challengers before the court can also be expected to raise issues challenging EPA's core authority (under the Clean Air Act, court precedent and elsewhere) to impose its new restrictions on the combustion engines.

Because the RICE rule has been challenged, it is subject to change. However, the current posture is such that owners and operators of existing engines encompassed by the new rule must take steps to comply with that rule now; such compliance steps should be taken with an eye on the actions of EPA and the D.C. Circuit Court.