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## ENVIRONMENTAL

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### CLIENT ALERT: PROPOSED AMENDMENTS TO EPA'S RICE RULE

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In response to lawsuits and industry comments, the Environmental Protection Agency recently issued proposed amendments<sup>1</sup> to certain provisions of its Reciprocating Internal Combustion Engines (RICE) National Air Emission Standard for Hazardous Air Pollutants (NESHAP)<sup>2</sup> rule. This memorandum describes the amendments to the circumstances in which a compression ignition (CI) RICE unit may be eligible to be designated as an “emergency unit.”<sup>3</sup> Because emergency units are exempted from carbon monoxide limitations (though they must still meet certain management practice standards and reporting requirements), qualification as an emergency unit can reduce the expense of complying with EPA’s RICE regulation by deferring or eliminating the need to retrofit with pollution control equipment. **Comments on the proposed amendments are due August 9, 2012.**

Under the rule, emergency CI RICE units are those that operate only for emergency purposes and less than 100 hours per year for required testing and maintenance. Emergency purposes include generating power for critical networks or equipment when electric power from the local utility or other normal power source is interrupted and for water pumps in the case of fire or flood. Peak shaving is *not* considered an emergency use. Furthermore, although supplying power to an electric grid or as part of a financial arrangement with another entity generally is also not considered an emergency purpose, the current RICE standard includes two limited exceptions (1) a 50-hour limit (from the 100-hour testing and maintenance allowance) for uncompensated general non-emergency purposes and (2) a 15-hour limit (from the 50-hour general non-emergency limit) for participation in an emergency demand response program.

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<sup>1</sup> [77 Fed. Reg. 33812](#).

<sup>2</sup> [75 Fed. Reg. 9648](#).

<sup>3</sup> Other proposed amendments affecting CI RICE units concern the exemption for remote Alaskan units, compliance of certified Tier 3 units installed before June 12, 2006, and the requirements for Tier 1 and Tier 2 units located at area sources subject to a state or local rule that the engine be replaced.

The amendments propose to relax these two exceptions potentially allowing more RICE engines to meet the standards of an “emergency” unit. As to the first exception, EPA proposes allowing RICE units at *area sources*<sup>4</sup> to receive compensation for the allowed 50 hours of general non-emergency use until April 16, 2017.<sup>5</sup> However, compensation may only be received for power that is “used at the facility or towards the local system[] and the engine can only be operated for peak shaving as part of a program with the local distribution system operator.”<sup>6</sup>

As to the second exception, EPA proposes allowing owner/operators to use the full 100 hours of the permitted testing and maintenance allowance time for “emergency demand response” operations. Qualifying periods of operation are limited to power generated during either (a) a deviation of voltage or frequency of 5% or more below standard voltage or frequency or (b) a declaration by the RTO/ISO or equivalent balancing authority and transmission operator of an Energy Emergency Alert Level 2 as defined in the NERC Reliability Standards EOP-002-3, Capacity and Energy Emergency.

Even if these proposed changes are adopted, if the total time spent for permitted non-emergency uses, emergency demand response, and maintenance and testing exceeds 100 hours, the unit will not be considered an emergency unit. Once an emergency unit exceeds its calendar year allowance, it will be subject to the requirements for non-emergency engines for the remaining life of the engine.

**All units must comply with the RICE rule by May 3, 2013. While the comment due date is August 9, 2012, EPA has not adjusted any compliance deadlines and is unlikely to do so for units not affected by the amendments. EPA specifically seeks comments on the application of the May 3 deadline to entities that may be affected by the proposed amendments but there is no guarantee the agency will make any change. If you would like to discuss the effect of the amendments on your RICE units or are interested in submitting comments, please contact any Spiegel attorney you regularly work with or a member of our environmental practice listed below.**

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FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE FOLLOWING SPIEGEL ATTORNEYS:

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<sup>4</sup> An area source is a unit that is not a major source. A major source is a stationary engine that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

<sup>5</sup> The sunset date for compensation is the final date (including available extensions) by which a utility must comply with the Mercury Air Toxics Standard.

<sup>6</sup> [77 Fed Reg. at 33820](#).