

## *Advocacy comments on EPA's Proposed Utility MACT Rule*

On August 4, 2011, the Office of Advocacy (Advocacy) filed comments on the Environmental Protection Agency's proposed rule establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units. This rule established new emissions controls for pollutants such as particulate matter and mercury from electric utilities. This rule has also been referred to as the Utility MACT, the EGU MACT, and the Toxics Rule.

Advocacy believes that EPA has not complied with the Regulatory Flexibility Act (RFA) in its development of this proposed rule. In its comment letter, Advocacy describes deficiencies in the Small Business Advocacy Review panel and the Initial Regulatory Flexibility Analysis. Advocacy also describes regulatory alternatives that are consistent with the Clean Air Act that EPA should have developed and analyzed, including:

- Facility-wide emission standards in lieu of pollutant-by-pollutant MACT floors;
- Limiting the rulemaking to mercury controls;
- Area Source emission or management practice standards; and
- Additional subcategorization schemes, including one on based on EGU size.

Advocacy strongly recommends that EPA do the following:

- Reconvene the SBAR panel to solicit more meaningful consultation with the SERs;
- Prepare an IRFA that includes descriptions of specific regulatory alternatives, the effects on small entities of the regulatory alternatives, and the policy reasons for selecting among them; and
- Release the IRFA for additional public comment before making any decisions about the EPA's preferred options for final rulemaking.

This rulemaking is subject to a settlement agreement with a court-agreed deadline for final rulemaking. EPA would have to request of the litigants and the court an extension of the timeline for final rulemaking, but Advocacy feels strongly that this action is necessary.