What’s the latest from the EPA?
The U.S. Environmental Protection Agency (EPA) has opted to not take further action on the D.C. Circuit Court decision that affects the revised National Emission Standards for Hazardous Air Pollutants (NESHAP) and the New Source Performance Standards (NSPS) regulations for Reciprocating Internal Combustion Engines (RICE) engines. This means that non-compliant generators are not permitted to participate in emergency demand response programs as of May 4, 2016.

On April 15, 2016, the EPA issued a memo explaining how they intend to implement the revised RICE NESHAP and NSPS engine regulations. Read their Vacatur Guidance here.

Wait, back up a minute. How did this start?
In 2013, the EPA modified the NESHAP for older RICE engines and the NSPS for newer RICE engines. The modified regulations allowed RICE (including back-up generators) to operate up to 100 hours per year for testing, maintenance, and emergency DR use.

The emergency DR changes to EPA’s emergency engine regulations were challenged by certain groups. On May 1, 2015, the D.C. Circuit Court of Appeals found the EPA to be “arbitrary and capricious” regarding its emergency DR changes to its engine regulations. A Court Mandate eliminated the 100-hour allowance for emergency DR use.

In August 2015, the Court granted the EPA a Stay until May 1, 2016, meaning the EPA’s 100-hour annual emergency DR allowance for RICE is in effect until then.

So what does this mean?
Unless the engines are compliant (see next column for further details), engines will need to be upgraded to meet the non-emergency requirements of the RICE NESHAP in order to participate in DR, which requires the installation of emission controls and other upgrades. Alternatively, sites can participate solely by curtailing load. Violations of the Clean Air Act are federal offenses subject to large fines, shut down, and/or prison.

EnerNOC will remove all known non-compliant generators that are actively participating in emergency DR programs no later than April 30, 2016 to help ensure customers are adhering to the updated EPA regulations.

What is the scope of this ruling?
The EPA engine regulations apply nationwide. In addition, many states, and even some cities and counties, have their own air regulations. Facilities must comply with the more rigid of the state (or city/county) and EPA air regulations.

Are there any exceptions from the Court Mandate?
Yes, there are exceptions based on the fuel type, engine manufacture date, size, etc. Here are a few key exceptions:

- The Court Mandate only affects RICE. Other generators such as turbines and boilers are not affected.
- Compression Ignition (CI) (e.g., diesel) engines <300 hp and Spark Ignition (SI) (e.g., natural gas) engines <500 hp that were ordered before June 12, 2006, do not need to meet emission limits under the RICE NESHAP (this affects older engines) (40 CFR 63 Subpart ZZZZ).
- Tier 2 or 3 engines manufactured prior to 2011 have the same emission limits for emergency and non-emergency use as per the EPA NSPS (40 CFR 60 Subpart III).
- Tier 1 engines manufactured between April 1, 2006 and December 31, 2010 have the same emission limits for emergency and non-emergency use as per the EPA NSPS.
- SI engines manufactured after April 1, 2006 depending on the engine size, fuel, and manufacture date (40 CFR 60 Subpart JJJJ).
- Engines operating in demand response programs which qualify for up to 50 hours per calendar year in non-emergency situations (40 CFR 63.6640(f)(4)(ii) (RICE NESHAP Subpart ZZZZ), 40 CFR 60.4211(f)(3)(i) (NSPS Subpart IIII), and 40 CFR 60.4243(d)(3)(i) (NSPS Subpart JJJJ).

Is it possible to upgrade my generators so they are compliant?

Engines operating under the RICE NESHAP can be upgraded to meet the non-emergency requirements of the regulation. This requires the addition of a diesel oxidation catalyst (DOC), stack testing, continuous monitoring, semi-annual reporting, etc.

Where can I learn more?

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Additional information regarding the EPA engine regulations can be found at: **EPA Stationary Internal Combustion Engines**