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ONCE IN-ALWAYS IN NO MORE!

EPA'S 2018 POLICY CHANGE AND WHAT IT MEANS

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BRIEF SUMMARY

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- Once In-Always In came from a 1995 policy
- Makes MACT controls effectively permanent for major sources
- 2018 policy reverses OIAI

CLEAN AIR ACT SECTION 112

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- Clean Air Act Section 112 requires EPA to regulate HAPs
- HAP program was substantially rewritten in the 1990 CAA amendments
- Now includes over 180 different pollutants

HAZARDOUS AIR POLLUTANT REGULATION

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- National Emission Standards for Hazardous Air Pollutants (NESHAP Program)—40 CFR Pt. 63
  - For example ZZZZ (engines) and HH (dehydrators)
- These programs regulate sources using Maximum Achievable Control Technology (MACT) standards

MAJOR SOURCES

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- NESHAP largely regulate sources based on major source applicability
  - 10 TPY of any single HAP
  - 25 TPY of combined HAP's
- Some area sources are also regulated (HH)
- Major sources of HAPs also potentially have Title V/NSR permitting requirements

1995 ONCE IN ALWAYS IN (OIAI) POLICY

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- 1995 EPA policy an applicable major source cannot avoid MACT by becoming an area source
- Under OIAI, major sources become "permanently subject" to MACT requirements

1995 POLICY RATIONALE

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to emit. In the absence of a rulemaking record supporting a different result, EPA believes that once a source is required to install controls or take other measures to comply with a MACT standard, it should not be able to substitute different controls or measures that happen to bring the source below major source levels.

A once in, always in policy ensures that MACT emissions reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined.

CRITIQUES OF 1995 POLICY

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- Unnecessary compliance burden
- Potentially discourages sources from improving pollution control
- Inclusion in Title V permitting, which is not really designed for small sources

2018 POLICY

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- Reverses the 1995 Policy
- Allows for a MACT-applicable source that reduces PTE below major source thresholds to become an area source
  - No longer a HAP MACT major source and therefore the requirements fall out
- EPA is expected to publish this notice in the Federal Register but has not done so

2018 POLICY RATIONALE

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source MACT and other requirements applicable to major sources under CAA section 112. As is explained below, the plain language of the definitions of "major source" in CAA section 112(a)(1) and of "area source" in CAA section 112(a)(2) compels the conclusion that a major source becomes an area source at such time that the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP) below the major source thresholds (*i.e.*, 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP). In such circumstances, a source that was previously classified as major, and which so limits its PTE, will no longer be subject either to the major source MACT or other major source requirements that were applicable to it as a major source under CAA section 112.

Accordingly, EPA has now determined that a major source which takes an enforceable limit on its PTE and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its PTE. That source, now having area source status, will not be subject thereafter to those requirements applicable to the source as a major source under CAA section 112, including, in particular, major source MACT standards – so long as the source's PTE remains below the applicable HAP emission thresholds.

NEXT STEPS

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- Expect a formalization of EPA's new policy
- Operators with MACT Major Sources should:
  - Reevaluate their emissions and controls
  - Confirm whether emissions have dropped below 10/25 TPY of HAP and are or could be subject to enforceable controls
- A new permitting effort may result in removal of MACT requirements
- May also eliminate the Title V permitting requirements if source is only major for HAPs

QUESTIONS?

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