

Alert | Environmental



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EPA Nixes Decades-Old Policy on Toxic Air Pollution

Jettisoning 23-year old doctrine, the U.S. Environmental Protection Agency (EPA) announced last week in guidance (“[Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act](#),” [Memorandum from William L. Wehrum, EPA \(January 25, 2018\)](#)) that it was abandoning its “once-in-always-in” (OIAI) policy that branded stationary air pollution sources as “major sources” in perpetuity for purposes of compliance with the Clean Air Act’s “maximum available control technology” (MACT) standards.

Under the OIAI policy, set out in a [1995 EPA memorandum](#), a stationary source with the potential to emit (PTE) hazardous air pollutants (HAPs) in excess of the major source threshold (10 tons per year (TPY) of a single HAP or 25 TPY of any combination of HAPs) was required to “comply permanently with the MACT standard,” even if the source subsequently took enforceable steps to limit its PTE below major source thresholds.

Under the new guidance, major sources that reduce their PTE below the threshold will become “area sources,” subject to reduced permitting requirements and less stringent pollution controls.

The agency and supporters of the changed policy claim it will remove the OIAI policy’s intrinsic disincentive to reduce emissions. Critics charge, however, that the new approach will result in increased HAP emissions, with potential adverse effects on low-income or minority communities adjacent the sources.

Only time will tell what effect this change will have on toxic emissions. In the meantime, now may be a good time for operators of HAP sources to reassess their pollution controls and permit status in light of the new policy.

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Our lawyers come from a variety of professional and educational backgrounds. Many of our attorneys have degrees and experience in science, engineering and manufacturing, enabling them to uniquely serve operators of stationary sources and other entities with compliance obligations under the Clean Air Act. We have studied the EPA's new MACT policy and stand ready to assist clients as they conduct assessments of permitting requirements and pollution controls in light of the new policy.

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