



October 22, 2019

Mr. Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
Air and Radiation Docket
1200 Pennsylvania Avenue,
NW Washington, DC 20460

Attention: Docket No. EPA–HQ–OAR–2019–0282

Re: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act
84 FR 36304 (July 26, 2019)

Dear Administrator Wheeler:

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to provide comments on the United States Environmental Protection Agency (EPA) proposed Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.

EPA is proposing amendments to the General Provisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP) to allow a major source to be reclassified to area source status at any time by limiting its potential to emit (PTE) hazardous air pollutants to below the major source thresholds of 10 tons per year (tpy) of any single hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants. The proposed rulemaking would eliminate the EPA's longstanding "Once In, Always In" policy (*See "Potential to Emit for MACT Standards – Guidance on Timing Issues."* John Seitz, Director, Office of Air Quality Planning Standards, EPA – May 16, 1995), under which a facility that qualified as a major source of hazardous air pollutants as of the "first substantive compliance date" of the applicable maximum achievable control technology (MACT) standard was permanently subject to that standard, even if the source later reduced its emissions below major source applicability thresholds.

DEP does not agree that the 1995 "Once In, Always In" policy should be reversed. Hazardous air pollutants, also known as toxic air pollutants or air toxics, are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. The "Once In, Always In" policy ensures that MACT emissions reductions of hazardous air pollutants are permanent and that the health and environmental protection provided by MACT standards is not undermined. Owners and operators of sources that emit major amounts of hazardous air pollutants are required to control them under the MACT standards, sometimes resulting in actual emissions under the major source thresholds. For example, a source that has a pre-control PTE of 20 tpy of a hazardous air pollutant and is required by MACT to control those emissions by 95% to 1 tpy. Under EPA's proposed rule, the source would be allowed to increase hazardous air pollutants to just under 10 tpy.

Secretary

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Should EPA go forward with the proposed rule, DEP recommends that it be applied prospectively, rather than retroactively, to the sources. For example, if the final rule is applicable only to newer affected sources, backsliding which results in air toxic emission increases will not occur. In Pennsylvania, new sources are required to reduce air contaminant emissions to the maximum extent possible considering technical and economic feasibility through the use of best available technology (BAT). Allowing a source to apply emission control strategies that reduce emissions to just below the major source threshold also doesn't make economic sense when one considers the dollars spent per ton of emissions reduced, which is required in the BAT economic feasibility analysis. It is better to achieve maximum emission reduction of toxic air pollutants given the money already spent on the air pollution control for the project.

EPA is proposing that PTE hazardous air pollutant limits must meet the proposed effectiveness criteria of being legally and practicably enforceable instead of federally enforceable. DEP agrees with the proposal provided; that the practically enforceable measures to limit the PTE are included in permits which are federally enforceable.

If EPA finalizes the rule by rescinding its "Once In, Always In" policy, DEP recommends that while providing administrative relief, EPA must include safeguards to prevent emissions increases when PTE limits are used to reclassify a major source to area source status.

It is unclear to DEP why EPA seeks to rescind a policy and potentially increase the emissions of cancer-causing hazardous air pollutants across the United States.

Thank you for your consideration in this matter. Should you have questions or need additional information, please contact Krishnan Ramamurthy, Deputy Secretary for Waste, Air, Radiation and Remediation, by e-mail at kramamurth@pa.gov or by phone at 717.787.9702.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is fluid and cursive, with the first name being more prominent than the last.

Patrick McDonnell
Secretary