Message

From: Mia, Marcia [Mia.Marcia@epa.gov]
Sent: 1/26/2018 10:09:53 PM
To: Messina, Edward [Messina.Edward@epa.gov]; Chapman, Apple [Chapman.Apple@epa.gov]
CC: Lischinsky, Robert [Lischinsky.Robert@epa.gov]
Subject: FW: Inside EPA - OIAI

Importance: High

I'm starting to get lots of questions about what this means for us. I am guessing OECA was not involved in the memo. Are we preparing a desk statement?

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From: Kaleri, Cynthia
Sent: Friday, January 26, 2018 10:31 AM
To: Mia, Marcia <Mia.Marcia@epa.gov>
Cc: Thompson, Steve <thompson.steve@epa.gov>; Larson, Darrin <Larson.Darrin@epa.gov>
Subject: FW: Inside EPA

Hi Marcia,

We were wondering if you had seen this yet and how this impacts our prior regulatory interpretations that have been issued – notice I highlighted a bit below about a coming FR Notice ... confusing since this is ending a policy, yes, so how does this get implemented moving forward if we are taking public comment? Perhaps we can get a copy of the memo, and some direction on this issue, since we are sure to get questions soon from state partners and industry, too. Thanks, Marcia!

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From: Thompson, Steve
Sent: Friday, January 26, 2018 8:02 AM
To: R6 6EN-A; R6 6EN-AA; R6 6EN-AS; R6 6EN-ASH; R6 6EN-AT
Subject: Inside EPA

EPA Ends 'Once In, Always In' Air Policy, Easing Facilities' MACT Mandates

January 25, 2018

EPA has withdrawn its contested "once in, always in" policy that subjected industrial facilities to strict maximum achievable control technology (MACT) air toxics rules for their lifetime even if they reduced and kept emissions below MACT levels, a major win for GOP senators, the Commerce Department and others who oppose the policy.

In a Jan. 25 "guidance" memo sent to EPA's regional air directors, the agency's air chief William Wehrum rescinds the 1995 policy, clearing the way for plants to reduce their potential to emit (PTE) and escape MACT emissions limits if they keep their emissions below MACT limits. MACT limits apply to "major" sources of hazardous air pollutants (HAPs), defined as those sources emitting in excess of 10 tons per year (tpy) of one HAP or 25 tpy of a combination of HAPs.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act," said Wehrum in a statement. "It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

EPA in the statement adds that the policy "has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions," saying the move is part of the Trump administration's deregulatory agenda.

Sources that limit their PTE below the major source thresholds will now be considered "area sources" subject to less-stringent air pollution control requirements.

Wehrum in the memo writes, "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."

He notes, "Congress placed no temporal limitations on the determination of whether a source emits or has" the potential to emit HAPs "in sufficient quantity to qualify as a major source."

Wehrum in the memo says that "EPA anticipates that it will soon publish a *Federal Register* notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

The notice will give critics of the move an opportunity to comment and potentially lay the foundation for eventual litigation against either the memo or a resulting regulation to implement the decision.

Deregulatory Agenda

Industry groups and others responding to earlier Trump administration solicitations for comment on what deregulatory steps would be helpful cited ending the policy as one step that EPA should take.

For example, the Commerce Department in a regulatory review report last year urged the agency to "review the 'once in, always in' policy to clarify the means by which a facility currently classified as a major source can become an area source," identifying it as a potential barrier to industry.

Sources told *Inside EPA* last year that the White House appears to be supporting states' calls to overhaul smaller "in-the-weeds" EPA rules such as the once in, always in policy, in lieu of calls to undo "big ticket" Obama-era policies.

More recently, Senate Environment & Public Works Committee (EPW) Chairman John Barrasso (R-WY) and EPW clean air panel Chairman Shelley Moore Capito (R-WV) sent a Jan. 9 letter to EPA Administrator Scott Pruitt urging him to end the policy. They argued that the policy serves to discourage, rather than promote, emissions reductions.

But environmentalists in early reaction are calling the policy withdrawal reckless. The new policy will "allow hundreds of U.S. industrial facilities to dramatically increase their emissions of the most toxic air pollutants regulated by the Clean Air Act," the Natural Resources Defense Council (NRDC) said in a Jan. 25 statement.

NRDC Clean Air Director John Walke said, "This is among the most dangerous actions that the Trump EPA has taken yet against public health. Rolling back longstanding protections to allow the greatest increase in hazardous air pollutants in our nation's history is unconscionable."

Walke promises NRDC "will fight this terrible decision to unleash toxic pollutants with every available tool." However, because it is a guidance memo rather than a regulation, environmentalists may find the move harder to challenge in court, where it may be more difficult to establish as a "final agency action" subject to judicial review. -- *Stuart Parker* (sparker@iwpnews.com)

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